

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**WALTER BARRY by his next friend
ELAINE BARRY, DONITHA COPELAND,
and KENNETH L. ANDERSON,
on behalf of themselves and all
others similarly situated, and
WESTSIDE MOTHERS,**

Plaintiffs,

v.

**NICK LYON,
in his capacity as Director, Michigan
Department of Health and Human Services,**

Defendant.

Case No. 5:13-cv-13185- JEL

**Hon. Judith E. Levy
U.S. District Judge**

Mag. Judge David R. Grand

_____ /

**JOINT MOTION FOR
APPROVAL OF ATTORNEYS' FEES AND COSTS**

Pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 23(h), Plaintiffs and Defendant (the “Parties”) jointly move, for an order approving a proposed settlement of fees and costs in this case, in the amount of \$910,908.83 for court-appointed Class Counsel’s costs and services from 2013 through January 18, 2017, with further payments to be made on a periodic basis for additional activities as set forth below. The Parties have agreed on a Proposed Order for Payment of Fees and Costs, which they have submitted for the Court’s consideration.

In support of this motion, the Parties state:

1. The payment of \$910,908.83 reflects reimbursement for more than 2,000 hours in attorneys' time reasonably spent by co-counsel Jacqueline Doig and Miriam J. Aukerman in the research; investigation; drafting papers including the complaint, motions, proposed orders, responses to Defendant's motions, agreements, notices, appellate briefs, and joint motions; related Court appearances; and negotiations. It also reflects more than 125 hours of other attorneys' time on such activities, and more than 150 hours of law students' time conducting research and preparing legal memoranda.

2. Specifically, the parties negotiated an agreement for payment of fees as shown in the following table:

Attorney/Law Student	Hourly Rate Negotiated	Hours Sought By Plaintiff	Hours Negotiated	Total Negotiated
Jackie	\$425	1,441.3	1,347.60	\$ 572,730.00
Miriam	\$425	688.25	658.99	\$ 280,070.75
Elan	\$276	114.1	103.68	\$ 28,615.68
Katie	\$205	8.7	8.7	\$ 1,783.50
Sofia	\$189	21	19.53	\$ 3,691.17
Dana	\$125	68.5	62.52	\$ 7,815.00
Allison	\$125	104.5	94.05	\$ 11,756.25
TOTAL		2,446.35	2,295.07	\$ 906,462.35

and to the payment of costs, as set forth below, and resulting the total amount shown for fees and costs through January 18, 2017:

	Fees	Costs	Total
CCJ	\$ 603,129.18	\$ 1,567.25	\$ 604,696.43
ACLU	\$ 303,333.17	\$ 2,879.23	\$ 306,212.40
Total	\$ 906,462.35	\$ 4,446.48	\$ 910,908.83

3. The hours for which the parties agree that class counsel should be reimbursed do not include several hundred hours that class counsel excluded or deducted in the exercise of billing discretion as well as additional hours that were deducted in the course of negotiations. No reimbursement was sought by Plaintiffs for: all time spent by senior staff at Center for Civil Justice and the ACLU of Michigan who consulted on this litigation; all time spent by ACLU staff responding to calls from class members to the *Barry* call center; time spent by members of the litigation team that involved (a) duplicative work by junior attorneys, (b) work that was primarily clerical, (c) work related to post-judgment inquiries by individual class members not involving systemic problems, and (d) work that involved resolution of the Named Plaintiffs' criminal cases. As the result of their billing judgment, Plaintiffs deducted more than 600 hours from the hours for which fees are to be paid for attorneys Doig, Aukerman, Linehan, Nichols, and Nelson, and for ACLU law clerks who worked on the case. *See* Exhibits A – G, This represents a deduction of 20% of the total hours spent on the case by all legal staff. In addition, as the result of negotiations, more than 150

additional hours were deducted from the hours for which Plaintiffs sought reimbursement, as reflected in the table in paragraph 2, above.

4. The Parties have reached agreement on this recovery of fees and costs through the course of arm's length negotiations conducted by the Parties through their respective counsel over the course of several weeks. This settlement constitutes a fair, reasonable and adequate resolution of Plaintiffs' claim for attorneys' fees and costs for the period 2013 through January 18, 2017, under 42 U.S.C. § 1988. The Parties further stipulate and agree that neither Plaintiffs nor Plaintiffs' counsel will recover any additional fees, costs, expenses or expenditures of any kind from Defendant for work performed in relation to this case prior to January 18, 2017, and specifically release Defendant from any such further payments.

