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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCY SIMON,
Plaintiff,
v.
MAPLE BEACH VENTURES LLC, et al.,
Defendants.

Case No. 21-cv-01005-PJH

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

Re: Dkt. No. 32

Before the court is plaintiff's motion for attorneys' fees and costs incurred in connection with confirming the arbitration award. The matter is fully briefed and suitable for decision without oral argument. Accordingly, the hearing set for May 13, 2021, is VACATED. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

I. Background

Plaintiff Marcy Simon and defendants Maple Beach Ventures, LLC,¹ entered into a consulting agreement in 2014. A dispute subsequently arose between the parties. The parties submitted the dispute to arbitration with JAMS in accordance with the terms of the Consulting Agreement. On January 13, 2021, the arbitrator issued the corrected final

¹ Maple Beach Ventures, LLC (Nevada), is the entity that originally contracted with plaintiff. It shares its managing director with both Maple Beach Ventures One, LLC (Wyoming), and Maple Beach Ventures One, LLC (Delaware), and all three entities are named as defendants. All three entities are collectively referred to as "MBV" or defendants herein.

1 award in plaintiff's favor, which included an award of fees and expenses incurred in the
2 arbitration proceedings. On January 19, 2021, plaintiff filed a petition in this court to
3 confirm the award and for an entry of judgment. Dkt. 1. Defendants did not oppose the
4 petition to confirm the arbitration award. Dkt. 25. On March 12, 2021, the court granted
5 plaintiff's petition and entered judgment in her favor. Dkt. 27 & 28.

6 On April 2, 2021, plaintiff filed a proposed amended judgment and this motion for
7 attorneys' fees and costs incurred in confirming the arbitration award in this court. Dkt.
8 31 & 32. On April 16, defendants filed an opposition to the fee request. Dkt. 33. On
9 April 23, plaintiff filed a reply. Dkt. 34.

10 **II. Discussion**

11 In this motion, plaintiff seeks an order (i) awarding \$46,986.25 in attorneys' fees
12 and (ii) awarding \$1,661.76 in costs. Plaintiff's motion for fees and costs is based on a
13 provision of the underlying consulting agreement between the parties. Section 7(h) of the
14 Consulting Agreement provides as follows:

15 If any arbitration, legal action or other proceeding is
16 commenced which is related to this Agreement, the losing party
17 shall pay the prevailing party's actual attorney's fees and
18 expenses incurred in the preparation for, conduct of or appeal
19 or enforcement of judgment resulting from the proceeding. The
phrase "prevailing party" shall mean the party who is
determined in the proceeding to have prevailed or who prevails
by dismissal, default or otherwise.

20 Dkt. 19-7 at 8. See SCIE LLC v. XL Reinsurance Am., Inc., 397 F. App'x 348, 351 (9th
21 Cir. 2010) ("Under California law, a contract provision that permits the recovery of fees in
22 arbitration is broad enough to include fees in related judicial proceedings.") (quotation
23 marks omitted). Defendants do not contest this as a basis for an award of fees and
24 costs. Rather, defendants ask the court to reduce plaintiff's requested fees considerably
25 because they are the result of excessive and unnecessary legal work. The following
26 assessment thus focuses on the reasonableness of both the attorneys' fees and costs
27 requested.

28

1 **A. Attorneys' Fees**

2 Reasonable attorneys' fees are generally based on the traditional "lodestar"
3 calculation set forth in Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). See Fischer v.
4 SJB-P.D., Inc., 214 F.3d 1115, 1119 (9th Cir. 2000). A reasonable fee is determined by
5 multiplying (1) "the number of hours reasonably expended on the litigation" by (2) "a
6 reasonable hourly rate." Hensley, 461 U.S. at 433.

7 Plaintiff's counsel breaks down time spent in this case into the following
8 categories: (1) preliminary research; (2) drafting and filing the Petition to Confirm;
9 (3) drafting and filing the administrative motion to seal; (4) preparing for and attempting
10 service via the U.S. Marshals; (5) post-filing motion practice and correspondence; and
11 (6) drafting and filing this motion, and related conferences.

