IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOSEPH WALKER,

Plaintiff,

v. Case No. 20-cv-487

CITY OF MILWAUKEE, et al.,

Defendants.

PLAINTIFF'S MOTION FOR LEGAL FEES AND COSTS
PURSUANT TO 42 U.S.C. § 1988

Plaintiff, Joseph Walker, by his attorneys, OVB Law & Consulting, S.C., pursuant to 42 U.S.C. §1988, files this motion seeking his legal fees and costs for having to bring and prosecute his claims. Mr. Walker also seeks, for the reasons stated below, an enhanced legal fee of 33.33% based on the City's prior failed attempts to resolve and the Common Council's purposeful circumvention of settlement in this matter.

This case depicts the exact type of civil rights litigation that Congress intended to encourage lawyers to handle when it decided to create a fee-shifting provision in Section 1983 cases so that state actors bear "the full burden of paying for enforcement of their civil rights obligations." *Hensley v. Eckerhart*, 477 U.S. 424, 445, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *see also City of Riverside v. Rivera*, 477 U.S. 561, 578, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986)(noting that fee awards are designed to "encourage the bringing of meritorious civil rights claims which may otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel.", *quoting Kerr v. Quinn*, 692, F.2d 875, 877 (2d Cir. 1982)). Thus, even those members of our society who cannot otherwise afford to hire an attorney can vindicate their constitutional rights and deter further misconduct, even against law enforcement. *Hensley*, 461 U.S. at 445–46.

I. The Lodestar Method is the Legal Standard for the Award of Legal Fees Pursuant to 42 U.S.C. § 1988.

Attorney's fees are determined by multiplying the reasonable hours expended by a reasonable hourly rate. *Hensley*, 461 U.S. at 433; *Blum v. Stenson*, 465 U.S. 886, 897, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). This method is referred to as the "lodestar" method and is considered the presumptively appropriate fee award under 42 U.S.C. §1988. *Blanchard v. Bergeron*, 489 U.S. 87, 95, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989) (the "strong presumption that the lodestar figure . . . represents a reasonable fee is wholly consistent with the rationale behind (section 1988)."); *Perdue v. Kenny A.*, 559 U.S. 542, 546, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010). When litigation of a § 1983 case leads to "excellent results," the plaintiff's attorney "should recover a fully-compensatory fee." *Hensley*, 461 U.S. at 435. "Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Id.*

Nonetheless, the party requesting fees has the burden of substantiating the reasonableness of the hours expended and the accompanying hourly rate. *Estate of Borst v. O'Brien,* 979 F.2d 511, 515 (7th Cir. 1992); *see also Pressley v. Haeger,* 977 F.2d 295, 299 (7th Cir. 1992) ("Prevailing plaintiffs are entitled not to a 'just' or 'fair' price for legal service, but to the *market* price for legal services"). "The market rate is 'the rate that lawyers of similar ability and experience in the community normally charge their paying clients for the type of work in question.'" *Eddleman v. Switchcraft, Inc.,* 965 F.2d 422, 424 (7th Cir. 1992) (*quoting Henry v. Webermeier,* 738 F.2d 188, 193 (7th Cir. 1984)). Importantly, when considering a fee request, the hourly rates currently in existence are the rates to be considered, not rates over multiple years. *King v. Board of Regents of University of Wisconsin System*, 748 F. Supp. 686, 691 (E.D. Wis. 1990) ("Thus, this court will utilize the current market rate in Milwaukee in awarding attorney's fees to King in order to compensate King's attorneys for the delay in payment in this case.").

Here, there no dispute that Mr. Walker was the prevailing party in this litigation. A prevailing party is one who succeeds on "any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit . . . ." *Texas State Teachers Ass'n v. Garland Independent School Distr.*, 489 U.S. 782, 788, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989), *quoting Nadeau v. Helgemoe*, 581 F.2d 275, 278–79 (1st Cir. 1978). As Mr. Walker is the prevailing party and achieved a successful outcome, at minimum, his attorneys should be awarded their full lodestar.[1]

Plaintiff's counsel seeks compensation for every hour expended proving the excessive force and failure to intervene claims, in violation of Mr. Walker's Fourth Amendment rights. The law firm's invoices substantiate the original hourly fees equals $314,576.00. (*See* Ovbiagele, Decl. Ex. B; Cade Decl. Ex. A). The following table shows the analysis of the hours worked and the rates sought.