5. For work performed by Plaintiffs' counsel after January 18, 2017, the Parties agree that Plaintiffs' counsel will submit periodic billing statements to Defendant for the activities set forth below, with the first such periodic billing statement to be submitted within 30 days after the Court enters an order pursuant to this motion.

6. In the first periodic billing statement, Plaintiffs may seek reimbursement from Defendant for their reasonable time and expenses in:

a. Work related to negotiating and obtaining Court approval of the payment

of fees and costs in this case;

b. Time spent by attorneys Doig and Aukerman training, supervising, and assisting the ALCU *Barry v. Lyon* Call Center staff, but excluding the time spent by Call Center staff, prior to March 1, 2017.

c. Monitoring Defendant's implementation of, and ensuring compliance with, this Court's orders, including the Stipulated Order to Modify Reporting Requirements in March 31, 2015 Order [114] and Restore Food Assistance Pursuant to a Streamlined Process and its attachments [Dkt. 210, Pg. ID 5763-5767, 5772-5820]. These monitoring activities will include problem solving related to implementation of the FNS waiver and FNS-approved terms for streamlined restoration of back food assistance benefits and the notices and due diligence required under those terms. They also will include spreadsheet reviews and communications with Defendant regarding any systemic issues or problems with the spreadsheets themselves, or with the underlying notice, due diligence and restoration processes that the spreadsheets reflect.

7. In subsequent periodic billings, Plaintiffs may seek reimbursement for the activities set forth in 6.c., above. The Parties contemplate that such monitoring activities will continue while Defendant implements the streamlined Food Assistance Program restoration process approved by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), and provides the reports required

by the Stipulated Order to Modify Reporting Requirements, Dkt. 210, which is estimated to take approximately 30 months from January 2017.

8. For the periodic billings, the Parties agree to reimbursement at the rates of:

a. \$425/hour for Ms. Doig and Ms. Aukerman, except as set forth in paragraph 10.

b. The mean rate for any other attorney's time based on his or her years of experience, as set forth in the most recent Michigan Economics of Law Practice Survey report available.¹

c. \$125/hour for paralegals or law clerks.

9. The Parties acknowledge that Defendant shall be responsible for reimbursement of time reasonably spent resolving the fees and costs to be awarded in this case and time spent for monitoring Defendant's implementation of, and compliance with, the Court's orders and the streamlined process for restoring Food Assistance Program benefits, at the stated rates. The Parties will work in good faith to ensure reimbursement occurs without the need for further action by the Court. However, Class Counsel shall retain the right to move for an order for fees and

¹ The 2014 Economics of Law Practice Attorney Income and Billing Rate Summary Report of the most recent survey results are available online at <https://www.michbar.org/file/pmrc/articles/0000151.pdf>. The 2014 Report covers billing rates for 2013 and Table 4 includes the rates based on years of experience.

costs if any differences between the parties as to reimbursement for fees covered by paragraphs 5 and 6 of this motion if those differences cannot be resolved. The parties agree that any such motion should be referred to the Magistrate Judge for a report and recommendation.

10. Beginning June 1, 2017, ongoing review of the spreadsheets ordered by this Court, Dkt. 210, Pg. ID 5764-5765, will be compensated at the mean rate based on years of experience for the attorney who conducts the review, with the mean rate being based on the most recent Economics of Law Practice in Michigan Survey report.

11. The Parties recognize that there may be compensable time or expenses that are not included in the regular billings, as outlined in paragraphs 5 and 6, including reasonable time spent ensuring that if the Defendant revises and reinstates a new fleeing felon policy, that policy and any notices issued in connection with that policy do not violate the Court's orders in this case. The parties will work in good faith to ensure reimbursement occurs without the need for further action by the Court. The Plaintiffs will not be barred from seeking fees through a motion for attorneys fees and costs for such other compensable time or expenses.

12. The Parties further agree that the Court's approval of their settlement of Plaintiffs' claim for attorneys' fees and costs shall not be construed to

constitute any finding regarding the appropriate hourly rates to be charged by Plaintiffs' counsel for professional services rendered in any other case.

