CLERKS OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED
1/31/18
JULIA C. DUDLEY, CLERK
BY: s/ K. DOTSON
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

JOHN DOE, Plaintiff,	)	Civil Action No. 5:15-cv-35
v.	)	REPORT & RECOMMENDATION
JONATHAN R. ALGER, et al., Defendants.	)	By: Joel C. Hoppe, United States Magistrate Judge

Before the Court is plaintiff John Doe's Petition for Attorneys' Fees and Expenses, ECF No. 180, pursuant to 42 U.S.C. § 1988. This matter is before me by referral under 28 U.S.C. § 636(1)(B). The issues presented are fully briefed by both parties, ECF Nos. 180, 183, 187, and oral argument is dispensed with because it was not requested and would not aid in the decisional process. Having considered the parties' briefs, the evidence, and the applicable law, I recommend that the presiding District Judge grant the petition and award attorneys' fees in the amount of $795,691.50 and litigation costs in the amount of $53,539.75, for a total award of $849,231.25.

I. Procedural History and Facts

United States District Judge Elizabeth K. Dillon, the presiding judge, thoroughly presented the facts of this case in her Memorandum Opinion on the summary judgment motions. ECF No. 153. As such, I will provide only a brief summary here. Plaintiff John Doe matriculated at James Madison University ("JMU") in August 2014. Shortly after beginning his first semester, he entered into a relationship with a fellow freshman student, Jane Roe, who later accused him of sexual misconduct. JMU conducted an initial hearing on the charge on December 5, 2014, which resulted in a finding of "not responsible." Jane Roe appealed that decision to an appeal board, which met on January 8, 2015, outside the presence of the parties. The appeal board imposed a

new sanction of immediate suspension through the Spring 2020 semester, at which time Doe would need to reapply for admission if he wanted to reenroll. Per JMU's policy, the decision was communicated to Defendant Mark Warner, JMU's Senior Vice President of Student Affairs and University Planning, who affirmed the appeal board's finding. Doe was informed of the appeal board's finding and Warner's final decision on January 10, 2015. *See Doe v. Alger*, 228 F. Supp. 3d 713, 716–24 (W.D. Va. 2016).

Doe contacted Gentry Locke ("GL") that same day and officially engaged GL's services on January 12. Declaration of W. David Paxton ("Paxton Decl.") ¶¶ 6–7, ECF No. 180-1. At the recommendation of W. David Paxton, lead counsel from GL, Doe reached out to the Center for Individual Rights ("CIR") and also engaged CIR's services beginning in February 2015. *Id.* ¶¶ 15-16. Initial efforts to come to an out-of-court settlement with JMU failed, and Doe filed a complaint in this Court on May 11, 2015, pursuant to 42 U.S.C. § 1983, alleging violation of his right to procedural due process under the Fourteenth Amendment based on a property interest in continued enrollment at JMU and a liberty interest in his good name. ECF No. 1.

On June 29, 2015, Judge Dillon granted Defendants' motion to dismiss for failure to state a claim, but also granted Doe's motion for leave to amend his complaint. ECF No. 27. Doe filed an Amended Complaint, ECF No. 30, which the Defendants moved to dismiss, ECF No. 32. On March 31, 2016, Judge Dillon granted Defendants' motion to dismiss as to Doe's liberty interest claim, but permitted Doe to proceed with his property interest claim. *See Doe v. Alger*, 175 F. Supp. 3d 646 (W.D. Va. 2016). The parties continued with discovery and filed cross-motions for summary judgment. On December 23, 2016, Judge Dillon granted Doe's motion for summary judgment as to liability, ECF No. 153, and directed the parties to file supplemental briefing as to the proper remedy, ECF No. 154. On April 25, 2017, Judge Dillon issued a memorandum

opinion addressing the proper remedy, ECF No. 173, and she entered a final order and judgment dismissing the case from the Court's active docket, ECF No. 174.

Doe's attorneys then filed a Bill of Costs, ECF No. 179, and a Petition for Attorney's Fees and Expenses on May 16, 2017, Pl.'s Pet., ECF No. 180. Defendants opposed this motion on June 6, and although they do not dispute that Plaintiff's attorneys are entitled to some fees, they object to the amount requested. Defs.' Br. in Opp'n to Pl.'s Pet. for Att'ys' Fees and Expenses ("Defs.' Br. in Opp'n"), ECF No. 183. Plaintiff's attorneys filed a reply to this opposition on June 16, Pl.'s Reply Memo on His Mot. for Reasonable Costs Including Att'ys' Fees ("Pl.'s Reply"), ECF No. 187, and this matter is now ripe.

II. Applicable Law

"In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title," § 1988 permits "the court, in its discretion, [to] allow the prevailing party . . . reasonable attorney's fee[s] as part of the costs." 42 U.S.C. § 1988(b). A plaintiff qualifies as a prevailing party if he "succeed[s] on any significant issue in litigation which achieves some of the benefit [he] sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278–79 (1st Cir. 1978)). Despite the language of § 1988 leaving an award of fees to the court's discretion, the Supreme Court has held that a prevailing party should be awarded reasonable attorneys' fees "unless special circumstances would render such an award unjust." *Id.* at 429 (quoting S. Rep. No. 94-1011, p. 4 (1976)).

Although not defined in § 1988, the Supreme Court explained that "a 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). In making this determination, the court applies the lodestar method. *Id.* at 550–52. As the Fourth Circuit has

explained, this involves a three-step process. "First, the court must 'determine the lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate.'" *McAfee v. Boczar*, 738 F.3d 81, 88 (4th Cir. 2013) (quoting *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009)). In calculating the lodestar figure, "the court is bound to apply the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)." *Id.* The Fourth Circuit has characterized the *Johnson* factors as:

> (1) The time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fee awards in similar cases.

Id. n.5.[1] The resulting lodestar figure enjoys a strong presumption of reasonableness. *See Perdue*, 559 U.S. at 554. Second, after calculating the lodestar, "the court must 'subtract fees for hours spent on unsuccessful claims unrelated to successful ones.'" *McAfee*, 738 F.3d at 88 (quoting *Robinson*, 560 F.3d at 244). Third, "the court should award 'some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.'" *Id.* (quoting *Robinson*, 560 F.3d at 244). The plaintiff bears the burden of demonstrating that the amount of fees he

---

[1] In *Perdue*, the Supreme Court found that the lodestar method—rather than applying the factors articulated in *Johnson* without any further guidance—was the proper approach to take in fee-shifting cases. 559 U.S. at 551–52. As the Fourth Circuit explained in *McAfee*, the lodestar approach does not eliminate consideration of the *Johnson* factors. 738 F.3d at 89. Indeed, courts in this circuit "have reviewed attorney's fee awards primarily by use of the lodestar method, with 'substantial reliance' on the *Johnson* factors." *Id.* The court also stated that "to the extent any of the *Johnson* factors has already been incorporated into the lodestar analysis, we do not consider those factors a second time." *Id.* (quoting *E. Associated Coal Corp. v. Dir., Office of Workers' Comp. Programs*, 724 F.3d 561, 570 (4th Cir. 2013) (brackets omitted)); *see also Page v. Va. State Bd. of Elections*, No. 3:13cv678, 2015 WL 11256614, at *2 (E.D. Va. Mar. 11, 2015). The court further instructed, however, that it had never ruled "that when certain *Johnson* factors have merged into the lodestar calculation, they are not to be otherwise considered to adjust the lodestar amount." *McAfee*, 738 F.3d at 89. Therefore, the *Johnson* factors still play an important role in determining what constitutes a reasonable hourly rate or the reasonable number of hours expended, and a particular factor may be relevant to both components of the lodestar calculus.

seeks is reasonable. *See Hensley*, 461 U.S. at 437 ("[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.").

III. Discussion

In his fee petition, Doe initially requested $944,293.50 for 3,364.9 hours of work in attorneys' fees, $41,582.75 in litigation expenses,[2] and $13,500.80 for items in the Bill of Costs,[3] for a total of award of $999,377.05 for all work performed through May 12, 2017, but reserved the right to supplement this figure at a later time. Pl.'s Pet. 2. Although the Defendants do not dispute that Plaintiff is entitled to some fees, they object to the amount requested. Defs.' Br. in Opp'n 1–2. Basing their opposition largely on a review done by Wayne G. Travell, an outside attorney, the Defendants conclude that Doe should be awarded "[a] maximum of $336,000 to $364,000" in fees and should have the requested expenses reduced to an unspecified amount. *Id.* at 2. The Defendants also "request that the payment of any award granted by the Court shall not be required until exhaustion of any appeal of the issue of fees and expenses awarded." *Id.* In supplementing the petition through his reply brief, Plaintiff requested an additional $20,330.00 for 62.2 hours of work in attorneys' fees incurred after May 12, 2017—primarily generated in response to the Defendants' opposition to the fee petition—as well as an additional $59.17 in out-of-pocket expenses. Pl.'s Reply 19. Doe objected to every facet of the Defendants'

[2] The itemized list provided by Plaintiff indicates the sum of all recoverable expenses as $41,822.75, but when adding up the subsets of requested expenses, the total comes out to $41,582.75, a difference of $240. Paxton Decl. Attach. U, ECF No. 180-4. As there is nothing to explain this discrepancy, I will use the latter number and attribute Doe's request to a calculation error.

[3] The Defendants do not challenge the expenses requested in the Bill of Costs. *See* ECF No. 179. As the prevailing party, Doe is entitled to recover certain expenses that fall into any of six categories incurred in the litigation as taxable costs. *See* Fed. R. Civ. P. 54(d); *see also* 28 U.S.C. § 1920. Doe requests $400 for Fees of the Clerk and $13,100.80 for fees for printed or electronically recorded transcripts necessarily obtained for use in the case. ECF No. 179; *see also* 28 U.S.C. § 1920(1)–(2). Because these claimed expenses are reasonable, properly supported, and not objected to, I recommend awarding the full amount sought by Doe. *See* Fed. R. Civ. P. 54(d)(1).

opposition, except for the removal of a $233.77 meal charge from April 1, 2016, because proper documentation was not available.[4] *Id.* at 18. Overall, then, Plaintiff requests a total award of $1,019,532.45 ($964,623.50 in attorneys' fees for 3,427.1 hours of work, $41,408.15 in litigation expenses, and $13,500.80 for the Bill of Costs).

A. Lodestar Figure[5]

1. Doe's Burden

To meet his burden of showing the reasonableness of the fee sought, in terms of both the hourly rate and the hours expended, Doe submitted detailed billing and cost records, as well as affidavits from three local attorneys regarding the reasonableness of his request. Doe also made voluntary reductions to the fee request. The Defendants make several distinct arguments. Because the Defendants challenge only certain aspects of the request and because an examination of those arguments inherently requires an assessment of whether Doe met his burden in proving reasonableness, the subsequent analysis focuses on the Defendants' arguments with reference to the applicable *Johnson* factors.

