

Exhibit B

2019 WL 3241557

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United States District Court, E.D.
Michigan, Southern Division.

Nikos KIDIS, Plaintiff,

v.

John MORAN, Defendant.

Case No. 16-13070

Signed 04/16/2019

Attorneys and Law Firms

Shawn C. Cabot, Christopher Trainer and Assoc., White Lake, MI, for Plaintiff.

Elizabeth P. Roberts, Raechel M. Badalamenti, Robert S. Huth, Jr., Robert T. Carollo, Kirk, Huth, Lange & Badalamenti, P.L.C., Clinton Township, MI, for Defendant.

**OPINION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR ATTORNEYS'
FEES, COSTS, AND INTEREST (ECF No. 124)**

Sean F. Cox, U. S. District Judge

*1 In this § 1983 excessive-force case, a jury returned a verdict in favor of Plaintiff Nikos Kidis and against Defendant John Moran. In an Opinion and Order issued on this date, the Court denied Moran's motion for remittitur or a new trial. The Court now considers Kidis's motion for attorneys' fees, costs, and interest. (ECF No. 124). Because the Court concludes that oral argument will not aid the decisional process, the motion will be decided on the parties' briefing. E.D. Mich. LR 7.1(f) (2).

Kidis moves for reasonable attorneys' fees under 42 U.S.C. § 1988(b). He seeks \$172,201.25 in total attorney and paralegal fees. He also seeks \$9,730.97 for costs that were necessarily incurred to prosecute this case and \$5,456.03 in pre-judgment interest. Finally, he seeks a ruling that he is entitled to post-judgment interest, to be calculated at the time that Moran satisfies the judgment.

ANALYSIS

I. Prevailing Party Status

As a threshold matter, Moran argues that Kidis is not a "prevailing party" under 42 U.S.C. § 1988(b). The Court can easily dispose of this argument. A prevailing party is one "who has been awarded some relief by the court." *Buckhannon Bd. and Care Home, Inc., v. West Virginia Dept. of Health and Human Services*, 532 U.S. 598, 603 (2001); see also *Berger v. City of Mayfield Heights*, 265 F.3d 399, 406 (6th Cir. 2001) ("To be a prevailing party, a party must succeed on any significant issue in litigation which achieves one of the benefits the parties sought in bringing the suit.") (citations omitted). In the absence of special circumstances, a district court must award fees to the prevailing plaintiff in a § 1983 case. *Berger*, 265 F.3d at 406.

Consistent with the jury verdict, the Court entered judgment in favor of Kidis on his excessive-force claim against Moran. (ECF No. 114). Thus, he is a prevailing party and entitled to fees under § 1988(b).

II. Attorneys' Fees

"The primary concern in an attorney fee case is that the fee award is reasonable, that is, one that is adequately compensatory to attract competent counsel yet which avoids producing a windfall for lawyers." *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 1999). "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "This calculation [referred to as the lodestar amount] provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Id.* The trial judge may then, within limits, adjust the "lodestar" to reflect relevant considerations peculiar to the subject litigation. *Adcock-Ladd v. Secretary of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000). "The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Id.*

The Court may consider twelve factors in determining the reasonableness of an attorney fee award or any adjustments: (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 other 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. *Blanchard v. Bergeron*, 489 U.S. 87, 91-92, n.5 (1989).

*2 The Supreme Court has determined that "reasonable fees" under § 1988 are to be calculated according to the prevailing market rates in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "In determining the reasonableness of the fees, the Court can look to the fair market value of the services provided which reflects training, background, experience and skill of the individual attorney."

