

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**CINDY RODRIGUEZ, STEPHEN GIBBS, )  
PAULA PULLUM, YOLANDA CARNEY, )  
JACQUELINE BRINKLEY, CURTIS )  
JOHNSON, FRED ROBINSON, et al., )**

**Plaintiffs,**

**v.**

**Case No. 3:15-CV-01048**

**PROVIDENCE COMMUNITY )  
CORRECTIONS, INC., )**

**RUTHERFORD COUNTY, TENNESSEE, )**

**JASMINE JACKSON, BRIANA )  
WOODLEE, AMANDA ROBERTS, )  
TIARA SMITH, KELLY HALEY, )  
AMANDA SCHEXNAYDER, KAYLA )  
BANKS, KELLY MCCALL, )**

**Defendants.**

**MEMORANDUM IN SUPPORT OF EQUAL JUSTICE  
UNDER LAW'S MOTION FOR ATTORNEYS' FEES**

Intervening Party Equal Justice Under Law files this Memorandum in support of its Motion for Attorneys' Fees in this matter pursuant to Fed. R. Civ. P. 54(d).

Equal Justice Under Law ("EJUL") is a non-profit organization that seeks to protect the legal rights of indigent persons. This case was originally filed by EJUL attorneys Phil Telfeyan, Alec Karakatsanis, and Elizabeth Rossi as counsel for the named plaintiffs along with co-counsel. (Complaint, Dkt 1). EJUL attorneys and their colleagues worked considerable hours in developing the case, working with class representatives, initiating the lawsuit, litigating initial motions, and conducting mediation which ultimately led to settlement of the case. (Shortly after mediation, Mr. Karakatsanis left EJUL and founded Civil Rights Corps ("CRC"), a similar non-profit civil rights organization. CRC now represents the named plaintiffs.) Although Mr. Karakatsanis and

Ms. Rossi are currently employed at CRC, EJUL has a right to petition the Court for fees based upon their work in this matter while employed by EJUL. For that reason, EJUL was made a party to the Settlement Agreement and Release filed with the Court (Dkt. 192-1) and was allowed to participate in this matter as a party for the limited purpose of its enforcing its right to petition the Court for an award of attorneys' fees, expenses and costs. (Order re: Motion to Intervene, Dkt. 178.) This memorandum is filed in support of that petition.

***Introduction and Background.*** As demonstrated by the Declarations filed by Mr. Telfeyan and Mr. Karakatsanis in support of EJUL's Petition and the Declaration filed by Mr. Karakatsanis in support of CRC's Petition (Dkt. 198-1), both attorneys have a substantial and successful history of litigating civil rights claims across the country. In this case, their work with the rest of the EJUL legal staff involved substantial research into novel legal theories that were incorporated into the Complaint, including the theories under which a private party such as Providence Community Corrections, Inc. ("PCC") could be held responsible for its actions in this matter. Declaration of Phil Telfeyan ("Telfeyan Decl.") ¶ 6. On two occasions, teams from EJUL traveled to Tennessee from Washington, D.C. to interview numerous probationers in order to identify named plaintiffs, develop a factual basis for the claims and prepare the affidavits and factual record that supported the allegations in the Complaint. *Id.*

Once the Complaint was filed, the EJUL attorneys prepared and filed substantial motions for preliminary injunction, motions which were successfully litigated against both PCC and Rutherford County, Tennessee. *Id.* ¶ 7. EJUL also successfully briefed and argued the Rule 12(b)(6) Motions to Dismiss that were filed by both PCC and the county defendants. *Id.* Then, the parties engaged in a protracted and complex mediation process during which thousands of pages of documents were exchanged and analyzed, akin to extensive written discovery. *Id.* ¶ 8. Further, the parties produced and exchanged substantive written position statements complete with argument and case citations, creating a parallel briefing process. The mediation itself consisted of

a total of three-and-one-half days of face-to-face sessions in Nashville and Washington, D.C. *Id.* Between the two rounds of mediation, the attorneys participated in numerous conference calls and communications both with opposing counsel and with the mediator. *Id.* These efforts led in September 2016 to the outline of an agreement, which was the basis for the Settlement Agreement that has been placed before the Court for approval. *Id.*

As stated in the Declarations of Mr. Telfeyan and Mr. Karakatsanis, this was the first case of its kind brought in the country and both of them have developed extensive experience in litigating constitutional civil rights class action matters challenging wealth-based detention schemes. It is unlikely that any law firm other than a non-profit dedicated to pursuing these types of claims would have brought this case or will bring similar cases in the future. Telfeyan Decl. ¶ 9.

