

Plaintiffs' Exhibit
1
Civ. No. 21-00997 (CJN)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES H., ISRAEL F., AND MALIK Z.
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:21-cv-00997 (CJN)

THIRD DECLARATION OF KATHLEEN L. MILLIAN

I, Kathleen L. Millian, hereby depose and state:

1. I am a partner at the law firm of Terris, Pravlik & Millian, LLP (hereafter, "Terris, Pravlik & Millian" or "TPM"). Terris, Pravlik & Millian has represented Plaintiffs in the above-captioned case with co-counsel from School Justice Project (SJP) and the Washington Lawyers' Committee for Civil Rights (WLC) (collectively, "Class Counsel"), beginning with the investigation of the case in 2020. I submit this declaration in support of Plaintiffs' Unopposed Motion for an Award of Litigation Costs, Including Attorneys' Fees.

2. As a component of the Settlement Agreement, the Parties have settled all of Plaintiffs' litigation costs, including attorneys' fees, expended in connection with this litigation through the Expiration Date, except for certain enforcement motions. *See* ECF No. 191-1, paras. 151-152.

ATTORNEYS AND PARALEGALS

3. TPM is a public interest law firm with ten attorneys that represents, in environmental, civil rights, and other matters, groups and individuals who have historically lacked representation due to their inability to attract and pay for such representation. In order to serve

this underserved community that cannot afford counsel, TPM pays all the costs of litigation and relies upon the fee-shifting provisions in the statutes under which it litigates for its compensation based on the hope that the clients will prevail in the litigation, and attorneys' fees and expenses will be paid by the defendants pursuant to a court award or a settlement.

4. The value of an attorney's time is generally reflected in the attorney's hourly billing rate. That does not work for public interest law firms, such as TPM, that do not charge their clients. TPM, therefore, does not have billing rates that reflect the value of its attorneys' services in the marketplace. *See SPIRG v. AT&T Bell Laboratories*, 842 F.2d 1436, 1442 (3d Cir. 1988); *see also Salazar v. District of Columbia*, 809 F. 3d 58, 64-65 (D.C. Cir. 2015) (in affirming fee awards based on prevailing market rates from the LSI *Laffey* Matrix, the court of appeals necessarily recognized that TPM does not have rates that reflect the value of its services in the marketplace); *DL v. District of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (in reversing the fee award based on the new United States Attorney's Office (USAO) matrix, the court of appeals necessarily recognized that TPM does not have rates that reflect the value of its services in the marketplace). In the present case, TPM and co-counsel have not charged the clients for attorneys' fees or expenses and instead have agreed to seek compensation only through settlement or an award based on applicable law.

5. TPM has extensive experience litigating complex class actions in federal courts, such as this one. *See, e.g., DL v. District of Columbia*, D.D.C., Civ. No. 05-1437 (class action challenging the District's failure to provide, and failure to timely provide, special education and related services to three-to-five-year-old children; filed in 2005 and currently ongoing); *Salazar v. District of Columbia*, D.D.C., Civ. No. 93-452 (class action challenging the District's failure to properly deliver Medicaid services; filed in 1993 and currently ongoing).

6. The attorneys and paralegals who worked on the matters at issue in this fee application are listed in the time records in Plaintiffs' Exhibit 4, which also provides their rates pursuant to the LSI *Laffey* Matrix, which is addressed in paragraph 11 below. The attorneys are also described below, and additional detail is provided in their resumes (Pl. Ex. 8).

7. The primary attorneys who worked on this case over the period at issue in this application are listed in the subparagraphs below:

(a) I, Kathleen L. Millian (KLM), graduated from Cornell University in 1982 with a Bachelor of Science degree and from Stanford Law School in 1985. Before beginning employment with Terris, Pravlik & Millian, I was a judicial clerk to the Honorable James K. Singleton of the Alaska Court of Appeals from 1985 to 1986. I began employment with the firm in 1987 and became a partner in 1992. In the last 36 years, I have successfully litigated complex environmental and civil rights cases in the federal courts. At TPM, the work for this case was handled primarily by Carolyn Smith Pravlik, Zenia Sanchez Fuentes, Stephanie A. Madison, Daniel M. Franz, and me.

