

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK****ERIC AXELROD,****Plaintiff,****-against-****HOWARD KLEIN, MARATHON SEARCH  
PARTNERS OF BURLINGTON, INC., and  
JEMEL CONSULTING, INC.,****Defendants.**USDC SDNY  
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DATE FILED: 10-28-16**16-cv-07183 (ALC)****OPINION AND ORDER****ANDREW L. CARTER, JR., United States District Judge:**

This suit was brought in the Superior Court of the State of Vermont, Chittenden Unit, by Plaintiff Eric Axelrod seeking declaratory judgment against his former business partner Howard Klein, as well as Marathon Search Partners of Burlington, Inc., and Jemel Consulting, Inc. On September 14, 2016, Defendants removed the action to this District on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. By Opinion and Order dated October 14, 2016, the Court remanded this case back to the Superior Court in Vermont, finding that removal, if appropriate, could only have been made to the District of Vermont. ECF No. 9. In so doing, the Court held that Defendants' removal to the United States District Court for the Southern District of New York was "objectively unreasonable" and warranted awarding Axelrod his attorney's fees incurred "as a result of the removal" pursuant to 28 U.S.C. § 1447(c). However, because the record was not sufficiently developed as to the amount of fees requested, the Court directed Axelrod to supplement the record to allow the Court to evaluate the reasonableness of the fees. *Id.* at 3.

Axelrod now has submitted a supplemental declaration by his counsel, Thomas Telesca, providing greater detail regarding Telesca's qualifications and the qualifications of Rona



Kupferberg, the paralegal who assisted Telesca in responding to Defendants' removal of this action to federal court. ECF No. 10 (Declaration of Thomas A. Telesca, dated Oct. 21, 2016 ("Telesca Decl.")). Telesca also provided billing entries in support of the number of hours he and Kupferberg expended. *See* Telesca Decl., Ex. A. Defendants responded to Telesca's supplemental declaration with a declaration of their counsel, David Panitz. ECF No. 11 (Declaration of David J. Panitz, dated Oct. 24, 2016 ("Panitz Decl.")). Axelrod then submitted an additional declaration by Telesca in reply to Panitz's declaration. ECF No. 12 (Declaration of Thomas A. Telesca, dated Oct. 25, 2016 ("Telesca Reply Decl.")).

### **LEGAL STANDARD**

When analyzing a request for attorney's fees, a court must determine the "lodestar" amount, which is "the product of a reasonable hourly rate and the reasonable number of hours required by the case," also known as the "presumptively reasonable fee" in the Second Circuit. *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections*, 522 F.3d 182, 183 (2d Cir. 2008)). The court determines the "reasonable hourly rate" by considering case-specific variables such as the complexity of the case, the amount of work required, the attorney's expertise, and awards in similar cases, among other factors. *Arbor Hill*, 522 F.3d at 190. With respect to the reasonableness of the hours expended, the court "looks to its own familiarity with the case and its experience with the case and its experience generally as well as to the evidentiary submissions and arguments of the parties." *Alexander v. Amchem Prod., Inc.*, No. 07-cv-6441 (RJS), 2008 WL 1700157, at \*3 (S.D.N.Y. Apr. 3, 2008) (quoting *Clarke v. Frank*, 960 F.2d 1146, 1153 (2d Cir. 1992)) (internal quotation marks omitted).



## ANALYSIS

### I. Reasonableness of the Hourly Rates

Defendants do not contest the reasonableness of the hourly rates for either Telesca or Kupferberg. The fees requested are equal to the hourly rates charged to Axelrod by Telesca's firm: \$375 per hour for Telesca and \$210 per hour for Kupferberg. Telesca has 13 years of experience practicing in state and federal court on a variety of commercial litigation matters. Telesca Decl. ¶¶ 7-8. The Court finds that Telesca's hourly rate is consistent with the hourly rates of partners with his level of experience in this District. *See, e.g., Alexander*, 2008 WL 1700157, at \*5 (collecting cases in which hourly rates ranged from \$200 to \$400 per hour for partners with 10 or more years of experience); *MB Fin. Bank, N.A. v. 56 Walker, LLC*, No. 11-cv-5538 (JGK), 2011 WL 6338808, at \*4 (S.D.N.Y. Dec. 19, 2011) (finding \$645 per hour reasonable for litigation partners) (collecting cases).

Kupferberg's rate, on the other hand, is on the high end of what courts in this District ordinarily find reasonable for paralegals. *See, e.g., Long v. HSBC USA Inc.*, No. 14-cv-6233 (HBP), 2016 WL 4764939, at \*11 (S.D.N.Y. Sept. 13, 2016) (\$100 to \$150 per hour reasonable for paralegals in labor cases) (collecting cases); *Sanguinetti v. Boqvist*, No. 15-cv-3159 (PKC), 2016 WL 1466552, at \*4 (S.D.N.Y. Apr. 14, 2016) (awarding \$129 per hour for paralegal and secretarial work); *Doe v. Unum Life Ins. Co. of Am.*, No. 12-cv-09327 (LAK) (AJP), 2016 WL 335867, at \*6 (S.D.N.Y. Jan. 28, 2016), *adopted by*, 2016 WL 749886 (S.D.N.Y. Feb. 23, 2016) (approving award of \$200 per hour for senior paralegals). While \$210 per hour is a high rate, Kupferberg has been working as a paralegal for 32 years, *see* Telesca Decl. ¶ 12, and some of the tasks she performed on this matter appear to be more typical of junior associates, such as proofreading and cite checking legal briefs. *See* Telesca Decl., Ex. A.