The Parties respectfully request that the Court approve the proposed fees settlement after giving appropriate notice to the class and due consideration.

Brief

I. Introduction

The Court previously appointed the Center for Civil Justice and the American Civil Liberties Union Fund of Michigan as counsel for the class in this case. Dkt. 91, Pg.ID 2724 (*Barry v. Corrigan*, 79 F. Supp. 3d 712, 751 (E.D. Mich. 2015)). The Court also determined that counsel for the Plaintiff Class in this case are entitled to reasonable attorneys' fees and costs under 42 U.S.C. 1988. Dkt. 91, Pg.ID 2728; 79 F. Supp. 3d at 753. The Court allowed the Parties time to negotiate in good faith to resolve the amount of fees and costs to be awarded. Dkt. 212 and 213.

The Parties' settlement of fees and costs, which they are asking the Court to approve, was reached after Defendant's examination of the declarations, with attached time records and resumes, of each of the attorneys and law students for which fees have been sought. Doig Declaration, Ex. A; Aukerman Declaration, Ex. B; Nichols Declaration, Ex. C; Linehan Declaration, Ex. D; Nelson Declaration, Ex. E ; Freed Declaration, Ex. F; Ziegler Declaration, Ex. G. As reflected in those

Declarations, the attorneys and law students exercised billing discretion in deciding the number of hours for which they sought reimbursement. In addition, the parties subsequently negotiated for further reductions in the hours for which reimbursement would be provided.

The parties ended up with an agreement for reimbursement of the following hours at the specified rates:

Attorney/Law Student	Hourly Rate	Hours	Total
Doig	425	1,347.60	\$ 572,730.00
Aukerman	425	658.99	\$ 280,070.75
Nichols	276	103.68	\$ 28,615.68
Linehan	205	8.7	\$ 1,783.50
Nelson	189	19.53	\$ 3,691.17
Ziegler	125	62.52	\$ 7,815.00
Freed	125	94.05	\$ 11,756.25
TOTAL		2,295.07	\$ 906,462.35

The parties also agreed to the payment of costs, as set forth below, resulting in a total amount for fees and costs through January 18, 2017 as follows:

	Fees	Costs	Total
CCJ	\$ 603,129.18	\$ 1,567.25	\$ 604,696.43
ACLU	\$ 303,333.17	\$ 2,879.23	\$ 306,212.40
Total	\$ 906,462.35	\$ 4,446.48	\$ 910,908.83

II. Law

The Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988

(“§1988”) allows the prevailing party in an action brought under various federal civil rights statutes, including 42 U.S.C. 1983, to obtain an award of reasonable attorneys’ fees and costs. The statute provides in pertinent part:

In any action to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.

Under § 1988, the prevailing party “should ordinarily recover an attorney’s fee.”

Hensley v. Eckerhart, 461 U.S. 424, 429 (1983), quoting S. Rep. No. 94-1011, p. 4 (1974), U.S. Code. Cong. & Admin. News 1976, p. 5912.

III. Fees and Costs of \$910,908.83 For Work Performed Prior to January 18, 2017 Are Reasonable In Light of the Results Achieved for the Class.

Even where the parties have agreed on the amount of fees and costs to be paid, the Court must review the settlement to ensure the fees are reasonable and there is no prejudice to the class members. As noted by the Advisory Committee on the 2003 amendments to Rule 23,

In a class action, the district court must ensure that the amount and mode of payment of attorney fees are fair and proper whether the fees come from a common fund or are otherwise paid. Even in the absence of objections, the court bears this responsibility. . . . Courts discharging this responsibility have looked to a variety of factors. One fundamental focus is the result actually achieved for class members, a basic consideration in any case in which fees are sought on the basis of a benefit achieved for class members. . . . At the same time, it is important to recognize that in some class actions the monetary relief obtained is not the sole determinant of an appropriate attorney fees award. Cf. *Blanchard v. Bergeron*, 489 U.S. 87, 95 [103 L. Ed. 2d 67, 76] (1989) (cautioning in an individual case against an “undesirable

emphasis” on “the importance of the recovery of damages in civil rights litigation” that might “shortchange efforts to seek effective injunctive or declaratory relief”).