2. Reasonable Hourly Rate

The Fourth Circuit has explained that "[t]he hourly rate included in an attorney's fee must . . . be reasonable." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). Generally, "[t]his requirement is met by compensating attorneys at the 'prevailing market rates in the relevant community.'" *Id.* (quoting *Blum v. Stenson*, 465 U.S. 886, 894 (1984)). Making this

[4] Because Doe does not object to removal of this charge and because expenses cannot be awarded without proper supporting documentation, *Trimper v. City of Norfolk*, 58 F.3d 68, 77 (4th Cir. 1995), I will subtract it at the outset from the expenses portion of the total fee award requested.

[5] All the *Johnson* factors except factor 11 (the nature and length of the professional relationship between the attorney and client) are addressed by either the Plaintiff or the Defendants in their briefs. This factor does not have any bearing on the lodestar figure given the facts of this case, and it will not affect the Court's analysis.

determination "is a fact intensive exercise requiring the fee applicant to produce 'specific evidence' of prevailing market rates in the relevant community for similar services in similar circumstances." *Sky Cable, LLC v. Coley*, No. 5:11cv48, 2014 WL 4407130, at *3 (W.D. Va. Sept. 8, 2014) (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1402 (4th Cir. 1987)). "The evidence [the Fourth Circuit has] deemed competent . . . includes 'affidavits of other local lawyers who are familiar with both the skills of the fee applicants and more generally with the type of work in the relevant community.'" *McAfee*, 738 F.3d at 91 (quoting *Robinson*, 560 F.3d at 245). The relevant legal community is generally that in which the district court sits. *Rum Creek Coal Sales*, 31 F.3d at 179.

Doe seeks compensation for the work of ten attorneys from GL and CIR and one paralegal from GL. Pl.'s Pet. 11. The rates sought are as follows:

Name	*Firm*	*Years' Experience*	*Hourly Rate*
W. David Paxton	GL	37	$375
Cynthia D. Kinser	GL	40	$400
Greg J. Haley	GL	33	$350
Justin M. Lugar	GL	9	$260
Abigail E. Murchison	GL	7	$200
Scott. A. Stephenson	GL	3	$170
Bradley C. Tobias	GL	3	$170
Cindy T. Bates (paralegal)	GL	26	$125
Michael E. Rosman	CIR	33	$350
Michelle A. Scott	CIR	22	$300
Christopher J. Hajec	CIR	18	$260

Id. In support of these rates, Doe submitted three affidavits and declarations from other local attorneys—John E. Davidson (Charlottesville), King F. Tower (Roanoke), and Mark D. Obenshain (Harrisonburg)—attesting to their reasonableness. *See* Aff. of John E. Davidson ("Davidson Aff."), ECF No. 180-7; Decl. of King F. Tower in Supp. of Pl.'s Pet. for Att'ys' Fees ("Tower Decl."), ECF No. 180-8; Decl. of Mark D. Obenshain in Supp. of Pl.'s Pet. for Att'ys' Fees ("Obenshain Decl."), ECF No. 180-9. All three attorneys opined that these rates were reasonable for Harrisonburg, Virginia, given the experience of the Plaintiff's attorneys and the nature of the case. *See* Davidson Aff. ¶¶ 23–26; Tower Decl. ¶¶ 6, 16, 18–19; Obenshain Decl. ¶¶ 5, 12–13.

Notably, the Defendants do not object to the reasonableness of these rates. Defs.' Br. in Opp'n 1–2. I agree with the parties that the requested rates are reasonable for the Western District of Virginia, specifically the Harrisonburg Division. These rates are appropriate given the complexity and novelty of the issues presented (*Johnson* factor 2), the skill required to properly perform the legal services rendered (*Johnson* factor 3), the customary fee for the work performed (*Johnson* factor 5), and the attorneys' experience, reputation, and ability (*Johnson* factor 9). Doe properly supported his request with affidavits and declarations from three experienced local attorneys, all of whom concluded that the rates were reasonable. *See, e.g.*, *Cab Siquic v. Star Forestry, LLC*, No. 3:13cv43, 2016 WL 1650800, at *3 (W.D. Va. Apr. 22, 2016). These affidavits/declarations indicate that all three attorneys familiarized themselves with the legal services performed in the case, as well as the background, experience, and expertise of Doe's attorneys. They also confirm that the requested hourly rates are "reasonable and consistent with those charged by local attorneys and other law firms with comparable knowledge, competency, and experience." *Id.* Moreover, a review of recent cases across this District supports the

appropriateness of these rates. *See Lusk v. Va. Panel Corp.*, 96 F. Supp. 3d 573, 581–82 (W.D. Va. 2015) (reducing requested rates from $375/hour to $300/hour for a partner and $275/hour to $150/hour for an associate in the Harrisonburg Division because the affidavits submitted in support came from higher billing markets of Richmond and Charlottesville and because the work billed by the associate did not justify the higher fee); *Sky Cable*, 2014 WL 4407130, at *4 (utilizing the Court's knowledge to cap the hourly rates at $350/hour for partners, $225/hour for associates, and $100/hour for paralegals and legal assistants in a Federal Communications Act case in the Harrisonburg Division); *Three Rivers Landing of Gulfport, LP v. Three Rivers Landing, LLC*, No. 7:11cv25, 2014 WL 1599564, at *3–4 (W.D. Va. Apr. 21, 2014) (concluding that an associate rate of $275/hour was reasonable, but reducing partner's rate from $685/hour to $500/hour for case in the Roanoke Division); *Hudson v. Pittsylvania Cty.*, No. 4:11cv43, 2013 WL 4520023, at *4 (W.D. Va. Aug. 26, 2013) (approving rate of $350/hour for partners and $150/hour for an associate for civil rights litigation in the Danville Division).

Accordingly, I find that the requested rates, as reflected in the above table, are reasonable in light of the relevant *Johnson* factors, the proffered support, and the Defendants lack of opposition. *See Doe v. Rector & Visitors of George Mason Univ.*, No. 1:15cv209, 2016 WL 3480947 (E.D. Va. June 21, 2016) (approving the requested rates "in light of the governing factors as well as by GMU's own admission" that the rates were reasonable).

3. Reasonable Hours Expended

Doe also bears the burden of demonstrating that the hours expended on the case were reasonable. *See SunTrust Mortg., Inc. v. AIG United Guar. Corp.*, 933 F. Supp. 2d 762, 774 (E.D. Va. 2013). To meet this burden, the fee applicant must provide documented support, i.e., "reliable billing records," of the need to have dedicated the amount of time for which

compensation is sought. *Id.* These records "must represent the product of 'billing judgment,'" in that the number of hours requested must be adjusted "to delete duplicative or unrelated hours." *Rum Creek Coal Sales*, 31 F.3d at 175 (quoting *Hensley*, 461 U.S. at 437). The Fourth Circuit also has "frequently exhorted counsel to describe specifically the tasks performed," and has noted its sensitivity "to the need to avoid use of multiple counsel for tasks where such use is not justified by the contributions of each attorney" because "[g]eneralized billing by multiple attorneys on a large case often produces unacceptable duplication." *Id.* at 180.

Here, Doe seeks a combined $964,623.50 in attorneys' fees for 3,427.1 hours of work, as demonstrated by the following table:

Name	*Firm*	*Hours on Merits*[6]	*Hours on Fee Petition*	*Total Hours*	*Hourly Rate*	*Total Fee*
W. David Paxton	GL	865.4	58.7	924.1	$375	$346,537.50
Cynthia D. Kinser	GL	9.9	--	9.9	$400	$3,960.00
Greg J. Haley	GL	11.1	--	11.1	$350	$3,885.00
Justin M. Lugar	GL	27.1	--	27.1	$260	$7,046.00
Abigail E. Murchison	GL	19.5	--	19.5	$200	$3,900.00
Scott A. Stephenson	GL	31.5	--	31.5	$170	$5,355.00
Bradley C. Tobias	GL	798.6	40.9	839.5	$170	$142,715.00
Cindy T. Bates	GL	225	26.8	251.8	$125	$31,475.00
Michael E. Rosman	CIR	488.1	52.5	540.6	$350	$189,210.00
Michelle A. Scott	CIR	744.4	1.1	745.5	$300	$223,650.00
Christopher J. Hajec	CIR	26.5	--	26.5	$260	$6,890.00
Totals	--	3,247.1	180	3,427.1	--	$964,623.50

[6] As explained below in the fees petition section, *see infra* Pt.III.A.3.g, the billing records for Phase VII and the post-petition supplemental records contain entries unrelated to the preparation and defense of the fee petition. Because these identified hours are minimal and otherwise compensable, the Court has taken the liberty of cutting those hours from the fee petition request and reallocating them to the requested hours on the merits. This redistribution is necessary to attain an accurate lodestar figure because the merits stage of the litigation warrants a different reduction than does the preparation and defense of the fee petition.

Doe submitted Paxton's declaration and Michael E. Rosman's statement, *see* Rosman Statement, ECF No. 180-6—in addition to the Davidson Affidavit, Tower Declaration, and Obenshain Declaration—in support of the reasonableness of hours. Doe avers that GL and CIR exercised billing judgment by writing off 32.77% and 19.08% of their recorded time respectively, Pl.'s Pet. 18–19, and his attorneys divided the litigation into seven phases and separated the billing records for each accordingly. *Id.* at 2.

Doe also sets forth a thorough summary of the case's procedural history, including the need for the hours expended prior to the litigation, in motions practice, and in discovery. *Id.* at 2–6. Upon being contacted by Doe, Paxton engaged bit-x-bit, Inc. ("bit-x-bit"), a forensic firm, "to collect and analyze electronically stored information retrieved from [Doe's] smart phone," and employed his colleagues to interview witnesses to develop a strategy to negotiate with JMU, albeit without success, before resorting to litigation. Paxton Decl. ¶¶ 8–9. During the litigation, Doe defended against two motions to dismiss, filed an amended complaint, prevailed on a motion to proceed by pseudonym, responded to a motion for a more definite statement which the Defendants ultimately abandoned, prevailed on cross motions for summary judgment, filed a supplemental brief apprising the Court of a relevant case out of the Eastern District of Virginia, briefed the Court on the appropriate remedies, and filed the current fee petition. Pl.'s Pet. 3–6. Concurrent with much of this litigation, Doe and his attorneys engaged in substantial discovery. GL attended hearings before the undersigned Magistrate Judge pursuant to JMU's compliance with the Family Educational Rights in Privacy Act of 1974 ("FERPA") in January 2016. *Id.* at 4. Afterwards, the parties agreed on a compressed, thirty-two-day schedule for taking depositions. *Id.* Doe submits that this procedural history substantiates the reasonableness of the number of hours expended on the case.

