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NEW YORK SUPREME COURT---------COUNTY OF BRONX

PART IA - 5

BLAKE WINGATE,

Plaintiff,

-against-

THE CITY OF NEW YORK and CAPTAIN HERNANDEZ (SHIELD NO. 106)

Defendants.

INDEX NUMBER: 309277/2008

Present:
HON. **ALISON Y. TUITT**
Justice

The following papers numbered 1 to 4,

Read on this Plaintiff's Motion to Set Aside the Jury Verdict

On Calendar of **7/9/12**

Notice of Motion - Exhibits, Affirmation 1

Affirmations in Opposition 2, 3

Reply Affirmation 4

Upon the foregoing papers, plaintiff's motion for a new trial on the issue of damages for past pain and suffering and for an award of attorney's fees and reimbursement of litigation expenses is denied in part and granted in part.

The within personal injury matter came to trial before this Court commencing on November 18, 2011 and concluding on December 16, 2011. This is an action to recover damages for personal injuries sustained by plaintiff while he was an inmate at Rikers Island Correctional Facility. Plaintiff alleges that on June 27, 2008, while he was incarcerated, Captain Ronald Hernandez repeatedly punched plaintiff without provocation. As a result of the incident, plaintiff claims he sustained serious personal injuries, including displaced fractures of the left mandibular body and right ramus, as well as a compound fracture of the left jaw.

Bilateral, intraoral surgery with open reductions with internal fixation were performed in July 1, 2008 at Bellevue Hospital. On September 26, 2008, plaintiff underwent surgery to remove and replace the bone plates inserted on July 1, 2008. On December 16, 2011, the jury returned a verdict in favor of plaintiff finding as follows: defendant Captain Hernandez did not use reasonable force; the unreasonable force used by defendant Captain Hernandez was a substantial factor in causing plaintiff's injuries; plaintiff was also responsible for the injuries he sustained; the percentage of fault of defendants was 57% and the percentage of fault of plaintiff was 43%; the force defendant Captain Hernandez used against plaintiff was malicious for the purpose of causing plaintiff harm; the unreasonable force used by defendant Captain Hernandez was a substantial factor in causing plaintiff's injuries; awarding plaintiff $65,000 for past pain and suffering; $104,000 for future pain and suffering; $40,000 for past medical expenses; $40,000 for future medical expenses; defendant Captain Hernandez's actions were sufficiently egregious to warrant punitive damages; awarding $25,000 for punitive damages.

The evidence adduced at trial regarding plaintiff's injuries came from Dr. Arthur C. Elias, an oral surgeon, who testified on behalf of plaintiff. Defendants offered no expert medical testimony. Dr. Elias testified that plaintiff sustained displaced fractures of both sides of his jaw, requiring an initial bilateral open reduction and internal fixation of the fracture fragments under general anesthesia. Thereafter, plaintiff' jaw was wired shut. Several months later, after the fracture fragments failed to properly unite and plaintiff developed a jaw infection, plaintiff underwent surgical removal of the hardware and a second bilateral open reduction and internal fixation of the fracture fragments under general anesthesia. As of the time of trial, plaintiff's jaw fractures had still not healed properly and he continued to suffer from facial nerve damage and malocclusion of the jaw resulting in, among other symptoms, facial pain and numbness, and difficulty chewing and speaking.

Plaintiff now moves pursuant to C.P.L.R. §4404(a) for an order directing a new trial only on the issue of damages for past pain and suffering. Plaintiff argues that his motion for a conditional additur should be granted since the jury's award of $65,000.00 for past pain and suffering for compound, displaced fractures of the jaw, requiring two surgeries under general anesthesia, deviated materially from what is reasonable compensation.

Pursuant to C.P.L.R. §4404(a), the Court in its discretion may set aside a verdict and order a new trial in the interests of justice. The applicable standard of review here is whether the monetary award for past

pain and suffering deviates materially from what would be reasonable compensation for the injuries sustained by plaintiff. See, Donlon v. City of New York, 727 N.Y.S.2d 94 (1st Dept. 2001). Where a damages award deviates materially from what would be reasonable compensation for comparable injuries, the Court has the authority to order a new trial conditioned on the non-moving party stipulating to the additur or remittitur of the damages award. See, C.P.L.R. §5501(c); Ortiz v. 975 LLC, N.Y.S.2d (1st Dept. 2010)(Generally, the amount of damages awarded for personal injury is primarily a question for the jury, the judgment of which is entitled to great deference based upon its evaluation of the evidence). To support a claim that a verdict deviates from reasonable compensation, a party must point to cases involving a similar injury. Malki v. Kreiger, 624 N.Y.S.2d 167 (1st Dept. 2005).