Attorney/Paralegal	**Hours worked**	**Current Hourly Rate**	**Total**
Ohioma Emil Ovbiagele	327.90	$300.00 - $350.00	$111,255.00
Samantha H. Baker	144.40	$275.00 - $300.00	$42,970.00
Nathaniel Cade, Jr.	165.30	$505.00	$83,476.5
Connor J. Dartt	119.00	$120.00 - $250.00	$24,755.00
Joey O'Neil (former paralegal)	161.90	$120.00	$19,428.00
Austin Baldwin (paralegal)	89.60	$120.00	$10,752.00

[1] Any suggestion that the size of the verdict is a reason to reduce Plaintiff's lodestar is not well taken. If anything, the extraordinary result achieved by Plaintiff's counsel is reason to increase the lodestar, not decrease it. *See Perdue,* 559 U.S. at 551. Moreover, "By virtue of its familiarity with the litigation, the district court certainly is in a much better position than we to determine the number of hours reasonably expended." *McNabola v. Chicago Transit Auth.,* 10 F.3d 501, 519 (7th Cir. 1993).

Allysa Brown (former attorney)	50.80	$250.00	$12,700.00
Megan Mirka	1.20	$250.00	$300.00
Annalisa Pusick	15.30	$285.00	$4,360.50
Madison Bedder	26.40	$250.00	$2,875.00
Tyarra Daniel (legal assistant)	1.60	$120.00	$192.00
Dusty Gross (law clerk)	.60	$120.00	$72.00
Sydney Wagner (former law clerk)	12.00	$120.00	$1,440.00
Total	**1,116**		**$314,576.00**
Total Costs			**$54,625.65**
Total			**$369,201.65**

As noted below, Mr. Walker also moves the Court to award his attorneys an enhancement of the legal fees due to the extraordinary recovery by his attorneys, as well as due to the failures of the City to settle or preventing an otherwise valid settlement from being accepted. Plaintiff requests a fee enhancement of 33.33% of the fees incurred, or $104,848.18. This would result in a total fee of $419,424.18 plus costs of $54,625.65.70. Added together, the total amount that Plaintiff requests is $474,049.88.

II. The *Hensley* Factors Support Mr. Walker's Counsel's Proposed Rates.

Per the Supreme Court in *Hensley*, describing the application of the lodestar method, the Court is to consider the following factors in deciding a reasonable fee award:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the skill requisite to perform the legal service properly;

(4) the preclusion of employment by the attorney due to acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) time limitations imposed by the client or the circumstances;

(8) the amount involved 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.

Hensley, 461 U.S. at 430, n.3.

Each of the *Hensley* factors supports Plaintiff's counsels' proposed rates. As explained above, "'the most critical factor' in determining a fee award 'is the degree of success obtained.'" *Farrar*, 506 U.S. at 114 (quoting *Hensley*, 461 U.S. at 436); *see also Telpro, Inc. v. Renello*, 1994 WL 380607 (N.D. Ill. July 18, 1994). A $2,000,000 civil rights verdict obtained by a single plaintiff is a successful result by any measure, especially given the overall difficulties that use of force cases present. In addition, the City had an opportunity to settle this case for much less.

A. Settlement Opportunities.

The parties first mediated this case on September 27, 2023 before Atty. Emile Banks. (OVB Decl., Ex. 1 (under seal)). In the failed mediation attempt, the highest amount offered up by the Defendant during mediation was a $300,000 offer contingent on City approval, which Mr. Walker rejected. (OVB Decl. (under seal)).

After the unsuccessful attempt at mediation, on October 5, 2023, Defendants made an even worse offer. Eight days after mediation, via a Rule 68 offer to Mr. Walker, the Defendants offered to resolve the matter for $250,000 (which was to include all attorney fees and cost). (OVB Decl., Ex. 2 (under seal)). In short, the Milwaukee City Attorney's Office, had opportunities to settle this matter, but whether through spite, hubris, or arrogance in a particular legal position, refused to settle for a reasonable amount.

B. Hensley Factors.

With respect to "the experience, reputation, and ability of the attorneys," Plaintiff's main attorneys, Samantha H. Baker and Ohioma Emil Ovbiagele, dutifully submit that their credentials and the credentials of the other lawyers and support staff who worked on this file are on par with attorneys practicing at the most renowned firms in the country. *See* Baker Decl.; Ovbiagele Decl. If they worked at commercial firms, Plaintiff's counsel would command top-tier rates far exceeding the rates proposed in this petition. *Riverside*, 447 U.S. at 578 (section 1988 is designed "to encourage the bringing of meritorious claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel"). Certainly, the experience aspect is present.

