UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 03-2006 (EGS/JMF)
	)	
FELD ENTERTAINMENT, INC.,	)	
	)	
	)	
Defendant.	)	

OPPOSITION TO PETITION FOR AWARD OF ATTORNEYS' FEES AGAINST KATHERINE MEYER, AND THE LAW FIRM MEYER GLITZENSTEIN & CRYSTAL

Introduction

Plaintiffs' counsel, Katherine Meyer and the law firm Meyer Glitzenstein & Crystal ("MGC"), hereby oppose the petition by Feld Entertainment, Inc. ("FEI") for an award of fees of $133,712.66 for Ms. Meyer's "participation in Rider's response to his 2004 Interrogatories" – i.e., Ms. Meyer's signing the objection to FEI's Interrogatories in which Mr. Rider stated in response to Interrogatory No. 24 that he had "not received any such compensation." As demonstrated below, the amount requested by FEI is excessive and completely unwarranted under the factors that apply to the reasonableness of such awards, *Copeland v. Marshall*, 641 F.2d 880, 889 (D.C. Cir. 1980) (en banc).

In addition, because FEI's counsel failed to provide any detail concerning the *actual* amount of time they spent moving to compel Mr. Rider's response to the precise Interrogatory for which sanctions have been imposed – and instead have claimed fees for the *entire amount of time they spent on a motion to compel that covered many other issues including those upon*

which FEI did not prevail – and FEI is also requesting *current* rates for some of the individuals who worked on this case, the requested amount should either be denied in its entirety, *Envtl. Def. Fund, Inc. v. Reilly*, 1 F.3d 1254, 1258 (D.C. Cir. 1993), or at least substantially reduced, *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962 (D.C. Cir. 2004). As explained in detail below, the most that should be imposed as a sanction here is $5,379.28.[1]

BACKGROUND

Before turning to the legal standards that apply to the Court's determination, it is important to provide the pertinent factual background, which bears heavily on whether FEI's specific request for fees is "reasonable." *Copeland*, 641 F.2d at 889.

A. Mr. Rider's Response To Interrogatory No. 24

This entire matter arises from a *portion* of an answer to an Interrogatory that was provided by Plaintiff Tom Rider in his original June 2004 Interrogatory Responses. The Interrogatory in question, No. 24, stated:

> Identify all income, compensation, other money or items, including without limitation, food, clothing, shelter, or transportation, you have ever received from any animal advocate or animal advocacy organization. If the money or items were given to you as compensation for services rendered, describe the service rendered and the amount of compensation.

See Rider Interrogatory Responses, MGC Exhibit A, at 39. Mr. Rider objected to the Interrogatory on the grounds that "it seeks privileged information that is protected by his right to privacy and would infringe on his freedom of association." *Id.* However, Mr. Rider further

[1]To facilitate the calculations necessary to respond to FEI's Fee Petition, MGC created an Excel spreadsheet with the relevant time entries, hourly rates, and discounts as provided by FEI. *See* MGC Exhibits N - P. In an effort to assist the Court, MGC is also providing the Court and opposing counsel with a DVD containing the native Excel document for Exhibits N - P.

stated that "*subject to a confidentiality agreement, [he] would be willing to provide defendants with the answer to the first sentence of the Interrogatory*," *id.* (emphasis added) – i.e., he would identify "all income . . . [and] other money or items" he had "ever received from any animal advocate or animal advocacy organization." *Id.*

However, as to the *second* sentence of the Interrogatory, because Mr. Rider did not consider the money and other items he had received to be "compensation *for services rendered*," he stated that "I have not received any such compensation." *Id.* As the lead attorney for the plaintiffs, Ms. Meyer signed the objection to this Interrogatory – i.e., the objection stating that Mr. Rider believed that information concerning money and other items he had received was privileged, but offering to provide such information subject to a confidentiality agreement. *See id.* at 40. Mr. Rider verified his own answer to the second part of the Interrogatory concerning whether he considered any such money to be "compensation for services rendered." *Id.* [2]

For two and a half years, FEI did not raise a problem with this response. Moreover, FEI's own internal documents disclose that FEI *knew* before filing its motion to compel Mr. Rider's Interrogatory response that Mr. Rider was in fact receiving financial assistance from some of the plaintiff organizations and others while he traveled around the country and spoke to reporters and legislators about the mistreatment of Asian elephants he witnessed while working

[2] Mr. Rider testified to the Court at trial that he personally did not consider the money he received as "compensation for services rendered" because he "wasn't getting paid" to be an advocate for the elephants. Rather, he testified that he considered the money as covering his living and traveling "expenses" while he conducted his own public education campaign for the elephants. Trial Transcript, Feb. 12, 2009 p.m. at 91-92 (MGC Ex. B); *see also id.* at 92 ("That part of it I did not consider a job; henceforth . . . I didn't consider it compensation"). *See also* Declaration of Katherine A. Meyer, DE 599-2, ¶ 74 (explaining that "when he answered this question in 2004, Mr. Rider regarded his public advocacy for the elephants not as a job for which he was being paid a salary, but rather as something he was doing on his own initiative").

at FEI and other circuses. *See, e.g.*, FEI Email (May 28, 2002), MGC Ex. C (reporting to high-level FEI officials that Mr. Rider had testified before a state legislature that the ASPCA was paying his expenses); Tampa Tribune (Jan. 11, 2004), MGC Ex. D (statement by FEI's "head of animal training and care" that Mr. Rider was "making a living parroting animals' rights rhetoric); September 16, 2005 Transcript of Hearing Before Judge Sullivan (MGC Ex. E) (Ms. Meyer states in open court that Mr. Rider gets "money from some of the clients and some other organizations to speak out and say what really happened when he worked there"). However, FEI also never took Mr. Rider up on his June 2004 offer to provide information about the sources and amount of his funding subject to a confidentiality agreement.[3]

Moreover, on October 12, 2006, at a deposition *noticed by the plaintiffs*, Mr. Rider testified extensively about money he had received from the plaintiff organizations and the Wildlife Advocacy Project ("WAP"), including IRS 1099 forms WAP had produced to FEI which identified such funding as "non-employee compensation." *See* October 12, 2006 Deposition (MGC Ex. F) at 123-124. Indeed, Mr. Rider answered all of FEI's questions concerning funding he had received, including amounts he had received from various plaintiff organizations and WAP. *See id.* at 123-125 (verifying the amount of funding he received from WAP each year from 2003-2005); *id.* at 143 (acknowledging that he received $5500 to purchase a used van); *id.* at 145 (testifying about money he received from the Fund for Animals); *id.* at 148-151 (testifying about funding he received from the American Society for the Prevention of

[3] *See also* Memorandum In Support Of Motion For Partial Summary Judgment By Defendants Katherine Meyer, Eric Glitzenstein, and Meyer Glitzenstein & Crystal, Civ. No. 07-1532 (the RICO case) at 13-31 (reciting additional voluminous evidence FEI had prior to February 2006 that Mr. Rider was receiving funding from the plaintiff organizations and others).

