



Vaigasi v. Solow Management Corp. et al

2017 | Cited 0 times | S.D. New York | September 5, 2017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF YORK

PEDIO VAIGASI,

SOLOW CORP.,

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5088 OPINION

ORDER

United States

Order 2016 302 ("Opinion Order")),

Order;

Opinion Order

NEW -----x

Plaintiff, -against- MANAGEMENT et al.,

Defendants. -----x

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Vaigasi v. Solow Management Corp. et al

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11 Civ. (RMB) (HBP)

AND

PITMAN, Magistrate Judge:

I. Introduction

By Opinion and dated February 16, (D.I. and I imposed sanctions on plaintiff as a result of his misconduct during discovery and his failure to comply with at least two discovery orders. I ordered, in part, that plaintiff was required to pay the reasonable attorneys' fees defendants incurred in addressing the motions resolved in the Opinion and those motions were plaintiff's motion to compel and defendants' motions for a protective order and for sanctions. I ordered defendants to submit an affidavit or affirmation, accompanied by contemporaneous time records, establishing the legal fees they incurred in addressing the motions resolved by the and and in opposing plaintiff's

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Order, motion to compel. Defendants have made the required submissions. For the reasons set forth below, defendants are entitled to recover attorneys' fees in the amount of \$61,605.25.

II. Facts

The facts that give rise to this action and the discovery dispute that led to the instant application are set forth in detail in the Opinion and I recite the facts here only to the extent necessary for an understanding of the dispute before me.

motions.

In 2015, the parties filed three pertinent discovery First, plaintiff moved to compel defendants to produce documents and electronically stored information in response to his second request for the production of documents Request for Documents"). defendants moved for a protective order relieving defendants of the obligation of responding to plaintiff's Request for Documents and notice



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of depositions.

compel.

Third, defendants moved for sanctions.

In my Opinion and I denied plaintiff's motion to The motion suffered from numerous procedural defects, including a failure to meet and confer with defendants in good faith (Opinion and at 25-30). Additionally, the underlying document requests were irrelevant, disproportionate to the

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Order, 30-44).

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Stefan Solow,

Solows Solow Solow claims remaining in the case, overbroad and unduly burdensome (Opinion and at Moreover, plaintiff offered nothing to support his contention that defendants' document production was incomplete other than his personal opinion that there had to be additional non-privileged documents (Opinion and

at 44-45). Relatedly, I granted defendants' motion for a protective order relieving them of the obligation of responding to plaintiffs' Request for Documents (Opinion and at 45).

I also granted in part defendants' motion for a protective order with respect to a notice of depositions that plaintiff served, seeking the depositions of ten individuals on the same day. Balancing plaintiff's conduct, on the one hand, and defendants' factual showing and the policy in this Circuit of resolving litigation on the merits, on the other hand, I ordered that within days of the date of the and plaintiff could conduct the depositions of two witnesses of his choice (other than Sheldon or Solow), each deposition to be limited to a maximum of four hours (Opinion and at I also conditionally granted a protective order precluding the depositions of Sheldon and provided that



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defendants submitted affidavits or declarations from the confirming their positions in Management Corp., Realty & Devel-

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Order opment Company LLC and their related entities and confirming that they had no knowledge concerning the events underlying plain tiff's claims apart from what they may have learned from counsel (Opinion and Order, at

Finally, I granted defendants' motion for sanctions. First, I found that plaintiff's Second Request for Documents was unquestionably prepared and served in bad faith and in a con scious effort to impose an unreasonable burden on defendants (Opinion and Order, at 56-59). Second, I found that plaintiff violated at least two of my discovery orders (Opinion and Order, at Third, I found that plaintiff engaged in other obstructive behavior throughout the course of the litigation and that the behavior was far beyond the bounds of reason, that the inference of plaintiff's bad faith [was] overwhelming" (Opinion and Order, at 61-63). Accordingly, balancing the relevant factors in determining an appropriate sanction, I concluded, inter alia, that plaintiff was required to pay the reasonable attorneys' fees defendants incurred in addressing the motions resolved in the Opinion and (Opinion and Order, at 72) .

Defendants timely submitted a declaration and contempo raneous time records establishing the legal fees they incurred in preparing the motions resolved by the Opinion and and in

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2016 ("Hill Deel.") CJ!