12 **1. Hours Worked**

13 The fee-seeking party bears the initial burden to show that the hours expended on
14 the case were reasonable, using time records documenting what tasks were completed.
15 Hensley, 461 U.S. at 434; Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir.1992). "By
16 and large, the court should defer to the winning lawyer's professional judgment as to how
17 much time he was required to spend on the case; after all, he won, and might not have,
18 had he been more of a slacker." Moreno v. City of Sacramento, 534 F.3d 1106, 1112
19 (9th Cir. 2008).

20 The court may reduce the hours through its discretion "where documentation of
21 the hours is inadequate; if the case was overstaffed and hours are duplicated; if hours
22 expended are deemed excessive or otherwise unnecessary." Chalmers v. City of L.A.,
23 796 F.2d 1205, 1210 (9th Cir. 1986). In addition, courts may reduce hours where records
24 show billing in block format "because block billing makes it more difficult to determine
25 how much time was spent on particular activities." Welch v. Metro. Life Ins. Co., 480
26 F.3d 942, 948 (9th Cir. 2007). A 10 percent reduction is appropriate where "the fee
27 applicant submits billing records that . . . the district court cannot practicably rely on . . . to
28 determine a reasonable number of hours," especially considering that "the district court

1 could simply cut the number of hours or the lodestar figure by as much as 10% (without
2 explanation).” Gonzalez v. City of Maywood, 729 F.3d 1196, 1204 n.4 (9th Cir. 2013)
3 (citing Moreno, 534 F.3d at 1112).

4 **a. Parties’ Arguments**

5 Defendants argue that the fee request should be reduced because the number of
6 hours worked by plaintiff’s counsel was unnecessary.

7 First, defendants contend that plaintiff’s counsel needlessly prepared papers far in
8 excess of those necessary to confirm the arbitration award. Defendants provide the
9 following examples of papers unnecessarily included in plaintiff’s petition: the inclusion of
10 the confidential contract underlying the arbitration action, several agreements ancillary to
11 the Consulting Agreement at issue, pages of factual background regarding the creation of
12 the Consulting Agreement, and a play-by-play of the post-award briefing. Defendants
13 cite to Sayta v. Martin, Case No. 16-cv-03775-LB, 2018 WL 4677456, at *5-6 (N.D. Cal.
14 Sept. 26, 2018) for the premise that petitions confirming arbitration awards should take
15 no more than five hours to complete.

16 Second, defendants argue that at least \$4,000 of fees sought by plaintiff are
17 attributable to mere impatience. Plaintiff’s counsel asked defense counsel at the
18 beginning of the case whether they would accept service on behalf of MBV, and when
19 defense counsel said they would get back to them, plaintiff’s counsel began researching
20 and preparing for service of the petition through the U.S. Marshals Service. The research
21 and preparation were obviated one week after counsel’s initial communication, with
22 defense counsel accepting service.

23 Third, defendants argue that plaintiff’s fee request should be reduced by 20
24 percent because plaintiff’s counsel bills in quarter hour (.25) increments. In support of
25 this request, they cite Welch v. Metro. Life Ins. Co., 480 F.3d 942 (9th Cir. 2007). In that
26 case, the Ninth Circuit affirmed a district court’s 20 percent across-the-board reduction
27 based on a finding that quarter-hour billing resulted in a request for excessive hours. Id.
28 at 948-49.

1 In response to defendants’ assertions that the record was inflated and expanded,
2 plaintiff’s counsel counters that the documents included in the petition were necessary to
3 provide context and additional support for the administrative motion to seal where
4 defense counsel insisted upon maintaining confidentiality.

5 The hours plaintiff’s counsel spent preparing a lengthy record and petition may be
6 viewed as unnecessary by defendants in hindsight, but plaintiff’s counsel was not aware
7 that the petition would be unopposed and found it necessary to file a robust set of papers.
8 Plaintiff argues that the facts of Satya are distinguishable where the petition considered in
9 that case was to confirm a second arbitration award between the same parties, before
10 the same court, and about the same facts required less effort (Id. at *1-2), while this case
11 involves a fresh petition along with a motion to seal.

