

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOEL Q. HACK, an individual, and  
WREN BEAULIEU-HACK, an individual,

Plaintiffs,

Hon. Marianne O. Battani  
Case No. 2:18-cv-13330

THE CHARTER TOWNSHIP OF MILFORD,  
a Michigan municipal corporation, TOWNSHIP  
OF MILFORD BOARD, a public body,  
DONALD D. GREEN, in his personal capacity and  
in his official capacity as Supervisor of Milford  
Township, and TIMOTHY C. BRANDT, in his  
personal capacity and in his official capacity as  
Building and Zoning Administrator of Milford Township,

Defendants.

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR  
ATTORNEY FEES AND COSTS PURSUANT TO 42 U.S.C. § 1988 AND  
FED.R.CIV.P. 54(d)(2)**

**BRIEF IN SUPPORT**

**CERTIFICATE OF SERVICE**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOEL Q. HACK, an individual, and  
WREN BEAULIEU-HACK, an individual,

Plaintiffs,

Hon. Marianne O. Battani  
Case No. 2:18-cv-13330

v.

THE CHARTER TOWNSHIP OF MILFORD,  
a Michigan municipal corporation, TOWNSHIP  
OF MILFORD BOARD, a public body,  
DONALD D. GREEN, in his personal capacity and  
in his official capacity as Supervisor of Milford  
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FED.R.CIV.P. 54(d)(2)**

**NOW COME** the Defendants, **THE CHARTER TOWNSHIP OF  
MILFORD, TOWNSHIP OF MILFORD BOARD, DONALD D. GREEN** and  
**TIMOTHY C. BRANDT**, by and through their attorneys, **O'CONNOR,  
DeGRAZIA, TAMM & O'CONNOR, P.C.**, and for their Response to Plaintiffs'  
Motion for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988 and Fed.R.Civ.P.  
54(d)(2), state as follows:

1. Defendants admit that on August 5, 2019, this Court entered an Injunction and Declaratory Judgment against Defendants (**ECF No. 76, Page ID 2574-2577**) as well as a money judgment pertaining to Plaintiffs' claim that Defendants violated their substantive due process rights under 42 U.S.C. § 1983 (**ECF No. 78, Page ID 2579-2580**). Defendants further state that the jury's verdict is subject to challenge on appeal and post-verdict motions which will not be due until after the deadline for responding to the present motion.

2. Defendants neither admit nor deny the allegations alleged in this paragraph as the law speaks for itself.

3. Defendants neither admit nor deny the hours allegedly expended by Plaintiffs' counsel in this matter.

4. Defendants object to the hourly rates requested by Plaintiffs' counsel as unreasonable and excessive. Defendants ask the Court to apply an hourly rate that reflects the market rate as set forth in the attached brief.

5. Defendants object to the alleged costs in this amount of seven thousand, three hundred sixty-five dollars and ninety-eight cents (\$7,365.98) on grounds that Plaintiffs' counsel has failed to provide an explanation for vague expense items.

6. Defendants object to the alleged expert fees and costs in this amount of nine thousand, two hundred forth-sixty dollars and twenty-five cents (\$9,246.25) for the reason that expert fees are not recoverable under 42 U.S.C. § 1988. *W. Virginia*

*Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 92, 111 S. Ct. 1138, 1143, 113 L. Ed. 2d 68 (1991). Additionally, the recovery of expert fees and costs would constitute unjust enrichment where the expenses were considered as part of the jury's verdict.

7. See response to paragraph six (6) above.

8. Defendants neither admit nor deny the allegations alleged in this paragraph as the case of *Northeast Ohio Coalition for the Homeless v. Husted*, 831 F.3d 686 (6<sup>th</sup> Cir. 2016) speaks for itself. Defendants further state that appellate issues remain including but not limited to the award of punitive damages against the Milford Township Board. See *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981) (While it was well established at the time § 1983 was enacted “that a municipality, like a private corporation, was to be treated as a natural person subject to suit for a wide range of tortious activity, ... this understanding did not extend to the award of punitive or exemplary damages.”).