Watkins v. County of Genesee, 2017 WL 1077068 at *7 (E.D. Mich. 2017). The hours claimed do not have to be automatically accepted by the court. *Northcross v. Bd. of Educ. of Memphis*, 611 F.2d 624, 636 (6th Cir. 1979). Hours can be cut for padding, frivolous time, or duplicative work. *Id.*

The Court has discretion in making this equitable judgment. *Hensley*, 461 U.S. at 437. "It remains important ... for the district court to provide a concise but clear explanation of its reasons for the fee award." *Id.*

A. Rates

The parties' dispute as to the reasonable hourly rate of Kidis's legal team is reflected in the chart below:

	Kidis's Suggested Rate	Moran's Suggested Rate
Cabot	\$400.00	\$250.00
Smiegel	\$209.00	\$190.00
Doss	\$219.00	\$209.00
Boll	\$150.00	\$75.00

In support of their suggested rates, the parties refer to the 2017 State Bar of Michigan *Economics of Law Practice* survey, (ECF No. 124-8), which outlines percentile market rates for attorneys based on their practice, experience, position, expertise, and geographic area. Kidis also submitted Cabot's affidavit, attesting to his background and qualifications.

¹ Specifically, the Court considers Table 3's data related to "senior associate" (ECF No. 124-8, PageID 4147), Table 4's data related to "16-25" years in practice, Table 6's data related to Oakland County, Wayne County, and Downtown Detroit, (ECF No. 124-8, PageID 4148), and Table 7's data related to "civil rights." *Id.*

Cabot has practiced law since 2002 and is a senior associate at the Law Offices of Christopher Trainor & Associates. (ECF No. 124-4). He specializes in civil rights and police misconduct cases and has litigated numerous cases in Michigan, North Carolina, Kentucky, and Tennessee.

Besides unsupported representations in his brief, Kidis has failed to offer any evidence as to why the rates he suggests for Smiegel, Doss, and Boll are reasonable. *See Watkins*, 2017 WL 1077068 at *8. Because Kidis has not supported his suggested rates, the Court agrees with the rates suggested by Moran.

Considering Cabot's background, experience, and expertise, the relevant data in the *Economics of Law Practice* survey¹, and the Court's knowledge of this case's characteristics, the Court concludes that \$325 an hour is a reasonable rate for Cabot's services.

Thus, these are the rates that the Court deem reasonable for Kidis's legal team:

Reasonable Rates

Cabot	\$325.00
Smiegel	\$190.00

Doss

\$209.00

Boll

\$75.00

B. Hours

Kidis submitted documentation showing that Cabot performed 355 hours of work (ECF No. 124-10); Smiegel performed 50.75 hours (ECF No. 124-11); Doss performed 3 hours (ECF No. 124-12); and Boll performed 126.25 hours (ECF No. 124-15).

Moran challenges 180.25 of Cabot's 355 hours (roughly 50%); 36 of Smiegel's 50.75 hours (roughly 71%); all 3 of Doss's hours; and 96.5 of Boll's 126.25 hours (roughly 76%). (ECF No. 133, PageID 4938-4942). Essentially, Moran argues that Cabot should have tried this case in half the time, with minimal support.

i. Cabot

Moran challenges 69.5 of Cabot's hours as being "excessive." After review of these challenged hours, the Court disagrees and finds them to be reasonable.

*3 Moran challenges 6.25 of Cabot's hours as being "clerical" and therefore not recoverable. Specifically, Moran appears to object to entries that include "copying documents" and a call that Cabot had with the Court's case manager. All of the time spent on "copying documents" is grouped in with other non-clerical work in one entry. After review of the challenged time, the Court will deduct 2.5 hours to reasonably account for the inclusion of clerical work.

Moran challenges 7.75 hours of Cabot's work as being "duplicative" of work done by other members of the legal team. Although the relevant entries show that Cabot and other members worked on the same task (e.g. drafting and reviewing the same motion), this does not mean that the work was duplicative. Receiving input on a motion from several attorneys might increase the chances of that motion's success and otherwise benefit the client. The Court finds this time to be reasonable.

Moran challenges .75 hours spent on a response to his motion to compel as unnecessary because counsel had agreed to withdraw the motion. The Court agrees and will deduct .75 hours.

Moran challenges 2 hours that Cabot spent on a supplemental brief. Because the Court granted leave to file this supplemental brief, it was a reasonable use of Cabot's time.

Moran objects to 94 hours of Cabot's time because his explanatory entries are "vague." All of this time relates to either trial prep or trial itself, which is evident from the entry. Therefore, the Court will not deduct any of this time.