Plaintiff argues that based on the precedent set by Atkinson v. Buch, 793N.Y.S.2d 39 (1st Dept. 2005), the jury's award of $65,000.00 for past pain and suffering deviates materially from what is reasonable compensation and is inadequate as a matter of law. In Atkinson, the First Department reversed a judgment awarding plaintiff damages for a broken jaw and ordered a new trial unless defendant agreed to increase the jury's award to $75,000.00. Plaintiff contends that the jaw injury in Atkinson paled in comparison to that sustained by the plaintiff herein. The First Department described the plaintiff's injury in Atkinson:

> Plaintiff sustained a broken jaw while undergoing a tooth extraction performed by defendant oral surgeon, whereupon defendant immediately wired plaintiff's mouth shut. Plaintiff was under local anesthesia during the extraction, and therefore did not experience pain at the moment his jaw was fractured, or while his mouth was being wired, but thereafter, over the eight weeks that his mouth was wired, did experience varying degrees of pain and loss of enjoyment of life, could only eat through a straw, and did not go to work.

Plaintiff argues that the injuries sustained herein were far more severe and extensive than that of Atkinson. Here, plaintiff sustained displaced fractures of both sides of his jaw resulting in open reduction and internal fixation; wiring shut of his jaw; infection and malocclusion of the jaw, subsequent removal of the hardware; a second open reduction and internal fixation all under general anesthesia. In addition, plaintiff herein was not under anesthesia when he sustained his injuries, thereby experiencing significant pain and suffering when his injuries were inflicted. Moreover, argues plaintiff, as of the time of trial, plaintiff herein had experienced four and a half years of pain and suffering and loss of enjoyment of life.

Defendants oppose the motion and argue that Atkinson, the only case cited by plaintiff, is distinguishable from the case at bar. Defendants contend that in Atkinson, the plaintiff was awarded a

significant increase in the past and pain suffering because he could not work for the eight weeks his mouth was wired. Defendants argue that plaintiff herein was incarcerated for at least one year prior to June 2008, has remained unemployed in between various stints of incarceration and did not lose any time from work.

Defendants further argue that the jury was able to observe plaintiff during the three week trial and could observe that he had no issues talking while he was cross examined during a three day period. Defendants contend that the jury also had the liberty and requested the opportunity to view surveillance of the plaintiff obtained by defendants the weekend after the trial began. The surveillance, 40 minutes long, depicted the plaintiff using and talking into two different cell phones at various points for long periods of time. Plaintiff was also depicted carrying heavy boxes against his jaw and cheekbone for a protracted amount of time. Defendants argue that the jury clearly evaluated plaintiff's testimony and actions and determined the proper award for past pain and suffering.

To determine whether an award deviates materially from what would be reasonable compensation, Courts look to awards previously approved in similar cases. Here, the only case involving a similar injury is the case of Atkinson. Contrary to the defendants argument, the increase in the award for past pain and suffering in Atkinson was not based mostly on plaintiff's lost time from work. If anything, it appears to be one of the least significant factors in the Court's reasoning.

The exercise of the discretion of a trial Court over damage awards should be exercised sparingly. Shurgan v. Tedesco, 578 N.Y.S.2d 658 (2d Dept. 1992) citing James v. Shanley, 423 N.Y.S.2d 312 (3rd Dept. 1979). Not all awards lend themselves to review and approval by comparison with previously approved verdicts. See Launders v. Steinberg, 828 N.Y.S.2d 36 (1st Dept. 2007), *mod. on other grounds*, 9 N.Y.3d 930 (2007); see also Morisette v. "The Final Call", 764 N.Y.S.2d 416, 422 (1st Dept.2003), *lv. dismissed*, 5 N.Y.3d 756 (2005) (Personal injury awards, especially those for pain and suffering, are subjective in nature, formulated without the availability of precise mathematical quantification).