9. The allegations alleged in this paragraph are denied as untrue. While Plaintiffs' prevailed at trial on claims for declaratory and injunctive relief and their substantive due process claim, several of Plaintiffs' claims were dismissed prior to trial and legal questions exist regarding the monetary judgment including the legality of awarding punitive damages against the Milford Township Board. *Id.*

10. Denied.

11. Denied.

12. Defendants neither admit nor deny the allegations alleged in this paragraph as the case of *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986), supplemented, 483 U.S. 711, 107 S. Ct. 3078, 97 L. Ed. 2d 585 (1987) speaks for itself. Defendants further state that any additional time spent on the case is the result of actions taken by the Plaintiffs and not the fault of the Defendants and are not awardable under 42 U.S.C. § 1988 to the extent the work is not related to Plaintiffs' § 1983 claim.

13. Defendants neither admit nor deny Plaintiffs' intent to submit periodic billing statements.

14. Defendants neither admit nor deny Plaintiffs' intent to submit periodic billing statements.

15. Defendants neither admit nor deny Plaintiffs' intent to submit periodic billing statements.

16. Defendants deny that Plaintiffs are entitled to recover attorney fees and/or costs identified in this paragraph. Defendants further state that the requested rates are excessive.

17. No contest.

**WHEREFORE**, Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for Attorney Fees and Costs and alternatively award attorney fees and costs reflective of reasonable attorney rates and costs.

Respectfully submitted,

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

BY: /s/ Richard V. Stokan, Jr.

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Dated: August 27, 2019

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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**TABLE OF CONTENTS**

**PG**

ISSUE PRESENTED ..... iii

CONTROLLING AUTHORITY..... iv

INTRODUCTION .....1

STANDARD OF REVIEW .....2

ARGUMENT .....2

    I.    Plaintiffs’ Counsel’s Request for Attorney Fees is Not  
Reasonable and Should be Reduced. ....2

    II.   Plaintiffs’ Requests for Litigation Costs is Unreasonable  
and Should be Reduced .....8

    III.  Plaintiffs Are Not Entitled to Recover Expert Witness  
Fees ..... 11

CONCLUSION AND RELIEF REQUESTED ..... 12

CERTIFICATE OF SERVICE ..... 13

**ISSUE PRESENTED**

**I. WHETHER PLAINTIFFS ARE ENTITLED TO RECOVER FULL ATTORNEY FEES AND COSTS**

**CONTROLLING AUTHORITY**

The controlling or most appropriate authority for the relief sought, in addition to 42 U.S.C. § 1988, is *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).

## INTRODUCTION

This case arises out of a claim that the Defendants placed unlawful conditions on Plaintiffs' attempt to construct a residential driveway in conjunction with construction of a single-family home. (**ECF No. 1, Page ID 18-36**). Specifically, Plaintiffs assert that the Defendants improperly issued a stop work order and required Plaintiffs to obtain unnecessary permits and engineering studies which denied them access to their property.

A jury trial commenced on July 17, 2019 to determine whether Defendants' actions were arbitrary and capricious for purposes of Plaintiffs' substantive due process claim. On July 31, 2019, the jury returned a verdict in Plaintiffs' favor which included an award of \$194,000.00 in compensatory damages and \$206,000.00 in punitive damages, for a total judgment of \$400,000.00. (**ECF No. 78, Page ID 2579-2580**). Included in the award was \$200,000.00 in punitive damages against the Milford Township Board. (**Jury Verdict, ECF No. 75, Page ID 2570-2573**). At the conclusion of trial, this court also granted Plaintiffs' request for declaratory and injunctive relief. (**Injunction and Declaratory Judgment, ECF No. 76, Page ID 2574-2577**).

Plaintiffs' now seek to recovery attorney fees and costs in the amount of \$226,515.73. (**See Plaintiffs' Motion for Attorney Fees and Costs, ECF No. 85,**

**Page ID 2785**). For the reasons set forth below Defendants object to the requested relief.

### **STANDARD OF REVIEW**

While parties generally bear of their own litigation expenses, including attorney's fees, under 42 U.S.C. § 1988, Congress explicitly empowered the courts to grant fees to prevailing parties in actions brought pursuant to 42 U.S.C. § 1983. *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) (citing *Key Tronic Corp. v. United States*, 511 U.S. 809, 819, 114 S.Ct. 1960, 128 L.Ed.2d 797 (1994)). Accordingly, a “court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs.” 42 U.S.C. § 1988(b).

