

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ACOSTA v. AMERICAN LAFRANCE, LLC, et al.	14-CV-881A(F)
BAUTISTA v. AMERICAN LAFRANCE, LLC, et. al.	14-CV-884A(F)
BROWN v. AMERICAN LAFRANCE, LLC, et al.	14-CV-886A(F)
CLARK v. AMERICAN LAFRANCE, LLC, et al.	14-CV-887A(F)
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WREST v. AMERICAN LAFRANCE, LLC, et al.	14-CV-908A(F)

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In this product liability class action brought by firefighters alleging hearing impairment resulting from excessive exposure to fire engine siren sound, by Decision and Order filed May 10, 2016 (Dkt. 89) (“the D&O”), the court granted Defendant Federal Signal’s (“Federal Signal”) request for sanctions against Plaintiffs’ law firm Napoli Bern caused by the firm’s bad faith cancellation of a scheduled mediation required under the court’s mandatory ADR Plan. Specifically, the court found that because one of Napoli Bern’s named partners improperly cancelled the mediation, one of Defendant Federal Signal’s attorneys, Jan Miller (“Miller”), a partner at Thompson Coburn, LLP (“Thompson Coburn”), Federal Signal’s attorneys, who was then en route to Buffalo to attend the mediation, was forced to return to his St. Louis law office causing unnecessary expenses to Federal Signal warranting an award of Federal Signal’s expenses incurred as a result of the Napoli Bern’s cancellation of the mediation. D&O at 9. Federal Signal’s motion included documentation supporting its sanctions request in the amount of \$3,600 representing Mr. Miller’s billable time at \$400/hr. in preparing for the cancelled mediation, plus \$789.83 for wasted air fare, hotel and meal expenses totaling \$4,389.83, and an additional \$1,749 representing 6.3 hours at \$255/hr. for Audrey Mense, an associate at Thompson Coburn, and at \$330/hr. for J. David Duffy (“Duffy”), a partner (“Federal Signal’s Application”).

In Plaintiffs’ response, Dkt. 91, Plaintiffs question only the hourly billings rates for Miller and Duffy. Specifically, Plaintiffs question whether Miller and Duffy actually bill

Federal Signal their respective hourly rates as stated in their declaration. *Id.* Plaintiffs state that Plaintiffs are questioning “the unsubstantiated and apparently arbitrary billing rate[s],” attributable to Miller and Duffy. Dkt. 91 at 3. In reply, Federal Signal submits copies of Thompson Coburn invoices for September 2015 for the matter which indicate that Miller’s billing rate is in fact \$400/hr. and Duffy’s is \$330/hr. See Dkt. 93-1 at 4, and an invoice dated October 23, 2015 indicating Duffy’s time on the case for the period covered by that invoice was \$330/hr. Dkt. 93-1 at 10. A third invoice dated November 25, 2015 also confirms Duffy’s rate to be \$330/hr. Dkt. 93-1 at 15. Taken together with Duffy’s Declaration in support of Defendant’s motion, Dkt. 71-1 ¶¶ 5, 7, Federal Signal’s submission sufficiently establishes that Miller and Duffy’s hourly rates are respectively \$400/hr. and \$330/hr. See *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 842-43 (2d Cir. 1993) (rejecting district court’s award of attorney’s fees at hourly rate that was substantially higher than hourly rate at which attorney had billed client based on attorney’s bills which are “high evidence” of the maximum value of the attorney’s services. Accordingly, there is no need for discovery on this issue as Plaintiffs request, Dkt. 91 at 3, and Plaintiffs’ request is therefore DENIED.

### CONCLUSION

Based on the foregoing, Federal Signal’s Application in the amount of \$6,188.83 to be paid by Napoli Bern is GRANTED.

SO ORDERED.

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

Dated: July \_\_\_\_, 2016  
Buffalo, New York