12 Plaintiff proceeds to distinguish the facts here from Welch, where the billing
13 records at issue revealed several quarter-hour entries for activities that clearly took much
14 less than a quarter or half-hour. Plaintiff’s counsel offers to make their billing records
15 available for inspection by the court *in camera*. Plaintiff otherwise concedes that, if the
16 court finds the quarter-hour entries result in overbilling, the more appropriate result than
17 an across-the-board reduction of fees by an arbitrary percentage would be to reduce
18 those nine entries of 0.25 hours “from 0.25 to 0.1 (and from 2.25 hours total to 0.9
19 hours).” Dkt 34 at 5.

20 **b. Analysis**

21 Here, plaintiff’s counsel should not be penalized for taking a thorough approach to
22 preparation of their papers, but they should also not be rewarded for the time they spent
23 impatiently preparing for activities that were not ultimately completed.

24 Plaintiff did prepare papers beyond what may have been strictly necessary to
25 confirm the arbitration award as defendants posit, but such papers were not excessive
26 nor superfluous to the court’s consideration of the petition. The contract documents
27 provided relevant information for the court to understand the context of the dispute. And
28 it was reasonable for plaintiff’s counsel to take a “belt and suspenders” approach to the

1 petition where they were not certain that it would be unopposed by defendants. The
2 court defers to the winning lawyer's professional judgment about the inclusion of papers
3 and effort necessary to prevail on the petition.

4 In contrast, it is not reasonable for plaintiff to attempt to collect fees for researching
5 and preparing for service of process through the U.S. Marshals Service. At the beginning
6 of this action, defense counsel responded within 20 minutes to plaintiff's inquiry regarding
7 acceptance of service to say they would "check and get back" to them. Supp. Burke
8 Decl., Ex. 1 (Dkt. 34-1 at 4). The records offered by plaintiff show that counsel began
9 preparing for service of the petition the next day, proceeding to spend hundreds of dollars
10 on photocopies and Westlaw search fees before defense counsel agreed to accept
11 service within a week. This effort did not contribute in any meaningful way to plaintiff's
12 success on the merits, and as defendants remark, shows little more than counsel's
13 impatience. The court therefore excludes from the award the 6.75 total hours spent
14 researching and preparing for service of the petition and administrative motion through
15 the U.S. Marshals Service.

16 Finally, while defendants object to the use of quarter-hour increments in plaintiff's
17 billing, the court cannot discern whether this method of tracking hours resulted in over-
18 billing because of plaintiff's counsel's block billing practice. Plaintiff encourages the court
19 to reduce nine entries of 0.25 hours "from 0.25 to 0.1 (and from 2.25 hours total to 0.9
20 hours)," but there is no way for the court to understand whether this practice is limited
21 only to those nine entries based on these overly general records. Plaintiff's counsel
22 provides little detail in support of the motion for fees, only providing six general categories
23 of time with the total number of hours spent by each attorney/staff member. This leaves
24 no opportunity for the court to assess how much time was spent on particular activities.
25 The court thus gives a 10 percent "haircut" to plaintiff's total based on their block billing,
26 although further reduction would be justifiable given the opacity of counsel's records.
27 Plaintiff's counsel offers to make their records available for *in camera* review by the court,
28 but this is simply too late. This offer to supplement time records is clearly insufficient

1 where they carry the *initial* burden to show that the hours expended on the case were
2 reasonable, using time records documenting what tasks were completed. See Hensley,
3 461 U.S. at 434; Gates, 987 F.2d at 1397.

4 **2. Hourly Rate**

5 A reasonable hourly rate is based on the “experience, skill, and reputation of the
6 attorney requesting fees,” in the context of “the rate prevailing in the community for
7 similar work performed by attorneys of comparable skill, experience, and reputation.”
8 Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986); see also
9 Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008). Generally, the
10 relevant community is the forum where the district court sits. Camacho, 523 F.3d at 979.
11 “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the
12 community, and rate determinations in other cases . . . are satisfactory evidence of the
13 prevailing market rate.” U. Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403,
14 407 (9th Cir. 1990). Courts also may rely on decisions by other courts awarding similar
15 rates for work in the same geographical area by attorneys with comparable levels of
16 experience. See Nadarajah v. Holder, 569 F.3d 906, 917 (9th Cir. 2009).