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Steven opposing plaintiff's motion to compel; they seek attorneys' fees in the total amount of (Declaration of Melissa D. Hill, Esq., dated Mar. 1, 6).

Plaintiff was required to submit any response or opposition to the amount of fees sought by defendants within 14 days of defendants' submission (Opinion and Order, at 72). Plaintiff requested an extension of time to comply with the Opinion and Order, and I granted him until April 18, to submit his response or opposition (Endorsement, dated Mar. 7,

(D.I. 308)). Approximately two weeks later, plaintiff requested another extension of time, which I denied for lack of good cause shown (Order, dated Mar. 21, (D.I. 312)). It was not until May 25, more than a month late, that plaintiff filed his response to the amount of fees defendants sought. Plaintiff also submitted a declaration from A. Morelli, an attorney whom plaintiff had newly retained.

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1 Because plaintiff submitted his response more than a month late without justification, together with his history of non compliance with my discovery orders, I shall not consider his response in deciding the amount of fees to award defendants. Although my analysis happens to coincide with points raised by Mr. Morelli, that is a result of my independent analysis of defendants' time records.

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2008). III. Analysis

A. Applicable Principles

Whether an attorneys' fee award is reasonable is within the discretion of the court. *Melgadejo v. & D*



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Fruits & Vegetables Inc., 12 Civ. 6852 (RA) (HBP), WL at *23 (S.D.N.Y. 23, (Pitman, M.J.) (Report & Recommendation), adopted WL 554843 (S.D.N.Y. Feb. 9, (Abrams, D.J.). The party seeking fees bears the burden of establishing that the hourly rates and the number of hours for which compensation is sought are reasonable. *Hensley v. Eckerhart*, 461

424, 437 (1983); accord *Cruz v. Local No. 3 of Int'l Bhd. of Elec. Workers*, 34 F.3d 1148, (2d Cir. 1994).

In determining the amount of reasonable attorneys' fees, "[b]oth [the Circuit] and the Supreme Court have held that the lodestar -- the product of a reasonable hourly rate and the reasonable number of hours required by the case - creates a 'presumptively reasonable *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 522 F.3d 182, 183 (2d Cir. The hourly rates used in determining a fee award should be "what a reasonable, paying client would be willing to pay." *Arbor Hill Concerned Citizens Neighborhood*

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960 *Ass'n v. County of Albany*, supra, 522 F.3d at 184. This rate should be line with those [rates] prevailing in the for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 886, 895 n.11 (1984). "[C]ourts should generally use 'the hourly rates employed in the district in which the reviewing court sits' in calculating the presumptively reasonable *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, supra, 522 F.3d at 192, quoting *In re Prods. Liab. Litig.*, 818 F.2d 226, 232 (2d Cir. 1987). In so doing, the court is free to rely on its own familiarity with the prevailing rates in the district. See *Miele v. New York State Teamsters Conference Pension & Ret. Fund*, 831 F.2d (2d Cir. 1987).



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The Honorable Loretta A. Preska, States District Judge, has the factors to be considered in assessing the reasonableness of the hours claimed in a fee application:

To assess the reasonableness of the time expended by an attorney, the court must look first to the time and work as they are documented by the attorney's records. See *Forschner Group, Inc. v. Arrow Trading Co., Inc.*, No. 92 Civ. 6953 (LAP), 1998 WL 879710, at *2 (S.D.N.Y. Dec. 15, 1998). Next the court looks to

own familiarity with the case and its experience generally . . . Because attorneys' fees are dependent on the unique facts of each case, the resolution of the issue is to the discretion of the district court." *AFP Imaging Corp. v. Phillips Medizin Sys.*, No. 92 Civ. 6211 (LMM), 1994 WL 698322, at *1 (S.D.N.Y. Dec. 13, 1994) (quoting *Clarke v. Frank*, F.2d 1146,

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U.S. 1153 (2d Cir. 1992) (quoting *DiFilippo v. Morizio*, 759 F.2d 231, 236 (2d Cir. 1985))).