Other factors for the Court to consider are the opportunity cost of the representation and the desirability of the case. Plaintiff's attorneys devoted hundreds of hours and more than $52,000 in costs, all while facing a substantial risk of recovering nothing. (Ovbiagele Decl., ¶ 28). This devotion of resources meant Plaintiff's counsel could not devote time and resources to other cases that would have paid them contemporaneously. Given that this litigation lasted nearly four years, with almost two of those years by the current counsel, and was vigorously defended at all stages, the opportunity cost of the litigation was especially high.

Finally, *Hensley* instructs that the Court determining a fee should evaluate the time and labor required, difficulty of issues, and skill necessary to perform the legal service properly. These factors

cut heavily in Plaintiff's counsel's favor. Plaintiff's counsel had to convince a jury that the defendants violated Mr. Walker's Fourth Amendment rights to be free of excessive force used by law enforcement and free from those law enforcement officers failure to intervene, which included Plaintiff getting shot in the back. In essence, Mr. Walker's counsel had to convince a jury that Mr. Walker was more credible than Lisa Purcelli, Tanya Boll, Jeremy Gonzalez, Daniel Clifford, and Balbir Mahay, And, as discussed below, this was an exhaustively litigated civil rights case. Plaintiff's fee petition should be granted in its entirety.

1. The Hours Expended Litigating This Case Were Reasonable and Should Be Approved.

In order to win, Plaintiff's counsel litigated this case aggressively and thoroughly. With regard to the lawsuit, Plaintiff's team submitted numerous discovery requests, reviewed thousands of pages of medical records, thousands of police documents, conducted five depositions, reviewed and obtained depositions from a prior cases involving parties associated with the shooting, defended a motion for summary judgment, and filed and responded to numerous pre-trial motions. The fruits of this labor were ultimately persuasive to the jury. Under such circumstances, counsels' fees should be approved. *Robinson*, 489 F.3d at 872; *Gautreaux v. Chicago Housing Authority*, 491 F.3d 649, 661-62 (7th Cir. 2007); *Coe v. City of Milwaukee Housing Authority*, 2013 WL7965804, *6 (7th Cir. April 10, 2013).

Moreover, as noted above, the settlement negotiations in this case proved to frustrate Plaintiff's preparation for trial. This case went through mediation, wherein Defendants stonewalled any efforts of resolution, severely under-valued the case, and refused to give consideration to Plaintiff's pain and suffering. These factors should further the Court's justification as to the fee request.

Defendants cannot now claim that the hundreds of hours expended preparing the case for trial were unreasonable. Faced with no choice but to prepare for trial, Plaintiff's counsel chartered a course to a hard-fought victory for Mr. Walker. Accordingly, Plaintiff's attorneys' time billed represents a necessary and reasonable use of time. *See Johnson v. GDF, Inc.*, 668 F.3d 927, 933 (7th Cir.

2012) ("[The defendant] knew (approximately) what it was up against and proceeded to trial, without an offer of judgment or any concession of liability. [The defendant] tested its luck and lost. Now it must pay for the attorney hours reasonably required to see the case through trial, to appeal, and for the collection of fees.").

2. The Hourly Rates Are Reasonable and Should be Approved.

a. Reasonable hourly rates are determined by the prevailing market rates.

"A reasonable hourly rate is determined by looking to prevailing market rates within the relevant community, and thus a lodestar calculation aims to approximate what a prevailing attorney would expect to receive from a paying client." *National Exchange Bank and Trust v. Petro-Chemical Systems, Inc.*, 2014 WL 1089589, at *1-2 (E.D. Wis. Mar. 19, 2014), citing *Perdue v. Kenny A.*, 559 U.S. 542, 551 (2010); *see also Pappenfus v. Receivable Management Services Corp.*, 2013 WL 5427891, at *1-2 (E.D. Wis. Sept.26, 2013) ("A reasonable hourly is one that is derived from the market rate for the services rendered."), quoting, in part, *Pickett v. Sheridan Health Care Center*, 664 F.3d 632, 640 (7th Cir. 2011).

The hourly rates that Plaintiff's counsel seek here are summarized in Exhibit A to the Declaration of Ohioma Emil Ovbiagele. These rates are reasonable in light of the market for comparable civil rights attorneys and trial lawyers in the Milwaukee area. As the declarations of Attorney Mark Thomsen and Attorney Ryan Woody demonstrates, the prevailing market rate is similar in Milwaukee. Plaintiff's counsel seeks an award in line with these rates. Accordingly, the Court should approve the requested fees as reasonable.

b. Plaintiff's counsel's rates comport with other civil rights attorneys' rate in the Milwaukee area.