In the instant matter, while it is true that the plaintiff's injuries were certainly more severe than the plaintiff in Atkinson, the Court agrees with defendants argument that the jury was able to observe plaintiff during the trial and could determine that plaintiff appeared to not have issues talking while he on the witness stand for several days. It was within the province of the jury to determine plaintiff's past pain and suffering was limited to $65,000.00. Based on the evidence presented at trial and the jury's observations of the plaintiff during the trial, this Court finds no reason to disturb the jury's award.

Plaintiff also moves for attorneys' fees in the amount of $401,592.50 and reimbursement of litigation expenses in the amount of $18,059.88. A prevailing party in a lawsuit brought pursuant to 42 U.S.C. §1983 is entitled to a reasonable attorney's fee from the defendant. See, 42 U.S.C. §1988(b). New York State inmates are entitled to proceed against corrections officers in state court under §1983 and to an award of attorney's fees if successful. Haywood v. Drown, 556 U.S. 729 (2008). The award authorized under §1988 also includes reimbursement of "those reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients. United States Football League v. National Football League, 887 F.2d 408, 416 (2nd Cir. 1989), *cert denied*, 493 U.S. 1071 (1990); see also Pastre v. Weber, 800 F. Supp. 1120, 1127 (S.D.N.Y. 1991). Although §1988 allows the Court discretion in choosing whether to award attorney's fees to the prevailing party, "this discretion is narrowed by a presumption that successful civil rights litigations should ordinarily recover attorneys' fees unless special circumstances would render an award unjust." Raishevich v. Foster, 247 F.3d 337, 344 (2nd Cir. 2001).

In determining the amount of attorney's fee to be awarded, the United States Supreme Court has endorsed the "lodestar" approach, which multiples a reasonable hourly rate by the reasonable number of hours required by the case to create a "presumptively reasonable fee". Perdue v. Kenny, 559 U.S. ____, 130 S. Ct. 1672(2010). To ascertain a "reasonable hourly rate", Courts look to the market rates "prevailing in the community for similar services by lawyers of reasonable comparable skill, experience and reputation. Gierlinger v. Gleason, 160 F.3d 858, 882 (2nd Cir. 1998).

Prior to the Supreme Court's decision in Perdue, New York Courts typically examined twelve factors itemized in Johnson v. Ga. Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) in determining a presumptively reasonable fee. See, Petrisch v. JP Morgan Chase, 789 F. Supp. 2d 437, 458 (S.D.N.Y. 2011)(noting that the Second Circuit directed Courts to look to the twelve *Johnson* factors in arriving at a reasonable attorney's fee). The twelve Johnson factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See Johnson, 488 F.2d at 717–19.

Courts are afforded considerable discretion in determining the amount of attorneys' fees in any given case. See, Barfield v. New York City Health and Hospitals Corp., 537 F.3d 132, 151 (2nd Cir. 2008). In calculating a reasonable fee award, the Second Circuit has adopted the "presumptively reasonable fee" approach. See, Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections, 522 F.3d 182, 190 (2nd Cir. 2008). "Although the term 'lodestar' is now disfavored by the Second Circuit, the applicable approach still contemplates (1) a consideration of the number of hours actual spent by counsel and other personnel that are deemed reasonably necessary to a successful outcome for the client, and (2) the setting of reasonable hourly rates for counsel...". Imbeault v. Rick's Cabaret Int'l, Inc., No. 08 Civ. 5458, 2009 WL 2482134 at 5 (S.D.N.Y. 2009). The presumptively reasonable fee boils down to what a reasonable, paying client would be willing to pay, given that such a party wishes to spend the minimum necessary to litigate the case effectively. Simmons v. New York City Transit Authority, 575 F.3d 170, 174 (2nd Cir. 2009). "The reasonable hourly rate is the rate a paying client would be willing to pay." Arbor Hill, 522 F.3d at 190. Moreover, the "presumptively reasonable fee" standard uses the hourly rates employed in the district in which the reviewing Court sits. Simmons, 575 at 174-175. In making a fee application, "the burden is on the fee applicant to produce satisfactory evidence - in addition to the attorney's own affidavits - that the requested rates are in line with those prevailing in th community for similar services. Blum v. Stenson, 465 U.S. 886, 896 n. 11 (1984).