(b) Carolyn Smith Pravlik (CSP) graduated from Catholic University Law School in 1980. Before joining the firm in 1981, she was a participant in the Solicitor's Honors Program at the United States Department of the Interior. She has over forty years' experience litigating complex cases in the federal courts at all judicial levels. Ms. Pravlik became a partner in 1987 and a managing partner in 1990.

(c) Zenia Sanchez Fuentes (ZSF) graduated from George Washington University Law School in 2005, where she participated in the Public Justice Advocacy Clinic and was a law clerk at the District of Columbia Public Defender Service. She joined the firm in 2005 and became a partner in 2013.

(d) Stephanie A. Madison (SAM) graduated from Georgetown University Law School in 2014, where she participated in the Juvenile Justice Clinic and was a law clerk, and after graduation, was a litigation fellow at the American Civil Liberties Union's National Prison Project. She joined the firm in 2015 and became a partner in 2022.

(e) Daniel M. Franz (DMF) graduated from the University of Colorado Law School in 2020. Following law school, he was a legal fellow with Earthjustice. He joined the firm as an associate in September 2021.

8. The following TPM attorneys also performed work at issue in this application:

(a) Patrick A. Sheldon (PAS) graduated from University of Chicago Law School in 2004. Before joining the firm in 2010, he worked as an associate legal officer at the International Criminal Tribunal for the former Yugoslavia and was a litigation associate at Cleary Gottlieb Steen & Hamilton LLP's New York and Washington, D.C. offices. He became a partner in 2014.

(b) Todd A. Gluckman (TAG) graduated from Cornell Law School in 2005. Before joining the firm in 2011, Mr. Gluckman was a clerk to the Honorable Frederick J. Martone of the United States District Court for the District of Arizona and an associate at White & Case LLP. He became a partner in 2015.

(c) Nicholas F. Soares (NFS) graduated from Georgetown University Law Center in 2012, where he was a student attorney in the Center's Institute for Public Representation and interned at the U.S. Department of Justice's Special Litigation Section in the Civil Rights Division. He joined the firm in 2012 and became a partner in 2020.

(d) Sarah A. Adams (SAA) graduated from George Washington University Law School in 1994. Following law school, she was an associate at a law firm practicing in the

areas of employment discrimination and labor law. She joined the firm as an associate in November 1997 and became a partner in 2002. She left the firm in 2004, and in 2018 she returned to TPM in a new role as Senior Counsel.

9. The firm’s paralegals and clerks who worked on this case for the time period covered in this application were: Carlo T. Bruno (CTB), Sarah A. Stenger (SAS), Amelia Medina Blanco (AMB), Braelyn T. Parkman (BTP), Lior L. Wolf (LLW), William R. Fortna (WRF), Lily Greenberg Call (LGC), Michael J. Harding (MJH), Hannah M. Robertson (HMR), and Lucy V. Lansing (LVL).

10. Our firm bills paralegal and law clerk time on its cases in the same manner as attorneys’ time. As a result, we have included paralegal time in the lodestar calculations. *See Missouri v. Jenkins*, 491 U.S. 274, 284-88 (1989).

HOURLY RATES

11. The rates in this request are based on the *Laffey* Matrix updated to the 2022-2023 time period using the Legal Services Index (“LSI”)—the LSI *Laffey* Matrix.¹ Under this methodology, the *Laffey* rates applicable to this application are:

Years out of Law School	6/1/2022-5/31/2023
20+	\$997
11-19	\$829
8-10	\$733
4-7	\$508

¹ To calculate the LSI *Laffey* Matrix rates, Plaintiffs began with the *Laffey* Matrix, as it was updated through May 31, 1989, in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988). Plaintiffs obtained the LSI component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor. Pl. Ex. 2. Plaintiffs applied the LSI to the *Laffey* matrix rates for each experience level in order to produce a current hourly rate for each experience level. These calculations are set forth in Plaintiffs’ Exhibit 3. This is the same methodology used to produce the LSI *Laffey* Matrix at issue in *Salazar v. District of Columbia*, 809 F.3d 58, 64-65 (D.C. Cir. 2015) and *DL v. District of Columbia*, 924 F.3d 585 (D.C. Cir. 2019).