Cruelty to Animals and the Animal Welfare Institute). Further, although at that deposition FEI asked Mr. Rider about *other* answers he had provided in his 2004 Interrogatory Responses, *see id.* at 154-168, it did not ask him why he had answered part of Interrogatory 24 by stating that he did not consider the money that FEI knew he had received, and which he had by then testified about receiving, to be considered "compensation for services rendered." *See id.*

B. The Meet And Confer Concerning Mr. Rider's Answer To Interrogatory 24

On November 22, 2006, FEI's counsel sent plaintiffs' counsel a detailed letter describing alleged "deficiencies" with respect to *all* of the plaintiffs' June 2004 discovery responses, including those of Mr. Rider and the three organizational plaintiffs. Letter to Katherine Meyer from George Gasper (Nov. 22, 2006) (MGC Ex. G). Of that 12 ½ page single-spaced letter, less than a page addressed Mr. Rider's response to Interrogatory 24, including an argument that the confidentiality agreement requested by Mr. Rider was not warranted for the requested information because, referring to Mr. Rider's October 2006 deposition, "*Rider already has testified under oath in an open setting about the money he received from WAP and the other contributions he has received directly from plaintiffs.*" *Id.* at 11 (emphasis added). FEI's counsel further stated that:

> We further note that Rider stated in response to Interrogatory No. 24 that he has not received compensation from an animal advocacy organization. We know that this is patently false given the documents produced by WAP such as 1099's. Regardless of whether Rider considers the money that he receives from WAP, PAWS, ASPCA, AWI, the Fund, etc. to be "compensation," he must amend his Interrogatory No. 24. Moreover, however the money is characterized, the request covers funds, so a complete answer on all of the funds received by Rider must be provided, rather than the evasive answer that now exists.

Id.

In response, by letter dated December 15, 2006, Ms. Meyer explained that Mr. Rider had long ago "agreed to provide answers to all of this discovery subject to a confidentiality agreement," but "[n]ow that defendants have obtained much of this information from other sources," including the organizational plaintiffs, WAP, and even Mr. Rider himself at his October 2006 deposition, she would ascertain whether Mr. Rider "is willing to provide a complete response to this discovery *without* a confidentiality agreement." *See* Letter from Katherine Meyer to George Gasper (Dec. 15, 2006) (MGC Ex. H) at 7 (underlining in original, italics added). A week later, Mr. Gasper sent another letter concerning *all* of the plaintiffs' alleged discovery deficiencies, which included three sentences concerning Mr. Rider's response to Interrogatory No. 24 – all of which reiterated FEI's position that it would not agree to a confidentiality agreement to obtain the requested information. *See* Letter from Gasper to Meyer (Dec. 22, 2006) (MGC Ex. I) at 4.

In a follow-up to her letter stating that she would ascertain whether Mr. Rider was willing to produce the information without a confidentiality agreement, Ms. Meyer stated that:

> as you note, Mr. Rider has already provided some of this information to you during his October 12, 2006 deposition, and you have also received some of this information from the other plaintiffs and from the Wildlife Advocacy Project. In addition, *Mr. Rider is willing to provide a more complete list to defendants of his sources and amounts of income since he stopped working for the circuses – as he has consistently stated he would do since June 2004. However, because he still believes that much of this information is personal and confidential, he continues to request that he provide this information to defendants subject to a confidentiality agreement. If you agree to this approach, I will draft a proposed agreement for your review as soon as possible.*

Letter from Meyer to Gasper (Jan. 16, 2007) (MGC Ex. J) at 9.

On January 19, 2007, FEI's counsel sent another letter regarding *all* of the remaining discovery disputes, stating that "the parties have reached an impasse on numerous issues that are

critical to resolving the deficiencies in plaintiff's discovery responses," and on February 7, 2007 the parties met in person to attempt to resolve some of these matters. *See* Letter from Gasper to Meyer (Jan. 19, 2007) (MGC Ex. K); Letter to Joiner from Meyer (Feb. 8, 2007) (MGC Ex. L).

C. Mr. Rider's Supplemental Discovery Response

Meanwhile, on January 31, 2007, Mr. Rider submitted supplemental discovery responses, including a supplemental response to Interrogatory No. 24, in which he incorporated the testimony he had provided at his October 12, 2006 deposition concerning the funding he had received, and reiterating that he would "provide defendants with a complete list of information that is responsive to this Interrogatory subject to a confidentiality agreement that would protect his personal privacy." *See* Rider Supplemental Interrogatory Response (MGC Ex. M) at 19. *See also* Letter to Joiner from Meyer (Feb. 8, 2007) (MGC Ex. L) at 2 ("In addition, in response to defendants' March 2004 discovery requests, Mr. Rider has since June 2004 consistently agreed to provide you with information concerning the funds he has received, but has requested that such information be subject to a confidentiality agreement to protect his personal privacy"). However, FEI would not agree to such an agreement, and instead decided to move to compel a non-protected response to the Interrogatory.