The Defendants disagree. In doing so, they make seven distinct arguments as to why the requested fees are not reasonable. Most, if not all, of the analysis underlying these arguments appears to have been performed by Travell, who annotated GL's and CIR's billing records by indicating which entries he believed were not compensable and for what reason. The Defendants incorporated much of his breakdown into their brief, and they urge the Court to award fees in the amount suggested by Travell. As such, Travell's analysis and each argument presented by the Defendants will be addressed in turn.

a. Travell Declaration

In forming his opinion, Travell interviewed counsel for the Defendants and reviewed the pleadings and motions, the transcript of the motion to dismiss hearing on September 30, 2015, the deposition transcripts and exhibits, the presiding District Judge's memorandum opinions, and the billing records submitted by GL and CIR. *See* Decl. of Wayne G. Travell ("Travell Decl.") ¶ 15, ECF No. 183-1. In annotating the billing records, he indicated that certain entries should not be compensable because they fall into at least one of the following nine categories: administrative or clerical tasks; block billing; conferences between GL and CIR; duplication of effort; inadequate, incomplete, or vague description; non-legal advice or discussions; public relations or media discussions; travel time, lodging, and meals; and time spent corresponding with vendors.[7] *Id.* ¶ 42. He concluded that fees in the range of $336,000 to $364,000 would be a fair and reasonable award. *Id.* ¶ 16. Travell arrived at this range by dividing the requested fee of

[7] Notably, the Defendants do not appear to incorporate Travell's write-offs of entries related to administrative tasks, public relations, vendor correspondence, and non-legal advice, and I do not find Travell's position to be justified given his analysis of these categories. Therefore, Travell's write-offs pertaining to these four categories will not be analyzed in this Report and Recommendation.

$911,691 by the requested hours of 3,262[8] to create a "blended hourly" rate of $280, which he then multiplied by "a reasonable number of hours between 1,200 and 1,300." *Id.* n.3.

Travell's conclusions and analysis are largely unpersuasive. First, as Plaintiff notes, his annotations at times fail to reflect Plaintiff's detailed supporting documentation. Pl.'s Reply 1–2. For example, Travell indicated that at least sixty-three entries on GL's billing records should not be compensable, but he did not acknowledge that GL's invoices expressly requested $0.00 for those entries. *Id.* at 2 n.2. Next, Travell's criticism of certain entries as "non-legal" tasks revealed his lack of familiarity with the details of this litigation. For instance, he concluded that any time spent by GL or CIR related to college applications or Reserve Officers' Training Corps ("ROTC") was not compensable, but as Paxton explained, these tasks were necessary because the Defendants specifically requested discovery of all documents pertaining to Doe's college applications and ROTC.[9]

Travell also summarily concluded that only one law firm was necessary, and as such, he wrote off nearly every conference held between GL and CIR. Indeed, at times, he appeared to criticize certain entries as a non-compensable "conference" if any information pertaining to CIR or one of its attorneys appeared in GL's records, even if the entry clearly showed that the task was *not* a conference. *See, e.g.*, Travell Decl. Ex. 7A (marking associate Bradley C. Tobias's entry on November 3, 2015, in which he "review[ed] CIR draft of supplemental opposition memo and [made] revisions to same" and his entry on December 11, 2015, in which he participated in a telephone conference with CIR attorneys, opposing counsel, and the undersigned Magistrate Judge regarding scheduling as non-compensable conferences between

---

[8] Travell completed his analysis before the Plaintiff supplemented the fee petition request, hence the difference in the number of requested hours and the attendant fees.

[9] As noted in Doe's reply brief, the Defendants do not incorporate this aspect of Travell's analysis into their argument. Pl.'s Reply 14.

firms); *id.* at Ex. 8A (marking Paxton's entry on April 6, 2016, in which he conducted a "review of initial CIR draft of fact section of MSJ with detailed comments" as a non-compensable conference).

In the same vein, per the Court's review of his annotations, Travell concluded that roughly 97% of CIR's time was not compensable, mostly because he deemed it "duplicative." He appeared to write off as duplicative any task that appeared more than once in the billing records, including many entries for time spent revising and editing substantive briefs and motions. *See, e.g.*, *id.* at Ex. 7B (concluding that Rosman's entry on January 15, 2016, described as "begin review of GL's proposed response on FERPA objections" was duplicative); *id.* at Ex. 8A (marking as duplicative both Tobias's and Paxton's 2016 entries from April 6, April 9, April 11, April 14, and April 15, during which they reviewed, edited, revised, and made comments on the summary judgment brief in the days leading up to its submission).

Travell also criticized GL and CIR's conduct during discovery as wasteful and duplicative. *Id.* ¶ 12. He claimed that it was inappropriate to ask every deponent about JMU's portrayal in the national media stemming from the perceived mishandling of a prior sexual assault case, *id.* ¶ 13, and he identified portions of the depositions that purportedly support this assertion, *id.* at Ex. 1. Despite this overarching claim, Travell does not cite any part of the depositions of four of the deponents. *Id.* As for what he did cite, upon review of the depositions, most questions concerned whether the deponent had heard of the previous case or was concerned with the changes made to JMU's sexual misconduct policy immediately after that case. Although this information did not factor into the Court's written opinions, these lines of inquiry were nonetheless reasonable in developing evidence for motions practice and trial considering Doe's

theory that the newly created policy applied to his case was, in part, a reaction to criticism leveled at JMU for its handling of the previous case.

Travell's suggested award range of $336,000 to $364,000 is also unsupported. First, Travell does not clarify why he chose to create a "blended hourly rate" as opposed to utilizing the attorneys' individual rates, which, like the Defendants, he did not question as unreasonable. Second, Travell's conclusion that 1,200 to 1,300 hours would be a "reasonable" amount of time spent on the case, *see id.* ¶ 16 n.3, lacks any explanation.

b. Comparison to Doe v. Rector

Turning to the specific contentions raised in the Defendants' opposition, I first address their insistence that the award requested in this case is too high because it is significantly more than the fees awarded in *Doe v. Rector & Visitors of George Mason University*, a comparable case from the Eastern District of Virginia. *See* 2016 WL 3480947, at *6 (awarding $278,531.45 for attorneys' fees and litigation costs). The Defendants contend that "[t]he legal issues and procedural history in this case are similar to the issues raised and argued" in that case, and they claim they were more successful in this case because they prevailed on "the central question of the University's ability to subject Plaintiff to a new student conduct appeal process." Defs.' Br. in Opp'n 11. They conclude that "[g]iven the similarity of the law and procedural background of this case to *Doe v. Rector*, there is no justification for why Plaintiff should be awarded a fee 3.6 times as much as the reasonable fee approved by Judge Ellis. (Travell Decl.)." *Id.* There is no further development of this argument in either the brief or the Travell Declaration.

The Defendants are correct to cite to comparable cases in determining the reasonableness of the hours worked (*Johnson* factor 12), *see Johnson*, 488 F.2d at 719 ("The reasonableness of a fee may also be considered in the light of awards made in similar litigation within and without

the court's circuit."), but the blanket conclusion drawn from the comparison to *Doe v. Rector* is misplaced here. Both cases involved a male plaintiff claiming violation of procedural due process by a state university in its handling of an accusation of sexual misconduct. Both plaintiffs moved to proceed by pseudonym, litigated motions to dismiss, participated in a settlement conference, and ultimately prevailed on summary judgment, which was bifurcated into a liability phase and a remedies phase. The similarities end there, however.

The scope of discovery and the summary judgment motions was much broader here than in *Doe v. Rector*. Although the Defendants' and Travell contend that this was the result of overkill on Doe's part, their position is not persuasive. Plaintiff in this case faced two motions to dismiss, rather than one. The Court held a hearing on issues stemming from five JMU students not a party to the case asserting their rights under FERPA. *See* ECF Nos. 91 to 93.. Discovery could not begin in earnest until these FERPA issues were resolved—specifically because JMU's obligations under FERPA prevented it from fully responding to Doe's discovery requests—and when it did, discovery was conducted in a condensed, mutually agreed upon thirty-two-day timeline. Pl.'s Pet. 4; *see also* Second Decl. of W. David Paxton ("Second Paxton Decl.") Attach. F, ECF No. 187-1 (setting out a broad timeline of the discovery phase from GL's perspective). Plaintiff here took eleven depositions and Defendants took three versus two and one respectively in *Doe v. Rector*. *See* 2016 WL 3480947, at *4. Similarly, the defendants in *Doe v. Rector* asserted only two challenges to the plaintiff's fee petition (i.e., block billing and overstaffing) and proposed a 40% reduction in the award, *see id.*, whereas the Defendants here mounted at least seven distinct objections to Doe's request for fees and proposed a 65% reduction in the award. There was one discovery dispute involving the Plaintiff's request for production of documents, which the Court resolved in Doe's favor. ECF No. 82. The Defendants made a

motion for a more definite statement, ECF No. 31, to which Doe responded, ECF No. 34, before Defendants withdrew the motion. JMU also followed its new protocol and policy, which included destroying Doe's administrative file pertaining to his initial misconduct hearing and the subsequent appeal, *see Doe v. Alger*, 228 F. Supp. 3d at 717–24, whereas George Mason officials substantially deviated from its own policy in disciplining the plaintiff there, facts which were obvious to the parties in that litigation, *see Doe v. Rector & Visitors of George Mason Univ.*, 149 F. Supp. 3d 602, 610–13 (E.D. Va. 2016). This difference necessitated more extensive discovery for the Plaintiff here to determine what went into the original hearing and subsequent appeal, and the Defendants were never able to identify which documents were in Doe's file at any specific point in time. Pl.'s Reply 7 n.8. Additionally, both parties filed lengthy motions for summary judgment, together supported by more than one hundred exhibits. *See* ECF Nos. 115, 117. Finally, the plaintiff in *Doe v. Rector* requested $307,951.25 for 1,099.85 hours of work, and he was ultimately awarded $277,864.45 for 984.69 reasonable hours expended. 2016 WL 3480947, at *2, *6. Although the Defendants question Doe's fee petition, pointing out that it requests an amount 300% higher than that awarded in *Doe v. Rector*, *see* Defs.' Br. in Opp'n 2, the preceding discussion highlights the differences between the cases, which in turn provides a reasonable explanation for the substantially higher request in this case.