In the instant matter, plaintiff's attorneys, Sivin & Miller, LLP, argue that its fee application based on an hourly rate of $600.00 is in line with rates charged by and awarded to civil rights lawyers in the Southern District of New York with experience comparable to Edward Sivin and Glenn D. Miller, the principals of Sivin & Miller, LLP. Mr. Sivin states that according to the contemporaneous time records kept by his office, he spent 230.6 hours, and Mr. Miller spent 398.2 hours, in the prosecution of this matter. Mr. House, an "of counsel" attorney for Sivin & Miller, LLP, provided 95.3 hours in the prosecution of this matter, primarily technical, non-legal support during the trial. Movants state that for the purposes of their fee application, Mr. House's time should be assessed at a rate comparable to that of a paralegal. In addition, counsels state that a paralegal and seven law school students expended 99.68 hours in the prosecution of this action and their rate should be assessed at $125.00 per hour. Using the lodestar method, the fee requested for Mr. Sivin's and Mr. Miller's work at the hourly rate of $600.00 amounts to $377,280.00; the work Mr. House, the paralegal and law school students at the rate of $125.00 per hour amounts to $24,312.50; for the total amount of $401,592.50.

Defendants oppose plaintiff's counsels' motion arguing that the plaintiff's request must be significantly reduced on the grounds that the hourly rates proposed by plaintiff's counsels are unreasonable and that the amount of hours expended by the attorneys in the prosecution of this case are also unreasonable. Defendants do not contest the hourly rate proposed by plaintiff's counsels for Mr. House, the paralegal and law students. Defendants argue that since this case was venued and tried in Bronx County, the prevailing market rate is that of Bronx County and, pursuant to the forum rule, attorneys' fees should be based on the prevailing rate in the Southern District of New York.

Defendants contend that hourly rates for experienced civil rights attorneys in the Southern District of New York range from $250.00 to $600.00 over the past ten years, with the average hourly rate increasing during that time. Mugavero v. Arms Acres, Inc., No. 03 Civ. 5724, 2010 U.S. Dist. LEXIS 11210 (S.D.N.Y. 2010). Rates of $400.00 per hour or more are generally reserved for "unusually difficult and complex cases, E.S. v. Katonah-Lewisboro School District, 796 F. Supp.2d 421, 430 (S.D.N.Y. 2008), while rates of $550.00 per hour or more are generally reserved for extraordinary attorneys who are held in unusually high regard by the legal community. Finch v. New York State Office of Children and Family Services, No. 04 Civ. 1668, 2012 WL 2866253 (S.D.N.Y. 2012).

Defendants also argue that hourly rates for civil litigators in small firms frequently range from $275.00 to $375.00 in the Southern District of New York. Dunn v. Advanced Credit Recovery Incorporated, No. 11 Civ. 4023, 2012 U.S. Dist. LEXIS 27205 at 18 (S.D.N.Y. 2012). Therefore, in setting the hourly rate, it is important to consider whether the attorneys are "more like members of a large New York City law firm than they are like members of a nonprofit organization or a two or three-person obscure law firm." Wise v. Kelly, 620 F. Supp.2d 435, 446 (S.D.N.Y. 2008); Reiter v. Metropolitan Transportation Authority of New York, No. 01 Civ. 2762, 2007 U.S. Dist. LEXIS 71008 at 21 (S.D.N.Y. 2007).

In reviewing a fee application, the Court must examine the particular hours expended by counsel with a view to the value of the work product of the specific expenditures to the client's case. See, Lunday v. City of Albany, 42 F.3d 131, 133 (2nd Cir. 1994); DiFilippo v. Morizio, 759 F.2d 231, 235 (2nd Cir. 1985). If any expenditure of time was unreasonable, the Court should exclude those hours from its calculation. See, Hensley v. Eckerhart, 461 U.S. 424, 434 (U.S. 1983); Lunday, 42 F.3d at 133. The Court should thus exclude "excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful

claims." Quarantino v. Tiffany & Co., 166 F.3d 422, 425 (2nd Cir. 1999). "The fee applicant bears the burden" of "documenting the appropriate hours expended." Hensley, 461 U.S. at 437. Courts have declined to award fees for entries in time sheets such as "research for brief", "research for and draft brief", "draft and edit brief", "review correspondence", "prepare correspondence", "telephone conference" and "review files", reasoning that these entries are too vague and do not provide a Court with sufficient information as to the type of work that was completed. F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d 1250, 1265 (2nd Cir. 1987); see also Williamsburg Fair Housing Community, 2005 U.S. Dist. LEXIS 5200 at 29.