D. FEI's Motion to Compel

On March 20, 2007, FEI filed a "Motion To Compel Discovery From Tom Rider And For Sanctions, Including Dismissal." DE 126. That motion sought to compel *numerous* categories of information from Mr. Rider – only one of which was a non-protected response to

Interrogatory No. 24. *Id.*[4]

In fact, of the 49 ½ pages of FEI's accompanying memorandum, **at most only about *five pages* can reasonably be attributed to addressing Mr. Rider's Answer to Interrogatory No. 24** – the *only* matter for which Ms. Meyer and MGC have been sanctioned – rather than the other matters covered by the motion, particularly FEI's motion to compel various *documents*. *See* Compel Mem. at 10-11 (restating both the Interrogatory and Mr. Rider's 2004 Response); *id.* at 24 (one sentence stating that in his Supplemental Response to Interrogatory No. 24 "Rider has attempted to incorporate all of his deposition testimony rather than respond, and has now removed any statement whatsoever regarding compensation"); *id.* at 6 (one sentence asserting that "Rider's interrogatory responses . . . did not disclose that he received money . . . directly from his co-plaintiffs and WAP"); *id.* (asserting, despite the fact that FEI was offered such information under a confidentiality agreement, that "[d]ue to Rider's false and incomplete discovery responses FEI had no means of knowing the true nature or extent of the payments . . . ."); 21-22 (one sentence stating that "Interrogatory No. 24 requires Rider to identify income, funds, compensation, etc. that he has received from animal advocates or animal advocacy

[4] The motion sought to compel (1) "all responsive documents within his possession, custody, or control"; (2) "a sworn declaration identifying any responsive documents that were once in Rider's possession . . . but have since been discarded [etc.]"; (3) "all responsive documents and information concerning his income and payments from other animal advocates or animal advocacy organizations;" (4) "all responsive documents and information concerning communications with other animal advocates," (5) a "precise identification of documents . . . incorporated by reference in his response to [certain Interrogatories]"; and (6) a privilege log. *See id.* at 1-2. The motion also sought to compel "complete and truthful answers" to Interrogatory No. 2 (concerning each job he held since high school, including his military service); Interrogatory No. 4 (concerning all civil litigation in which he had been involved); Interrogatory No. 7 (expert witnesses) and Interrogatory No. 24. *See* Motion at 2; *see also* Memorandum In Support Of FEI's Motion To Compel Discovery From Plaintiff Tom Rider And For Sanctions, DE 126 (hereinafter "Compel Mem.") at 4-9.

organizations" and another sentence asserting (wrongly) that "Rider has refused to produce the required . . . information"); *id.* at 22 n.14 (asserting that "Rider also has attempted to hide information from FEI by asserting that a protective order is warranted and by committing perjury" and that "Rider should be compelled to provide responsive documents and information without a confidentiality order immediately").

Moreover, FEI's argument that (a) none of the privileges asserted by Mr. Rider applied, and (b) even if they did, any such interest was outweighed by FEI's "need for the information," *id.* at 21-24, principally addressed *documents* at issue in the memorandum, rather than Mr. Rider's Response to Interrogatory No. 24. Indeed, FEI's "need" argument could not possibly apply to the Interrogatory Response when, as demonstrated, Mr. Rider and his counsel had already repeatedly offered to provide *all* of the requested information to FEI subject to a confidentiality agreement. Nevertheless, in calculating the number of pages that can be attributed to FEI's argument about the Interrogatory Response, we have generously attributed half of the argument on privilege and need to the Interrogatory Response.[5]

In their opposition, Plaintiffs stressed that Mr. Rider did *not* oppose providing FEI with all of the information covered by Interrogatory No. 24, but that Mr. Rider believed that such information should be provided under a protective order "to protect Mr. Rider's sensitive financial information and the names of individual donors. " Plaintiffs' Opposition to

[5] The background section to the memorandum recounts the history of the entire meet and confer process on *all* of the issues covered by the memorandum, *id.* at 12-13, and the argument for sanctions includes the statement that Mr. Rider's discovery responses are "plagued by perjury – including . . . Interrogatory 24 stating that he has not received compensation from animal rights groups"). We have also taken this into account in the calculation of the number of *pages* that can be attributed to the argument concerning Interrogatory No. 24.

Defendants' Motion To Compel Discovery From Plaintiff Tom Rider And For Sanctions, Including Dismissal, DE 138, at 4. Six days later, Mr. Rider also filed his motion for a protective order, in which he again explained that he had "no objection to providing defendants with financial information that actually exceeds the scope of what defendants actually requested in their March 2004 discovery requests," but that "he requests that he be permitted to do so subject to a protective order that will protect his privacy, and *also protect others who have contributed to his public education and advocacy efforts from harassment and retaliation by defendants*." Memorandum In Support Of Plaintiff Tom Rider's Motion For A Protective Order With Respect To Certain Financial Information, DE 141-2, at 1 (underlining in original, italics added); *see also id.* at 11 (explaining that "because defendants also have a well established pattern of spying on, harassing, intimidating, reporting to the IRS, suing, and otherwise oppressing those who criticize their operations – including not only 'animal activists,' but also reporters, writers, and even teachers – Mr. Rider also seeks a protective order from this Court that will ensure that once he provides defendants with the information they have requested, *defendants will be prohibited from harassing any of these individuals or groups in any way*.") (emphasis added).

FEI's reply in support of its motion to compel was 24 pages long. *See* Reply In Support Of FEI's Motion To Compel Discovery From Plaintiff Tom Rider, DE 144 ("Compel Reply"). At most, *less than a page was devoted to Mr. Rider's Answer to Interrogatory No. 24*, as distinguished from FEI's complaint about other matters, including the various *documents* it sought to compel. *See id.* (bottom of page 7) (complaining that Mr. Rider's statement that he did not receive any "compensation" for services rendered was "outrageous"); *id.* (bottom of page 8)

(arguing that Mr. Rider had waived his right to seek a protective order, and stating that "[t]he issue here is whether – with or without a protective order – Rider must produce all of the documents and information that FEI has requested."). FEI also filed an opposition to Mr. Rider's motion for a protective order. *See* DE 146.

E. Judge Sullivan's Ruling On The Motion To Compel

On August 23, 2007, Judge Sullivan issued an Order concerning several pending discovery motions, including FEI's motion to compel against Mr. Rider, granting some of the plaintiffs' motion as well as FEI's, and denying others. DE 178. FEI's Motion to Compel Discovery from Plaintiff Tom Rider and For Sanctions, Including Dismissal, was one of the matters that was granted in part and denied in part. *Id.* at 3.

As to the portion of the motion to compel concerning Mr. Rider's Answer to Interrogatory No. 24, the Court ordered Mr. Rider to provide a "[c]omplete and truthful" answer to the Interrogatory, but *allowed him to withhold the names of "individual donors or organizations unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP*." *See id.* at 4 (emphasis added) (requiring Mr. Rider to answer Interrogatory 24 "with the exception of any information the Court has already found to be irrelevant or otherwise not subject to discovery as outlined above"); *id.* at 3 (bullet 2 – detailing those exceptions).