### **LAW & ARGUMENT**

#### **I. Plaintiffs’ Counsel’s Request for Attorney Fees is Not Reasonable and Should be Reduced.**

Section 1988 of Title 42 of the United States Code is the fee shifting statute applicable to actions brought pursuant to 42 U.S.C. § 1983. The statute permits a prevailing party a reasonable attorney fee and costs as to actions brought pursuant to Section 1983. Under Section 1983 a reasonable attorney fee is calculated by the lodestar method described by the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). See *Blum v.*

*Stenson*, 465 U.S. 886, 888, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). In *Hensley v. Eckerhart*, the Supreme Court stated:

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. [emphasis added].

The party seeking an award of attorney fees and costs must submit evidence of the hours worked and the rates sought. *Id.* If “documentation of hours is inadequate,[a] district court may reduce the award accordingly.” *Id.* In determining hours, a court must “exclude from this initial fee calculation hours that were not ‘reasonably expended.’ ” *Id.* at 434 (quoting S. Rep. No. 94-1011, at 6 (1976)). Thus, parties requiring attorney fees must exercise “billing judgment.” *Id.*; see also *id.* at 437. Counsel are expected to “exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.” *Id.* at 434. Therefore, a court is to keep in mind, that while the Plaintiffs are entitled to a reasonable fee, that fee should not be inflated at Defendants’ expense either by excessive rates or excessive hours. While Plaintiffs are the prevailing party, Defendants present the following objections to Plaintiffs’ requests for attorney fees and costs.

In this case, Mr. Cronkhite is requesting a rate of \$300.00 per hour for work in 2018 and \$325.00 per hour for work in 2019. (**Plaintiffs’ Motion, ECF No. 85,**

**Page ID 2774-2775**). Mr. Sallen is requesting a rate of \$425.00 per hour for 2018 and \$450.00 per hour for 2019 while attorneys Michelle Harrell is requesting \$400.00 per hour and David Hart is requesting \$425.00 per hour. (**Id. at Page ID 2775**). These rates are higher than the mean billing rate, \$290.00 for civil rights attorneys in Michigan according to the State Bar of Michigan Economics of Practice 2017 report. (**2017 Economics of Practice Report, p. 5, Attached as Ex. A**). The sample size that produced this rate is only 70 attorneys. Comparatively, hourly rates for an attorney with an office located in the downtown Detroit (where the trial took place) are \$200 (25th percentile), \$250 (median), \$286 (mean), \$350 (75th percentile), and \$550 (95th percentile). (**Id.**) The hourly rates for an attorney with an office located in Oakland County, south of M-59, (where Plaintiffs' counsel's office is located) are \$200 (25th percentile), \$270 (median), \$280 (mean), \$350 (75th percentile), and \$470 (95th percentile). (**Id.**) The hourly rate for attorneys practicing in the field of civil litigation (with a sample size of 512) are \$200 (25th percentile), \$250 (median), \$272 (mean), \$320 (75th percentile), and \$450 (95th percentile). (**Id.**)

While Plaintiffs have attached attorney bios in support of their motion and request for attorney fees the bios do not set forth justification for the hourly rates requested. No specific evidence regarding Mr. Cronkhite's trial history or his settlement history is provided beyond the basic information contained in his firm's