In deciding whether the fees sought are reasonable, “the most critical factor is the degree of success obtained... Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” *Northeast Ohio Coalition for the Homeless v. Husted*, 831 F.3d 686,703 (6th Cir. 2016) (citation omitted). “A court should compensate the plaintiff for the time his attorney reasonably spent in achieving the favorable outcome... District courts may deny fee awards only for work performed on claims ‘that bore no relation to the grant of relief’ or were otherwise ‘frivolous.’” *Hescott v. City of Saginaw*, 757 F.3d 518, 526 (6th Cir. 2014) (citation omitted). “[T]he district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” *Hensley*, 461 U.S. at 435.

In the present case, the results achieved for the class were excellent. The named Plaintiffs and the roughly twenty thousand class members have received and continue to receive a direct, material benefit from this Court’s judgment and order (1) declaring that Defendant’s “criminal justice disqualification” notices violated the Constitution and federal law, and permanently enjoining their use; (2) declaring that Defendant’s “fleeing felon” policy violated the Food and Nutrition Act, and permanently enjoining food assistance disqualifications based on that

policy; and (3) certifying a class and subclass.² Dkt. #91 and 108. The Sixth Circuit affirmed this Court's decision in all respects. Dkt. #200.

Approximately \$60 million in retroactive food assistance benefits is being paid out for the two-year period prior to the Court's decision. *See* Dkt. #209, Pg.ID 5735.³ The exact amounts of cash, food, and child care assistance that has been and will continue to be paid out since this Court's decision are not precisely known, but potentially are in the millions of dollars.⁴

In addition, Plaintiffs obtained significant legal rulings on due process notice rights of public assistance applicants and recipients, the private enforceability of

² Plaintiffs also prevailed on their claim for notice relief pursuant to Fed. R. Civ. P. 23(d) and *Quern v. Jordan*, 440 U.S. 332 (1979), thereby obtaining Court-ordered Class Notices informing class members about the outcome of the case and how to receive assistance to which they might be entitled as a result of the court's decision, through state-established procedures. Dkt. #114. The Court also granted Plaintiffs' request that Defendant regularly report on his compliance with the Court's orders and on the outcomes for members of the certified class and subclass. *Id.*

³ In addition, hundreds of class members sought and received restoration of wrongfully denied, back cash and child care assistance through administrative hearings. *See* Dkt. #209, Pg.ID 5731.

⁴ Within the first four months after the court's decision, benefits were restored to approximately 3,410 class members living in households that had active cases but were receiving reduced benefits because of the unlawful disqualifications. Other class members who had been disqualified were able to reapply, and were informed through a court-ordered notice of their ability to receive benefits prospectively. Dkt. #120, Pg.ID 3371. After receiving court-ordered notice, thousands of class members reapplied for and received benefits prospectively. Countless other individuals who would have been denied benefits in the future will be able to get the help that they need because Defendant's illegal policy and notices were enjoined.

key Food and Nutrition Act provisions (7 U.S.C. §§2014(a) and 2020(e)(10)), due process violations as actionable injuries, and the circumstances in which the “capable of repetition and evading review” exception to mootness applies.

Counsel seek fees that represent less than 2% of the back benefits paid out to the class, and an even smaller percentage of the total benefits to be paid as a result of this case.

IV. The Fees Are Reasonable Under § 1988

Once the Court has determined that Plaintiffs have prevailed in an action under § 1983, it must determine what is a reasonable fee, “that is, one that is adequately compensatory to attract competent counsel yet which avoids producing a windfall for lawyers.” *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 1999). The Court must “provide an adequate explanation of the reasons for its award and the manner in which that award was determined,” *Geir, supra*, 372 F.3d at 791. However, “[i]n assessing fees, district courts are not required to act as ‘green-eyeshade accountants’ and ‘achieve auditing perfection’ but instead must simply to do ‘rough justice.’... This means that the court can rely on estimates based on its ‘overall sense of a suit.’” *Husted*, 831 F.3d at 703.

Setting a reasonable fee starts with the “lodestar,” which is the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate for each of the attorneys. *Pennsylvania v. Delaware Valley Citizens’ Council*

for Clean Air, 478 U.S. 546, 564 (1987). The hourly rate is determined based on the prevailing market rate for lawyers of comparable skill and experience in the same venue. *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004).