F. Judge Sullivan's Sanction Ruling Against Meyer And MGC

On March 29, 2013, Judge Sullivan issued a ruling that sanctions are warranted pursuant to 28 U.S.C. § 1927 against Katherine Meyer and MGC for one very specific matter – Ms. Meyer's participation in Mr. Rider's June 2004 response to FEI Interrogatory No. 24 in which

Mr. Rider stated in response to the second sentence of the Interrogatory that he had "not received any such compensation," and hence the portion of FEI's Motion to Compel against Mr. Rider concerning that matter. DE 620 at 41-42.[6]

FEI has now filed a fee petition in which it seeks $133,712.60 in sanctions against Ms. Meyer and MGC. However, as demonstrated below, that amount not only far exceeds what is "reasonable" here, but fails to provide the "sufficiently detailed information about the hours logged and the work done" that is "essential . . . to permit the District Court *to make an accurate and equitable award*." *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1327 (D.C. Cir. 1982) (emphasis added). Accordingly, the requested amount should either be denied in its entirety, *Envtl. Def. Fund, Inc.*, 1 F.3d at 1258, or substantially reduced by the Court. *See Role Models Am., Inc.*, 353 F.3d at 975. Indeed, as explained more fully below, the most the Court should impose as a sanction here for the very limited conduct at issue is $5,379.28.

ARGUMENT

Introduction

The starting point for any fee determination is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) – i.e., the lodestar figure, *Copeland*, 641 F.2d at 891. Further, explaining that the elements for deciding the "reasonableness" of an award are "necessarily somewhat imprecise," the Court of Appeals has stressed that the district court's task "can only be met where fee applicants meet their correspondingly *heavy obligation to present well-documented claims*."

[6]Although the ruling referred to that motion as ECF No. 101, this was later corrected to clarify that the Court meant ECF No. 126. *See* Minute Order (5/2/13).

Nat'l Ass'n of Concerned Veterans, 675 F.2d at 1323-24 (emphasis added). Thus, because the party seeking attorneys' fees "is only entitled to an award for time reasonably expended," the fee application must "contain *sufficiently detailed information about the hours logged and the work done*." *Id.* at 1327 (emphasis added). Such detailed information "is *essential* not only to permit the District Court *to make an accurate and equitable award* but to place [opposing] counsel in a position to make an informed determination as to the merits of the application." *Id.* (emphasis added).[7]

The Court of Appeals has further held that the Court "may deny in its entirety a request for an 'outrageously unreasonable' [fee] amount, lest claimants feel free to make 'unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place.'" *Envtl. Def. Fund, Inc.*, 1 F.3d at 1258 (citations omitted); *see also LaPrade v. Kidder Peobody & Co., Inc.*, 146 F.3d 899, 906 (D.C. Cir. 1998) (noting that a court could decide that a fee request under 28 U.S.C. § 1927, is "so 'outrageously unreasonable' that outright denial of the request . . . would be appropriate"). Of course, if the "documentation of hours is inadequate," or other reasons suggest that the amount requested is not "reasonable," the district court may also reduce the award accordingly. *Hensley*, 461 U.S. at 433; *see also Copeland*, 641 F.2d at 889 (the

[7] The same basic factors that apply to a typical attorney's fee determination apply in the context of determining the amount of appropriate attorney's fees for a 28 U.S.C. § 1927 sanction. *See, e.g., LaPrade v. Kidder Peabody & Co., Inc.*, 146 F.3d 899, 900 (D.C. Cir. 1998) (court engaged in discussion of adjusting the lodestar figure when determining the amount of 1927 sanctions.); *Copeland*, 641 F.2d at 889 (D.C. Cir. 1980) (explaining that the twelve Johnson factors "remain central to any fee award."); *Barber v. Am. Sec. Bank*, C.A.86-1156 (HHG/PJA), 1989 WL 7339, at *5-8 (D.D.C. Jan. 18, 1989)(after determining that 1927 sanction of attorney's fees was appropriate court engaged in typical attorney's fees analysis to determine the amount.).

reasonableness of a fee award should be based on several additional factors, including "the time and labor" involved on the matter, as well as "the novelty and difficulty" of the issue) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

As explained below, FEI's petition for fees from MGC in the amount of $133,712.60 for the sanction that was imposed by the Court for Ms. Meyer and MGC's involvement in Mr. Rider's Answer to Interrogatory No. 24 is "outrageously unreasonable." *LaPrade*, 146 F.3d at 906. It is also so rife with inadequate documentation that FEI has completely failed to meet its "heavy obligation" to present a "well-documented claim[]" for fees. *Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1323-24. Accordingly, its fee request should either be denied entirely or reduced substantially.

I. FEI's ATTORNEYS ARE NOT ENTITLED TO CHARGE *CURRENT* RATES FOR WORK BILLED AND PAID BY THEIR CLIENT IN 2007.

To begin with, FEI's request for fees must be reduced because it seeks to compensate several of FEI's attorneys at *current* market rates, rather than at the rates they charged their client for such work in 2007. *See* FEI Fee Petition at 31-34; Simpson Decl., FEI Ex. 34 (showing that FEI used current rates for calculating the time spent by attorneys Simpson, Pardo, Pettaway, and Coleman.). Thus, FEI urges the Court to apply current rates with respect to these individuals when calculating the fee award, based solely on the fact that FEI "has been paying legal fees for more than thirteen years." *See* FEI Fee Petition at 31-34. However, particularly because the fee petition concedes that FEI "regularly paid its counsel's bills," FEI's argument that it should be compensated for a *delay* in payment, *id.* at 33, is simply not supported by the wealth of case law on this issue.

As explained by the Supreme Court in *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989),

"compensation received several years after the services were rendered . . . is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, *as would normally be the case with private billings*." (emphasis added). Indeed, the Court of Appeals has repeatedly explained that "[t]he hourly rates used in the 'lodestar' represent the prevailing rate *for clients who typically pay their bills promptly*." *Copeland*, 641 F.2d at 893 (emphasis added); *accord Murray v. Weinberger*, 741 F.2d 1423, 1432 (D.C. Cir. 1984); *Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1328. Thus, as another court succinctly explained, relying on *Copeland*, when lawyers were paid "on a regular hourly basis. . . [they] *neither risked noncompensation nor endured a delay before payment*." *Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc.*, 776 F.2d 646, 660 (7th Cir. 1985) (emphasis added). Accordingly, there is "no reason to adjust the lodestar upward for . . . delay in receipt of payment." *Id.*[8]