Years out of Law School	6/1/2022-5/31/2023
1-3	\$413
Paralegal	\$225

12. Plaintiffs used the current 2022-2023 hourly rates for the experience level of each attorney at the time the work was performed to account for the delay in payment. *See Missouri v. Jenkins*, 491 U.S. 274, 283-284 (1989).

13. Based on information available to me, the LSI *Laffey* Matrix rates are below the current market rates for complex federal litigation in Washington, D.C.

TIME EXPENDED FROM JULY 15, 2020 UNTIL DECEMBER 31, 2022

14. All the work performed by Terris, Pravlik & Millian, as set forth in this fee petition, was reasonably expended in representation of the plaintiff class between July 15, 2020 and December 31, 2022. This period was chosen because it covers the approximate start date of Class Counsel's investigation into the class claims at issue through the end of December 2022.

15. This work included a thorough investigation into the claims, including working with the named Plaintiffs, communicating with dozens of other students and special education advocates with clients at the High School at the DC Jail, and hiring and consulting with experts in the fields of special education in the correctional setting (Joseph Brojomohun-Gagnon, Ph.D.) and internet technology to support education in correctional facilities (Eden Nelson).

16. The work also included contentious motions practice such as the researching, briefing, and presenting of oral argument on Plaintiffs' successful preliminary injunction motion (ECF Nos. 12, 25, 27) and Plaintiffs' successful motion to hold Defendants in contempt for failing to comply with the Preliminary Injunction pursuant to which the Court granted the Plaintiff Class significant compensatory relief. *See* Order ("Contempt Order"), ECF No. 101. Class Counsel

spent time monitoring Defendants' compliance with the Preliminary Injunction and Contempt Orders, including reviewing and assessing the District's monthly status reports.

17. After the Contempt finding, Class Counsel continued to engage in motions practice to enforce and maintain the relief they had obtained for the class, including moving to enforce the Contempt Order, *see* ECF Nos. 111, 115, 119, and opposing Defendants' motion to clarify or, in the alternative, to modify the Preliminary Injunction and Contempt Orders. *See* ECF Nos. 118, 120. The Parties presented oral argument on these post-Contempt motions. *See* Minute Order of June 21, 2022.

18. Subsequently, Class Counsel participated in mediation and settlement negotiations with the District and engaged in a total of 15 mediation sessions supervised by Magistrate Judge G. Michael Harvey between August 2022 and May 2023. During these sessions, the Parties engaged in extensive negotiations, which at times included client representatives and a relevant third party to gather additional relevant information to evaluate the proposed settlement terms. The Parties exchanged dozens of draft settlement documents. The fourteen months of mediation and settlement negotiations culminated in the proposed Settlement Agreement, ECF No. 191-1.

19. In identifying the time for which we seek compensation, we have exercised billing judgment. In the exercise of billing judgment concerning the attorneys' fees and expenses encompassed in this fee petition, TPM eliminated significant fees.

20. TPM uses computerized timekeeping software to track the time expended by individuals and the expenses associated with each case. That software was used for TPM's time and expenses presented in this application and to generate the data presented in the supporting exhibits. For this application, we have divided the time spent in this case by attorneys, law clerks, and paralegals into categories and subcategories. The lodestar amounts, *i.e.*, the number of hours

of work for each TPM timekeeper in each category multiplied by the rates, are set forth in summary tables. *See* Pl. Ex. 5. The contemporaneous time records of TPM timekeepers are provided in Plaintiffs' Exhibit 4 and they are organized by the same categories and subcategories as in the summary tables (Pl. Ex. 5).

**TIME EXPENDED FROM DECEMBER 31, 2022 UNTIL THE SETTLEMENT
AGREEMENT'S EXPIRATION DATE**

21. Plaintiffs are entitled to their reasonable attorneys' fees and expenses incurred from December 31, 2022 until the Expiration Date of the Settlement Agreement. This work has included engaging in settlement negotiations and mediation sessions, monitoring Defendants' compliance with the Preliminary Injunction and Contempt Orders, communications with class members, and will continue to include the work related to approving the Settlement Agreement and then monitoring Defendants' compliance with the Settlement Agreement.