The Court has reviewed the remainder of Cabot's recorded time and finds it to be reasonable. Thus, the Court concludes that 351.75 hours is a reasonable amount of time for Cabot to have worked on this case. Kidis is entitled to \$114,318.75 in attorney fees for Cabot's participation in the case (\$325 x 351.75 hours).

ii. Smiegel

Moran challenges 36 hours that Smiegel spent reviewing case material and preparing Kidis's response to Moran's motion for summary judgment. Moran argues that this number involves time to "get up to speed." At first glance, this time might appear excessive, but it seems that Smiegel was the primary author and researcher for the response. (Cabot appears to have spent only 3 hours on the response, mainly reviewing Smiegel's work.) (ECF No. 124-10, PageID 4167). Thus, even if some of this time was spent getting up to speed on the case, it was still a reasonable and economic distribution of work.

The Court has reviewed the rest of Smiegel's recorded time and finds it reasonable. Thus, Kidis is entitled to \$9,642.50 for Smiegel's participation in the case (\$190 x 50.75 hours).

iii. Doss

Moran challenges all 3 hours that Doss spent on this case as duplicative. However, it appears that Doss created the first draft of the complaint. This length of time is reasonable.

Thus, Kidis is entitled to \$627 for Doss's participation in the case (\$209 x 3 hours).

iv. Boll

Moran challenges 100.25 of Boll's time as excessive. She spent 20 hours reviewing the case material for case evaluation, 2.25 hours working on a supplemental response that the Court allowed, 45 hours working on the Joint Final Pretrial Order (which included hundreds of possible witnesses and exhibits), 3 hours reviewing the facilitation summary, and 30 hours reviewing experts and expert reports. The Court concludes that Boll spent a reasonable amount of time on these tasks.

Moran also challenges 2.25 hours that Boll spent redacting medical records as clerical work. However, this time is not purely clerical or secretarial because it requires some legal understanding of what must be redacted.

*4 The Court reviewed the remainder of Boll's time and finds it to be reasonable. Thus, Kidis is entitled to \$9,468.75 for Boll's participation in the case (\$75 x 126.25 hours).

v. Conclusion for Attorneys' Fees

The Court finds that Kidis is entitled to attorneys' fees in the following amounts:

Total Fees by Attorney/Paralegal

Cabot	\$114,318.75
Smiegel	\$9,642.50
Doss	\$627.00
Boll	\$9,468.75

In sum, Kidis is entitled to \$134,057 in attorneys' fees.

494-495 (6th Cir. 2013). Here, virtually all of Kidis's award was punitive. It would be inapposite to allow a plaintiff to recover pre-judgment interest on a punitive award because punitive damages are intended to punish and deter, not compensate. *See generally, Ortiz v. Bright*, 2006 WL 1133296 at *3 (S.D. Ohio 2006) (collecting cases). Thus, Kidis is not entitled to pre-judgment interest.

III. Costs

"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).

V. Post-judgment Interest

Kidis argues that he "is entitled to an award of post-judgment interest in this case depending upon how long it takes Defendant to satisfy the judgment." Because there is no basis for calculating post-judgment interest at this time, the Court need not address this argument.

Kidis seeks \$9,730.97 in costs associated with litigating this action. After review, the Court concludes that these costs are "incidental and necessary expenses incurred in furnishing effective and competent representation." *See Northcross*, 611 F.2d at 639. Thus, the Court will award \$9,730.97 in reasonable costs.

CONCLUSION

IV. Pre-judgment Interest

Kidis seeks \$5,456.03 in prejudgment interest. However, "as a general matter, prejudgment interest is intended to make the plaintiff whole; it is an element of complete compensation." *In re Classic Star Mare Lease Litigation*, 727 F.3d 473,

For the reasons above, the Court **GRANTS** Plaintiff's motion for attorneys' fees to the extent that it finds that he is entitled to \$143,787.97 in reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988(b). (\$134,057 in attorneys' fees and \$9,730.97 in costs). The Court will enter an amended judgment consistent with this Opinion and Order.

All Citations

IT IS SO ORDERED.

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