* * * Finally, billing judgment must be factored into the equation. *Hensley*, 461 at 434; *DiFilippo*, 759 F.2d at 235-36. If a court finds that the fee applicant's claim is excessive, or that time spent was wasteful or duplicative, it may decrease or disallow certain hours or, where the application for fees is voluminous, order an across-the-board percentage reduction in compensable hours. In *re Products Liab. Litig.*, 818 F.2d 226, 237 (2d Cir. 1987) (stating that cases in which substantial numbers of voluminous fee petitions are filed, the district court has the authority to make across-the-board percentage cuts in hours 'as a practical means of trimming fat from a fee application'" (quoting *Carey*, 711 F. 2d at 1146)); see also *Football League v. National Football League*, 887 F.2d 408, 415 (2d Cir. 1989) (approving a percentage reduction of total fee award to account for vagueness in documentation of certain time entries). *Fe Natural Tobacco Co. v. Spitzer*, Civ. 7274 (LAP), Civ. 7750 (LAP), WL 498631 at *3 (S.D.N.Y. Mar. 29, accord *Hensley v. Eckerhart*, supra, 461 at 434.

B. Application of



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the Foregoing Principles

Defendants' counsel, Morgan, Lewis & Bockius LLP ("Morgan, Lewis"), staffed the discovery dispute in this matter

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2015 2016 \$795.00 \$815.00 \$625.00 \$645.00

Suzanne

\$400.00

Chelsea Conanan

\$400.00 \$450.00 \$305.00 Caroline

\$245.00 \$205.00 Charles Calvaruso Clerk

\$265.00 \$270.00

2015 2016.

2016. with four attorneys, three paralegals and one "filing clerk." 2 Their positions and hourly rates 3

are as follows: Name Position Rate Rate David A. McManus Partner,

24 years experience Melissa D. Hill Partner,

12 years experience Farer Associate,

N/A 4 years experience L. Associate,

3 years experience Denise Dellaratta Paralegal

N/A Ball Paralegal

N/A J.K. Mickles Paralegal

N/A M. Filing



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2 Counsel has not explained the nature of a filing clerk's duties. From a review of counsel's time records, the filing clerk was responsible for keeping track of filing deadlines (Hill Deel., Ex. A, Entry for 1/5/16).

3 The work for which defendants seek fees bridged both and Defendants' counsel increased the hourly rates of some of its professionals and support staff in Accordingly, two rates are quoted for some of the attorneys and support staff who worked on the matter.

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\$996.00

\$400.00 \$815.00 \$205.00 \$305.00

\$250 \$600.

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Plaza, 05 8560 2009 2009)

10 (Hill Deel. 7) .

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Defendants are seeking compensation for a total of 234.6 hours of attorney time and 3.9 hours of paralegal and filing clerk time (Hill Deel., Exs. A & B). The sum sought for the attorney time totals \$113,029.00; the sum sought for the paralegal and filing clerk time totals (Hill Deel., Ex. A).

1. Reasonable

Hourly Rate

As the chart above indicates, defendants seek fees based on hourly rates ranging from to per hour for attorneys and to for the support staff who worked on this discovery dispute.

The range of appropriate fees for experienced civil rights and employment law litigators is between and Blake v. New York City Health & Hosps. Corp., 14 Civ.

4 Defendants did not provide the qualifications of the attorneys for whom fees are sought. This would normally warrant a reduction in their fees. See, Yea Kim v. 167 Nail Inc., Civ. (GBD) (GWG),



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WL 77876 at *9 (S.D.N.Y. Jan. 12, (Daniels, D.J.) (reducing attorney rates where no information was provided to the court regarding their back grounds). Nonetheless, considering the circumstances of this case and the fact that the qualifications of each attorney can be found on the Internet, this omission plays a minimal role in my analysis.

Each attorney's years of experience is measured as of 2016, when counsel submitted their time records.

2016 6520067 (S.D.N.Y. 2016)

05 RJS) 2015 S. 2015) (Sullivan, "" \$200

\$350, time.""

2016 (S.D.N.Y. 2016)

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"smaller rate"); Old Supp. 470, (S.D.N.Y. 2009)

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Sept. 2017). (JGK) (AJP), WL at *5 Nov. 3, (Peck, M. J.) (collecting cases) ; Abdell v. City of New York, Ci v. 8 4 5 3 (, WL 8 9 8 9 7 4 at * 3 (D. N. Y. Mar. 2,

D.J.). [R]ates for associates have ranged from to with average awards increasing over Makinen v. City of New York, 11 Civ. 7535 (ALC) (AJP), WL 1451543 at *3

Apr. 12, (A. Carter, D.J.), quoting Abdell v. City of New York, supra, WL 898974 at *3.