In short, the Defendants overstate the parallels between this case and *Doe v. Rector*. The hours expended by Doe's attorneys and support staff were reasonable in light of the motions practice and discovery demands in this case. As such, the superficial similarities to a potentially comparable case (*Johnson* factor 12) do not necessitate a reduction in the fee award or otherwise affect the reasonableness of the requested hours as it factors into the lodestar calculation. *Cf. Doe v. Alger*, No. 5:15cv35, 2017 WL 1483577, at *3 (W.D. Va. Apr. 25, 2017) ("As is evident from

[the] factual background, there are significant differences between [*Doe v. Rector*] and this one.").

c. Block Billing

The Defendants next claim that CIR's billing records contain excessive block billing and should be reduced, Defs.' Br. in Opp'n 8–9, ostensibly by a fixed percentage somewhere in the 10 to 50% range suggested by Travell, *see* Travell Decl. ¶ 42.[10] "'Block billing' is generally defined as 'grouping, or lumping, several tasks together under a single entry, without specifying the amount of time spent on each particular task.'" *McAfee v. Boczar*, 906 F. Supp. 2d 484, 498 (E.D. Va. 2012) (quoting *Guidry v. Clare*, 442 F. Supp. 2d 282, 294 (E.D. Va. 2006)), *vacated and remanded on other grounds*, 738 F.3d 81 (4th Cir. 2013). Block billing is disfavored by courts in this circuit because it "does not provide the court with a sufficient breakdown to support an attorneys' fee request." *Griffin v. Areva, Inc.*, No. 6:16cv29, 2016 WL 7736953, at *3 (W.D. Va. Dec. 15, 2016), *adopted by* 2017 WL 121073 (W.D. Va. Jan. 12, 2017). Accordingly, the presence of block billing gives the court grounds to reduce an otherwise proper fee award. *Id.*; *see also Doe v. Rector*, 2016 WL 3480947, at *5; *Guidry*, 442 F. Supp. 2d at 294. Courts make such a reduction by either excising certain deficient entries from the billing record or imposing an across-the-board reduction by a fixed percentage "based on the trial court's familiarity with the case, its complexity, and the counsel involved." *Griffin*, 2016 WL 7736953, at *3. The across-the-board reduction is designed to strike a balance between the lack of specificity presented by block billing and the unfairness of denying an otherwise proper fee award in its entirety, *see Elderberry of Weber City, LLC v. Living Centers-Southeast, Inc.*, No. 6:12cv52, 2014 WL 3900389, at *4 (W.D. Va. Aug. 11, 2014), and it generally ranges from 5%

[10] Travell identified some of GL's time entries as block billing in his annotation of their invoices, but the Defendants properly do not attempt to make that argument. GL's billing records do not contain block billing and will not be reduced for that reason.

to 20%, *see Doe v. Rector*, 2016 WL 3480947, at *5 (reducing the hours requested by 10% for the more frequent block billing by associates and by 5% for the lead partner whose block billing was sparse); *LaMonaca v. Tread Corp.*, 157 F. Supp. 3d 507, 519–21 (W.D. Va. 2016) (reducing by 15 to 20% the hours requested by two attorneys because of block billing and incomplete descriptions of tasks); *Sky Cable*, 2014 WL 4407130, at *5 (reducing fee by 15%).

The Defendants are correct that CIR's invoices show block billing. The hours requested by CIR were compiled by essentially two attorneys—Rosman and Michelle Scott. Both Rosman's and Scott's entries contain block billing, although Rosman's are less prevalent than Scott's. Rosman's entries often are either broken down by the time spent on the task, and thus do not constitute block billing, or the tasks described are sufficiently related that they do not invoke the typical block billing concerns, *see* Rosman Statement Ex. 8 (entry from May 13, 2016, billing 3.3 hours with the description "review D. Paxton comments on reply brief and add sections to brief based on those comments; email to D. Paxton and others re those comments and how I addressed them; review and edit brief and distribute to counsel"). That said, CIR's records show some block billing on Rosman's behalf. *See, e.g.*, *id.* at Ex. 7 (entry from March 9, 2016, billing 2.8 hours with the description "review emails; review answers to requests to admit and discuss same w/ M. Scott; begin review of 'remedy brief' in GMU case"); *id.* at Ex. 10 (entry from January 12, 2017, billing 5.1 hours with the description "email exchanges re D. Paxton's conversation w/ N. Rouzer and possible settlement counteroffer; continue reviewing cases relevant to remedies submission; continue drafting remedies memorandum of law"). Therefore, I recommend that Rosman's requested hours on the merits (488.1) be reduced by 5% to 463.7 hours.

Scott's entries show less particularity. She often recorded only one entry per day, comprised of all the tasks for that day, and would frequently bill in quantities of five hours or more. She did not identify the tasks by the specific time it took to perform each. Additionally, her entries are vague and incomplete, containing descriptions such as "research," "drafting memo," "draft brief inserts," or "review related cases." *See, e.g.*, *id.* at Ex. 6 (entries from 2015 for May 19, May 27, June 8, July 8 (billing 7.9 hours to "review related cases; emails cocounsel"), July 31, and August 5). Moreover, there are multiple instances where Scott's description of the billable work she performed remained the same over a multi-day period during which she frequently billed six to eight hours. *See, e.g.*, *id.* (entries from 2015 containing the same description for May 29, June 1, and June 2; July 15, July 16, and July 17; and July 31, August 3, and August 4).

Although CIR did include significant write-offs of Scott's (and Rosman's) time before submitting its invoices, these reductions do not cover the block billing problems described above. The write-offs are also inadequate because they regularly discounted only part of an entry, leaving the Court to guess about what part of the description was considered billable and what was not. *See, e.g.*, *id.* at Ex. 7 (reducing Scott's entry on February 26, 2016, from 5.3 hours to 2.7 hours, her entry on March 7, 2016, from 7.9 hours to 3.9 hours, and her entry on March 8, 2016, from 8.2 hours to 4.1 hours). This approach does not sufficiently account for pervasive block billing because, as courts have recognized, "it is nigh onto impossible to reconstruct old billing entries accurately." *LaMonaca*, 157 F. Supp. 3d at 520 (quoting *McAfee*, 906 F. Supp. 2d at 500). Therefore, I recommend that Scott's requested hours on the merits (744.4) be reduced by 20% to 595.5 hours.

d. Overstaffing and Necessity of Two Firms

Arguing that GL and CIR worked an unreasonable number of hours, the Defendants and Travell focus extensively on the participation of two firms. Defs.' Br. in Opp'n 7–9. They claim that using ten attorneys and one paralegal across two firms significantly inflated the number of hours expended as evidenced by "duplication of effort, the overbilling of meetings, conferences, telephone calls, and email communications—often by several attorneys—as well as reviews of such communications and reviews and revisions of other attorneys' work." *Id.* at 8. They claim that GL and CIR each had the skill required to properly perform the necessary legal services and did not require the assistance of the other. *Id.* at 9. Permeating the Defendants' brief and attached declarations is also the implication that Defendants perceived this case to be factually and legally straightforward, and consequently, the amount of work Plaintiff's counsel conducted during discovery and motions practice was unnecessary. *See id.* at 2–3; *id.* at Attach. B., Decl. of Susan L. Wheeler ("Wheeler Decl.") ¶¶ 9–10, 12, ECF No. 183-22. The Defendants contend there was "no justifiable reason to have two law firms involved in all aspects of this litigation," and "[t]he involvement of two firms in this case significantly increased the cost of legal services without providing much, if any, enhancement in such services or the result obtained." Defs.' Br. in Opp'n 8–9.

Doe counters that focusing on the number of firms, rather than the number of attorneys, is misguided because there is no authority or evidence that four attorneys in one firm confer any less than four attorneys[11] across two firms. Pl.'s Reply 4. He disputes Travell's insistence that all time spent conferencing should be non-compensable because "[i]t is perfectly reasonable for attorneys to speak with one another about a case," and the Defendants cite no authority to the contrary. *Id.* at 11–12. Doe notes that Travell's annotation of GL's and CIR's billing records

[11] Paxton, Tobias, Rosman, and Scott accounted for 89% of the total requested hours, with much of the rest attributed to Cindy T. Bates, GL's paralegal.

provides no assistance in determining what tasks were actually duplicative and that the Defendants made no effort to prove that these identified tasks were on the same topic. *Id.* at 13. He explains that the Defendants opposed every substantive motion made by the Plaintiff, necessitating more time spent on the case. Pl.'s Pet. 16. Doe claims the records reflect good billing judgment, as his attorneys assigned much of the time-intensive tasks such as research and evidence review to associates and a paralegal, who billed at lower rates; CIR limited its role in discovery; they charged for only one attorney at hearings; and they wrote off significant amounts of additional time precisely to avoid charging for duplicative or overlapping work. *Id.* at 18–19. Furthermore, Doe asserts that the number of hours expended was reasonable given the novelty and difficulty of the legal questions raised. *Id.* at 17.

Most of the Defendants' arguments are unpersuasive. For one, the Defendants have not established, and the Court cannot speculate, about what the outcome may have been if Doe were represented by only GL or CIR, but not both, especially considering the complete success he achieved with both firms' representation. *Cf. Rosenberger v. Rector & Visitors of the Univ. of Va.*, Civ. A. No. 91-0036-C, 1996 WL 537859, at *3 (W.D. Va. Sept. 17, 1996) ("Although the court hesitates to say that the litigation demanded this many hours or this many lawyers, given the results achieved by plaintiffs, the court cannot find that plaintiffs' counsel's commitment of resources was unreasonable.").

The Defendants also argue that employing two firms is by itself unreasonable. By that logic, as the Plaintiff notes, it is more reasonable to hire one large firm who staffs a case with multiple attorneys than to hire two solo practitioners. Pl.'s Reply 4. The crux of the lodestar calculation is the reasonableness of the hours expended, not whether those hours were incurred by one or two firms. *See SunTrust Mortg.*, 933 F. Supp. 2d at 775–76 (focusing on the

reasonableness of time expended by at least twenty-one attorneys across two firms and concluding that the information provided by the prevailing party showed that the matter was "for the most part, . . . prudently staffed"); *see also Sky Cable*, 2014 WL 4407130, at *6 ("'[T]here is nothing inherently unreasonable about a client having multiple attorneys,' especially in a complex civil case." (quoting *McAfee*, 906 F. Supp. 2d at 501)). Thus, the Court will not discount an otherwise adequately supported explanation of the reasonableness of the hours expended simply because two firms worked on the case. *See Sky Cable*, 2014 WL 4407130, at *6 ("When reviewing the hours sought, the court must focus on the reasonableness of the division of responsibility between counsel. Reduction of hours is warranted only if counsel unreasonably duplicate each other's work.").