Defendants claim that plaintiff's counsels pervasive use of block billing hinders the Court's task of determining whether the time spent on a particular task was reasonable. Mawere v. Citco Fund Services (USA), Inc., No. 09 Civ. 1342, 2011 U.S. Dist. LEXIS 149111 at 30; see also Simmonds v. New York Department of Corrections, No. 06 Civ. 5298, 2008 U.S. Dist. LEXIS 74539 at 8 (S.D.N.Y. 2008)(block billing makes it "difficult if not impossible for a court to determine the reasonableness of the time spent on each" individual task). At times, Courts have reduced or even disallowed a request for attorneys' fees where the billing records were not itemized in sufficient detail to allow the reviewing Court to determines the reasonableness of the time spent on each task. Mawere, 2011 U.S. Dist. LEXIS 149111 at 30-31.

Furthermore, travel time billed should be billed at one-half of counsel's billing rate. Robinson v. The City of New York, No. 05 Civ. 9545, 2009 U.S. Dist. LEXIS 89981 at 21 (S.D.N.Y. 2009). Defendants contend that based on the billing records, a minimum reduction of 4.9 hours is required to account for the lower rate at which travel time is billed.

Defendants argue that plaintiff's counsels have failed to show that they are entitled to an hourly rate of $600.00. The law firm of Sivin & Miller, LLP is a two attorney firm and therefore the appropriate community by which to determine their hourly rate should be that of a small law firm. Defendants argue that plaintiff's counsels have fail to demonstrate the experience and reputation that is a prerequisite for an hourly rate exceeding $550.00. Of the 39 "noteworthy cases" listed on Sivin & Miller's website, only seven involve civil rights violations. In addition, defendants argue that counsels fail to demonstrate that they "are held in unusually high regard by the legal community" so as to warrant an hourly rate in excess of $550.00. Based on the applicable case law, defendants submit that the hourly rate of $350.00 is reasonable and appropriate compensation.

Moreover, defendants claim that plaintiff's counsel's billing records are replete with vague

entries and block billing. Of the 230.6 hours billed by Mr. Sivin, 101.2 hours (approximately 44%) including 58.7 hours described only as "work on post-trial motion can be attributed to block billing and a further 78.5 hours (approximately 34%) can be attributed to vague entries. With respect to Mr. Miller, defendants claim that of the 398.2 hours billed, 90.5 hours (approximately 34%) can be attributed to block billing and a further 116 hours (approximately 29%) as "prep" or "trial prep" are impermissibly vague as there is no explanation as to what tasks he performed during those hours. Thus, contends defendants, the hours billed by Mr. Sivin and Mr. Miller should be reduced by 191.7 hours to account for the substantial use of block billing and by the 194.5 hours to account for vague entries. Additionally, defendants argue that 7.5 hours billed on July 30, 2009 for the depositions of plaintiff and Captain Hernandez should be disallowed because the depositions were not performed by either Mr. Sivin or Mr. Miller, but by Elliot Skydel, an attorney noted as "of counsel".

As an alternative to scrutinizing each entry on the billing statements provided by counsels, defendants argue that the Court should exclude hours from its fee computation by making an across the board reduction in the number of hours. See In re "Agent Orange" Prod. Lib. Litig., 818 F.2d 226, 237-238 (2nd Cir. 1987). Such a reduction may be accomplished by deducting a percentage of the hours from the billing statements. Kirsch v. Fleet Street, Ltd., 148 F.3d 149, 173 (2nd Cir. 1988).

Defendants argue that, in the alternative to reducing the billing statement by the numbers stated, the Court should reduce the number of hours in plaintiff's counsels' billing statements by 55% or 384.34 hours. Defendants claim that such is warranted here because approximately 27% of the total hours included on the billing statement can be attributed to block billing and 28% of the total hours can be characterized as vague entries.

Plaintiff's counsels concede that they improperly billed 7.5 hours for work that was performed by another attorney, in addition to another 1.5 hours improperly billed for a total deduction of 9.0 hours from their fee application. Plaintiff's counsels contend that they have expended an additional 73.2 hours subsequent to the initial fee application in preparing motion, opposition and reply papers in connection with post trial motions, for an additional $38,520.00 in fees, for a total fee of $440,112.50.