In support of their petition, Plaintiff's counsel submits the declaration of Ryan Woody, an experienced civil rights litigator in the Milwaukee area who attests that the hours and rates requested by Plaintiff's counsel are reasonable. (*See* Decl. of Ryan Woody, ¶¶ 6-8; Decl. of Mark Thomsen, ¶¶

9-11). In addition, Plaintiff's counsel, Ohioma Emil Ovbiagele and Samantha H. Baker, as well as Nathaniel Cade, Jr., have submitted their own Declarations in support of the hourly rates sought. *See* Cade Decl.; Ovbiagele Decl.; and Baker Decl.).

These types of declarations satisfy Plaintiff's burden of demonstrating the reasonableness of the rates sought. *Spegon v. The Catholic Bishop of Chicago*, 175 F.3d 544, 556 (7th Cir. 1999) (the "attorney's own affidavits," "evidence of fee awards that the attorney has received in similar cases" and affidavits from "similarly experienced attorneys attesting to the rates" sufficiently satisfy the fee applicant's burden). Indeed, an attorney's actual rate is the best evidence of the market rate and is presumptively reasonable. *See People Who Care v. Rockford Bd. of Edu.,* 90 F.3d 1307, 1310 (7th Cir. 1996).

3. The Costs Expended To Win This Case Were Reasonable.

Section 1988 also provides that the prevailing party will be reimbursed for the reasonable costs associated with litigating the case. *Six Star Holdings, LLC*, 2015 WL 5821441, *8, citing *Henry v. Webermeir*, 738 F.2d 188, 192 (7th Cir. 1984). Indeed, "the Seventh Circuit held that the term "attorney's fee" in §1988 includes out-of-pocket expenses, such as those incurred for investigation, travel, and other activities related to case preparation, that a lawyer would normally bill to a client separately rather than include in his or her overhead." *Six Star Holdings, LLC*, 2015 WL 5821441, *8, citing *Henry*, 738 F.2d at 191-92.

As reflected in the Bill of Costs and accompanying materials, the costs for which counsel seeks reimbursement represent the reasonable expenditures necessary to advance this case, such as the cost for depositions and transcript fees, experts retained to defend Mr. Walker's claims, and travel. Plaintiff's counsel incurred these reasonable expenses to aggressively litigate the case. (Ovbiagele Decl., ¶ 28). These are the typical expenses that the market reimburses as the costs of litigation. *Star Holdings, LLC*, 2015 WL 5821441, *9 ("Thus, under current law, a prevailing party is

entitled to have any reasonable out-of-pocket expenses, including expert-witness fees, included in the fee award."), citing *Ziegler Coal Col. v. Dir., Office Workers' Comp. Programs,* 326 F.3d 894, 899-900 n. 2 (7th Cir. 2003)(noting that Congress amended § 1988 to allow the recovery of expert witness fees as part of recovered attorney's fees). *See also Tchemkou v. Mukasey*, 517 F.3d 506, 512-13 (7th Cir. 2008) (computerized research, printing and mailing expenses are recoverable as part of a fee petition); *Manson v. City of Chicago,* 825 F.Supp.2d 952, 957 (N.D. Ill. 2011) (prevailing party may recover the cost of deposition transcripts in section 1983 litigation).

All in all, Plaintiff has shown that his fees are reasonable considering the victory at trial and are supported by the market-rate of similar civil rights matters. Further, the enhancement sought highlights Common Council's failure to adhere to its fellow colleagues on advice regarding settlement matters lending the taxpayers to a greater sacrifice.

III. The Court Should Modify and Increase the Lodestar Amount By 33.33%, As Requested, for the Results Obtained.

Once the Court has determined an amount of legal fees using the lodestar method, the Court is free to adjust that award in light of a plaintiff's "level of success." *Hensley,* 461 U.S. at 434, 436. There numerous other decisions agreeing about an upward departure. *See, e.g.,* Pennsylvania *v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 107 S.Ct. 3078, 97 L.Ed.2d 585 (1987); *Skelton v. General Motors Corp.*, 860 F.2d 250, 254 n.3 (7th Cir. 1988), *cert. denied,* 493 U.S. 810, 110 S.Ct. 53, 107 L.Ed.2d 22 (1989), citing *Delaware Valley*; *Bankston v. State of Ill.,* 60 F.3d 1249, 1255–56 7th Cir. 1995); *Ustrak v. Fairman*, 851 F.2d 983*,* 988–89 (7th Cir 1988); *King*, 748 F.Supp. at 693 (Judge Reynolds granting a 25% fee enhancement). *See also Milwaukee Deputy Sheriffs' Ass'n v. Clarke*, 2010 WL 2430776 (E.D. Wis. June 14, 2010)(Adelman, J.)("After determining the lodestar, *I may adjust the fee upward* or downward based on a variety of factors, the most important of which is the results obtained.")(emphasis added).