The Court also has considered the other factors identified by the Court of Appeals in *Arbor Hill*, and finds that they, too, support the determination that the hourly rates are reasonable. While the issues presented by the removal of this action to federal court and the subsequent motion for remand were not complex, they required briefing on a relatively short timetable. Additionally, Axelrod was successful in his motion to remand this action to state court in Vermont. Therefore, the Court finds that Telesca's and Kupferberg's hourly rates are reasonable.

## **II. Hours Expended**

As a preliminary matter, Defendants do not contest the reasonableness of the number of hours Kupferberg worked, and the Court agrees that the 1.8 hours Kupferberg spent working on this case appear reasonable. Defendants do, however, take issue with the 19.9 hours Telesca says that he expended on issues related to removal and remand.

Telesca acknowledges that the billing entries included as an exhibit to his declaration include tasks unrelated to the removal and remand, but states that he subtracted the time spent on those unrelated tasks to reach his 19.9 hour total. Telesca Decl. ¶ 14. Defendants have a different view of the number of hours Telesca spent on unrelated tasks, particularly where those tasks included telephone calls with Defendants' counsel regarding settlement, and suggest that "about 5 hours" would be a more reasonable total. *See, e.g.,* Panitz Decl. ¶¶ 4-5, 6, 10, 37. However, Telesca explains that the bills he submitted to the Court do not reflect the *total* time he spent in settlement discussions with Defendants' counsel because he did not bill Axelrod for "most of the time [he] spent" in this regard and he already subtracted from the time entries he submitted to the Court "the time [he] *billed* [his] client for settlement discussions." Telesca Reply Decl. ¶ 6.



The Court's ability to assess the reasonableness of the amount of time attributable to addressing issues of removal and remand also is somewhat complicated by the use of "block billing," that is, aggregating multiple, unrelated tasks into a single time entry. *See Triumph Constr. Corp. v. N.Y. City Council of Carpenters Pension Fund*, No. 12-cv-8297 (KPF), 2014 WL 6879851, at \*6-7 (S.D.N.Y. Dec. 8, 2014). Despite the difficulties presented by block billing, it does appear that Telesca spent a reasonable amount of time responding to Defendants' removal and subtracted unrelated time from the block-billed time entries by reference to his own contemporaneous time records. *See* Telesca Decl. ¶ 14.

Defendants also assert that, even subtracting the time spent on settlement negotiations, Axelrod's counsel should have spent less than 19.9 hours on this relatively straightforward removal and remand. Panitz Decl. ¶¶ 40-41. However, courts in this Circuit regularly allow plaintiffs who successfully remand an action to state court to recover up to 30 hours of their counsel's time, even when the issues presented by the removal and remand were straightforward. *See, e.g., Mosher v. Davita Healthcare Partners Inc.*, No. 15-cv-7594 (JPO), 2016 WL 3963131, at \*2 (S.D.N.Y. July 20, 2016) (reducing compensated hours on "straightforward" remand motion from 70 hours to 30 hours because "district courts across this Circuit hesitate to reimburse plaintiffs' attorneys for more than about 30 hours spent on relatively uncomplicated motions to remand") (citation omitted); *Frontier Park Co., LLC v. Contreras*, 35 F. Supp. 3d 264, 273-74 (E.D.N.Y. 2014) (reducing hourly rate because "issues involved were not particularly complex," but awarding fees for 26.4 hours); *MB Fin. Bank*, 2011 WL 6338808, at \*4 (reducing attorneys' hours by 40.0% from 51 hours to 30.6 hours where removal was plainly improper). Here, Axelrod seeks reimbursement for only 19.9 hours of attorney time for an action that, while not terribly complex, involved responding to the Court's order to show cause



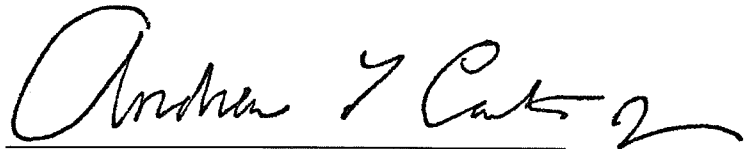
regarding remand, making his own motion to remand, among other peripheral tasks incurred as a result of the improper removal, such as preparing a letter pursuant to Federal Rule of Civil Procedure 11.

### **CONCLUSION**

For all of the foregoing reasons, Axelrod's request for attorney's fees is GRANTED. Axelrod is awarded attorney's fees as follows: **\$7,462.50** for Telesca's fees (\$375 per hour multiplied by 19.9 hours) and **\$378.00** for Kupferberg's fees (\$210 per hour multiplied by 1.8 hours), for a total of **\$7,840.50**.

**SO ORDERED.**

Dated: October 28, 2016  
New York, New York

A handwritten signature in black ink, reading "Andrew L. Carter, Jr.", written in a cursive style.

**ANDREW L. CARTER, JR.**  
**United States District Judge**