[8] None of the cases cited by FEI, FEI Petition at 32, is to the contrary. Two cases involve situations where the attorneys were paid a rate *below* the market rate throughout the litigation. *See Muldrow v. Re-Direct, Inc.*, 397 F. Supp. 2d 1, 4 (D.D.C. 2005); *Does I, II, and III v. District of Columbia.*, 448 F. Supp. 2d 137, 140 (D.D.C. 2006). Another case involved a situation where the attorney was paid a market rate during the litigation and the court decided that rate should be *reduced* to the current *Laffey* rate. *Blackman v. District of Columbia.*, 677 F. Supp. 2d 169, 174-175 (D.D.C. 2010), *aff'd*, 633 F.3d 1088 (D.C. Cir. 2011). Another case involved a 1995 court order requiring the District of Columbia to pay fees on a quarterly basis for the cost of monitoring compliance with several court orders, which D.C. paid consistently for several years but then *abruptly refused to pay*. *Petties v. District of Columbia.*, Civ. No. 95-0148 (PLF), 2009 WL 8663462, at *1-2 (D.D.C. Oct. 20, 2009). Four cases arose under the Individuals With Disabilities Education Act ("IDEA"), where the court highlighted the District of Columbia's habitual failure to pay attorney's fees and how that persistent delay hindered attorneys' ability to file cases under the IDEA, *Thomas v. District of Columbia*, 908 F. Supp. 2d 233, 245 (D.D.C. 2012) *appeal dismissed*, No. 13-7010, 2013 WL 1187428 (D.C. Cir. Mar. 14, 2013); *Smith v. Roher*, 954 F. Supp. 359 (D.D.C. 1997); *Pullins-Graham v. Dist. of Columbia*, 2003 U.S. Dist. LEXIS 25796, at *3 (D.D.C. July 31, 2003); *McDowell v. Dist. of Columbia*, 2001 U.S. Dist. LEXIS 8114, at *1, 5 (D.D.C. June 4, 2001). Finally, in *Harvey v. Mohammed*, the court awarded current Laffey rates only because the District of Columbia did not contest the issue. Civ. No. 02-2476 (RCL), 2013 WL 3214873 (D.D.C. June 26, 2013).

FEI's counsel has not suffered any delay in payment here. Indeed, its own petition acknowledges that FEI "regularly paid its counsel's bills." FEI Fee Petition at 33. Thus, as FEI's own expert explains:

> [t]he best evidence of "market" billing rates, and indeed of the overall appropriateness of the fees paid in a matter, is *what clients actually pay*. Here, of course, the Court has the benefit of the fact that ***FEI paid the fees covered by the Petition*** . . . .

Declaration of John Millan at ¶ 34 (emphasis added). Therefore, the only relevant hourly rate for each of the individuals who worked on this matter is the rate actually billed to and paid by FEI. Accordingly, at the outset, the fees requested by FEI must be reduced to $113,553.49, to account for the inflated hourly rates used by Mr. Simpson and others in calculating the requested fee amount. *See* MGC Ex. N (Excel Sheet calculating fees at both actual and current rates).[9]

II. THE NUMBER OF HOURS INCLUDED IN FEI's FEE REQUEST IS COMPLETELY UNREASONABLE.

A. The Court Should Reject As Unreasonable Time Spent on Work That Was Irrelevant To Litigating The Motion To Compel.

In calculating the reasonableness of the time spent by FEI's counsel on this matter, it is important to focus on the fact that the Court sanctioned Ms. Meyer and MGC solely for *Ms. Meyer's participation in Mr. Rider's response to Interrogatory No. 24*. *See* Sanction Mem. at

[9] This chart separates FEI's billing records related to the portion of the fee request directed at MGC into seven (7) categories for each timekeeper. Each category is color coded and corresponds to the billing records in MGC Ex. O. The amount of fees shown in this chart for each time keeper was calculated based on the method described by John Simpson in ¶ 260 of his declaration. MGC has calculated fees based on (a) the mix of current and historic rates that are requested by FEI ("FEI Requested Rate"), and (b) historically billed rates ("Actually Billed (historic) Rate"). This chart was compiled using only information from John Simpson's Decl. ¶¶ 257-260 and FEI Fee Petition Exhs. 31, 33, and 34.

41-42. However, FEI has included several entries that, while arguably relevant to the Endangered Species Act case as a whole, cannot possibly be considered relevant to this precise matter. Such entries range from time spent by five separate attorneys reviewing the many different discovery orders issued by Judge Sullivan on August 23, 2007, to time spent by Michelle Pardo to "prepare RICO claim for filing and additional required attachments, evaluate and conference with firm attorneys regarding related case status." *See* MGC Ex. O at 4, 7, 9, 14, and 16 (orange entries) and at 9 (blue entry) (Excel Chart of FEI's Fees Broken Into Categories of Time).[10] Therefore, as an initial matter in deciding the number of reasonable hours expended on this issue, the Court should strike all of the orange and blue highlighted entries from the fee award as completely irrelevant to the Court's sanction ruling. This brings the fee request down to $112,756.98. *See* MGC Ex. P.[11]

B. The Court Should Reject All Vague Billing Entries.

As this Court has previously recognized, "[u]nder this Circuit's law . . . 'supporting documentation must be of *sufficient detail* . . . to enable the court *to determine with a high*

[10] This chart compiles all of the yellow highlighted entries from Simpson Decl. Ex. 31 into one condensed chart separated by timekeeper. The chart is color coded: the highlighted entries correspond to the categories of time listed in MGC Ex. N. (Green = reviewing to find discrepancies; Purple = letters back and forth, meet and confer; Red = motion to compel generally; Yellow = drafting Rider motion; Orange = review of court orders; White = vague entries; and Blue = not related.) This chart also includes the relevant information from Simpson Decl. Ex. 33 and 34. The amount of fees shown in this chart for each timekeeper was calculated based on the method described by John Simpson in ¶ 260 of his declaration. For all timekeepers for whom FEI is seeking a *current* rate, MGC has calculated fees at both a current rate and the actual billed rate.

[11] MGC Ex. P contains 2 charts. Both charts show the amount of FEI's requested fee award reduced by the various categories of reductions requested by MGC throughout its brief. The first chart detailing the various categories of reductions is based on rates *actually* billed. while the second chart is based on the rates requested by FEI.

degree of certainty that such hours were actually and reasonably expended.'" *Doe #1 v. Rumsfeld*, 501 F.Supp.2d 186, 192 (D.D.C. 2007) (J. Sullivan) (quoting *Role Models Am., Inc.*, 353 F.3d at 970 (emphasis added). Accordingly, asserted hours may be completely rejected "when *work descriptions are so general that a court cannot ascertain the reasonableness of the time claimed*." *Davis Cnty. Solid Waste Mgmt. and Energy Recovery Special Serv. v. EPA*, 169 F.3d 755, 761 (D.C. Cir. 1999) (emphasis added); *McKesson Corp. v. Islamic Republic of Iran*, 935 F.Supp.2d 34, 44 (2013)(D.D.C. 2013).