17 In a relatively recent case from this district, a rate of \$425/hour was approved for
18 work completed on a petition to confirm an arbitration award by counsel with between 17
19 and 19 years of experience. Int’l Petroleum Prod. & Additives Co., Inc. v. Black Gold
20 S.A.R.L., No. 19-CV-03004-YGR, 2020 WL 789567, at *4 (N.D. Cal. Feb. 18, 2020).
21 Counsel’s declaration in support of the motion for attorney’s fees and costs there
22 provided a relatively bare record to demonstrate the reasonableness of the rates sought.
23 Id. at *4. The court referred to some other Northern District cases resolving fee petitions
24 to show the reasonableness of the fees requested,² but the court ultimately relied on its

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26 ² See, e.g., In re MagSafe Apple Power Adapter Litig., No. 5:09-cv-01911-EJD, 2015 WL
27 428105, at *12 (N.D. Cal. Jan. 30, 2015) (“In the Bay Area, reasonable hourly rates for
28 partners range from \$560 to \$800, for associates from \$285 to \$510[.]”); Banas v.
Volcano Corp., 2014 WL 7051682, at *5 (N.D. Cal. 2014) (finding rates ranging from
\$355 to \$1,095 per hour for partners and associates were within the range of prevailing
rates).

1 own understanding of market rates, the nature of the case, and comparable rates that the
2 court previously approved to determine that the rate of \$425/hour was reasonable. Id. at
3 *4.

4 **a. Parties' arguments**

5 Plaintiff's counsel seeks the following rate per member of the litigation team: Kerry
6 Garvis Wright, partner, \$600/hour; Thomas P. Burke Jr., associate, \$550/hour in 2020
7 and \$575/hour in 2021; Tania Seanpanah, associate, \$450/hour; Allison Gipson,
8 paralegal, \$410/hour; Randy Carlos, research librarian, \$150/hour. In support of the
9 motion, plaintiff submits the declaration of Thomas P. Burke, associate with the law firm
10 Glaser Weil Fink Howard Avchen & Shapiro LLP. Dkt. 32-1. Mr. Burke's declaration
11 summarizes (1) counsel's meet and confer process preceding the present motion (¶¶ 2-
12 4); (2) how the firm maintains time records using software (¶¶ 5-7); and (3) the
13 credentials, years of experience, and billing rates of the firm's attorneys and staff (¶¶ 8-
14 12). Dkt. 32-1.

15 Defendants argue that plaintiff's fee request should be reduced because more
16 senior counsel performed what they deems to be more junior tasks. In a footnote,
17 defendants argue that plaintiff fails to carry her burden to establish the "reasonableness"
18 of the hourly rate sought—plaintiff's counsel provides no admissible evidence that these
19 rates are the prevailing rate for attorneys with comparable skill and experience.

20 Plaintiff defends her litigation strategy and use of attorneys in preparation of the
21 petition. Plaintiff cites cases providing that a "Court should not speculate as to how other
22 firms might have staffed the case or impose its own judgment regarding the best way to
23 operate a law firm but should instead look at the difficulty and skill level of the work
24 performed." San Francisco Baykeeper v. W. Bay Sanitary Dist., No. C-09-5676 EMC,
25 2011 WL 6012936, at *9 (N.D. Cal. Dec. 1, 2011) (citing Moreno, 534 F.3d at 1112).
26 Plaintiff's counsel cites to a recent bankruptcy case in the Southern District of New York
27 in which defense counsel's firm bills at rates far exceeding their own. Counsel attaches a
28 copy of the 83-page application from bankruptcy court to show that defense counsel's