### **I. Treatment of Attorneys' Fees Under the Settlement Agreement**

The Settlement Agreement provides that the named plaintiffs' current and former attorneys are entitled to petition this Court for reasonable fees and expenses to be paid from the Settlement Fund, subject to the approval of this Court. (Settlement Agreement, Dkt. 192-1, Sec. VI., pp. 22-25). The Settlement Agreement contemplates that the parties will petition the Court for such fees in a two-step process. At this initial stage, the Settlement Agreement provides that counsel may petition the Court for an award of the expenses and costs incurred and reasonable attorneys' fees, not to exceed the amounts set out in the Settlement Agreement. *Id.* The Settlement Agreement further provides that, in the event monies remain in the Settlement Fund after administration of all claims made by the Settlement Class, the named plaintiffs' current and former attorneys may file additional petitions with the Court seeking additional fees from the Settlement Fund.<sup>1</sup> *Id.*

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<sup>1</sup> Because any additional award of attorneys' fees, costs or expenses beyond those sought in this motion and the motions filed by other current and former counsel to the named plaintiffs is entirely contingent on there being monies remaining in the Settlement Fund after administration of the settlement, the parties structured the Settlement Agreement so that petitions regarding any such

In addition to the structure laid out by the parties in the Settlement Agreement, in its Order Granting Second Unopposed Motion to Approve Notice of Class Action Settlement Agreement, Set Hearing Date, and Authorize Notice to Class Members, (Dkt. 197), this Court further bifurcated the award of attorneys' fees by instructing that any fee sought at this initial stage would be paid one-half upon approval of the relevant motion with the balance being paid if, and only if, monies remained in the Settlement Fund after administration of all claims by the Settlement Class. Accordingly, EJUL petitions the Court for an initial award of attorneys' fees totaling \$827,368.50, to be paid in accordance with the Court's January 2, 2018 Order, and expenses in the amount of \$14,992.30, without prejudice to the filing of an additional petition as contemplated by the Settlement Agreement in the event monies remain in the Settlement Fund after administration is complete.

## **II. An Award of Fees, Costs and Expenses to EJUL is Appropriate.**

Fed. R. Civ. P. 23(h) authorizes the award of a reasonable attorney's fee and costs "that are authorized by law or by the parties' agreement." As noted above, the Settlement Agreement specifically contemplates an initial claim for attorney's fees by the named plaintiffs' current and former attorneys. In the case of EJUL, an initial petition not to exceed \$830,800 is authorized. (Dkt. 192-1, pp. 22 – 25 and Dkt. 192-8, Attorney's Fee Schedule).

An award of attorney's fees is also appropriate for parties prevailing on claims brought under 42 U.S.C. § 1983 and/or the Racketeering Influenced Corrupt Organizations Act ("RICO"). See 42 U.S.C. § 1988(b) and 18 U.S.C. § 1964(c). There is good reason for awarding fully compensatory fees to prevailing plaintiffs in civil-rights lawsuits: guaranteeing adequate access to the justice system. "The purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quoting

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additional awards would be made only in the event that the contingency of remaining funds was met.

H.R. Rep. No. 94-1558, p. 1 (1976)); *see also* *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 559 (2010) (“Section 1988 serves an important public purpose by making it possible for persons without means to bring suit to vindicate their rights.”). The continued vitality of such access requires that the attorneys who risk undertaking these cases be fully compensated for their services. As a result, a reasonable fee under § 1988 is “one that grants the successful civil rights plaintiff a ‘fully compensatory fee,’ comparable to what ‘is traditional with attorneys compensated by a fee-paying client.’” *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 286 (1989) (internal citations omitted).

### **III. EJUL’s Requested Fees Are Reasonable.**

An FRCP 23(h) attorney’s fee claim can be based on either the “percentage-of-the-fund” or the “lodestar” method. *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (holding that district courts should have discretion to choose the most appropriate method in light of the unique circumstances of class actions in general and of the unique circumstances of the actual cases before them). CRC correctly notes that “the percentage-of-the-fund method is preferred in the Sixth Circuit, and courts typically allow an award of at least 25% of the fund.” *In re Southeastern Milk*, No. 2:07-CV208, 2012 WL 12875983, \*2 (E.D. Tenn. Jul. 11, 2012) (*citing* *Stanley v. United States Steel Company*, 2009 U.S. Dist. LEXIS 114065 (E.D. Mich. Dec. 8, 2009); *Bessey v. Packerland Plainwell, Inc.*, 2007 U.S. Dist. LEXIS 79606, \*4 (W.D. Mich. 2007).

In this case, the interested parties reached a compromise that properly prioritizes full recovery by the Settlement Class by agreeing upon an initial fee petition based on the loadstar method while potentially allowing a later recovery — perhaps based on a percentage of the recovery as preferred by the Sixth Circuit — to support future civil rights litigation if funds remain after full administration of the claims of class members. Under the Settlement Agreement, this initial fee request is accordingly based on the hours worked by the relevant EJUL attorneys.

The work done on behalf of the named plaintiffs meets the relevant Sixth Circuit standard related to Rule 23(h) awards<sup>2</sup> and is demonstrated in detail in the Memorandum filed by CRC in support of its petition. For the sake of economy, EJUL incorporates by reference that discussion and will focus on the elements that support the hours and rates it seeks.

**1. *The Benefit Rendered to the Settlement Class Was Substantial.*** The recovery obtained on behalf of the Settlement Class in this matter includes injunctive relief, repayment of debts paid by class members, and the reimbursement of probation fees, including a premium. Not only are these benefits to the class substantial, but they also would not have been possible absent the significant resources extended by all counsel in this matter.