In *Role Models America, Inc., v. Brown*, 353 F.3d 962, 971 (D.C. Cir. 2004), the Court of Appeals found that entries such as, "[r]esearch and writing for appellate brief," were far too "generic" and "inadequate to meet a fee applicant's 'heavy obligation to present well-documented claims.'" (citations omitted). *See also McKesson Corp. v. Islamic Republic of Iran*, 935 F. Supp. 2d 34, 45 (2013) (D.D.C. 2013) (entries stating "'[w]ork on appeal brief'" were too vague to justify a fee award). Here, FEI has submitted entries that are equally, if not *more*, vague then those rejected in *Role Models* and *McKesson*. We have separated these entries into two separate categories: (1) those dealing with the general topic of research for an unspecified "motion to compel" and (2) other vague entries. *See* MGC Ex. O (red highlighted entries and white entries).

For example, in the first category – research for a "motion to compel" – there are several time entries from George Gasper such as "conduct research for anticipated motion to compel regarding plaintiffs' discovery deficiencies," "research for motions to compel," and "draft such motions." *See* MGC Ex. O at 10-11 (entries highlighted in red). However, from December 2006 through May 2007, FEI was briefing three *different* motions to compel: (1) Plaintiffs Motion to

Compel Defendants to Comply with Plaintiffs' Rule 34 Request for Inspections (DE 118), (2) FEI's Motion to Compel Discovery from Tom Rider (DE 126), and (3) FEI's Motion to Compel Discovery from the Organizational Plaintiffs and API (DE 149). Therefore, without additional documentation from FEI, such entries are far too vague to allow the Court to determine with a "high degree of certainty" that this time was even expended on the specific Motion to Compel that is at issue here, let alone the *portion* of that motion for which sanctions have been imposed. *Role Models Am. Inc.*, 353 F.3d at 971.

As to the second category – other vague entries – there are several time entries from Lisa Joiner stating such things as "continue legal research," "finish writing final sections of brief and circulate for comments," and "continue working on briefing." *See* MGC Ex. O at 5-7 (entries in white). These entries cover the time period from February 2007 through May 2007. *Id.* However, during this same period there were *six other filings being briefed in the ESA case*, including, for example, FEI's Motion for Leave to File Amended Answer to Assert Additional Defense and Rico Counterclaim (DE 121).[12] The sheer number of filings being briefed during this time period, coupled with the completely generic nature of these time entries, makes it impossible for the Court to determine "with a high degree of certainty that such hours were actually and reasonably expended" on the specific matter for which sanctions have been imposed. *Role Models Am. Inc.*, 353 F.3d at 971.

[12] *See also* DE 123 (FEI's Response To Plaintiffs' Notice Of Additional Exhibit In Support Of Their Opposition To Summary Judgment); DE 133 (FEI's Motion To Strike [WAP's] Memorandum In Opposition To FEI's Motion To Amend); DE 146 (FEI's Memorandum In Opposition To Motion For Protective Order); DE 147 (FEI's Response To Plaintiffs' Notice Of Filing Supplemental Exhibit); DE 149 (FEI's Motion To Compel Discovery From The Organizational Plaintiffs And API).

As demonstrated by MGC Exhs. O and N (white and red highlighted entries), FEI has included in these two categories of billing records *$11,335.08 worth of time* – none of which should be included in the requested sanction amount. Accordingly, this time should also be deducted from the amount requested, further reducing the amount to $101,421.90. MGC Ex. P.

C. The Fee Award Should Be Reduced Significantly Because Ms. Meyer And MGC Were Sanctioned For Only One Matter Addressed In FEI's Motion To Compel Addressing Many Topics.

Although the Court has determined that Ms. Meyer and MGC should be sanctioned solely for Ms. Meyer's role in Mr. Rider's response to Interrogatory No. 24, FEI is requesting fees for work it performed on *the entire Motion to Compel against Mr. Rider*, which, as explained, dealt with many different issues in *addition* to Mr. Rider's Answer to Interrogatory 24. *See supra* at 7-8; *see also* Exhibit 31 to Simpson Declaration. However, when a fee applicant submits a petition that includes time spent litigating issues on which the party is not entitled to fees, "[t]he district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Hensley*, 461 U.S. at 436-37.

Crucially, FEI's billing records do not identify how much time was spent on the many *different matters* covered by the Motion to Compel. *See e.g.* MGC Ex. O at 12 (2/09/07 entry for "Draft/revise motion to compel against Rider"; 2/27/07 entry for "revise motion to compel against Rider"). Moreover, nowhere in its petition, supporting exhibits, or supporting declarations, does FEI even attempt to provide the Court with *the amount of time its attorneys spent on the relevant portion of the Motion to Compel* – i.e., the specific portion dealing with Mr. Rider's response to Interrogatory No. 24. However, as explained above, of the 73 pages

devoted to the entire Motion to Compel – both FEI's opening brief (49 ½ pages) and reply brief (23 ½ pages) – at most ***only six pages can arguably be attributed to addressing Mr. Rider's response to Interrogatory 24***.

Accordingly, to make the calculation as simple as possible, the most that MGC should be sanctioned is one-tenth of the time requested by FEI. *See, e.g.*, *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 696 F.3d 1, 3-4 (D.C. Cir. 2012) (court imposed a one-third reduction because it "correspond[ed] roughly" with the number of pages in the opening and reply briefs devoted to an unsuccessful claim) (citation omitted); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, Civ. No. 10-1992 (RCL), 2013 WL 5620891, at *2 (D.D.C. Oct. 15, 2013), *appeal docketed*, Civ. No. 13-5372 (D.C. Cir. Dec. 24, 2013) ("The method of reduction this Court will use here, one that the D.C. Circuit has used when a plaintiff does not allocate time between claims, is to award a percentage of the fees sought equal to the percentage of pages spent arguing the successful claims on the merits.") (citing *Judicial Watch, Inc. v. U.S. Dep't of Commerce*, 2007 U.S. App. LEXIS 2337, at *2, *4 (D.C. Cir. 2007)).