22. Nonetheless, solely as a compromise to achieve settlement, Plaintiffs have agreed that Defendants will pay Plaintiffs in the amount of \$2,500,000 for all litigation costs, including attorneys' fees, through the Expiration Date, and that Plaintiffs will not seek further litigation costs, including attorneys' fees, for monitoring work undertaken during the term of this Settlement Agreement. ECF No. 191-1, paras. 151-152.

23. Plaintiffs, however, have reserved the right to seek litigation costs, including attorneys' fees, in connection with any enforcement motion filed in Court after the date of Final Court Approval on which they are entitled to all or part of their fees in accordance with applicable law, provided that Plaintiffs comply with the relevant dispute resolution provisions in the Settlement Agreement. ECF No. 191-1, para. 152. Plaintiffs have agreed that they will not be entitled to seek fees on any motion that is denied by the Court, or for which they are not granted

any relief, unless that motion is settled in their favor or, as a result of its filing, the District voluntarily or unilaterally changes its position on the matter that is the subject of the motion. *Id.*

EXPENSES

24. In our application, we have also requested reimbursement for the expenses that we incurred. These are expenses that we would bill to paying clients and that law firms typically charge their clients in the Washington, D.C. market.

25. Plaintiffs' Exhibit 7 is a summary of expenses related to the work at issue and Exhibit 6 is the detailed expense log. TPM has not produced back-up documentation such as receipts or Westlaw invoices. However, TPM will produce or file them if they are requested. Plaintiffs request a total of \$37,580.54 in out-of-pocket litigation expenses incurred in the time period covered in this application. *See* Pl. Ex. 7.

26. I describe below the categories of expenses included in our application:

(a) Document Production B&W. This category includes the cost of black and white printing and photocopying documents in connection with the case. Our firm charges 15 cents per page. Such charge is consistent with the prevailing rate in the District of Columbia for such services.

(b) Document Production Color. This category includes the cost of color printing and photocopying documents in connection with the case. Our firm charges 25 cents per page. Such charge is below the prevailing rate in the District of Columbia for such services.

(c) Document Production External. This category includes the cost charged by third parties for copying requested documents on behalf of our clients which are needed for their representation. These expenses are charged at cost.

(d) Expert Fees. This category includes the cost charged by Plaintiffs' experts for their work performed in connection with the case.

(e) Filing Fees. This category includes the costs associated with filing the Complaint in the district court.

(f) Lexis/Westlaw. This category includes the cost of Westlaw for legal research. These expenses are charged at cost.

(g) Messenger Delivery Fees. This category includes the cost of local delivery of documents and correspondence with class members.

(h) PACER. This category includes the cost of any documents that were downloaded from Public Access to Court Electronic Records (PACER).

(i) Postage. This category includes out-of-pocket postage costs.

(j) Transcript/Reporting Fee. This category includes the cost of reporting services and transcripts for the hearings.

(k) Travel Expenses. This category includes the cost of local travel for in-person court appearances. These are the costs of travel by taxi or other car service in Washington, DC.

TOTAL REQUEST

27. After reducing our fees in the exercise of billing judgment, TPM incurred attorneys' fees of \$4,591,740.59 (Pl. Ex. 5) and expenses of \$37,580.54 (Pl. Ex. 7), Washington Lawyers' Committee incurred fees of \$844,337.37 (Pl. Ex. 10), and School Justice Project incurred fees of \$719,920.81 (Pl. Ex. 13), for a total of \$6,193,579.31. Plaintiffs are entitled to these fees and expenses. However, the Parties have agreed to settle these fees and expenses and those that will be incurred through the Expiration Date of the Settlement Agreement, except for certain enforcement motions, for \$2,500,000.

28. In this declaration, I have attempted to describe, as concisely as possible, the work that has been performed and the expenses incurred by Class Counsel. TPM has maintained detailed

records of its work and expenses. These records will enable me, if necessary, to supplement these descriptions. Thus, if the Court requests, I would be pleased to supplement this declaration or to discuss any category in more detail, including the nature of the work or expense and the amount of time expended or expenses incurred.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 2023.

/s/ Kathleen L. Millian

KATHLEEN L. MILLIAN