The Defendants also do not give GL and CIR credit for writing off 32.77% (almost 90% of which comes from Paxton, Tobias, and paralegal Cindy T. Bates, the three of whom accounted for over 95% of GL's requested time) and 19.08% of their time respectively. This voluntary reduction demonstrates good billing judgment and weighs in favor of the reasonableness of the hours requested. *See Rosenberger*, 1996 WL 537859, at *3–4 (concluding that plaintiff's across-the-board reduction of 5% was not sufficient to account for duplication as it mainly targeted low-billing attorneys and summer associates, and instead found a 20% across-the-board reduction reasonable).

Next, the *post hoc* rationalizations that this case presented primarily undisputed facts and straightforward legal issues, with the intended inference being that GL's and CIR's time spent was overkill, *see* Wheeler Decl. ¶¶ 9–10 ("In my experience and opinion, this lawsuit was neither unique nor complex. . . . The central issue of this lawsuit before the court was legal, not factual. Most of the facts were agreed upon by the parties. . . . Contrary to the assertion in the

plaintiff's petition, this case posed no novel facts."); *id.* ¶ 12 ("[P]laintiff's discovery was almost entirely duplicative of information already received by the firm through open records requests filed in advance of formal discovery. . . ."), is not borne out by the record. This case presented novel legal issues with no established binding precedent in this District. *See Doe v. Alger*, 175 F. Supp. 3d at 656 ("Neither the Supreme Court nor the Fourth Circuit has explicitly recognized a property interest in a student's continued enrollment in a public college or university or a liberty interest in his good name, resulting from a constitutionally infirm disciplinary process."). It required significant discovery instigated by both parties.[12] The Defendants' opposition brief to Doe's summary judgment motion contained over ten pages of disputed facts. *See* ECF No. 123, pp. 3–13. The Defendants opposed all of Doe's substantive motions and even objected to some minor requests, such as Doe's motion for leave to exceed the page limit on the remedies brief, *see* ECF No. 156, which the Court granted, ECF No. 158. This case involved novel and complex civil rights litigation, and it was closely contested, *see Doe v. Alger*, 2017 WL 1483577, at *1 n.1, ("All counsel have ably demonstrated that it is possible to be a fierce advocate for one's own client(s) and, at the same time, to remain respectful and work cooperatively with opposing counsel."). Thus, I do not find persuasive the Defendants' characterization of the case in opposing Plaintiff's fee petition.

While the essence of the Defendants' argument is that they believe GL and CIR overstaffed the case, were inefficient, and duplicated each other's work, they do not offer any

---

[12] For example, the Defendants chastised the Plaintiff's attorneys for issuing three sets of interrogatories, four sets of requests for production of documents, and one set of requests for admission seeking 121 admissions, whereas Defendants' counsel issued Doe only one set of interrogatories, two sets of requests for production of documents, and one set of requests for admission. Defs.' Br. in Opp'n 3. As noted in the reply brief, however, the Defendants served Doe with more requests for production of documents (thirty-nine separate requests over three, not two, sets versus Doe's thirty-one) and the same number of interrogatories (twenty-two for each), albeit in fewer increments. Pl.'s Reply. 4–5, n.4; Second Paxton Decl. Attachs. C to E. Furthermore, the Defendants' requests prompted Doe to produce 2,119 responsive documents in total. Pl.'s Reply 12–13.

specific support for this position. *See Sky Cable*, 2014 WL 4407130, at *7 (criticizing the defendants for "mischaracteriz[ing] the complexity of this litigation" when they concluded that duplication occurred, without pointing to specific entries in the fee petition, because of their belief that the work could have been handled by one or two attorneys). Although the Defendants submitted thousands of pages of deposition transcripts with their opposition brief as evidence of inefficiency and overkill, they do not cite to any portion of these depositions. The Court will not review these voluminous records to search for evidence of duplication or excess in discovery, and the Defendants' failure to identify any other examples of duplication undermines their position. *See SunTrust Mortg.*, 933 F. Supp. 2d at 775 ("[SunTrust] takes the view that the 'overkill' is evident based on the total time expended in pursuit of the sanctions motion. However, [SunTrust] points only to two examples to make that point. . . . These examples are probative of [SunTrust's] position, but they are not sufficient to carry the load that [SunTrust] puts on them because the examples address only two events in a lengthy process. That is an insufficient predicate to condemn as overkill the entire time component of the fee application.").

Likewise, Travell's annotations and affidavit do not provide the requisite support for the Defendants' position. Travell opined that only one firm was necessary and suggested that 97% of CIR's requested time was not compensable, usually because he deemed it duplicative. As to GL's entries, his conclusory designation of tasks as duplicative provides no insight into the reasonableness of the entries he identified. As explained above, Travell often noted that a task was duplicative if it was performed more than once. The obvious flaw in this approach is that labor-intensive tasks might not be completed in one sitting and thus are not inherently duplicative just because they are identified with the same description in separate time entries. On other occasions, Travell noted a task as duplicative for each attorney who entered it, effectively

writing off the task entirely. *See, e.g.*, Travell Decl. Exs. 6A, 6B (marking as duplicative each of Tobias's, Paxton's, Scott's, and Rosman's entries from September 21, 2015, reviewing the recent decision in *Doe v. Rector*). If a task is truly duplicative, then it is reasonable to conclude that the Plaintiff should not recover for it twice, but that does not mean that he forfeits *all* the fees for those hours. Without any further explanation, then, Travell's annotations do not support the Defendants' claim that GL's and CIR's records are replete with duplication.

Moreover, the Defendants did not address the clear division of work between GL and CIR, as articulated in the attorney declarations, *see* Paxton Decl. ¶¶ 16–17; Rosman Statement ¶¶ 3, 8, and detailed in the billing records. Although GL operated as the lead firm and Paxton handled the majority of oral arguments, CIR did the lion's share of the work on much of the briefing, including the opposition to Defendants' motions to dismiss, the motion to proceed by pseudonym, the motion for summary judgment on liability, and the opposition to Defendants' cross-motion for summary judgment. Paxton Decl. ¶ 16. This division of labor is reflected in the billing details, which depict CIR attorneys drafting the briefs, GL attorneys reviewing them and providing comments, and CIR attorneys revising them. *See, e.g.*, Rosman Statement Ex. 8 (entries from March 24, 25, 29, 30, 31, and April 4, 2016, pertaining to the initial drafting of the motion for summary judgment brief); Paxton Decl. Attach. P (entries from April 6, 7, 8, 9, and 10, 2016, pertaining to GL's review of CIR's draft of motion for summary judgment brief); Rosman Statement Ex. 8 (entries from April 11, 12, 15, and 18, 2016, pertaining to edits made in response to GL's review of motion for summary judgment brief). CIR also had a hand in assisting GL with analyzing and drafting the complaint and amended complaint, developing discovery strategy, drafting the remedies brief and opposition brief at the summary judgment stage, and compiling the present fee petition. Paxton Decl. ¶ 16.

That said, I agree that some duplication occurred. Employing two firms was the Plaintiff's prerogative, but that choice created the potential for lost efficiency, and it appears that occurred here to a degree. By distributing the work as they did, GL and CIR communicated frequently with each other regarding their separate roles throughout the case. This frequent communication resulted in significant billing entries for conference calls and emails between the firms. Although GL exercised discretion on most occasions and only billed for the time of one attorney (usually Paxton) on conference calls, CIR did not. The overwhelming trend in CIR's invoices showed that it billed for both Rosman's and Scott's time on conference calls with GL. *See, e.g.*, Rosman Statement Exs. 6, 7, 8, (June 9, 2015; June 25, 2015; July 14, 2015; August 31, 2015; March 17, 2016; April 20, 2016). Additionally, in the later phases of litigation, there are instances where GL and CIR billed for all four attorneys on the same phone call. *See* Paxton Decl. Attach. R; Rosman Statement Ex. 10 (January 10, 2017; January 17, 2017). This lack of billing judgment calls for some reduction in hours.

Similarly, communication between attorneys working on a complex case is expected, and it can "result in greater efficiency and less duplication of effort." *Page*, 2015 WL 11256614, at *9. But this was not always true here. For example, attorneys from both firms conducted extensive research, and on some occasions, it is difficult to discern whether GL and CIR were researching the same legal concepts because the descriptions identify similar topics. *Compare* Rosman Statement Ex. 6 (entries from Scott and Rosman during Phase II concerning research of liberty interest, property interest, JMU publications, FERPA issues, and cases cited in the Defendants' motion to dismiss), *with* Paxton Decl. Attach. M (entries from Tobias, Paxton, Scott A. Stephenson, and Greg J. Haley during Phase II concerning research of and conferences relating to the same issues). Scott's excessive block billing and incomplete descriptions of her

work exacerbates this lack of clarity and frustrates the Court's ability to determine whether Doe's attorneys' work was duplicative. *See, e.g.*, Rosman Statement Ex. 5 (entry from April 14, 2015, billing 6.2 hours for "research; drafting complaint"; entry from April 15, 2015, billing 7.6 hours for "drafting and revising complaint; discuss with [R]osman; research on anonymity standards in the fourth circuit; review local rules").

The four main attorneys also regularly reviewed and edited each other's work. The Court does not criticize the thoroughness of this preparation, but it is evident from the records that the sheer frequency of the back and forth between the firms, as well as the extensive intra-firm review, suggests some lost efficiency and duplication. *See, e.g.*, Paxton Decl. Attach. P (multiple entries from Paxton from April 5–9, 2016, involving reviewing, editing, providing comments, and explaining those comments on CIR's summary judgment brief, as well as Tobias's review, revision, and cite checking done from April 9–11, 2016).

On the whole, GL and CIR separately contributed to Doe's success, and Paxton and Rosman made good faith efforts to eliminate duplication by meticulously reviewing and editing their billing records. On the Court's own review, however, it is evident that using two firms created some inefficiencies and despite counsel's best attempts to prune the billing records, duplication of effort and careless billing remained. Therefore, I recommend an across-the-board reduction of 10% to all hours worked by each attorney and paralegal during the merits portion of the litigation. This reduction should not include time spent preparing and defending the fee petition, as those hours are individually challenged and require separate deductions, *see infra* Pt.III.A.3.g, nor will it pertain to the compensable hours spent traveling by Paxton and Tobias as described *infra* Pt.III.A.3.f. This recommended reduction will be reflected in the final table of reasonable hours and hourly rates set forth *infra* Pt.III.A.4.

e. Customary Fee for Like Work and Expectations at Outset of Litigation

The Defendants next contend that because civil-rights cases such as this one are typically taken on a pro bono basis, GL and CIR were not accountable to a paying client during their representation of Doe, and as such, this lack of accountability led to "overstaffing, duplication of efforts[,] imprecise [billing,] and block billing." Defs.' Br. in Opp'n 10. They characterize GL's representation as initially being on a fee basis, which switched to pro bono representation around February 2015. *Id.* Similarly, they contend that CIR, as a self-described public interest law firm, has no expectation of being paid absent eligibility under a fee-shifting statute such as § 1988. *Id.* The Defendants provide no further explanation on how these factors should impact the lodestar calculation, other than to generically assert that GL and CIR's unrestrained approach to litigating their client's case resulted in an inflated number of hours billed.