FEI's Petition suffers from the same flaw with respect to the time requested for the "meet and confer" process leading up to the Motion to Compel – i.e., it seeks an award of fees for time spent meeting and conferring on the *entire* motion to compel. *See, e.g.*, MGC Ex. O at 10 (11/13/06 entry for "draft letter to K. Meyer outlining deficiencies in production" and 12/18/13 entry for "draft/revise letter to K. Meyer regarding plaintiffs' discovery deficiencies."). However, as discussed above, only a very small portion of the time spent during the meet and confer process involved Mr. Rider's response to Interrogatory 24 – e.g., of the 22 pages of FEI's meet and confer correspondence, at most *only one page arguably concerns this particular*

matter. *See* Letter from George Gasper (Nov. 22, 2006) (MGC Ex. G) at 11 (middle section of the page discussing both *documents* as well as Mr. Rider's response to Interrogatory No. 24); Letter from George Gasper (Dec. 22, 2006) (MGC Ex. I) at 4 (portion of second full paragraph stating that "no confidentiality agreement is warranted here").[13] Indeed, the only dispute between the parties was whether the requested information must be disclosed without a protective order. *See id.* Accordingly, at most, FEI should also be awarded only about one twentieth of the time spent on the meet and confer process. However, to keep the calculation as simple as possible, we have also calculated this amount by using a one-tenth figure for the entire meet and confer process, bringing the total to $10,758.56. *See* MGC Ex. P.[14]

D. <u>The Court Should Impose An Additional 50% Reduction</u>.

The sanction imposed here should be reduced even further for several reasons. *See DL v. District of Columbia*, 256 F.R.D. 239, 245 (D.D.C. 2009) ("After the Court has subtracted out non-compensable time, the Court can conduct further across-the-board percentage reductions as appropriate when a large number of entries suffer from one or more deficiencies."); *Copeland*, 641 F.2d at 892 (the lodestar fee may be adjusted up or down "to reflect other factors").

First, the amount of the sanction should be reduced because of FEI's pervasive use of impermissible "block billing" – i.e., FEI "lump[ed] together multiple tasks" in its billing entries, "*making it impossible to evaluate their reasonableness*." *Role Models*, 353 F.3d at 971 (emphasis added); *accord In re Olson*, 884 F.2d 1415, 1428-29 (D.C. Cir., Spec. Div., 1989);

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[13] FEI's meet and confer correspondence is attached as MGC Exhs. G - L.

[14] We note that neither of FEI's experts made any statement that the amount sought by FEI for the time spent on compelling Mr. Rider's response to Interrogatory No. 24 was reasonable.

Doe #1 v. Rumsfeld, 501 F. Supp. 2d at 192; *National Law Center on Homelessness and Poverty v. U.S. Dep't of Veteran Affairs*, Civ. No. 88-2503, 2013 WL 6654344, at *4-5 (D.D.C. Dec. 18, 2013).[15]

FEI admits – as it must – that its time records suffer from block billing. *See* FEI Fee Petition at 37 ("With regard to Fulbright, from December 1, 2005 through April 30, 2010 timekeepers . . . *aggregated the time spent working on all activities for the ESA Case on a given day (i.e., block billing*).") (emphasis added). For example, one entry indicates that on November 20, 2006 John Simpson spent seven hours on the following eight tasks:

> Review and revise further draft reply in support of motion to compel Rider deposition testimony. Conference with L. Joiner regarding same. Review correspondence regarding same. Update internet research on Rider for second phase of deposition. Review and analysis of Animal Enterprise Terrorism Act passed by House. Conference with L. Joiner regarding draft of letter to plaintiffs' counsel regarding deficiencies in document production. Review draft of letter to plaintiffs' counsel regarding video tape production. Correspondence with M. Pardo regarding same.

See Simpson Decl. Exhibit 31, part 2 at 109. Yet only one of these entries even comes close to the matter for which MGC has been sanctioned – the one stating "Conference with L. Joiner regarding draft of letter to plaintiffs' counsel regarding deficiencies in document production." *See id.*

Putting aside the fact that this particular entry deals with *documents,* has nothing to do with Mr. Rider's response to Interrogatory No. 24, and hence is not even *covered* by the sanction that has been determined is appropriate here, FEI explained that when looking at such entries, it

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[15] FEI's assertion that "[b]lock billing is the standard practice for recording time for the vast majority of cases handled by large Washington firms," FEI Fee Petition at 37, n.50, even if correct, is beside the point. The Court of Appeals for this Circuit has made clear that this practice completely undermines the "reasonableness" of a request for an award of fees. *See Role Models Am. Inc.*, 353 F.3d at 971.

generally divided "the total time by the number of tasks to determine the amount related to ECF No.126 *unless surrounding circumstances suggested that such an approach was inaccurate*." Simpson Decl. at ¶ 259 (emphasis added). However, there is nothing in the documentation provided by FEI to suggest that its determination is anything other than pure guesswork. It is well settled that such "*after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees*." *Concerned Veterans*, 675 F.2d at 1327 (emphasis added).[16]

Thus, as the Court of Appeals explained in *Role Models*, "*the lumping prevents [the court] from verifying that [the applicant] deducted the proper amount of time*." 353 F.3d at 971 (emphasis added). In fact, FEI's rampant block billing makes it *impossible* for the Court to determine with "a high degree of certainty" that *any* of the hours requested for the precise matter for which Ms. Meyer and MGC were sanctioned are reasonable.[17] *Id.; see also* Simpson Decl.

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[16] Indeed, this was the very argument that FEI successfully used to defeat a specific fee award to the plaintiffs in this case after Judge Sullivan ruled that *the plaintifffs were entitled to fees against FEI for prevailing on both their motion to compel FEI to produce the medical records for the elephants* ***and*** *their motion to enforce that order when FEI failed to fully comply with it*. *See* Memorandum Opinion, DE 120 (concluding "that plaintiffs are entitled to attorneys' fees and costs related to their motion to compel elephant veterinary records," but that the Court "has insufficient information to determine the exact amount of fees and costs to which plaintiffs are entitled"); Order, DE 94, at 4 ("plaintiffs shall file any appropriate motion requesting attorneys' fees and costs related to their Expedited Motion to Enforce the Court's September 26, 2005 Order"); *see also* Defendant Feld Entertainment Inc.'s Opposition To Plaintiffs' Motion For Attorney's Fees and Costs, DE 65, at 4, stating that "***[w]ithout itemization of these fees . . . neither this Court nor defendant can adequately assess whether these fees are reasonable***") (citing *Concerned Veterans)* (emphasis added); Defendant's Opposition To Plaintiffs' Motion Requesting Attorneys' Fees and Costs Related To Plaintiffs' Motion To Enforce The Court's September 26, 2005 Order, DE 110, at 16 ("Plaintiffs' Motion ***does not contain the necessary detail that is required of such a motion***") (emphasis added).