The Court may consider the twelve factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714, 717-9 (5th Cir. 1974) and *City of Riverside v. Rivera*, 477 U.S. 561, 567-8 (1986). The factors are:

1. the time and labor involved;
2. the novelty or difficulty of the questions;
3. the skill needed to properly handle the case;
4. the other employment precluded by the attorneys' acceptance of the case;
5. the customary fee;
6. whether the fee is fixed or contingent;
7. time limitations imposed by the client or the circumstances;
8. the amount involved and results obtained;
9. the experience reputation and ability of the attorneys;
10. the undesirability of the case;
11. the nature and length of the professional relationship with the client;
and
12. awards in similar cases.

Not all of the twelve factors are relevant to the instant case, but those that are relevant support the fee agreed upon by the Parties. The Court may also

consider data and affidavits regarding fees and market rates.

This case involves enforcement of rights under the federal Food Assistance Program statute and its enforcing regulations. Accordingly, it is fair to say that the case involves “novel or difficult questions” and required significant skill to identify and enforce the Plaintiffs’ legal rights, within the meaning of the second and third factors identified in *Johnson*, 488 F.2d at 717-9.

The results obtained for the Plaintiff Class were significant, including prospective changes in state Food Assistance Program policies and practices, individual notice and opportunity to file claims for corrective Food Assistance Program payments for prospective class members, thousands of class members had Food Assistance Program coverage reinstated or extended as the result of the outcome of the case. Principal Class Counsel are experienced in litigation of this nature, as reflected in their resumes, which are included in Exhibits A and B.

Another *Johnson* factor that is relevant here is the “undesirability of the case.” 488 F. 2d at 719. Many attorneys would find this case unattractive because the plaintiffs are individuals accused of felony crimes seeking needs-based benefits (colloquially referred to as “welfare”). In addition, the class members are indigent and unable to retain counsel or pay fees.

A. The Hours for Which Fees Will Be Paid Are Reasonable

The time for which Defendant has agreed to compensate class counsel is

reasonable in light of the complexity of the case and the fact that the Michigan Attorney General's office presented a vigorous defense. *See* Declaration of Gerald A. McIntyre, Ex. H. Plaintiffs' class action complaint raised complex issues, including the constitutional and statutory due process requirements applicable to notices reducing, terminating, or denying needs-based benefits; the proper application of the Food and Nutrition Act to Michigan's law and policy of denying food assistance based on outstanding warrants; and class certification and implementation of class-wide relief. Defendant's attorneys zealously defended every aspect of this case, raising complex procedural and substantive issues, including standing, mootness, and private enforceability of the relevant Food and Nutrition Act provisions under 42 U.S.C. §1983. Defendant pursued first a stay and then an appeal challenging the outcome in this Court based on a variety of issues. The thousands of pages of briefs and exhibits in this case, as well as this Court's 97-page Opinion, and the 20-page Opinion of the Sixth Circuit, attest to the complexity of the issues raised in this case.

In addition, class counsel spent a reasonable amount of time on research, document preparation, and negotiation regarding attorneys' fees and costs. And, finally, class counsel engaged in reasonable monitoring to ensure that Plaintiff class members realize the full benefit of the relief granted by the Court. Class counsel also engaged in nearly two years of complex negotiations and advocacy

with Defendant and the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS), and detailed document review and preparation, to obtain the federal waiver allowing a streamlined process for restoring back food assistance benefits to the Plaintiff subclass.

In sum, the time spent by class counsel is reasonable. And, without agreeing on the specifics of every activity and tenth of an hour for which compensation is sought, Defendant agrees that the appointed Class Counsel and the other attorneys and law clerks who worked with them reasonably spent the time for which the Defendant has agreed they should be paid.