Plaintiff objects to characterizing GL's representation as pro bono because GL took the case with the expectation of receiving fees for its services. Pl.'s Reply 4 n.3. Moreover, the Defendants do not address counsels' other assertions that they expected the case would progress quickly and with minimal risks–a scenario that did not bear out. Pl.'s Pet. 14, 16–17. Doe also identifies the uncertainty of ever being paid because of the purported reluctance of courts to find for a plaintiff in his position; the substantial amount of time both firms must wait to be paid; and the ancillary opportunity costs (*Johnson* factor 4) that developed during the two years after taking this case, including at least one lost opportunity for GL to defend a Title IX case because of a perceived conflict of interest. *Id.* at 13–15.

Considering Plaintiff's rebuttal, the Defendants' argument is unavailing. As evidenced by Paxton, GL accepted an initial retainer and ultimately took the case on a contingency arrangement, not a pro bono basis. *See* Paxton Decl. ¶ 14. Both GL and CIR expected to be

compensated for their work pursuant to § 1988 if Doe prevailed in the litigation, which he did. The Defendants offer no argument other than *ipse dixit* contentions that GL and CIR were not accountable in their representation because they were not responsible to a fee-paying client. Even if this argument had some merit, I have reduced amounts claimed in the fee petition for imprecise billing, block billing, and duplication, thereby addressing any alleged lack of accountability to a paying client. Accordingly, no further reduction is warranted on these grounds.

f. Undesirability of Case Within the Legal Community

The Defendants contend that the Plaintiff failed to carry his burden of proving the undesirability of the case within the relevant legal community because "[t]here is no evidence that this was an unpopular case in Harrisonburg, or that Plaintiff was required to use lawyers outside" the local community. Defs.' Br. in Opp'n 10. They claim that many local attorneys and firms are well-versed in this area of the law and that by his own admission, the Plaintiff did not seek any local attorney because he was referred to GL. *Id.* Doe, conversely, contends that three local attorneys all attested that this case—and others like it—are unpopular and that there was a dearth of available counsel within the local community competent to handle such a complex matter. Pl.'s Reply 13–14 (citing Davidson Aff.; Tower Decl.; Obenshain Decl.).

At the outset, I note that it is common for attorneys throughout the Commonwealth and Washington, D.C. (as well as many other states), to practice in this District and in the Harrisonburg Division in particular, and I am not persuaded that the Plaintiff's right to recover under § 1988 somehow hinges on the fact that he did not seek counsel in Harrisonburg before retaining representation of his choosing. Additionally, the lack of explanation from the Defendants makes it difficult to determine how the case's undesirability, or lack thereof, should

affect the reasonableness of the hours worked. Usually, this *Johnson* factor pertains to the reasonableness of the hourly rates, which, as explained above, should be determined in accordance with the prevailing rate in the relevant community. *See supra* Pt.III.A.2. Because Doe submitted rates consistent with the appropriate standard and the Defendants do not challenge the reasonableness of the rates, the impact of this factor on the reasonableness of GL's and CIR's expended hours is minimal.

Based on the Travell Declaration, however, the Defendants appear to raise the location of Doe's attorneys' offices as a challenge to recovery for time spent commuting to and from Harrisonburg. Travell explained that, in his opinion, attorney travel time and its associated costs should not be borne by the Defendants at all because of Plaintiff's election to employ firms from Roanoke, Virginia, and Washington, D.C., but that if the Court deemed travel time compensable, it should be awarded for only one attorney and at a discounted rate of 50%. Travell Decl. ¶ 42. Ostensibly, the Plaintiff agrees to an extent, as CIR did not request any reimbursement for travel time and attendance at proceedings, and GL requested travel time only for the attorney who took the lead on a given deposition or motions argument, albeit at their regular rate. Per Travell's review of GL's invoices, GL requested 43.6 hours of travel time for Paxton and 8.0 hours of travel time for Tobias, resulting in a total of $17,710. I do not agree with the Defendants that all travel time is per se unreasonable and therefore not compensable. I do agree, however, that GL attorneys should not recover their full hourly rate for this travel time. *See Rosenberger*, 1996 WL 537859, at *6 ("[D]efendants rightly point out that plaintiffs should not recover the same fee for travel time as they recover for active legal work. . . . One, the court believes, is more intellectually challenging and grueling than the other." (citations omitted)). Although GL and CIR commendably exercised billing judgment in requesting fees for the travel time incurred by

only one attorney for a given matter and by scheduling depositions so as to minimize travel to and from Harrisonburg, it is nonetheless appropriate to further reduce the hourly rate requested by 50% for all requested travel time. *See Prison Legal News v. Stolle*, 129 F. Supp. 3d 390, 403–04 (E.D. Va. 2015) (finding that reducing the requested rate by 50% struck "an appropriate balance between the task billed, driving a car (which requires no legal skills of any kind), and counsel's opportunity costs of such travel-time").

Therefore, Paxton's 43.6 hours of travel time will be billed at $187.50/hour. In keeping with GL's self-imposed cuts, the Court finds it appropriate to excise the four hours of requested travel time from Tobias for the remedies hearing on February 22, 2017, as Paxton argued the motion and also seeks reimbursement for that time. *See* Paxton Decl. Attach. R, ECF No. 180-3, at 79. Tobias's remaining four hours of travel time for arguing the FERPA motions will be billed at $85/hour. As these reductions are the only changes of the charged rates, rather than the hours worked, the final table breaking down the lodestar figure will accommodate travel time as a separate entry for Paxton and Tobias.

g. Reasonableness of the Fee Petition Preparation and Defense

Preparation of the fee petition primarily took place in what GL and CIR described as Phase VII of the litigation. As with analyzing the reasonableness of the hours expended during the litigation phase of the case, those hours spent preparing and defending the fee petition are part of the lodestar calculation. The billing records for Phase VII reflect 102.2 hours of work for $24,957.50 in fees from GL (41.8 hours from Paxton, 38.5 hours from Tobias, and 21.9 hours from Bates) and 22 hours of work for $7,645 in fees from CIR (20.9 hours from Rosman and 1.1 hours from Scott), totaling 124.2 hours of work for $32,602.50 in fees. Paxton Decl. Attach. S, ECF No. 180-3, at 83–90; Rosman Statement Ex. 11. Plaintiff then supplemented this request

with an additional 29.5 hours of work for $8,915 in fees from GL (20.1 hours from Paxton, 4.5 hours from Tobias, and 4.9 hours from Bates) and 32.7 hours of work from CIR for $11,415 in fees (32.1 hours from Rosman and .6 hours from Scott), totaling 62.2 hours of work for $20,330 in fees. ECF Nos. 187-1, 187-2. The total requested amount of time for preparing and defending the fee petition then is 186.4 hours of work for $52,932.50 in fees.

As noted by Plaintiff, however, Phase VII and the supplemental records reflect other work not related to preparation of the fee petition, although those entries are not identified by GL or CIR. Pl.'s Pet. 2 n.2. Per the Court's own review, GL's Phase VII records indicate 1.4 hours of Tobias's time and 1.3 hours of Paxton's time not related to preparing the fee petition. *See* Paxton Decl. Attach. S. CIR's time was either written off or expressly dedicated to the fee petition. The supplemental records reveal 0.7 hours of Tobias's time, 1.9 hours of Paxton's time, 0.6 hours of Scott's time, and 0.5 hours of Rosman's time dedicated to other issues. *See* ECF No. 187-1. These 6.4 hours are related to other compensable work—such as attempting to reach a settlement agreement with the Defendants—and therefore factor into the lodestar calculation as part of the merits stage of litigation. *See supra* note 6. Based on this reallocation, Doe requests recompense for 180 hours of work (121.5 hours in preparation and 58.5 hours in defending) for $51,020.50 in fees ($31,877 in preparation and $19,143.50 in defending) spent on the fee petition.

The Defendants contest the reasonableness of the hours spent on this fee petition and advocate an across-the-board reduction. Defs.' Br. in Opp'n 11–13. They suggest that the Court reduce the award to $10,000 and deduct another 20% to account for CIR's block billing, for a total award of $8,000. *Id.* at 12. The Defendants rely on two cases from the Eastern District of Virginia and one case from the Fourth Circuit in support of their proposition that "[c]ourts in the

Fourth Circuit commonly reduce excessive fee awards for preparation of a petition for fees to $10,000." *Id.* (citing *Spell v. McDaniel*, 852 F.2d 762, 770 (4th Cir. 1988); *Page*, 2015 WL 11256614, at *12; *McAfee v. Boczar*, No. 3:11cv646, 2012 WL 6623038, at *3 (E.D. Va. Dec. 19, 2012)).

A review of the billing records from Phase VII and the supplemental request reveals that some reduction is necessary, but not to the degree urged by the Defendants. Contrary to the Defendants' assertion, there is no steadfast rule or practice by courts in this Circuit to cap fee awards at $10,000 for preparing any fee petition. Instead, like the rest of the analysis of the lodestar calculation, the decision is within the trial court's discretion and focuses on the reasonableness of the hours and rates requested. *See Trimper*, 58 F.3d at 77 ("Although it is well settled that the time spent defending entitlement to attorney's fees is properly compensable under § 1988 . . . it is nevertheless within the district court's discretion to determine exactly what amount would compensate the party sufficiently for the time spent on the fees phase of a lawsuit." (citations omitted)).