1 firm (Skadden, Arps, Slate, Meager & Flom, LLP) bills for associates in excess of \$1,000
2 per hour while plaintiff's counsel here asks for a discounted rate of \$600 per hour for the
3 work of a partner. Plaintiff's counsel then cites generally to a recent Central District
4 decision for the premise that the rates they charge in this case are aligned with those
5 charged by comparable firms in Los Angeles. See Vasquez v. Packaging Corp. of Am.,
6 No. CV191935PSGPLAX, 2020 WL 6785650, at *10 (C.D. Cal. Aug. 17, 2020) ("In Los
7 Angeles, partners have an hourly rate ranging from \$450 to \$955, and associates from
8 \$382 to \$721.") (citing the 2018 Real Rate Report: The Industry's Leading Analysis of
9 Law Firm Rates, Trends, and Practices). Finally, plaintiff asks the court to rely on its own
10 experience and knowledge to recognize that the rates charged here are reasonable.

11 **b. Analysis**

12 Here, the court resists second-guessing the staffing choices of plaintiff's counsel.
13 Plaintiff prevailed, and as noted above, the court need not question winning counsel's
14 professional judgment about the effort or preparation necessary to meet their client's
15 goals. See Moreno, 534 F.3d at 1112. Moreover, the performance of certain tasks by
16 more senior counsel is clearly mitigated where the partner working on the case reduced
17 her hourly rate to \$600 per hour, almost matching the \$575 per hour billed for the senior
18 associate on the case. Counsels' staffing choices do not warrant a reduction in the rates
19 they seek.

20 But defendants are correct that plaintiff provides no admissible evidence that these
21 rates are the prevailing rate for attorneys with comparable skill and experience. Plaintiff
22 provides no information in either of counsel's declarations demonstrating that these are
23 the prevailing rates for comparable counsel, instead unhelpfully directing the court's
24 attention to fees sought by their opponents in other fora.

25 The single case cited by plaintiff does support the reasonableness of counsel's
26 rates for the Los Angeles area—\$600 per hour falls within the range for partners and both
27 \$575 and \$450 per hour fall within the range for associates. It is disappointing that
28 counsel could not find a single case from the Northern District, *this* forum, to cite in

1 support of their motion. It is additionally disappointing that counsel could not offer any
2 reference point for reasonable rates for similar work to cite in support of their motion.

3 The court thus finds it necessary to reduce the requested hourly rates for plaintiff's
4 counsel. Plaintiff bears the burden to establish by competent evidence each (1) the
5 experience of the attorneys requesting fees, (2) the skill and reputation of the attorneys
6 requesting fees related to the subject matter at hand, and (3) the rates prevailing in the
7 relevant community. Plaintiff touches on the first two points in the first Burke Declaration
8 (Dkt 32-1), but completely fails to establish the third point, one-third of her necessary
9 evidence. The court, in its discretion, accordingly reduces all rates by one-third. The
10 hourly rate for Kerry Garvis Wright, partner with nearly 30 years of experience, is reduced
11 from \$600/hour to \$400/hour. The hourly rate for Thomas R. Burke, associate with eight
12 years of experience, is reduced from \$575/hour to \$383.33/hour.³ The hourly rate for
13 Tania Seanpanah, associate with three years of experience, is reduced from \$450/hour
14 to \$300/hour. The hourly rate for Allison Gipson, paralegal with eight years of
15 experience, is reduced from \$410/hour to \$273.33/hour. The hourly rate for Randy
16 Carlos, research librarian, is reduced from \$150/hour to \$100/hour.

17 These rates are still in the ballpark of historical rates in this district and the
18 \$425/hour approved for similar post-arbitration award work in Int'l Petroleum Prod. &
19 Additives Co., Inc., 2020 WL 789567, by counsel with between 17-19 years of
20 experience. The court reiterates that the rates sought by counsel in this case are
21 reduced at the court's discretion for a lack of evidentiary showing—the requested rates
22 may prove reasonable in other contexts if properly supported by competent evidence.