**2. *The Value of the Services on an Hourly Basis Is Reflected in the Lodestar Calculation.*** The majority of the work done in this matter was performed by attorneys at EJUL, including Phil Telfeyan, Alec Karakatsanis, and Elizabeth Rossi.<sup>3</sup> For their work, EJUL seeks fees based on the following hours and hourly rates:

Phil Telfeyan: 318.75 hours at \$450 per hour.

Alec Karakatsanis: 929 hours at \$450 per hour.

Elizabeth Rossi: 759.66 hours at \$350 per hour.

Total hours: 2,007.41. Total requested initial fee: \$827,368.50.

EJUL's request that the work performed by its attorneys be compensated at these rates is supported by the declarations of experienced Nashville attorneys David Garrison and Tricia

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<sup>2</sup> The relevant factors are: "(1) the value of the benefit rendered to the plaintiff class . . . ; (2) the value of services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides." *In re Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at \*17 (citing *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996)).

<sup>3</sup> A paralegal employed by EJUL also worked productively on this matter, but EJUL is not requesting compensation for his work at this time. Telfeyan Decl. ¶ 11.

Herzfeld, as well as—with respect to Mr. Karakatsanis and Ms. Rossi—the declarations filed by Mr. Garrison, Ms. Herzfeld, and David Briley in support of CRC’s petition for attorney’s fees.<sup>4</sup> In these declarations, these well-regarded attorneys experienced in civil rights litigation opine that the requested rates for these attorneys are at or even below the rates Mr. Telfeyan, Mr. Karakatsanis, and Ms. Rossi could expect to charge if they practiced in the Nashville market. Mr. Garrison and Ms. Herzfeld also opine that the total hours spent by EJUL attorneys are reasonable given the complexity of the facts and legal theories involved in this matter and the result obtained for the Class. The work performed was reasonable and necessary to the successful outcome obtained.

**3. *The Representation Was Undertaken on Contingency Basis.*** EJUL, like other former and present counsel, was engaged on a contingency basis, satisfying this element. Telfeyan Decl. ¶ 4.

**4. *Society Greatly Benefits from the Work of Counsel Who Undertake Claims on Behalf of Indigent Citizens Such as Probationers.*** As noted above, the purpose of awarding fees in civil rights cases is to incentivize attorneys to expend the resources and to invest the considerable time and effort required to successfully litigate cases like this one. This interest is even more acute when, as here, the matter involves the recognition and vindication of constitutional rights of persons who would not otherwise have access to an attorney. *Hensley*, 461 U.S. at 429. In this case, it is highly unlikely that any firm other than a non-profit dedicated to providing legal services to indigent persons would have undertaken the litigation. Telfeyan Decl. ¶ 9. Indeed, any fees EJUL (as well as CRC) receive will by definition go directly to funding further work in this area, to the great benefit of society.

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<sup>4</sup> See Dkt. 198-8, 198-9, and 198-10.

**5. *The Litigation Was Complex and Unique.*** This litigation was the first of its kind to be brought, paving the way for further challenges to privatized probation practices. *Id.* ¶ 6. Further, it was based on novel legal theories, particularly as to the claims brought against PCC as a private entity, that successfully resulted in a significant recovery for the Settlement Class. *Id.*

**6. *All Counsel Involved Displayed a High Degree of Skill.*** Defendants were vigorously represented by able counsel from firms that are highly regarded both regionally and nationally. EJUL and its attorneys who worked on this case have, in turn, also won a national reputation in the area of civil rights litigation. Telfeyan Decl. ¶¶ 1-5. Obtaining the result procured for the Settlement Class in light of the resources and counsel available to the defendants speaks conclusively to the skill exercised by counsel for the named plaintiffs, including EJUL.

Accordingly, having demonstrated that an analysis of all relevant factors supports the initial award of the fees authorized by the Settlement Agreement, EJUL requests that the Court award it \$827,368.50 in attorney's fees paid, in accordance with the Court's January 2, 2018 Order, one-half upon the granting of this motion and one-half upon completion of the administration of all claims by the members of the Settlement Class, subject to the availability of monies in the Settlement Fund.

#### **IV. Litigation Expenses**

The parties' agreement authorizes the compensation of counsel's expenses from the settlement fund, and compensation for expenses is permitted within the discretion of the Court. 42 U.S.C. § 1988; *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 827 (6th Cir. 2013). EJUL requests the Court approve the reimbursement of expenses incurred by it in the amount of \$14,992.30. Such expenses are identified on the exhibit attached to Mr. Telfeyan's Declaration, and were reasonably and necessarily incurred in the prosecution of this case. Telfeyan Decl. ¶ 13.

**V. Conclusion**

For the reasons detailed above and in the declarations filed in support of its motion, Equal Justice Under Law respectfully requests that the Court award it an initial attorney fee of \$827,368.50, payable in accordance with the Courts prior order, and expenses of \$14,992.30.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to all counsel of record via the District Court's electronic filing system on this 13<sup>th</sup> day of February, 2018.

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