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September 29, 2016

Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Schoolcraft v. The City of New York,
10-cv-6005 (RWS) (DCF)

Dear Judge Sweet:

As one of plaintiff's counsel, I am writing to respond to the letter by Mr. Alan Scheiner, dated September 29, 2016, opposing my request that the Court direct the City to make the payments required by the Court's September 6, 2016 Opinion. I write on behalf of myself and the attorneys that I worked with in this action (John Lenoir, Magdalene Bauza, Howard Suckle and James McCutcheon).

Mr. Scheiner opposes my request based on three divergent and inconsistent grounds, arguing (i) that the request is not supported by legal authority; (ii) that the request is premature; and (iii) that the state-law rule requires that the payments be made in 90 days. The Court should reject these arguments for the following reasons.

First, it ought to be self-evident that a party's obligation to comply with a court order necessarily is based on the inherent authority of the District Court to enforce its orders, which is substantial. *Chambers v. NASCO,* 501 U. S. 32, 42 (1991) (federal district courts are universally acknowledged to be vested, by their very creation, with the power to require submission to their lawful mandates). No other legal authority ought to be required. And a state procedural statute governing

when a municipality is required to make payment on a settlement agreement does not apply to a federal court order resolving a motion for fee under federal law. Notably, the City cites no decision holding that the state procedureal statute applies to a fee decision under 42 U. S. C. Section 1988.

Second, the argument that the request for payment is "premature" should be rejected. While it is certainly correct that our motion for reconsideration operates to toll the 30-day period for filing a notice of appeal pursuant to Rule 4(a)(4) of the Federal Rules of Appellate Procedure, that does not mean that the Court's September 6, 2016 Opinion and Order has no force and effect. The City does not cite any authority to support the proposition that the Court's Order is stayed merely by virtue of the filing of a reconsideration motion. Instead, it argues that if it had sought a stay under Rule 62(b) of the Federal Rules of Civil Procedure, then "such a stay should be granted because it would be inequitable for plaintiff to both challenge the award and enforce it at the same time." Scheiner Letter at p. 1. We could not disagree more.

To the extent that the City's letter is treated as a motion for a stay, we oppose that application. My colleagues and I have been working on this action since February of 2012, and during the course of the litigation I personally incurred costs and expenses of $151,470.16. Although the claims against the City Defendants were resolved in October of 2015 and the claims against the Medical Defendants were resolved in November of 2015, none us has received any compensation for our services, and I have received only $25,000 as a partial off-set for my expenses from the settlement with the Medical Defendants. On the other hand, a year ago the City Defendants agreed in their September 2015 Offer of Judgment to pay reasonable fees, costs and expenses, and the Court in its September 6, 2016 Opinion and Order made its determination as to the *precise* amounts due for fees and costs. While it is certainly correct that we have sought to increase that award in our reconsideration motion, the City has not filed its own reconsideration motion, suggesting that the Court ought to award a lesser amount. Moreover, it is recent letter resisting payment, the City does not provided the Court with any basis or reason to suggest that the Court's award ought to be lower than the amounts set forth in the September 6th Opinion and Order. As such, we respectfully submit that the Court's Opinion and Order has established at the very least the *minimum* amount that the City will ultimately be required to pay.

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Even if the Court's September 6, 2016 Opinion is not the final decision on the matter of fees and expenses in this case, there is substantial authority that the Court has the power under 42 U. S. C. Section 1988 to award a prevailing plaintiff an *interim* award of fees and costs pending a final determination of the action. *Hurley v. Coombe*, 1996 U.S. Dist. Lexis 1185 (S.D.N.Y. Feb. 6, 1996) (interim fee awarded); *United States v. City of New York*, 2013 U.S. Dist. Lexis 125461 (E.D.N.Y. Aug. 30, 2013) (same); *see also Hanrahan v. Hampton,* 446 U. S. 754 756-57 (1980) (discussing legislative history of Section 1988 on pendent lite fee awards). Thus, the Court certainly has the power to order the City to comply with its mandate, regardless of whether its September 6th Opinion is the final decision on the matter.

In light of the protracted nature and duration of this litigation and the extensive resources (in time and money) devoted to achieving a successful resolution of the action for the plaintiff, we request that the City be ordered to comply with the Court's fee decision by October 7, 2016, which is 30 days after its issuance. In short, the City fails to come forward with any demonstrable prejudice from an order directing it to comply with the Court's fee decision.

Respectfully submitted,

Nathaniel B. Smith

Via ECF
cc: All Counsel (by ECF)