In light of all of circumstances herein and the applicable caselaw, this Court finds that the hourly rate of $600.00 is excessive and Sivin & Miller, LLP's attorneys' fees should be charged at $350.00 per hour for work performed in this case. See, Sylvester v. City of New York, 2006 U.S. Dist. LEXIS 81716 (S.D.N.Y. 2006)(A false arrest action where the firm Sivin & Miller, LLP, representing the plaintiff, requested an hourly

rate of $350.00 for attorneys' fees which the Southern District of New York found reasonable); see also Martinez v. Thompson, 2008 U.S. Dist. LEXIS 98961(The Northern District of New York declaring a $275.00 hourly rate for attorneys' fees requested by Sivin & Miller, LLP in a similar case).

With respect to defendants' argument of block billing, this Court finds that Sivin & Miller, LLP's billing practices were practical in this matter. The Second Circuit has held unequivocally that block-billing is permissible "as long as the Court can determine the reasonableness of the work performed." Adorno v. Port Authority of N.Y. & N.J., 685 F. Supp. 2d 507 (S.D.N.Y. 2010). Sivin & Miller, LLP's billing records are sufficiently specific to describe the work that was performed by the attorneys. This Court conducted a review of the billing records submitted by counsels and finds it itemized sufficiently to determine the work performed . The Court is able to determine the reasonableness of the time spent of each task by the attorneys. As noted by the Court in Sylvester, which also rejected the argument of block billing, "... the time entries of plaintiffs' counsel conform to what a reasonable client compensating her attorneys on an hourly basis might expect them to delineate in periodic invoices seeking the payment of fees."

With respect to travel time, this Court agrees that a minimum reduction of 4.9 hours is required as travel time it is customary to reduce the billing rate by 50%. Additionally, plaintiff concedes that a total deduction of 9.0 is warranted for improperly billed time.

With respect to the 95.3 hours at the hourly rate of $125.00 for work performed by Mr. House, the "of counsel" attorney, and the 99.2 hours expended by counsel's paralegal and seven law students, it is also allowed as proper. However, the hourly rate of $125.00 per hour requested is unreasonable and the hourly rate should be $100.00 per hour. See Wise v. Kelly, 2008 WL 482399, 11 (S.D.N.Y.2008); see also Sylvester v. City of New York, *supra* (finding paralegal hourly rates of $100 per hour reasonable).

Plaintiff's application to include an additional 64.2 hours in attorneys' fees that it has incurred subsequent to the initial fee application is permissible, at the hourly rate of $350.00. The work performed by counsel was necessary to the action. It is well established that hours spent in an attorney's fee application pursuant to 42 U.S.C. §1983 are to be included in the fee award. See, Wyant v. Ost, 198 F.3d 311, 316 (2nd Cir. 1999).

The Court finds no merit to defendants' argument regarding the contemporaneous nature of counsels' billing. Sivin & Miller, LLP have adequately shown that it is their practice and a requirement of all office staff to keep contemporaneous time records in connection with all work performed on civil rights cases. With respect to defendants' remaining arguments with respect to the attorneys' fees, the Court has considered

them and finds them unavailing.

Plaintiff's counsels' application for reimbursement of expenses incurred in the prosecution of this case in the amount of $18,059.88 is also granted with no opposition from defendants.

Accordingly, it is the Order of this Court that plaintiff's counsels award is as follows:

1. Sivin & Miller LLP's hours expended on the case (minus the appeal) to be paid at a rate of $350.00 per hour: 230.6 hours by Mr. Sivin and 398.2 hours by Mr. Miller for a total of 628.8 hours; minus the 9.0 hours counsels concede were improperly billed and 4.9 hour reduction to account for lower rate of travel time, for a total attorney's fee award of $215,215.00.

2. Sivin & Miller LLP's additional 64.2 hours expended on the post trial motions including its attorneys fees application at the hourly rate of $350.00, for an award of $22,470.00.

3. Mr. House hours of 95.3 and the paralegal/law students hours of 99.2, for a total of 194.5 hours billed at the $100.00 hour rate, there is a further award of $19,450.00.

4. In addition, counsels are entitled to $18,059.88 for reimbursement of expenses.

Thus, the total award to Sivin & Miller LLP is $275,194.88.
This constitutes the decision and Order of this Court.

Dated: February 21, 2013

Hon. Alison Y. Tuitt