Courts across this Circuit have employed various methods to assess a reasonable number of hours spent in preparing a fee petition. For example, the Fourth Circuit upheld a district court's decision to limit recovery for time spent during the fees stage to 20% of the amount recovered during the merits stage because the district court had determined that spending more than double the amount of time at the fees stage than the merits stage was unreasonable. *See id.* Another court found that the 34.9 hours requested were "totally unreasonable" in light of the facts in that case and awarded fees for a reasonable 5 hours spent on the fee petition. *Starnes v. Hill*, 589 F. Supp. 341, 345–46 (W.D.N.C. 1984), *aff'd in relevant part sub nom. Daly v. Hill*, 790 F.2d 1071, 1080 (4th Cir. 1986). In *Spell v. McDaniel*, the Fourth Circuit deemed the

requested 64.6 hours "incredible," but this was in reference to time spent on a supplemental motion as part of a fee petition for expenses incurred solely on appeal of the initial fee petition. 852 F.2d at 770. The Fourth Circuit found a 70% reduction appropriate in that circumstance. *Id.* In *McAfee*, the district court did its own line-by-line review and concluded that a reasonable number of hours would yield a fee of $29,473, but based on the context, it determined that "the exercise of billing judgment would necessitate the conclusion that a reasonable fee for this endeavor is far less than that," and reduced the award to $10,000. 2012 WL 6623038, at *3. In *Page*, the court relied on the district court's approach in *McAfee*, deemed the request of $75,017.50 for 216.1 hours of work excessive, and reduced the fee award to $10,000. 2015 WL 11256614, at *11–12; *see also Personhuballah v. Alcorn*, 239 F. Supp. 3d 929, 950 (E.D. Va. 2017) (using the same approach and finding that a flat fee of $10,000 was reasonable when attorneys requested $17,564.50 for 43.7 hours of work). Additionally, courts outside this Circuit have taken similar approaches by imposing across-the-board reductions. *See Salazar v. District of Columbia*, 563 F. Supp. 2d 33, 37 (D.D.C. 2008) (reducing time claimed on fee petition of 52.66 hours, which spanned work conducted during a six-month period, by 20%); *White v. City of Richmond*, 559 F. Supp. 127, 135 (N.D. Cal. 1982) (finding fee petition "was well-prepared and well-argued," but determining that spending 486.3 hours on a single motion was unreasonable and reducing the hours by 25%).

Here, GL and CIR together expended 121.5 hours in Phase VII and another 58.5 hours in defending the fee petition. I separate these periods because I determine that the hours spent in Phase VII preparing the fee petition are more reasonable than those spent replying to the Defendants' opposition. The preparation of the initial fee petition required Paxton and Rosman to go through over two years of billing records and exercise billing judgment to determine what

hours were reasonably expended on the litigation. This endeavor resulted in significant reductions from the proposed lodestar calculation and displayed good billing judgment. GL contacted local attorneys to provide affidavits and declarations in support of the fee petition in terms of the reasonableness of both the hours spent and the hourly rate. GL compiled documentation to support the claim for litigation expenses and the Bill of Costs and then synthesized this detailed information into a presentable format to aid the Court's review. Then, GL and CIR drafted the brief in support of Doe's motion, which was thoroughly researched and well argued. These efforts were for the most part reasonable.

That said, there are some instances of entries from Phase VII that the Court is not persuaded are reasonable. GL claims that it wrote off time from Phase VII, and indeed it appears the firm eliminated 29.2 hours, Paxton Decl. Attach. J, but unlike the other records, this write-off is not reflected in the itemized billing invoice, inhibiting the Court's review. Likewise, time devoted to excising from the billing records entries for duplicative work, which would not have been reasonable to claim, ought not to be claimed in a fee petition. Additionally, it appears GL and CIR both spent an excessive amount of time conferring with each other during this period. Although I understand the need to conference with co-counsel regarding litigation of the case, conferences at the fee petition stage should have been minimal. The billing invoices also contain some vague and incomplete descriptions of tasks, primarily those of GL's paralegal. As a result, I find that a 25% reduction is warranted for the hours expended by Paxton, Tobias, Bates, Rosman, and Scott during preparation of the fee petition. This reduction takes into account the extensive work needed to properly prepare and argue an initial fee petition covering more than two years of litigation while balancing the need to eliminate unreasonable hours.

As for the second, supplemental, part of the fee petition request, I am less persuaded that the hours here are reasonable. It appears that Rosman took the lead on writing the reply brief, which understandably resulted in more hours expended by CIR than GL. A review of CIR's invoices show that he spent approximately 25.7 hours researching, drafting, and revising this brief, which, as a seasoned civil-rights attorney responding to a relatively short opposition brief, the Court finds to be an unreasonable amount of time. As with Phase VII, there is a certain amount of unnecessary conferencing between CIR and GL regarding each other's hours and the declarations of the respective lead partners, which inflates the requested fee. Additionally, the Court finds it hard to fathom how GL and CIR spent nearly half as much time in one month responding to the Defendants' opposition as they did in Phase VII, which involved preparing, documenting, and briefing a fee petition spanning more than two years of litigation. Therefore, I recommend a 75% reduction in hours expended by Paxton, Tobias, Bates, and Rosman during this supplemental stage of defending the fee petition.

Overall, after applying these reductions to each attorney's and paralegal's time, I recommend that Doe be compensated for preparing and defending the fee petition as expressed in the following table:

Name	*Firm*	*Phase VII Hours*	*Post-Petition Hours*	*Total Hours*	*Rate*	*Total Fee*
W. David Paxton	GL	30.4	4.6	35	$375	$13,125
Bradley C. Tobias	GL	27.8	1.1	28.9	$170	$4,913
Cindy T. Bates	GL	16.4	1.2	17.6	$125	$2,200
Michael E. Rosman	CIR	15.7	7.9	23.6	$350	$8,260
Michelle Scott	CIR	.8	0	.8	$300	$240
Totals	--	91.1	14.8	**105.9**	--	**$28,738**

h. Unreasonable, Unnecessary, or Insufficiently Documented Expenses

Doe requests $41,408.15 in litigation expenses under § 1988. This includes reimbursement for process service fees ($70); fees for ESI collection and analysis by bit-x-bit, LLC ($21,687.84) and Servient ($541.88); computerized research fees ($3,639.23); lodging, meals, and travel expenses ($7,626.05); photocopy charges ($6,521.51); FedEx charges/postage ($335.64); long-distance telephone charges ($564.87); miscellaneous office supplies ($361.96); and additional expenses ($59.17) consisting of FedEx services, inside copying, and a long-distance telephone call. *See* Paxton Decl. Attach. U; Second Paxton Decl. Attach. J. Plaintiff or his parents paid for all of these expenses. *See* Second Paxton Decl. ¶ 10. Doe supports this request with copies of GL's billing invoices to him, as well as with receipts and invoices pertaining to the other charges. *See* Paxton Decl. Attach. U.

"The great weight of authority in this circuit and others clearly establishes that a prevailing plaintiff is entitled to compensation for reasonable litigation expenses under § 1988." *Daly*, 790 F.2d at 1084 (collecting cases). This includes "reasonable out-of-pocket expenses incurred by the attorney, which are normally charged to a fee-paying client, in the course of providing legal services." *Spell*, 852 F.2d at 771 (quoting *Northcross v. Bd. of Educ. of Memphis City Schs.*, 611 F.2d 624, 639 (6th Cir. 1979)). The fee applicant must provide adequate documentation to receive an award of litigation expenses. *Trimper*, 58 F.3d at 77. Furthermore, "[a]n expense award, like an attorney's fee, must adequately compensate counsel without resulting in a windfall. Prevailing attorneys must exercise 'billing judgment,' for expenses 'not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.'" *Daly*, 790 F.2d at 1084 n.18 (quoting *Hensley*, 461 U.S. at 434).

Here, the Defendants contend that the Plaintiff should not recover all of his requested litigation expenses, but they identify only a few specific entries with which they take issue. Defs.' Br. in Opp'n 13–15. First, the Defendants challenge costs pertaining to bit-x-bit's ESI collection and analysis. *Id.* at 13. The Defendants aver that because Doe "fails to demonstrate that the data from his cell phone was not duplicitously collected, and [alternatively], it is unreasonable to collect and process his cell phone data twice," the Court should strike the first invoice ($5,906.62 on February 5, 2015) and allow recovery of the second invoice ($10,375.37 on March 2, 2016) alone. *Id.* As Plaintiff points out, this argument stems from Defendants' failure to look beyond the summary of the itemization expenses. Pl.'s Reply 16. An examination of the detailed invoices from bit-x-bit reveals that the work associated with the first invoice pertained to extracting and synthesizing data from Doe's iPhone, *see* Paxton Decl. Attach. U Ex. C, ECF No. 180-4, at 54–55, whereas the work associated with the second invoice was much broader. Particularly, the work reflected in this second invoice involved data extraction from different sources, including a computer and more mobile devices, as well as from numerous social media accounts such as Facebook, Instagram, and Twitter. *Id.* at 57–60. Moreover, as Paxton explained, GL engaged bit-x-bit in January 2015 to prepare a meaningful presentation of information, which GL then hoped to use to try and resolve the matter with JMU before filing a lawsuit. Second Paxton Decl. ¶¶ 47–48. Conversely, charges in the second invoice were incurred in response to the Defendants' first set of requests for production of documents and targeted information, such as emails, text messages, and social media postings, sought across devices that were not known to GL at the time the first data extraction occurred. *Id.* ¶¶ 49–53. Doe has thus demonstrated that the scope and purpose of each charge was unique, and he should be permitted to recover both. The Defendants also challenge bit-x-bit's charge dated July 5, 2016, for ESI

searches conducted on June 7 and June 8, 2016, because summary judgment arguments took place on June 2, 2016, and the trial date had been continued to November. Defs.' Br. in Opp'n 14. As Paxton explained, however, this charge was reasonable as it related to GL's preparation for the settlement conference on June 30, 2016. Second Paxton Decl. ¶ 55. Accordingly, I find the Defendants' challenge to bit-x-bit's charges unavailing, and I recommend that no reductions be made to these requested expenses.

The Defendants also challenge Doe's inclusion of a $370 expense for submitting a FOIA request to JMU prior to the start of discovery amongst the photocopy charges because they claim the information obtained was recoverable during the discovery phase of the litigation. Defs.' Br. in Opp'n 14. Doe explained that this request was made in an effort to obtain additional factual documentation to support his amended complaint and as such, his ability to acquire these documents during discovery would not have helped him. Pl.'s Reply 18. Neither party elaborates further, and I find that Doe has the more persuasive position.