bio. (See **Exhibit 3 to Plaintiffs' Motion, ECF No. 85-4, Page ID 2850**). Likewise, no trial history or settlement history was provided for Mr. Hart who assisted during trial. (**Id. at Page ID 2851**). Conversely, in *Kidis v. Moran*, No. 16-13070, 2019 WL 3241557, at \*2 (E.D. Mich. Apr. 16, 2019) (**Attached as Exhibit B**), Judge Sean F. Cox, of the Eastern District of Michigan, addressing a motion for attorney fees and costs in a § 1983 excessive-force case, considered a request for attorney fees for plaintiff's counsel who had been practicing since 2002 and who had litigated numerous cases in Michigan, North Carolina, Kentucky, and Tennessee. (*Id.* at \*2). In light of the lead attorney's background, experience, and expertise, the relevant data in the Economics of Law Practice survey, and the court granted a rate of \$325.00 per hour for the lead attorney, \$209.00 for counsel licensed in 2013, \$190.00 for counsel licensed in 2017 and \$75.00 for paralegal work. *Id.* The lead attorney in *Kidis* had been practicing twelve years longer than Mr. Cronkhite. See also *Hines v. DeWitt*, No. 2:13-CV-1058, 2016 WL 2342014, at \*4 (S.D. Ohio May 4, 2016), *aff'd sub nom. Hines v. City of Columbus, Ohio*, 676 F. App'x 546 (6th Cir. 2017) (**Attached as Exhibit C**) (Awarding attorney fees to attorneys of the Fieger firm \$150.00 per hour (2 years' experience), \$200.00 per hour (5 years' experience), \$250.00 per hour (16 years' experience), \$300.00 per hour (partner with 19 years' experience) and \$350.00 per hour (partners with 21 years' experience)).

In addition to work performed attorneys, Plaintiffs are requested 70.4 hours for paralegal work performed by Pamela M. Shaw at \$200.00 per hour in 2018 and \$220.00 per hour in 2019. (**Plaintiffs' Motion, ECF No. 85, Page ID 2775**). Although identified as a paralegal (**Plaintiffs' Motion, ¶ 3, ECF No. 85, Page ID 2774**), no information was provided regarding Ms. Shaw's background or experience. Plaintiffs are also requesting \$200.00 per hour for Victoria C. Bellamy for 6.40 hours of work. (**Plaintiffs' Motion, ECF No. 85, Page ID 2775**). While the work by Ms. Bellamy was performed in June and July 2019 according to invoices attached to Plaintiffs' motion (**ECF No. 85-2, Page ID 2824, 2831**), no information was provided regarding Ms. Bellamy other than that she serves as a law clerk. (**Plaintiffs' Motion, ¶ 3, ECF No. 85, Page ID 2774**). The 2018 rate of \$200.00 per hour for paralegal work is equivalent to the 25<sup>th</sup> percentile for an attorney located in Oakland County, south of M-59 where Plaintiffs' office is located. (**2017 Economics of Practice Report, p. 5, Attached as Ex. 1**). This also exceeds several of the rates awarded to practicing attorneys in *Kidis* and *Hines*.

Significant hours expended by Ms. Shaw also represents clerical time and/or was blocked billed. (**See Ex. D, Objectionable billing entries are highlighted**). For example, Ms. Shaw blocked billed 5.50 hours for trial prep of 07/09/19 (**ECF No. 85-2, Page ID 2826**), 5.70 hours on 07/10/19, 4.30 hours on 07/11/19 (**ECF No. 85-2, Page ID 2827**) and 3.70 hours on 07/15/19 (**ECF No. 85-2, Page ID 2828**).

Based on these entries it is unclear what percentage of the time was spent on non-compensable clerical tasks. “[In] obtaining the number of hours expended on the case, the district court must conclude that the party seeking the award has sufficiently documented its claim.” *United Slate, Local 307 v. G & M Roofing & Sheet Metal Co.*, 732 F.2d 495, 502 (6th Cir.1984). Attorneys who seek fees have an obligation to “maintain billing time records that are sufficiently detailed to enable courts to review the reasonableness of the hours expended.” *Wooldridge v. Marlene Indus. Corp.*, 898 F.2d 1169, 1177 (6th Cir.1990), abrogated on other grounds by *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001). While block billing has not been rejected by the Sixth Circuit, district courts have discretion to reduce fees due to vague block billing. See, e.g., *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL–CIO v. Kelsey–Hayes Co.*, 2013 WL 2634815, at \*4 (E.D.Mich. June 12, 2013) (reducing requested fees, in part, due to vague block billing entries such as “review documents,” “research legal issues,” and “plan strategy”); *Gratz v. Bollinger*, 353 F.Supp.2d 929, 939 (E.D.Mich.2005) (reducing the requested fees by ten percent due block billing and vague entries because block billing frustrates the Court's ability to determine whether a reasonable number of hours were expended on each tack). See also *Swapalease, Inc. v. Sublease Exchange.com, Inc.*, 2009 WL 1119591, at \*2 (S.D.Ohio Apr. 27, 2009)

