

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| NEW YORK CITY TRANSIT AUTHORITY, | : | |
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| Plaintiff, | : | 19-CV-5196 (JMF) |
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| -v- | : | |
| | : | <u>MEMORANDUM OPINION</u> |
| EXPRESS SCRIPTS, INC., | : | <u>AND ORDER</u> |
| | : | |
| Defendant. | : | |
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JESSE M. FURMAN, United States District Judge:

In an Opinion and Order entered on August 19, 2022, the Court ordered Plaintiff New York City Transit Authority (“NYCTA”) to reimburse Defendant Express Scripts, Inc. (“Express Scripts”) “for the reasonable attorneys’ fees and costs it incurred in conducting additional discovery following the Court’s summary judgment ruling and in bringing its motion for reconsideration.” ECF No. 178 (“Op.”), at 9-10. In light of that decision, Express Scripts seeks \$88,401.25 in attorney’s fees, \$5,023.10 in costs, and \$134,990.51 in expenses associated with its consultant, Berkeley Research Group (“BRG”). *See* ECF No. 184. NYCTA has no objection to the \$88,401.25 in attorney’s fees and \$5,023.10 in costs, which are hereby awarded, but it does object to the \$134,990.51 in expert fees. *See* ECF No. 190 (“Pl.’s Opp’n”), at 1.

NYCTA’s categorical objection — that the BRG expenses “fall outside the ambit of this Court’s award,” *id.* — is overruled. NYCTA concedes, as it must, that such expenses are reimbursable under Rule 37(c)(1)(A) of the Federal Rules of Civil Procedure, which was the basis for the Court’s award, *see* Op. 9-10, and provides for payment of “the reasonable *expenses*, including attorney’s fees, caused by the failure,” *see* Pl.’s Opp’n 2. Instead, the basis for NYCTA’s objection is the Court’s Opinion and Order, which referred to “reasonable attorneys’


fees and costs.” But that was merely the Court’s (admittedly imprecise) gloss on the amount to be awarded under Rule 37(c)(1)(A) and was not intended to narrow the expenses that would be reimbursable. Accordingly, NYCTA’s objection is overruled.

That said, the Court agrees with NYCTA’s other concerns — namely, that Express Scripts’s submission does not provide sufficient information for the Court to determine that the BRG expenses are reasonable. *See* Pl.’s Opp’n 3-6. Among other things, Express Scripts provides no rate information and makes no effort to show that the rates charged are reasonable on a market basis; there is little attempt to explain the task BRG was assigned or to specify the work performed; and the time entries submitted fail to provide sufficient detail. This imprecision is all the more problematic given that, by Express Scripts’s own admission, some of BRG’s work is not reimbursable. In these circumstances, the Court has “broad authority to make across-the-board percentage cuts in hours, as opposed to an item-by-item approach,” to determine what would qualify as reasonable expenses. *Top Jet Enters., Ltd. v. Kulowiec*, No. 21-MC-789 (RA) (KHP), 2022 WL 1184245, at *5 (S.D.N.Y. Apr. 21, 2022). Exercising that broad authority, the Court concludes that a 75% reduction is appropriate here. *See id.* That translates to \$33,747.63 in reimbursable BRG-related expenses.

In light of the foregoing, and the Court’s August 19, 2022 Opinion and Order, Express Scripts is awarded a total of \$127,171.98. NYCTA shall pay that amount to Express Scripts **within thirty days of the date of this Memorandum Opinion and Order.**

SO ORDERED.

Dated: October 12, 2022
New York, New York



JESSE M. FURMAN
United States District Judge