Last, the Defendants assert that "expenses sought to be recovered for travel and lodging should be excluded or discounted as Plaintiff has not demonstrated reasonable need to retain an attorney more than 100 miles away from the federal courthouse in Harrisonburg." Defs.' Br. in Opp'n 14–15. The Defendants do not identify any specific charges from the detailed invoices that they deemed unreasonable, nor did they offer any suggestions as to how much the travel and lodging expenses should be discounted. Conversely, Plaintiff notes that he provided an affidavit or declaration from three local attorneys, all of whom refuted the Defendants' position that competent attorneys existed in the local area to take on such a case. Pl.'s Reply 13–14. The Defendants do challenge, however, some specific meal charges, Defs.' Br. in Opp'n 14, which Doe grouped together with his lodging and travel expenses. Given the arguments presented, I

find that the Plaintiff has the better position regarding mileage and lodging expenses, but not meals. He provided sufficient support to justify hiring GL.[13] GL also exercised billing judgment to minimize the costs associated with traveling to and from Harrisonburg. The travel and lodging expenses sought here are thus reasonable and compensable. *See Hudson*, 2013 WL 4520023, at *8 ("It is customary for attorneys to bill clients for duplicating expenses, attorney travel and other necessary litigation expenses in addition to a regular hourly rate." (quoting *Daly*, 790 F.2d at 1084 n.18)); *cf. Parker v. Town of Swansea*, 310 F. Supp. 2d 376, 400 (D. Mass. 2004) (explaining that there "is no question" hotel costs may be recoverable when "an overnight stay is reasonably necessary to the presentation of the case," but denying such compensation because the plaintiff had not demonstrated the necessity of retaining out-of-state counsel). The meals request totaling $1,369.20, however, is not.[14] Essentially, the Defendants put forward the unsupported argument that because Doe did not attempt to secure local counsel, he should not receive any expenses or fees tied to GL's need to travel to Harrisonburg. This position is not persuasive in light of Doe's proffered support that the case would be unpopular in Harrisonburg and that there is not a market for attorneys competent to handle such litigation in the area. The Defendants also fail to suggest any specific reduction they believe is warranted. Thus, I

[13] As CIR does not request any expenses related to travel and lodging, the fact that its offices are located more than 100 miles away from the courthouse in Harrisonburg is irrelevant to the analysis here.

[14] *See* Paxton Decl. Attach. U, ECF No. 180-4, at 4–7. The summary of expenses provided by GL identifies, for the most part, meal charges as separate itemizations, but five entries (two on March 1, 2016; two on March 10, 2016; and one on March 29, 2016) document expenses for a combined "Lodging/Meals" charge. *Id.* at 5–6. In order to accurately excise meal, but not lodging, expenses, the Court looked to the attached hotel receipts. These receipts document charges of $39.84 and $13.41 for meals on March 1, 2016, Paxton Decl. Attach. U Ex. E, ECF No. 180-5, at 8–9; $36.65 and $2.29 for meals on March 10, 2016, *id.* at 14–15; and a charge of $111.31 for meals on March 29, 2016, *id.* at 23–24. The Court added these figures to the already identified meal charges in GL's itemized form to arrive at the overall request of $1,369.20. Additionally, the three specific expenses the Defendants identified, *see* Defs.' Br. in Opp'n 14, were part of Doe's meals request and thus are accounted for by the Court's reductions.

recommend that Doe be awarded the full amount of expenses requested for travel and lodging, but not for meals, which comes to a total of $6,256.85.

The Defendants do not make any other challenges to the requested expenses. Doe provided sufficient documentation to support his request, and, considering that Doe has already paid them, the Court finds these expenses reasonable. *See Spell*, 852 F.2d at 771. Therefore, I recommend that Doe be awarded $40,038.95 in litigation expenses, which is the full request minus the $1,369.20 reduction for meals.

4. Summary and Determination of Lodestar Figure and Reasonable Expenses

GL and CIR took on distinct roles in their representation of this case and utilized their skills to obtain an excellent result for Doe—despite strong opposition from the Defendants—in a novel and complex area of the law (*Johnson* factors 2, 3, 7, and 8). Doing so required thorough and skillful preparation over a two-year period (*Johnson* factors 1 and 3). The firms cooperated so as to not duplicate each other's efforts, for the most part, and GL and CIR made good-faith efforts to eliminate any duplicative billing by writing off a large portion of hours from their invoices, which displays good billing judgment (*Johnson* factor 1). These invoices were synthesized and provided to the Court, along with the affidavits and declarations of three local attorneys all attesting to the skill required and reasonableness of the hours expended to obtain such a result (*Johnson* factors 1, 2, 3, 8, 9). Moreover, the requested rates are reasonable taking into account the novelty of the legal questions, the skill and experience needed to perform such services, and the customary fee for similar work in the area (*Johnson* factors 2, 3, 5, and 9). The Defendants vigorously opposed the fee petition on various grounds, most of which the Court finds unpersuasive.

Without conducting a line-by-line review of the entirety of the billing records to excise all unreasonable entries, *see Fox v. Vice*, 563 U.S. 826, 838 (2011) ("[T]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection."), the Court attempts to strike a balance between eliminating or reducing unreasonable entries where feasible and utilizing its discretion and knowledge of the case to generate reasonable, across-the-board reductions in other instances.

To summarize, I find that block billing warrants a 5% reduction of Rosman's and a 20% reduction of Scott's requested hours on the merits, resulting in a reduction to 463.7 and 595.5 hours respectively. I conclude that the records from the merits phases showed evidence of duplication, unnecessary conferencing and reviews, and lost efficiency, and I therefore impose a 10% reduction to all hours worked by the ten attorneys and one paralegal during this period, with the exception of the hours spent on the fee petition and those Paxton and Tobias spent traveling to and from Harrisonburg. Turning to the travel hours, I find that Paxton and Tobias should recover for their time, but at a 50% reduction of their regular hourly rate. I also conclude that, in keeping with GL's self-imposed reductions, only one attorney should be compensated for travel time to a hearing, and thus I eliminate the four hours requested by Tobias for travel to the remedies hearing on February 22, 2017. Per the Court's calculation, the number of reasonable hours spent after these deductions amounts to 2,767.7 hours, worth a total of $766,953.50. As to preparing and defending the fee petition, I conclude that the hours spent are not entirely reasonable. Therefore, I deem that a 25% reduction is warranted for all hours spent by Paxton, Tobias, Bates, Rosman, and Scott in Phase VII and a 75% reduction is warranted for the hours spent by Paxton, Tobias, Bates, and Rosman in the post-petition phase. As shown in the chart

above, *see* Sec. III.A.3.g., the number of reasonable hours spent in the fee petition phase amounts to 105.9 hours, for a total of $28,738 in fees. I then combine the hours awarded for the merits phase and the fee petition phase to get the number of reasonable hours for each attorney or paralegal and then multiply this total by each professional's hourly rate. The results of this endeavor are reflected in the following table in the form of the lodestar figure of $795,691.50:

Name	*Firm*	*Hours Requested Merits*	*Hours Awarded Merits*	*Hours Requested Fee Petition*	*Hours Awarded Fee Petition*	*Total Hours Awarded*	*Hourly Rate*	*Total Fee*
Paxton	GL	821.8	739.6	58.7	35	774.6	$375	$290,475
Paxton Travel	GL	43.6	43.6	--	--	43.6	$187.50	$8,175
Kinser	GL	9.9	8.9	--	--	8.9	$400	$3,560
Haley	GL	11.1	10	--	--	10	$350	$3,500
Lugar	GL	27.1	24.4	--	--	24.4	$260	$6,344
Murchison	GL	19.5	17.6	--	--	17.6	$200	$3,520
Stephenson	GL	31.5	28.4	--	--	28.4	$170	$4,828
Tobias	GL	790.6	711.5	40.9	28.9	740.4	$170	$125,868
Tobias Travel	GL	8	4	--	--	4	$85	$340
Bates	GL	225	202.5	26.8	17.6	220.1	$125	$27,512.50
Rosman	CIR	488.1	417.3	52.5	23.6	440.9	$350	$154,315
Scott	CIR	744.4	536	1.1	0.8	536.8	$300	$161,040
Hajec	CIR	26.5	23.9	--	--	23.9	$260	$6,214
Totals	--	3,247.1	2,767.7	180	105.9	**2,873.6**	--	**$795,691.50**

B. No Reduction for Unsuccessful Claims

The next step is to make any appropriate reductions for time spent on unsuccessful claims unrelated to the Plaintiff's successful claims. *Robinson*, 560 F.3d at 244. The Defendants do not expressly argue that the lodestar figure should be reduced, and no such reduction is warranted. This case "involve[d] a common core of facts," *Hensley*, 461 U.S. at 435, related to JMU's violation of Doe's right not to be deprived of a protected interest without procedural due process. That Doe prevailed on the basis of the Court finding that he had a protected property interest, rather than a protected liberty interest *and* property interest as asserted in the amended complaint, does not make his claim against JMU any less successful. *See id.* ("Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee."). Doe achieved a

complete success against JMU and, with one minor exception,[15] was granted the relief he requested. Therefore, I recommend that the presiding District Judge make no reductions to the lodestar figure on this basis.

C. Determination of Final Award

The last step is to award some percentage of the lodestar figure to the prevailing party, depending on the plaintiff's degree of success. *McAfee*, 738 F.3d at 88. Typically, adjustments made at this step concern whether to increase the award because the lodestar figure is deemed insufficient to compensate the prevailing party based on its success. *See, e.g.*, *id.* Such a departure is warranted only under rare circumstances because "there is a 'strong presumption' that the lodestar figure is reasonable." *Perdue*, 559 U.S. at 554. Here, Plaintiff properly does not request an enhancement of the lodestar figure. Additionally, there is no doubt that, as discussed above, Doe achieved excellent results and "his attorney[s] should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435. Thus, I recommend that the presiding District Judge award the full lodestar figure of $795,691.50.

D. Defendants' Request to Stay Judgment

As a final matter, the Defendants ask that "the payment of any award granted by the Court shall not be required until exhaustion of any appeal of the issue of fees and expenses awarded." Defs.' Br. in Opp'n 2. They do not elaborate on this request or cite any supporting authority. The Plaintiff objects to this request as premature. Pl.'s Reply 18–19. Rule 62 of the Federal Rules of Civil Procedure governs the type of request made by Defendants here. Once the presiding District Judge enters final judgment, Rule 62(a) provides for an automatic stay for fourteen days from the date of entry. Should the Defendants (or, for that matter, the Plaintiff)

[15] Judge Dillon declined to hold that JMU could not subject Doe to a new sexual misconduct hearing should he choose to reenroll. *Doe v. Alger*, 2017 WL 1483577, at *4.

choose to appeal the award granted, the proper method would be to post a supersedeas bond pursuant to Rule 62(d).

IV. Conclusion

For the foregoing reasons, having deemed $795,691.50 the proper lodestar figure and $53,539.75 the appropriate amount of recoverable litigation costs under § 1988 and the Bill of Costs filed pursuant to Rule 54(d), I recommend that the presiding District Judge **GRANT** Plaintiff an overall award of $849,231.25.

Notice to Parties

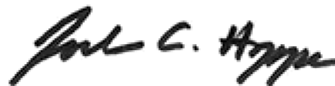
Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

> Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14 day period, the Clerk is directed to transmit the record in this matter to the Honorable Elizabeth K. Dillon, United States District Judge.

The Clerk shall send a copy of this Report and Recommendation to the parties.

ENTERED: January 31, 2018



Joel C. Hoppe
United States Magistrate Judge