In *Hensley,* the Supreme Court identified the basic approach a district court is to take in

determining whether to adjust the modified lodestar amount to account for a plaintiff's limited success. 461 U.S. at 434–38. In a case involving a single claim or related claims, the court is directed to ask whether "the plaintiff achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award." *Id.* at 434. This Court "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Hensley*. at 435; *see also Jaffee v. Redmond,* 142 F.3d 409, 414 (7th Cir. 1998).

When a plaintiff has obtained an excellent result, his attorneys should be rewarded and recover a fully compensable fee (*i.e.,* the modified lodestar amount), and the fee "should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." *Hensley,* 461 U.S. at 435. Moreover, "a judgment in the amount of $2,000,000.00 cannot be described as 'a minimal victory in light of the time expended to achieve it.' *Montanez [v. Simon],* 755 F.3d [547,] 556 [7th Cir. 2014]. Thus, I conclude that the lodestar should not be reduced under the 'results obtained' factor." *Six Star Holdings, LLC v. City of Milwaukee*, 2015 WL 5821441, *7 (E.D. Wis. October 5, 2015)(Adelman, J.).

Mr. Walker's success at trial is indicative of the jury's understanding of the issues presented to them. The jury's verdict certainly vindicated Mr. Walker's individual constitutional rights while sending a message via compensatory damages. Section 1988 provides that the "prevailing party" in a civil rights suit may be entitled to reasonable attorneys" fees and costs paid by the defendants. 42 U.S.C. §1988(b). "'[T]he most critical factor'" in determining a fee award "'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S.Ct. 566, 121 L.Ex.2d 494 (1992) (quoting *Hensley*, 461 U.S. at 436).

One factor that suggests a higher fee award under the lodestar method is the size of Mr. Walker's award and highlights the severity of the issues at hand and the jury's understanding of the violations at stake. In addition to serving a large monetary award, Mr. Walker's commendable ability to navigate the legal system, *pro se,* for several years is a feat not to be underestimated. While many civilians litigate their claims *pro se*, Mr. Walker's demeanor on the stand, patience in obtaining competent counsel two years

after filing his lawsuit, and steadfast credibility suggested quite clearly that his claims were meritorious from the start. The jury agreed and the verdict demonstrates that violations of constitutional rights at the hands of current and former law enforcement officers will not be tolerated. With hope, this award will deter future constitutional violations in the City of Milwaukee and elsewhere. *Hensley*, 461 U.S. at 445, n. 4 ("the public as a whole has an interest in the vindication of the rights conferred by statutes enumerated in § 1988 over and above the value of a civil rights remedy to a particular plaintiff."); *Robinson v. City of Harvey*, 489 F.3d 864, 872 (7th Cir. 2007) (where civil rights plaintiff won a substantial award, brought public attention to disturbing police misconduct, and presumably deterred future constitutional violations his attorneys were therefore entitled to the full lodestar amount).

Another factor the Court should consider with regards to the increase of the lodestar amount is the bad faith that the City (i.e., Defendants) exhibited with regards to settlement of this case. Here, despite Plaintiff's attempts to reach a settlement with the City, their efforts ultimately were halted by the City Attorney's Office who valued this case at $420,000. Plaintiff's counsel cannot be punished for the City's lack of diligence in settling this matter when appropriate nor can they be admonished for seeking a larger award when trial preparation was made a necessity. Additionally, the fact that Mr. Walker navigated the filing of his lawsuit *pro se* while facing the difficult task of obtaining an attorney when no one else wanted the case, should justify the enhancement of the hourly rates sought, or an additional $104,848.18. Mr. Walker's diligence and strong-willed belief in his claims likewise support an enhancement.

CONCLUSION

Plaintiff Joseph Walker, for the reasons stated above, requests that the Court award him his legal fees and costs in the following amounts:

Legal fees & Costs (Lodestar method):	$369,201.65
33.33% enhanced legal fee:	$104,848.18

Total Fees and Costs Sought:	**$474,049.88**

Dated this 14th day of December 2023.

OVB Law & Consulting, S.C.
Attorney for Plaintiff

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