B. The Hourly Rates for Past and Ongoing Work Are Reasonable

The rates agreed upon are reasonable in light of the attorneys' experience and skills; the excellent results obtained despite of the Defendant's vigorous defense; and the additional factors that may be considered by the court in awarding fees. Many of the *Johnson* factors militate in favor of an award at the upper end of the range of reasonable attorney fees.⁵

In the present case, "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill,

⁵ Attorneys with CCJ and the ACLU of Michigan do not bill their clients for services rendered. Accordingly, the court cannot use as a reference point the rate charged by the attorneys' clients or the customary rate charged by their law firms. However, it is well-settled that attorneys fees may be awarded in cases in which the prevailing party has received "free" or "no charge" legal representation from a non-profit agency. *Blum v. Stenson*, 465 U.S. 886, 894 (1984).

experience, and reputation”, as required by *Blum v. Stenson*, 465 U.S. 886, 896 (1984). The reasonableness of a fee under §1988, must “be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases[,] and not be reduced because the rights involved may be nonpecuniary in nature.” *Id.* at 893 (quoting S. Rep. No. 94-1011, p. 6 (1976)).

The agreed rates are consistent with those in the most recent Economics of Law Practice survey for Michigan, which was conducted in early 2014, with members reporting on 2013 billing rates. *See* Ex. K. The survey results shows billing rates for private practitioners with 1-2 years of experience (Nelson), 3-5 years (Linehan), 11-15 years (Nichols), 16-25 years (Aukerman) and more than 35 years (Doig’s range) were as follows:

Experience	25th %ile	Median	Mean	75th %ile	95th %ile
1 to 2 years	150	189	189	225	284
3 to 5 years	160	200	205	250	317
11-15 years	195	250	260	300	435
16-25 years	200	269	291	350	488
31-35 years	200	250	276	300	515
>35 years	200	250	285	350	525

State Bar of Michigan, 2014 Economics of Law Practice Summary Report, Ex. I, at Table 4, p. 4.⁶

For rates in the jurisdiction where the case was filed, the survey shows:

Office Location/County	25th %ile	Median	Mean	75th %ile	95th %ile
Downtown Detroit and New Center Area	195	275	304	400	550
Detroit, not Downtown	150	250	243	313	538
Ann Arbor Area	200	275	290	350	520
Washtenaw County	200	250	284	342	510
Wayne County	200	250	275	325	500
Statewide Practice	201	263	301	375	560

Id. at Table 6, p. 5.

As another point of comparison with market rates, the hourly rates sought by are in line with the hourly rates for Civil Rights Attorneys in Michigan:

Field of Practice	25th %ile	Median	Mean	75th %ile	95th %ile
Civil Rights	200	250	276	350	450

⁶ It is appropriate to consider current rates when awarding fees for litigation that has extended for a number of years. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (given that “compensation received several years after the services were rendered—as is frequently is in complex civil rights litigation—is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed”, it is appropriate to adjust for delay in payment “by the application of current rather than historic hourly rates”).

Id. at Table 7, p. 6.

The rates agreed upon for attorneys Nichols, Linehan, and Nelson are at the mean (average) rate for their years of experience. The rates sought for senior class counsel Doig and Aukerman are between the 75th and the 95th percentile of the 2013 market rates, to reflect the depth of their experience in litigation of this sort, *see* Exhibits A and B, as well as the complexity of this litigation, which are factors that the Supreme Court recognized as important to setting an hourly rate. *Blum*, 465 U.S. at 896. Hourly rates requested for the other attorneys are at the mean (average) rate for their years of experience. In *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 618 and n. 6 (6th Cir. 2007), the Sixth Circuit held that because the district court determined that the specific rates awarded “were sufficient to attract counsel but avoided a windfall,” it was within the court’s discretion to award fees in the range of the 95th percentile of the market rates. *See also Potter v. Blue Cross Blue Shield of Mich.*, 10 F. Supp. 3d 737, 747 (E.D. Mich. 2014) (fees properly awarded at 95th percentile based on counsel’s experience and complexity of the case).

Fees for paralegals and law clerks at \$125 per hour (and for attorneys at \$475 an hour) have been determined reasonable in the Eastern District of Michigan. *Ford v. Federal-Mogul Corp.*, 2015 U.S. Dist. LEXIS 3399, at *3-4 (E.D. Mich. 2015).