(recognizing that “[c]ourts unquestionably have authority to downwardly adjust the fee claims because of block billing and vague entries.”); *Heath v. Metro. Life Ins. Co.*, 2011 WL 4005409, at \*10–11 (M.D.Tenn. Sept. 8, 2011) (reducing fees by 20% because counsel's block billing made it impossible to “ensure with a high degree of certainty that the hours allegedly expended were in fact expended in a reasonable, non-duplicative fashion”).

In addition to the lack of evidence to support the hourly rates requested, several entries on Plaintiffs’ invoices (**ECF No. 85-2, Page ID 2799-2833**) are vague and/or represent clerical time which is non-compensable. For these reason Defendants request a reduction in the hourly rate commensurate to the hourly rates in *Kidis* and *Hines* and that the questionable billing entries be stricken or reduced. (**See Ex. D, Objectionable billing entries are highlighted**).

## **II. Plaintiffs’ Requests for Litigation Costs is Unreasonable and Should be Reduced**

“An attorney's fee under § 1988 includes those expenses that are incurred in order for the attorney to render legal services that would normally be charged to a fee-paying client, including reasonable photocopying, paralegal expenses, and travel and telephone costs.” *Segovia v. Montgomery County, Tenn.*, 593 Fed.Appx. 488, 492 (6th Cir. 2014) (internal citations omitted). It is unclear from Plaintiffs’ motion and exhibits whether the requested relief satisfies these requirements. Consequently,

Defendants object to the alleged litigation costs in the amount of \$7,365.98. **(Plaintiffs’ Motion, ECF No. 85, Page ID 2775).**

With the exception of listing the amount, Plaintiffs offer no explanation for the costs which are included in Plaintiffs’ Exhibit 1.<sup>1</sup> **(See Ex. D, Objectionable billing entries are highlighted).** For example, on 01/31/19, Plaintiffs incurred a \$46.00 expense which appears to relate to process service on defense counsel James Tamm. **(See ECF No. 85-2, Page ID 2816).** According to Plaintiffs’ invoice an unknown document or documents were served on defense counsel James Tamm on 03/25/19. **(Id).** It is unclear what type of service would have been required on a party after litigation had been initiated given that the parties had routine communication.

Expenses relating to Tri-County Court reporters are also unclear. Plaintiffs’ invoices list multiple expenses in the amounts of \$662.60 and \$594.55 **(ECF No. 85-2, Page ID 2816)**, \$492.00 **(ECF No. 85-2, Page ID 2822)**, \$328.95 and \$556.80 **(ECF No. 85-2, Page ID 2832)**. The invoices do not identify whether the expenses relate to a particular witness or whether the expenses are duplicative to work previously billed. A \$46.00 charge to “Recon Management Group” on 07/18/19 and \$50.00 charges on 05/31/19 and 06/26/19 to “Randolph Champe – United States

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<sup>1</sup> Defendants concede that several expenses such as Westlaw research, copying and postage expenses are self-explanatory.

District Court” also have not been explained. (**ECF No. 85-2, Page ID 2832**). It is unclear from Plaintiffs’ motion if these expenses related to the case. Plaintiffs also failed to distinguish which costs were already taxed by the Court pursuant to the Taxed Bill of Cost (**ECF No. 84, Page ID 2770**) or that are requested as part of Plaintiffs' Motion Requesting the Court’s Review and Amendment of Taxed Bill of Costs (**ECF No. 86, Page ID 2875-2880**).