[17]The problems posed by FEI's block billing is compounded by Fulbright's practice of billing in fifteen minute increments. *See* FEI Fee Petition at 37. While quarter-hour billing is not

Exhibit 31 (entries highlighted in yellow). Accordingly, an additional across the board reduction of a certain percentage "is appropriate given the large number of entries that suffer" from these deficiencies. *Role Models Am. Inc.*, 353 F.3d at 973; *see also DL v. District of Columbia*, 256 F.R.D. at 245.[18]

Second, FEI has failed to make any showing as to why it needed to spend significant time on an issue that was very straightforward by the time FEI filed its motion to compel – i.e., whether Mr. Rider must provide his Answer to Interrogatory 24 *without* the confidentiality agreement that he had requested with respect to all of the funding information. Thus, as the Court of Appeals observed in *Role Models*, the "shortcoming[s] in the time records [were] particularly serious" because the Court had no idea why so many hours were required for the investment of time claimed. *See* 353 F.3d at 972 ("Involving no discovery and *presenting neither complex nor contested facts*, the case presented a straightforward challenge to an agency's failure to comply with its own regulations.") (emphasis added); *see also Copeland*, 641

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a *per se* reason to reduce a fee award, several courts in this district have cautioned against quarter-hour billing because it does not reasonably reflect the number of hours actually worked. *See e.g., Am. Civil Liberties Union v. U.S. Dep't of Homeland Sec.*, 810 F. Supp. 2d 267, 278 (D.D.C. 2011).

[18] Instead of acknowledging that *Role Models* is the controlling precedent in this Circuit on the issue of block billing, FEI cites a handful of cases where courts declined to reduce a fee award on the basis of block billing. *See* FEI Petition at 37-39. However, in all of those cases the court found that the documentation provided by the fee petitioner – including billing records and supplemental declarations – had sufficient detail to allow the court to make the requisite independent determination of reasonableness. Moreover, in sharp contrast to the present matter, in several of the cases the party seeking fee recovery was not confined to recovery for time spent on a discreet matter. *See Smith v. District of Columbia*, 466 F.Supp.2d 151, 158 (D.D.C. 2006); *Bridges Public Charter School v. Barrie*, 796 F.Supp.2d 39, 51 (D.D.C. 2011); *Laborers' International Union of North America v. Brand Energy Services*, 746 F.Supp.2d 121, 127 (D.D.C. 2010).

F.2d at 889 (explaining that in deciding an award of fees the court should consider "the time and labor required" to obtain the result requested, as well as "the novelty and *difficulty of the questions*") (emphasis added) (*citing Johnson v. Georgia Highway Express, Inc.* , 488 F.2d at 717-19).

Thus, FEI's assertion that the amount it seeks as a sanction here is entirely reasonable because the Motion to Compel was "factually and legally complex," FEI Fee Petition at 43; Simpson Decl. at 257 ("This motion was a substantial undertaking"), is demonstrably incorrect for two reasons – (1) as explained above, FEI is not entitled to fees for the *entire* Motion to Compel, which addressed myriad issues that are not at issue here; and (2) the precise issue for which Ms. Meyer and MGC were actually sanctioned was extremely straightforward and involved *uncontested* facts – i.e., whether Mr. Rider needed to provide a complete answer to Interrogatory No. 24 *without a confidentiality agreement*.

For the same reason, FEI has failed to explain why six attorneys, including three partners and three senior associates, were necessary to litigate this particular issue in the motion to compel. *See* MGC Ex. N; Simpson Decl. Ex. 1. As the Court explained in *Role Models*, "because the time records contain so little information, *we have no basis for concluding that hours that appear to be excessive and redundant are in fact anything other than excessive and redundant*." 353 F.3d at 972 (emphasis added); *see also id*. ("*[H]ours that are 'excessive, redundant, or otherwise unnecessary' must be excluded . . . .*") (quoting *Hensley*, 461 U.S. at 434 (emphasis added).

For all of these reasons, if the Court is going to award FEI fees based on its current insufficient submission, the Court should further reduce any such amount by an additional fifty

percent, bringing the total amount to $5,379.28. MGC Ex. P; *see Role Models Am. Inc.*, 353 F.3d at 971-72 (reducing the amount of fees by 50% because of the applicant's use of block billing).

CONCLUSION

Taking all of the above considerations into account, if an award is going to be granted here despite FEI's failure to meet its "heavy obligation to present well-documented claims," *Concerned Veterans*, 675 F.2d at 1324, the most that should be imposed as a sanction is $5,379.28. This amount is more than sufficient to meet the purpose of a Section 1927 sanction – to punish attorneys for their wrongdoing. *See United States v. Wallace*, 964 F.2d 1214, 1220 (D.C. Cir. 1992).[19]

Indeed, having the Court rule in a published decision that such a sanction is appropriate in this case is itself severe punishment for Ms. Meyer and her public interest law firm, which for more than thirty-seven and twenty-one years, respectively, have enjoyed reputations for exhibiting high standards of professional conduct. Imposing a monetary sanction of more than $5,000 on this small public interest law firm – that only does cases on a statutory fee basis or for rates well below market rates – will be more than sufficient to fulfill the punitive purpose of Section 1927, as well as satisfying the Court of Appeals' standards for calculating fee awards. *See* www.meyerglitz.com; *see also Novelty Textile Mills, Inc. v. Stern*, 136 F.R.D. 63, 78 (S.D.N.Y. 1991) ("[I]t is appropriate to take into account [when imposing § 1927 sanctions] that [the] attorney is a member of a small firm, on whom the effect of a substantial award might well

[19] Even using the inflated rates requested by FEI, the most that should be awarded is $6,491.23. *See* MGC Ex. P.

be out of proportion to the misconduct.").

For all of the foregoing reasons, FEI's request for fees should either be denied in its entirety as far too excessive and insufficiently documented, or substantially reduced by the Court.

Respectfully submitted,

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