V. The Proposed Procedures for Payment of Fees for Time Spent After January 18, 2017 are Reasonable.

Time reasonably expended on the litigation includes not only time spent obtaining a judgment on the merits and time spent on appeal, *Kelley v. Metropolitan County Bd. of Educ.*, 773 F.2d 677 (6th Cir. 1985), but also hours spent pursuing an award of attorneys fees, *Husted*, 831 F.3d at 722-725, and time spent on post-judgment work that is necessary to protect the “full scope of relief” conferred by the court. Courts have discretion to award fees for time spent on activities that are “crucial to the vindication of [the prevailing parties’] rights.” *Delaware Valley*, 478 U.S. at 561. It is appropriate to award fees for time spent on monitoring and other post-judgment activities that are necessary to effectuate the court’s orders. *Northcross v. Board of Education*, 611 F.2d 624, 637 (6th Cir. 1979) (“services devoted to reasonable monitoring of the court’s decrees, both to insure compliance and to ensure that the plan is indeed working to desegregate the school system, are compensable services”). Hours are compensable under §1988 for post-judgment monitoring work that is “as necessary to the attainment of adequate relief for [the]...client as ...earlier work in the courtroom which secured [the client’s] initial success in obtaining” the decree or judgment. *Delaware Valley*, 478 U.S. at 558-59; *see also Northcross, supra*, 611 F.2d at 637 (fees awarded for monitoring that was “essential to the long-term success of the plaintiff’s suit”).

As outlined in the previous section, the rates for Ms. Doig and Ms. Aukerman are reasonable in light of their experience and skills, as set forth in Exhibits A and B. Thus, in general, time spent by Doig and Aukerman on attorneys' fees work, monitoring, problem solving, and supervision and training of ACLU Call Center staff⁷ will be reimbursed at the \$425 hourly rate. After the initial monitoring Defendant's implementation of the streamlined restoration process, however, the parties do not expect that level of skill will be needed in reviewing the spreadsheet reports that Defendant has been ordered to provide. Accordingly, the hourly rate for that specific task (spreadsheet review) will be capped at the mean hourly rate for the attorney conducting the review, based on years of experience, for spreadsheet review hours included in any billings subsequent to the first billing that is due within 30 days of the entry of the order awarding fees and costs.

In light of their negotiations regarding the attorneys' fees to be paid for the period 2013-January 18, 2017, the parties do not anticipate any disputes regarding payment of the periodic billing statements that will be submitted by class counsel, but at the same time are optimistic that they can informally resolve any disputes that might occur. If disputes cannot be informally resolved,

⁷ The ACLU Call Center staff answers the phone number provided on various notices that have been sent to class members in this case, and provides answers to class members' questions based on information and training provided by class counsel.

Plaintiffs retain the right to file a motion for fees with the Court and the parties agree that any such motion regarding the attorneys' fees and monitoring fees set forth in paragraphs 5 and 6 of the Joint Motion should be referred to the Magistrate Judge for a Report and Recommendation. The parties believe this process will result in the payment of reasonable fees for compensable activities without unduly burdening the Court.

Finally, for any other activities that may be compensable under §1988 -- such as activities related to ensuring that any actions that Defendant may take to reinstate a Food Assistance fleeing felon policy, and notices issued in connection with that policy, do not violate the Court's orders in this case -- the parties shall work in good faith to ensure reimbursement occurs without the need for further action by the Court. The Plaintiffs shall not be barred from seeking fees through a motion for attorneys' fees and costs for such other compensable time or expenses.

VI. Conclusion

For the forgoing reasons, the Court should approve the payment of fees agreed upon by Plaintiffs and the process for payment of fees in the future.

February 24, 2017

Respectfully submitted,

/s/Jacqueline Doig

Jacqueline Doig (P37105)
CENTER FOR CIVIL JUSTICE
436 S. Saginaw St., Suite 400
Flint, MI 48502
(810) 244-8044
jdoig@ccj-mi.org

/s/ Miriam J. Aukerman

Miriam J. Aukerman (P63165)
AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN
1514 Wealthy SE, Suite 242
Grand Rapids, MI 49506
(616) 301-0930
maukerman@aclumich.org

Attorneys for Plaintiffs

/s/ Joshua S. Smith

Joshua S. Smith (P63349)
Kristin Heyse (P64353)
William R. Morris (P31957)
Assistant Attorneys General
Health, Education and Family
Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 373-7700
smithj46@michigan
Heysek@michigan.gov
Morrisw@michigan.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2017 I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Jacqueline Doig_____