Finally, Plaintiffs request reimbursement for costs relating to medical records of Dr. Bernie Les, PhD (\$30.90), Alicia Tisdale, PhD (\$81.00) and Seema Kumar, M.D. (\$21.30). (**ECF No. 85-2, Page ID 2832**). Dr. Les’ records, however, were only peripherally used during direct examination when Dr. Les referred to notes he brought to trial. His records were not admitted as an exhibit and were not otherwise used as part of the case. Neither Dr. Tisdale nor Dr. Kumar testified at trial. Like Dr. Les, their records were not submitted as trial exhibits and were not used as part of Plaintiffs’ case. The only records from Dr. Tisdale and Dr. Kumar used at trial were one-page summary letters. As a result any expenses pertaining to the medical records should be stricken.

Based upon Plaintiffs’ Exhibits, and for the reasons set forth above it is impossible to determine the nature of all of Plaintiffs’ expenses. Absent an explanation, the questionable items identified above should be stricken.

### III. Plaintiffs Are Not Entitled to Recover Expert Witness Fees

Finally, Defendants object to the alleged expert fees and costs in the amount of \$9,246.25 (**ECF No. 85, Page ID 2775**) on grounds that expert witness expenses are not recoverable under 42 U.S.C. § 1988. See *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 92, 111 S. Ct. 1138, 1143, 113 L. Ed. 2d 68 (1991). In *Casey*, the Supreme Court held that, under 42 U.S.C. § 1988, the court could not shift expert fees for a non-testimonial expert. 499 U.S. at 102. While § 1988 has been amended to permit the recovery of expert fees under § 1981, the recovery of expert witness fees under § 1983 claims remains subject to the ruling in *Casey*. See *Jenkins v. Missouri*, 158 F.3d 980, 983 (8th Cir. 1998). Therefore, Plaintiffs are not entitled to recover expert witness fees for Mr. LaVanway or Dr. Les.<sup>2</sup>

Furthermore, even if this Court would consider awarding expert fees, Plaintiffs' request for fees pertaining to Mr. LaVanway and Dr. Les would constitute a double recovery. In addition to their appearance at trial, for which costs have already been taxed (**Taxed Bill of Costs, ECF No. 84, Page ID 2771**), Plaintiffs' motion seeks to compel the Defendants to pay the entire costs associated with Boss Engineering's involvement with Plaintiffs' property, including preparation of the site plan necessitated by the low lying topography of Plaintiffs' property and Dr. Les'

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<sup>2</sup> Plaintiffs have already been awarded the statutory witness fees for Mr. LaVanway and Dr. Les. (**See Taxed Bill of Costs, ECF No. 84, Page ID 2771**).

time. (See ECF No 85-5, Page ID 2857-2868). Plaintiffs, however, have already been compensated for these expenses as part of the economic, out-of-pocket damages awarded by the jury. (See Jury Verdict, ECF No. 75, Page ID 2572). It was argued at trial by Plaintiffs' counsel that the Plaintiffs' damages included the medical costs and costs associated with Boss Engineering, including Mr. LaVanway's preparation of the site plan, appearance at deposition and appearance at trial. Thus, awarding Plaintiffs' counsel costs associated with Mr. LaVanway and Dr. Les' testimony would constitute unjust enrichment and the expenses must be denied.

### **CONCLUSION AND RELIEF REQUESTED**

Plaintiffs' requested attorney fees and costs are excessive and unreasonable. The rates for attorneys ranging from \$300.00 to \$450.00 is unwarranted under the circumstances and should be adjusted downward to reflect the market rate as reflected in the *Kidis* and *Hines* cases. In addition, Plaintiffs have failed to justify several entries contained in Plaintiffs' list of costs to allow a meaningful review. Finally, the costs for expert witnesses should be stricken and they are non-recoverable and moreover would constitute unjust enrichment because they were considered by the jury and incorporated as part of the jury's verdict.

Respectfully submitted,

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

BY: /s/ Richard V. Stokan, Jr.

JAMES E. TAMM (P38154)

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Dated: August 27, 2019

### **CERTIFICATE OF SERVICE**

Richard V. Stokan, Jr. states that on August 27th, on behalf of Defendants he served the attached DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR ATTORNEY FEES AND COSTS PURSUANT TO 42 U.S.C. § 1988 AND FED.R.CIV.P. 54(d)(2), *Brief in Support* and *Certificate of Service* upon counsel of record.

/s/ Richard V. Stokan, Jr.

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