Considering defendants' counsel's experience (and counsel's failure to provide it), along with the nature of the matter and my familiarity with the prevailing rates for litiga- tors at a large New York law firm,

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see Chambliss v. Masters, Mates & Pilots Pension Plan, 885 F.2d 1058-59 (2d Cir. 1989) (size of firm is



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relevant to determining prevailing market rate and firms may be subject to their own prevailing market Kahlil v. Original Homestead Rest., Inc., 657 F. 2d 476 (Holwell, D.J.) (size of law firm is factor in determining reasonable hourly rate because of overhead costs), I find that reasonable hourly rates for the attorneys are as follows: for Mr. McManus, for Ms.

5 Morgan, Lewis has over professionals and numerous offices across Asia, Europe and North America. Morgan Lewis, About <https://www.morganlewis.com/our-firm/about-us> (last visited 5,

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\$300 Conanan \$300 One Civ. 2015 2015) \$650

\$350

.Qy, 2015 2015) Clark PLLC, Civ. 1307 2013 20, 2013)

\$500

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\$100 \$200 2016 2016) 07

2015 2015) Hill, for Ms. and for Ms. Farer. See Powell v. Metro Loss Prevention Servs. Grp. (Guard Div. NY), Inc., 12

4221 (LAP) (DF), WL 9287121 at *2-*4 (S.D.N.Y. Feb. 5, (Freeman, M. J.) (Report & Recommendation) (awarding hourly rate to partner with more than 35 years of experience in employment law and hourly rate to associate with 8 years of experience), adopted WL 9255338 (S.D.N.Y. Dec. 17, (Preska, D.J.); v. Gotham Lasik, 11 (LGS),

WL 4437220 at *7 (S.D.N.Y. Aug. (Schofield, D.J.) (awarding hourly rate to partner with more than 15 years of experience in employment law and \$275 hourly rate with associate with 4.5 years of experience).

With respect to the rates of the paralegals and filing clerk who worked on the matter, district typically awards rates not to exceed per Dimopoulou v. First Life Ins. 13 7159 WL 464430 at *3 (S.D.N.Y. Feb. 3, (A. D.J.); see TufAmerica Inc. v. Diamond, 12 Civ. 3529 (AJN), WL 1029553 at *6 (S.D.N.Y. Mar. 9, 2D16) (Nathan, D. J.) ("Recent cases in this district suggest that the prevailing rate for paralegals is between and per hour."), reconsidered in part, WL 3866578 (S.D.N.Y. July 12,



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(Nathan, D.J.); Capitol Records, Inc. v. MP3tunes, LLC, Civ. 9931 (WHP), WL 7271565 at *4 (S.D.N.Y. Nov. 12,

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\$200

See, g.g., 2009

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\$125.00. See

2014 Sept. 2014) (Pauley, D.J.) (describing hourly rate for non-attorney personnel as "the high end of rates typically approved in this District.") .

Counsel has not provided the qualifications of the paralegals and filing clerk who worked on this matter. Accord- ingly, a reduction in their hourly rates is warranted.

6 Yea Kim v. 167 Nail Plaza, Inc., supra, WL 77876 at *9 (reducing paralegal rates where no information was provided to the court regarding their backgrounds); Tlacoapa v. Carregal, 386 F. 2d 362, (S.D.N.Y. (Robinson, D.J.) (reducing paralegal rate where limited information was provided regarding paralegals' qualifications and the nature of their work). A reduction in the hourly rates is also warranted because the rates are too high. Thus, I find that a reasonable hourly rate for the paralegals and filing clerk is Regulatory Fundamen- tals Grp. LLC v. Governance Risk Mgmt. Compliance, LLC, 13 Civ. 2493 (KBF), WL 4792082 at *3 (S.D.N.Y. 24, (Forrest, D. J.) (reducing paralegals' hourly rate from between \$195 and \$255 to \$125 because no information was provided regard- ing their expertise or experience; collecting cases awarding paralegals hourly rates close to \$125).

6 The qualifications of the support staff are not as accessi ble on the Internet as the attorneys' qualifications.

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Applying the reduced hourly rates set forth above, defendants' fees incurred in preparing the motions resolved by the Opinion and in opposing plaintiff's motion to compel equal However, as explained below, a further reduction is justified for excessive hours.

2. Reasonable

Number of Hours

Defendants have submitted contemporaneous time records for all attorneys and support staff who worked on the discovery dispute that set forth the date on which services were performed, the hours spent and the nature of the work performed.

I have reviewed each of the entries in the time records, and I find that counsel spent an unreasonable number of hours preparing the motions for a protective order and for sanctions. Counsel spent approximately hours drafting and revising the motion for a protective order and more than 65 hours drafting and revising the motion for sanctions. Even considering the scope of the underlying dispute and plaintiff's lengthy history of misconduct during discovery, these hours are unjustifiably high. Local No. of Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers v. Car-Win Constr. Inc., 88 F. 3d 250, 281-82 (S.D.N.Y. 2015) D.J.) (35.4 hours researching and drafting motion for sanctions reasonable); Doe v.

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Civ. (PAE), 2015 1840264 2015)

Civ. (JLC), 2015 2015) (Cott,

30% See, Congregation Coll. Pomona, Supp.

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Co., Supp. 2015) 30% Delta Airlines, Inc., 13 6287 WL at *6 (S.D.N.Y. Apr. 21, (Engelmayer, D.J.) (23.5 hours in drafting and revising 15-page motion for sanctions reasonable); Eldesouky v. Aziz, 11 6986 WL 1573319 at *8 (S.D.N.Y. Apr. 8, M.J.) (24 hours spent on motion for sanctions reasonable).

Accordingly, a further reduction of in the fees defendants seek is warranted. Rabbinical

of Tartikov, Inc. v. Village of 188 F. 3d 333, 344-45 (S.D.N.Y. (Karas, D.J.) (reducing fees by because of excessive hours, among other things); see also Beastie Boys v. Monster Energy 112 F. 3d 31, 57



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(S.D.N.Y.

(Engelmayer, D.J.) ("Fee reductions around are . . . common in this District to reflect considerations of

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"block-billing," "the

700 Supp. 510, (S.D.N.Y. 2010)

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2015 (S.D.N.Y. 2015) whether work performed was necessary, leanly staffed, or properly billed.") .

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These adjustments yield the following remainder: Total Fees Sought Fees After Reduction in Hourly Rates

Adjustment Remainder

(\$26,402.25) \$61,605.25

7 I also note that Ms. Hill block-billed some of her time entries (Hill Deel., Ex. A, Entries for 3/23/15, 3/27/15, 3/31/1- 5, 4/8/15, 4/23/15, 4/28/15). Although practice of aggregating multiple tasks into one billing entry, is not prohibited, [the practice] can make it exceedingly difficult for courts to assess the reasonableness of the hours billed." LV v. New York City Dep't of Educ., F. 2d



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525 (Holwell, D.J.) (internal quotation marks omitted). the same time, block billing is most problematic where large amounts of time five hours or more) are block billed" because it "meaningfully clouds a reviewer's ability to determine the projects on which significant legal hours were spent." *Beastie Boys v. Monster Energy Co.*, supra, 112 F. 3d at 53; accord *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, supra, 188 F. 3d at 343; *Melgadejo v. & D Fruits & Vegetables, Inc.*, supra, WL

at *28. Here, all but one of Ms. Hill's block-billed entries were for less than five hours. Additionally, it is possible to evaluate the reasonableness of Ms. Hill's time in these entries, "even if it is impossible to reconstruct the precise amounts of time allocable to each specific task listed in the block *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, supra, 188 F. 3d at 343; see also *ex rel. Fox Rx, Inc. v. Omnicare, Inc.*, 12 Civ. 275 (DLC), WL 1726474 at *3 Apr. 15, (Cote, D.J.) ("The use of block billing here is perfectly reasonable; the specific tasks in each block are described with sufficient detail and clarity to confirm the reasonableness of the work performed." (internal quotation marks omitted)). Therefore, a reduction on the basis of Ms. Hill's block-billing is unnecessary.

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SO ORDERED

United States IV. Conclusion

For the foregoing reasons, defendants are awarded \$61,605.25 in attorneys' fees. Dated: New York, New York

September 5,

Copies transmitted to: All Counsel of Record

Magistrate Judge

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