23 3. Lodestar Calculation

24 Based on the conclusions above, rejecting plaintiff's counsel's hours spent
25 preparing for service through the U.S. Marshals Service, giving a 10 percent haircut for
26 block-billing, and granting plaintiff's counsel's requested rates, the court calculates the

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28 ³ The court addresses all hours billed by Mr. Burke according to this rate, avoiding any
discernment of the hours billed at \$550/hour versus \$575/hour.

attorneys' fees to be awarded to plaintiff as follows:

Timekeeper	Total Billed Hours	Hourly Rate	Total Billed Amt.
Kerry Garvis Wright	18	\$400	\$7,200
Thomas R. Burke	50.75	\$383.33	\$19,454
Tania Seanpanah	2	\$300	\$600
Allison Gipson	3	\$273.33	\$819.99
Randy Carlos	0.25	\$100	\$25
Lodestar Total			\$28,098.99

B. Costs

Pursuant to Federal Rule of Civil Procedure 54(d), costs (other than attorneys' fees) should be awarded to a prevailing party unless a statute, rule, or court order provides otherwise. Fed. R. Civ. P. 54(d)(1). "Rule 54(d) creates a presumption in favor of awarding costs to prevailing parties, and it is incumbent upon the losing party to demonstrate why the costs should not be awarded." Stanley v. University of So. Cal., 178 F.3d 1069, 1079 (9th Cir.1999). Taxable costs are listed in 28 U.S.C. § 1920 as follows:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Civil Local Rule 54-3 provides additional standards for interpreting the costs allowed under section 1920. The taxation of costs lies within the trial court's discretion. Assoc. of Mexican-American Educators v. California, 231 F.3d 572, 591 (9th Cir.2000). If the district court wishes to depart from the presumption in favor of awarding costs, it must

1 “specify reasons” for doing so by explaining “why a case is not ‘ordinary’ and why, in the
2 circumstances, it would be inappropriate or inequitable to award costs.” Id. at 591-93.
3 District courts may consider a variety of factors in determining whether to exercise their
4 discretion to deny costs to the prevailing party. Id. at 592-93.

5 **1. Parties’ Arguments**

6 Plaintiff seeks to recover a total of \$1,661.76 in costs. Counsel acknowledges
7 within the motion that “The majority of the expenses for ‘photocopies’ [\$904.80] were
8 incurred preparing copies of the Petition and administrative motion for service by the U.S.
9 Marshals. Petitioner needed to print four complete sets of the petition and administrative
10 motion, including exhibits and in color, for the Marshals Service—one set for each of the
11 named defendants and one for the Marshals’ records.” Dkt. 7. The other costs plaintiff
12 seeks are reimbursement for Westlaw online research, U.S. Marshals fees, shipping
13 fees, and the civil case filing fee.

14 Defendants’ opposition brief does not include any substantive dispute as to
15 plaintiff’s costs.

16 **2. Analysis**

17 Here, defendants do not demonstrate that costs should not be awarded. The
18 presumption in favor of awarding costs thus remains un rebutted. Earlier in this order,
19 however, the court eliminated as unreasonable the hours plaintiff’s counsel spent
20 preparing service of the petition and motion to seal through the Marshals Service. On
21 similar grounds, the court eliminates as unreasonable the photocopy costs incurred in
22 preparing service of the petition and motion to seal through the Marshals Service. The
23 expense of \$904.80 for unserved photocopies is excluded from the award of plaintiff’s
24 costs.⁴ The court thus grants plaintiff’s request in part to recover a total of \$756.96 in
25 costs.

26 _____
27 ⁴ The photocopy costs represent just the largest portion of plaintiff’s costs related to this
28 service-related misadventure. Other costs, including fees, were incurred in preparing
these documents for service by the Marshals Service. However, the court considers
elimination of this expense alone in the face of defendants’ failure to object to the costs.

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III. Conclusion

For the foregoing reasons, plaintiff's motion for attorneys' fees and costs is GRANTED in part and DENIED in part. The court awards a total of \$28,098.99 in attorneys' fees for plaintiff's counsel and \$756.96 for plaintiff's costs.

IT IS SO ORDERED.

Dated: May 12, 2021

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge