

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

WOODWARD HARBOR L.L.C. and	*	CIVIL ACTION NO. 23-cv-05824
LSU HEALTH FOUNDATION	*	
NEW ORLEANS	*	JUDGE BRANDON S. LONG
	*	
VERSUS	*	MAG. JUDGE EVA J. DOSSIER
	*	
CITY OF MANDEVILLE and	*	DIVISION O (3)
JASON ZUCKERMAN, INDIVIDUALLY*	*	
	*	

**MEMORANDUM OF THE CITY OF MANDEVILLE IN SUPPORT OF
MOTION FOR ATTORNEYS’ FEES**

MAY IT PLEASE THE COURT:

As the Court will recall, Plaintiffs, Woodward Harbor, L.L.C. and LSU Health Foundation New Orleans (individually “Woodward” and “LSU” and collectively “Plaintiffs”) challenged the denial of their application for a zoning change and approval of requested conditional uses by the City of Mandeville (“the City” or “Defendant”). Plaintiffs asserted a number of constitutional challenges to the City’s actions as well as requests for declaratory relief, all of which were dismissed with prejudice by one of two separate 12(b)(6) Motions to Dismiss. The City now seeks recovery under the provisions of 42 U.S.C. § 1988 of the attorneys’ fees it incurred in defense of the frivolous claims of Plaintiffs.¹

I. THE COURT DENIED EACH AND EVERY ONE OF PLAINTIFFS’ CLAIMS

This case arose from the City’s denial of Plaintiffs’ Application for Planned District and Conditional Use Approval in connection with their proposed Sucette Harbor development.

¹ In this motion, the City seeks recovery of only the attorneys’ fees it incurred in the defense of the claims against the City. Councilman Zuckerman has filed a separate motion for recovery of attorneys’ fees in which the City joined, because the City actually paid those fees. The attorneys’ fees sought in the two separate motions, however, are not duplicative.

Following numerous public hearings before the City Council over the course of more than one year, the Council rejected the proposed ordinance by a unanimous roll call vote.

Plaintiffs filed suit against the City and councilmember Jason Zuckerman, individually, alleging that the actions of the Defendants violated the Plaintiffs' constitutional and statutory rights. This Court dismissed the claims against councilmember Zuckerman in their entirety based on qualified-immunity defenses. This Court then dismissed all claims against the City, granting two separate 12(b)(6) Motions to Dismiss filed by the City.²

The City's first 12(b)(6) Motion to Dismiss sought dismissal of Plaintiffs' state and federal regulatory taking claims and federal substantive and procedural due process claims. Plaintiffs filed an opposition that failed to rebut many of the City's legal arguments for dismissal. In its Order and Reasons,³ the Court dismissed each of Plaintiffs' claims based upon Plaintiffs' failure to adequately plead a viable constitutional claim, finding as follows:

- First, Sucette fails to state a regulatory-takings claim against the City under the Louisiana Constitution because Sucette fails to plead facts plausibly establishing that Sucette had a recognized species of property right under Louisiana law in the City Council's approval of Sucette's development plan for the Sucette Harbor Project.
- Second, Sucette fails to state a *Lucas* categorical regulatory-takings claim against the City under the United States Constitution because Sucette fails to plead facts—rather than mere conclusions—plausibly establishing that the City Council's disapproval of this one development plan for the Sucette Harbor Project site permanently deprives that property of all economically beneficial use.
- Third, Sucette fails to state a *Penn Central* regulatory-takings claim against the City under the United States Constitution because Sucette fails to plead facts plausibly establishing that any *Penn Central* factor favors Sucette.
- Fourth, Sucette fails to state any due-process claims against the City under the United States Constitution because Sucette fails to plead facts plausibly establishing that Sucette

² The City also filed a Rule 12(b)(1) Motion to Dismiss, which this court denied.

³ Doc. #70, pg. 2-3.

had a property interest protected by the Due Process Clause in the City Council's approval of its development plan for the Sucette Harbor Project.

As will be detailed in Section II.B, the Court additionally noted that Plaintiffs even failed to meaningfully oppose certain of the City's legal arguments raised in its Motion to Dismiss.

The City's second 12(b)(6) Motion to Dismiss sought dismissal of Plaintiffs' sole remaining constitutional claim—the equal protection claim and derivative §1983 claim. The Court summarily denied those claims as well, finding as follows:

- Plaintiffs' complaint fails to plead sufficient facts to establish it was intentionally treated differently from others similarly situated under the CLURO These conclusory allegations fail to identify any similarly situated comparators and thus fail to adequately state an equal protection claim.⁴
- Even if Plaintiffs had established a comparator to show they were "intentionally treated differently from others similarly situated," their claim would still fail under the second prong of the equal protection analysis. Plaintiffs fail to allege "there [was] no rational basis for the difference in treatment."⁵

Finally, not only did the Court deny Plaintiffs' substantive claims, but also denied Plaintiffs leave to amend, concluding "there is no indication that Sucette could plead facts sufficient to state plausible takings and due-process claims against the City or to otherwise fix the legal flaws outlined in this opinion[,]"⁶ and, with respect to Plaintiffs' equal protection claim, "Plaintiffs will be unable to amend their complaint to plead facts to show the City's reasons for denial of their application were irrational. Nor do Plaintiffs even argue they could plead such facts."⁷ In short, Plaintiffs' claims were so frivolous that the Court found both that Plaintiffs failed to plead sufficient facts to support any of their constitutional claims and that their theories were so lacking

⁴ Doc. #101, pg. 14.

⁵ *Id.* at pg. 16.

⁶ Doc. #70, pg. 3.

⁷ Doc. #101, pg. 19.

in legal support that they could not be salvaged by amendment.

II. LAW AND ARGUMENT

A. The City's Attorneys' Fees are Recoverable under 42 U.S.C. § 1988(b).

The general rule in the American legal system is that each party must pay its own attorneys' fees and expenses. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). In order to ensure that certain federal rights are adequately enforced, Congress enacted 42 U.S.C. § 1988, which provides that a prevailing party in certain civil rights actions, including § 1983 actions, may recover "a reasonable attorney's fee as part of the costs."⁸

In that regard, 42 U.S.C. § 1988(b) provides, in part, as follows:

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

There is no dispute the Plaintiffs brought this action under the provisions of § 1983: "After the Mandeville City Council unanimously voted against the Sucette Harbor Project ... the developer (Woodward Harbor) and the landowner (LSU Health) sued the City of Mandeville and Mandeville City Councilman Jason Zuckerman under 42 U.S.C. § 1983 and Louisiana law."⁹

Similarly, there is no dispute that the City was the prevailing party. The Fifth Circuit has held that, for the purposes of § 1988, a defendant is the prevailing party "when it receives a dismissal with prejudice."¹⁰ The City prevailed on every one of Plaintiffs' claims, obtaining a dismissal with prejudice of each such claim, while Plaintiffs prevailed on none.

⁸ *Perkins v. Hart*, No. 21-879, 2024 WL 3755238, at *8 (E.D. La. June 28, 2024).

⁹ Order and Reasons, Doc. #70, pg. 1; Order and Reasons, Doc. #101, pg. 1.

¹⁰ *Alexander v. Trump*, 753 Fed. App'x 201, 209 (5th Cir. 2018) (citing *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1169-70 (5th Cir. 1980)); see also *Lewis v. Smith*, No. 18-4776, 2019 WL 4521422, at *2 (E.D. La. Sept. 19, 2019).

Under § 1983, however, the mere dismissal of the plaintiff's claim alone is not dispositive of the right to attorneys' fees. "Although § 1988 does not facially distinguish between prevailing plaintiffs and prevailing defendants, courts have recognized that the different equitable considerations at stake dictate different standards govern the fee award to plaintiffs versus defendants."¹¹

"In enacting § 1988, . . . Congress sought 'to protect defendants from burdensome litigation having no legal or factual basis.'"¹² "[W]here the plaintiff's civil rights claim lacks a basis in fact or relies on an indisputably meritless legal theory[.]" an award of fees to the defendant under § 1988 is proper.¹³ Moreover, "a defendant may deserve fees even if not all the plaintiff's claims were frivolous."¹⁴ Thus, a court has the discretion to award attorney's fees when the plaintiff's action was "frivolous, unreasonable, or without foundation[.]"¹⁵ "A suit is frivolous if it is 'so lacking in arguable merit as to be groundless or without foundation...'"¹⁶ When considering whether a suit is frivolous, a district court should analyze factors such as: (1) "whether the plaintiff established a *prima facie* case"; (2) "whether the defendant offered to settle"; and (3) "whether the court held a full trial."¹⁷ Rather than hard-and-fast rules, however, these factors are

¹¹ *Perkins*, 2024 WL 3755238, at *8 (citing *Fox v. Vice*, 563 U.S. 826, 833 (2011) (quoting *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412, 419 (1978)).

¹² *Fox v. Vice*, *supra* (quoting *Christiansburg Garment Co.*, 434 U.S. at 420).

¹³ See *Doe v. Silsbee Indep. Sch. Dist.*, 440 Fed. App'x 421, 425 (5th Cir. 2011) (per curiam) (citing *Lewis v. Brown & Root, Inc.*, 711 F.2d 1287, 1291 (5th Cir. 1983)).

¹⁴ *Fox*, 563 U.S. at 834. In this case, however, the Court's dismissal and rationale for doing so suggests all of Plaintiffs' claims were indeed frivolous.

¹⁵ *Christiansburg Garment Co.*, 434 U.S. at 421.

¹⁶ *Walker v. City of Bogalusa*, 168 F.3d 237, 240 (5th Cir. 1999) (quoting *Plemer v. Parsons-Gilbane*, 713 F.2d 1127, 1140-41 (5th Cir. 1983)).

¹⁷ *Myers v. City of W. Monroe*, 211 F.3d 289, 292 (5th Cir. 2000).

guideposts the district court utilizes to determine frivolousness on a case-by-case basis.¹⁸

B. Each of the Myers Factors Favors an Award of Attorneys' Fees to the City.

Plaintiffs failed to establish a prima facie case because their deficient pleadings doomed their case before it even got to the evidentiary stage. In *Pechon v. Louisiana Dep't of Health and Hospitals*,¹⁹ this Court awarded attorneys' fees after finding that the matter “has been resolved on pretrial motion demonstrating the failure to state a claim, or a prima facie case” in plaintiff's complaint.

While a decision regarding settlement may be a factor in some cases, the Fifth Circuit has found that the decision of a municipal defendant not to settle claims “is of questionable value in determining whether the plaintiff's claims are frivolous.”²⁰ In any event, while the City did participate in a day-long settlement conference before Magistrate Judge Dossier, it never made any offer to settle.²¹

As to the third factor, as the Court is aware, the Court did not conduct a trial, as the Plaintiffs' pleadings failed to set forth facts entitling Plaintiffs to relief, and the Court concluded that they would not be able to amend their pleading to do so.

While *Myers* set forth three specific guideposts for the court to consider in determining whether a plaintiff's claims were frivolous, the Fifth Circuit jurisprudence is clear to the effect that courts may consider other factors, including consideration of the case as a whole, to determine if

¹⁸ *Silsbee Indep. Sch. Dist.*, 440 Fed. App'x at 425 (quoting *E.E.O.C. v. L.B. Foster Co.*, 123 F.3d 746, 751 (3d Cir. 1997)).

¹⁹ No. 08-0664, 2009 WL 2046766, at *16 (E.D. La. July 14, 2009).

²⁰ *Myers*, 211 F.3d at 292 (noting that the “City may have a policy of rarely settling claims in order to discourage lawsuits”).

²¹ See Minutes at Doc. #58. Indeed, as the City advised the Magistrate Judge, it had no authority to make a settlement offer without the authority of the entire City Council approving any settlement.

the claims were frivolous.²²

In this case, the lack of any response or opposition of the Plaintiff to many of the arguments advanced by the City further illustrates the frivolous nature and the total absence of any factual or legal support for many of their claims. This Court undertook significant effort to highlight such lack of support when it stated:

- For its part, Sucette does not even address the argument that its Louisiana regulatory-takings claim fails for lack of a “recognized species of property right.”²³
- For its part, Sucette does not meaningfully rebut the City’s argument that Sucette fails to plead facts sufficient to plausibly establish a categorical regulatory taking under *Lucas*. In fact, Sucette does not even cite *Lucas*. Nor does Sucette point to any allegations in its complaint that would allow the Court to reasonably infer that the City Council’s rejection of one planned development for the property is equivalent to a permanent denial of all economically beneficial use of the property.²⁴
- Against all of this, Sucette offers only a limited, two-paragraph counterargument that does not convince the Court that any *Penn Central* factor tilts in Sucette’s favor.²⁵
- Sucette does not address the City’s argument that Sucette’s due-process claims fail as a matter of law because Sucette lacks a property interest protected by the Due Process Clause.²⁶

Similarly, with respect to the City’s second Motion to Dismiss, Plaintiffs once again failed to offer a meaningful response, and the complaint offered little to no legal or factual support for the remaining claims:

- Plaintiffs’ complaint fails to plead sufficient facts to establish it was intentionally treated differently from others similarly situated under the CLURO. Plaintiffs allege, without identifying any specific properties, that Defendants “approved prior developments on the same site at much higher residential densities” and “approved commercial uses on nearby

²² See, e.g., *Silsbee*, 440 Fed. App’x at 426: “The district court’s orders show that it considered the three *Myers* factors and then, viewing the H.S.’s case as a whole, made the factual finding that her § 1983 claims were unreasonable.”

²³ Order and Reasons, Doc. #70, pg. 28.

²⁴ *Id.* at pg. 31.

²⁵ *Id.* at pg. 37.

²⁶ *Id.* at pg. 41.

tracts.”²⁷

- Plaintiffs’ sole allegation that identifies a specific comparator is similarly inadequate. . . These allegations fail to establish that the “Pre-Stressed site” is a suitable comparator.²⁸
- Even if Plaintiffs had established a comparator to show they were “intentionally treated differently from others similarly situated,” their claim would still fail under the second prong of the equal protection analysis. Plaintiffs fail to allege “there [was] no rational basis for the difference in treatment.”²⁹
- The many justifications in both the complaint and the meeting minutes ensure that even if Plaintiffs could allege a suitable comparator, Plaintiffs will be unable to amend their complaint to plead facts to show the City’s reasons for denial of their application were irrational. Nor do Plaintiffs even argue they could plead such facts.³⁰

As further evidence of the groundless nature of these claims, Plaintiffs’ arguments in response to the Second Motion to Dismiss were supported by citations to cases that do not exist or that incorrectly quoted from or inaccurately described the facts and holdings.³¹ Such an opposition is indicative of the lack of merit in Plaintiffs’ allegations and legal theories to begin with.

C. Louisiana Federal Courts Have Awarded Attorneys’ Fees under Similar Circumstances.

In *Allen v. Lowe*, Judge Milazzo of this Court awarded attorneys’ fees to the defendant who was successful in obtaining a 12(b)(6) dismissal of plaintiff’s § 1983 claim:

While the Court has no difficulty concluding that Plaintiff’s section 1983 claim was frivolous, the Court must still consider the factors identified by the Fifth Circuit. **The Court has already concluded that Plaintiff failed to plead, must [sic] less prove, facts sufficient to establish a prima facie case.** Additionally, there is no evidence that Defendants ever offered to settle the case, and the Court dismissed the case pursuant to Rule 12(b)6. Accordingly, all of the factors weigh in favor of awarding attorney’s fees.³²

²⁷ Order and Reasons, Doc. #101, pg. 14.

²⁸ *Id.* at pg. 15.

²⁹ *Id.* at pg. 16.

³⁰ *Id.* at pg. 19.

³¹ *Id.* at pg. 20.

³² No. 14-204, 2015 WL 1021695, at *3 (E.D. La. Mar. 9, 2015) (emphasis added).

In *Deramus v. City of Alexandria*,³³ the Western District awarded attorneys' fees to the prevailing defendant after concluding that plaintiffs failed to establish a *prima facie* case, and all claims were dismissed pursuant to motions for summary judgment, some of which plaintiffs failed to oppose. "Thus, we find that plaintiffs' claims were not only without merit, but also frivolous."

The Western District similarly found a petition frivolous in *Butler v. Rapides Foundation*,³⁴ after the defendants prevailed on summary judgment. The Western District found all three of the *Myers* factors satisfied: (1) plaintiff failed to establish a *prima facie* case for his discrimination claims and for his hostile work environment/Title VII claim (2) the defendants never offered to settle the case; and (3) because the case was decided at the summary judgment stage based on the plaintiff's failure to present any credible evidence, the court did not hold a full trial. The court, therefore, concluded that the petition was "utterly without basis in law or in fact such that it was unreasonable, frivolous, groundless or without foundation."³⁵

The instant case is even more compelling. First, even assuming all of the Complaint's factual allegations were true and drawing reasonable inferences in Plaintiffs' favor, Plaintiffs failed to establish a *prima facie* case because they failed to even plead facts plausibly establishing a right to the claimed relief. Second, the City made no settlement offer.³⁶ Finally, Plaintiffs offered no facts or evidence, or even the promise of such evidence, to support any of their claims. The fact that Plaintiffs could not even plead facts supporting their legal theories illustrates that each and every one of their claims was frivolous, without legal or factual support.

³³ No. 1:14-03222, 2016 WL 3040138, at *4 (W.D. La. May 23, 2016).

³⁴ 365 F. Supp. 2d 787 (W.D. La. 2005).

³⁵ *Id.* at 793-94.

³⁶ *See* Exhibit A, Declaration of Paul M. Adkins.

The Fifth Circuit has also upheld attorney’s fee awards in similar circumstances. In *Walker v. City of Bogalusa*,³⁷ the Fifth Circuit affirmed an award of attorneys’ fees after the defendant city prevailed on summary judgment:

A constitutional violation is an essential element of a prima facie § 1983 claim against a municipality.... **In granting summary judgment, the district court held that not only had the Plaintiffs not pointed to or come forward with any evidence of discriminatory purpose, they had also failed to establish even disparate racial impact.** The absence of discriminatory purpose precludes a constitutional violation, which in turn precludes a § 1983 violation. The district court did not abuse its discretion in awarding costs and fees. Plaintiff’s claim was patently frivolous.³⁸

In *Doe v. Silsbee Independent School District*,³⁹ the Fifth Circuit affirmed an award of attorneys’ fees after finding all but one of the plaintiff’s constitutional claims to be frivolous: “We have generally affirmed awards of attorney’s fees where the plaintiff’s civil rights claim lacks a basis in fact or relies on an undisputably meritless legal theory.” Much as in the instant case, plaintiff’s pleadings were woefully deficient and failed to even allege facts supporting critical elements of her claim. As to her equal protection claim, the *Silsbee* plaintiff “alleged no facts indicating that the Defendants were motivated to act against her because of her sex or because she exercised any fundamental rights”⁴⁰; as to her due process claim of a protected liberty interest, plaintiff alleged a liberty interest in freedom from psychological harm, “But it is well-settled that psychological injury *alone* does not constitute a violation of [plaintiff’s] liberty interest in bodily integrity and that freedom from false stigmatization also does not constitute a protected liberty interest”⁴¹; as to her due process claim of a protected property interest, plaintiff “asserted no

³⁷ 168 F.3d 237 (5th Cir. 1999).

³⁸ *Id.* at 240 (emphasis added).

³⁹ 440 Fed. App’x at 425.

⁴⁰ *Id.* at 426.

⁴¹ *Id.*

allegations that she received insufficient process, a critical element of a due process violation.”⁴² The Fifth Circuit affirmed the award of attorneys’ fees incurred relating to each of these claims.⁴³

The Fifth Circuit’s decision in *Silsbee* is instructional in this case. Just like the *Silsbee* plaintiff, Plaintiffs in the instant case failed to plead facts even plausibly showing a violation of any constitutional right. Plaintiffs also outright neglected critical elements of certain claims and did not even attempt to rebut legal arguments relating to certain claims. The instant case is not a case involving any areas of unsettled law or in which the pleading requirements were uncertain. Plaintiffs had no good faith basis to believe that the actions of the City constituted a regulatory taking or deprived them of any protected due process or equal protection rights. “[W]here the plaintiff’s civil rights claim lacks a basis in fact or relies on an undisputably meritless legal theory,” an award of attorneys’ fees is appropriate.

D. This Court Should Exercise its Discretion to Award the City Attorneys’ Fees.

i. Calculation of the Lodestar

As the prevailing party who obtained complete success by having all of Plaintiffs’ claims dismissed pursuant to 12(b)(6) Motions to Dismiss, the City is entitled to an award of attorneys’ fees incurred in the defense of these frivolous claims. This Court has on numerous occasions set forth the criteria for the calculation of such fees, and in that regard, the City need not reinvent the wheel, but simply reminds this Court of the appropriate methodology it has already endorsed:

The first step in determining an appropriate award of attorneys’ fees and costs under § 1988 is the calculation of the “lodestar” by multiplying the number of hours reasonably spent on the litigation by a reasonable hourly billing rate. *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939, 76 L.Ed.2d 40 (1983).

⁴² *Id.*

⁴³ The Fifth Circuit found that plaintiff’s free speech claim, although unsuccessful, had “at least some arguable merit” and remanded the case to the district court to recalculate the award of attorneys’ fees related to only the claims determined to be frivolous.

Inasmuch as the statute allows only for the awarding of a *reasonable* fee as determined by the court, the fee applicant bears the burden of establishing that the hours expended and the billing rate are reasonable. 461 U.S. at 437, 103 S.Ct. at 1941.

To establish that the hours expended are reasonable, “[t]he party seeking attorney’s fees must present adequately documented time records to the court. Using this time as a benchmark, the court should exclude all time that is excessive, duplicative, or inadequately documented. *Hensley*, 461 U.S. at 432–34, 103 S.Ct. at 1939; *Von Clark v. Butler*, 916 F.2d 255, 258 (5th Cir.1990). The hours surviving this vetting process are those reasonably expended on the litigation.” *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir.1993). To determine a reasonable hourly rate, the court must consider the “prevailing market rates in the relevant community”, supported by evidence in the record. *League of United Latin American Citizens # 4552 (LULAC) v. Roscoe Independent School District*, 119 F.3d 1228, 1234 (5th Cir.1997).

In evaluating the reasonableness of the fee request, the court must consider the factors described in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir.1974). The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.⁴⁴

The Fifth Circuit has held that, “of the *Johnson* factors, the court should give special heed to the time and labor involved, the customary fee, the amount involved and the result obtained, and the experience, reputation and ability of counsel.”⁴⁵

ii. The City’s Counsel

The City approved the engagement of James Breaux of the Liskow & Lewis law firm as special counsel for the City in its defense of these claims by resolution of the City Council, and the City entered into an engagement agreement with Liskow & Lewis. The team of Liskow

⁴⁴ *Lalla v. City of New Orleans*, 161 F. Supp. 2d 686, 697 (E.D. La. 2001).

⁴⁵ *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998) (citing *Von Clark v. Butler*, 916 F.2d 255, 258 (5th Cir. 1990)).

attorneys assembled to handle the matter included Paul Adkins, James Breaux, and Clare Bienvenu, all of whom were employed at the time by Liskow & Lewis.⁴⁶ In addition, three Liskow associates⁴⁷ provided support in research and in cite checking not only the City's memoranda, but that of Plaintiffs.

Paul M. Adkins served as Trial Attorney in this case and was responsible for the trial of the case, had such become necessary. Moreover, Mr. Adkins was primarily responsible for strategic and tactical decisions in all aspects of the litigation, including the decision regarding which motions to assert, and was actively involved in the briefing of all motions. Mr. Adkins graduated from LSU Law School, where he was a member of the Louisiana Law Review, and has over 40 years of litigation experience. Mr. Adkins maintains an AV rating with Martindale Hubbell and has been consistently recognized in Best Lawyers for his expertise in commercial and oil and gas litigation. Mr. Adkins' hourly rate for the work performed on behalf of the City was \$375 per hour, which is a discount from his standard hourly rate.⁴⁸

James Breaux provided advice and analysis based upon his experience with planning and zoning issues. In addition to his law degree from Loyola University, where he served as Articles Editor for the Loyola Law Review, he also earned a Master of Urban and Regional Planning degree from the University of New Orleans with a curriculum concentrated in land use and zoning. Mr.

⁴⁶ Mr. Breaux was a Liskow attorney throughout the majority of this time, but effective February 1, 2025, left Liskow to open his own firm in Covington. Even after his departure, however, Mr. Breaux continued to provide advice on planning and zoning issues.

⁴⁷ While two associates, Sheri Corales and Colin North, performed the bulk of this work, the City's counsel found it necessary, based on timeline and availability, to ask associate Katelyn Davis to perform an additional citation check of Plaintiffs' Opposition to Second Motion to Dismiss. This additional check was necessary in order to be certain that representations the City made in its reply brief, regarding cases that did not exist, were incorrectly quoted and/or inaccurately described, were absolutely accurate.

⁴⁸ Mr. Adkins' standard rate during 2023 and 2024 was \$400 per hour, but moved to \$450 per hour effective January 1, 2025.

Breaux has been recognized by Best Lawyers in the area of Real Estate Law. He has over 25 years experience with a practice focused in the areas of commercial real estate and land use and zoning, including representing clients before planning and zoning boards. Mr. Breaux's rate for the City was \$350 per hour, which is a discount from his standard hourly rate.⁴⁹

Clare Bienvenu was to serve as second chair at trial and was also actively involved in drafting the various motions filed in this case. Ms. Bienvenu became a partner with Liskow on January 1, 2024, only a few months after this suit was filed. She is an environmental regulatory and litigation lawyer, and her practice encompasses the legal aspects of project development, including land use and zoning. She has practiced in both Louisiana and California courts. Ms. Bienvenu is individually ranked in Chambers USA 2025, and has been recognized in Best Lawyers for expertise in environmental litigation for the past several years. Ms. Bienvenu graduated *magna cum laude* from Texas A & M with a degree in Civil Engineering and *magna cum laude* from Tulane Law School in 2004. Ms. Bienvenu served as a Law Clerk to the Honorable Richard Ganucheau, Judge, Civil District Court for the Parish of Orleans in 2002 and as a Law Clerk to Administrative Law Judge Richard Mills, U.S. Department of Labor, Office of Administrative Law Judges, from 2004-2006. Ms. Bienvenu's hourly rate for the City was \$325 per hour, which is a discount from her standard hourly rate.⁵⁰

iii. The Hourly Rates of the City's Attorneys Are Reasonable

“‘[R]easonable’ hourly rates ‘are to be calculated according to the prevailing market rates in the relevant community.’”⁵¹ “An attorney’s requested hourly rate is prima facie reasonable when

⁴⁹ Mr. Breaux's standard rates were \$375 during 2023, \$400 during 2024 and \$410 during 2025.

⁵⁰ Ms. Bienvenu's standard rate was \$350 for 2023, \$375 for 2024, and \$400 for 2025.

⁵¹ *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011) (quoting *Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984)).

[he] requests that the lodestar be computed at [his] ‘customary billing rate,’ the rate is within the range of prevailing market rates and the rate is not contested.”⁵² The declarations of the City’s attorneys set forth that each attorney believes that the rate charged to the City is at or below the prevailing market rate in the New Orleans area. Moreover, the City directs the Court to the attorneys’ fees requested by Mr. Zuckerman’s attorneys. The rate charged by Mr. Flanagan, whose experience is comparable to that of Mr. Adkins, is the same \$375 per hour as charged by Mr. Adkins, a rate which Mr. Flanagan notes is “far below the rates [he] has charged private parties during the life of this case (2023-2026) and below the prevailing rates for lawyers of similar experience and ability in the New Orleans area.”⁵³

Sheri Corales and Colin North are both Liskow associates who also assisted in this matter, primarily helping with research, matters of form and local rules, and cite checking the memoranda of the City and of Plaintiffs. Ms. Corales graduated from Loyola University New Orleans College of Law in 2017 where she served as a member of *Loyola Law Review*, Moot Court, and Vice President of the Association of Women Law Students. She then served as a federal judicial law clerk to the Honorable Kurt D. Engelhardt of the United States Court of Appeals for the Fifth Circuit. Mr. North received his Juris Doctor and Graduate Diploma in Comparative Law, *magna cum laude*, from the Paul M. Hebert Law Center, Louisiana State University in 2023. During law school, he was a member of the Board of Advocates and participated in the Robert Lee Tullis Moot Court Competition. Katelyn Davis, a young attorney who graduated in 2024, also conducted

⁵² *White v. Imperial Adjustment Corp.*, No. 99-3804, 2005 WL 1578810, at *5 (E.D. La. June 28, 2005) (citing *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 328 (5th Cir. 1995)). Counsel for the City does not know at this time whether Plaintiffs will contest the reasonableness of the rates charged by the City’s counsel.

⁵³ Memorandum in Support of Renewed Motion for Attorney’s Fees, Doc. #107, pg. 10.

limited research work in verifying that citations in Plaintiffs' Opposition to Second Motion to Dismiss were inaccurate. The rate charged by Ms. Corales was \$245 per hour, which is the same rate charged by Ms. Guidry.⁵⁴ Mr. North and Ms. Davis were billed at \$250 per hour.⁵⁵

While the rates charged by counsel for Mr. Zuckerman's counsel confirm that the rates charged by the Liskow attorneys are reasonable, this Court has adequate experience to make that determination even without supporting declarations.

In *MGMTL, LLC v. Strategic Tech. Inst., Inc.*,⁵⁶ this court noted that “[p]revailing market rates in this community generally range from \$200 to \$400 per hour depending on the attorney’s level of experience.”⁵⁷ Moreover, where a party does not offer affidavits from other attorneys regarding prevailing market rates, “the Fifth Circuit has recognized that the district court ‘is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of testimony of witnesses as to value.’”⁵⁸

A cursory review of attorneys’ fee awards in other cases before this Court establishes that the rates charged by the City’s attorneys are more than reasonable. In *MGMTL*, this Court considered the reasonableness of attorneys’ fees in a copyright infringement and breach of contract case. The Court found that the rates of Harold Flanagan, an attorney with 28 years of experience,

⁵⁴ The June 2025 invoice reflects Ms. Corales’ rate as \$250/hour, which was an appropriate adjustment based upon rate increases over time.

⁵⁵ On the November 2023 invoice, due to a clerical error, Mr. North’s rate was billed at \$275/hour. However, the City issued “no charge” for a large portion of Mr. North’s time on this invoice, which more than covered the discrepancy

⁵⁶ 776 F. Supp. 3d 419 (E.D. La. 2025).

⁵⁷ *Id.* at 446 (citing *Nelson v. Constant*, Civ. A. No. 17-14581, 2021 WL 76407, at *3 (E.D. La. Jan. 8, 2021) (van Meerveld, M.J.) (citing authority)).

⁵⁸ *Id.* (citing *Campbell v. Green*, 112 F.2d 143, 144 (5th Cir. 1940) (citing authority)).

more than 10 years fewer than that of Mr. Adkins, ranging between \$475-\$520 per hour were not reasonable, and reduced those rates to \$450-\$480 per hour. The court further found that the reasonable rate for an attorney with 11 years of experience ranged from \$250-\$275 per hour. (Ms. Bienvenu had some 19 years of experience during the time she worked on this matter.)

In *Archer W. Contractors, L.L.C. v. McDonnell Grp., L.L.C.*,⁵⁹ this Court reduced the requested rates of the attorneys involved in a contract dispute. Most significantly, the Court examined the rates of three attorneys from the New Orleans firm of Phelps Dunbar, which requested rates ranged from \$455 per hour for a senior partner to \$260 per hour for an associate who had two years of experience when that case began. This Court found that the requested rates of Mr. Lund, who had 36 years of experience and billed at \$455.00/hour, and of Mr. Richeson, who had some 30 years of experience and billed at \$345.00/hour “are both in line with other similar awards in this District.” The Court further approved a rate of \$230 per hour for an associate with two to four years of experience during the time she worked on the case.

iv. The Amount of Time Spent in Defense of the Case was Reasonable

The party seeking the fee bears the burden of documenting and supporting the reasonableness of all time expenditures for which compensation is sought. “Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, and otherwise unnecessary....”⁶⁰

Complete copies of the invoices which the City paid are attached to the affidavits of the City’s counsel. Initially, as each bill was prepared, the reviewing attorney exercised his discretion and either deleted entries or reduced time for any charges he felt were excessive, duplicative, or

⁵⁹ No. 22-5323, 2025 WL 2088911 (E.D. La. July 9, 2025).

⁶⁰ *Hensley*, 461 U.S at 434.

simply not warranted based upon the nature of the work. The City does not believe any of the time reflected on the attached invoices and spent in defense of these claims was redundant or unnecessary.⁶¹

The hourly rates and amount of time expended in defense of this claim are reasonable. Although the case did not involve novel legal theories or unsettled law, Plaintiffs filed a 144-paragraph complaint, asserting eight different counts, including state and federal constitutional regulatory taking and federal due process and equal protection violations. As this Court is well aware, these claims are fact sensitive and the jurisprudence relating to these constitutional claims against government bodies is voluminous and quite nuanced. The City's counsel justifiably spent numerous hours both researching the law in support of its motions, as well as in responding to the arguments of Plaintiffs.

The City's memorandum and reply memorandum in support of its first motion to dismiss collectively comprised 34 pages, while the memorandum and reply in support of the second motion to dismiss collectively comprised another 36 pages. While page count is not always indicative of effort, in this instance, disproving the viability of eight complex claims required such volume and is indicative of the labor involved in the task.

Further, the factual background of the lawsuit was voluminous. The analysis of Plaintiffs' claims required a thorough review of the minutes from six different meetings of the Planning and Zoning Commission, as well as from nine different City Council meetings. These minutes contained extensive analysis of the various proposals and changes to the proposed development,

⁶¹ The only amounts that the City feels is arguably redundant was the time spent attempting to locate and or distinguish the hallucinatory and/or inaccurate analysis set forth in Plaintiffs' Opposition to the City's Second Motion to Dismiss. Once it appeared that Plaintiffs' citations were erroneous, lead counsel for the City tasked multiple associates to confirm his suspicions.

as well as lengthy recitals of the public comments. The factual record reflects that this was not a simple permit denial, but in essence the dominant business of the commission and council for more than a year. Perhaps most significantly, the CLURO itself is an incredibly complex 415 page document, which is unlike any zoning rules and regulations of any other local governmental entity, and thus required extensive analysis to determine how it applied to Plaintiffs' claims.⁶² The amount of time spent in defense of Plaintiffs' frivolous claims was reasonable.

v. Additional Factors Relating to the Fee Award

In *Migis*, the Fifth Circuit found that special heed should be given, in addition to the factors involved, but the amount involved and the result obtained.⁶³ In their Complaint, Plaintiffs suggest the construction costs of this project would have been some \$75 million in material costs.⁶⁴ In the following paragraph, they contend their economic damages include the loss of land value, lost profits, actual costs and expenses, and attorneys' fees. While Plaintiffs do not assign a specific dollar value to these damages, suffice it to say it would have been substantial.

The City contends, however, that the dollar amount alone at issue in this case does not adequately measure the importance of this case. The Planning and Zoning Commission conducted six public hearing on the proposed Sucette Harbor development. The members of the Commission spent hundreds of hours of time meeting with the developers and in preparing for those meetings. Thereafter, the City Council conducted nine additional public hearings on the proposed project, once again requiring the devotion of substantial resources to the project. Those public meetings

⁶² Indeed, Plaintiffs concede that "The CLURO is a complicated document that requires intense reading to determine how its various provisions interact and are reconciled from a legal standpoint." Complaint, Doc. #1, par. 23. That paragraph goes on to concede "The CLURO's nuances can be confusing."

⁶³ *Migis*, 135 F.3d at 1047.

⁶⁴ Doc. #1, par. 74.

were attended by numerous residents on both sides of the issue. Plaintiffs' initial application occurred on August 8, 2022⁶⁵ while the final vote of the Council denying the application occurred on September 5, 2023. For more than one year, the proposed project dominated the work of the Planning Commission and Council, not to mention the attention of the public.

Finally, the litigation related to the project has continued to occupy the public's interest in protecting development in the City of Mandeville. As the Court will recall, a group of 14 resident attempted to intervene in this case "to protect their legally protectable interests in opposing the proposed Sucette Harbor Development so as to preserve the residential character of the City of Mandeville...."⁶⁶ Suffice it to say, the concern of the City and its residents over the attempts to change the character of the City of Mandeville by the construction of this multi-purpose development simply cannot be measured in money.

Insofar as the result obtained, the Court's rulings speak for themselves. The City obtained a complete dismissal of all of Plaintiffs' claims, with prejudice.

III. CONCLUSION

While the City recognizes that the Fifth Circuit has set a high bar for the defendant in a §1983 action to recover an award of attorneys' fees, that bar has been reached in this case. "A suit is frivolous if it is "so lacking in arguable merit as to be groundless or without foundation...."⁶⁷ Despite crafting a 144-paragraph complaint, Plaintiffs failed to plead facts plausibly establishing any viable constitutional claim. Further, this Court found that Plaintiffs had not provided any indication that they could even plead sufficient facts or otherwise fix the Complaint's legal flaws.

⁶⁵ Doc. #1, par. 47.

⁶⁶ Motion to Intervene, Doc. #53, pg. 1.

⁶⁷ *Walker v. City of Bogalusa*, 168 F.3d at 240.

Not only did Plaintiffs fail to adequately allege a single constitutional claim, this Court found that based upon the facts of this case they would be unable to do so.

No constitutional claim ever existed in this case, and Plaintiffs' claims were so lacking in arguable merit as to be groundless and without foundation. As this Court recognized, Plaintiffs failed to plead facts satisfying critical elements of certain claims and failed to rebut major legal arguments raised by the City. As a result, the City expended significant resources defending a frivolous lawsuit. This is precisely the scenario Congress sought to protect against in allowing attorney's fee awards in §1983 actions for defendants—the fee and cost awards are intended “to protect defendants from burdensome litigation having no legal or factual basis.”⁶⁸

Plaintiffs' claims in this case never had any factual or legal basis, yet the City was compelled to spend in excess of \$230,000 defending those claims. This Court should exercise its discretion and enter an award in favor of the City for reimbursement of the \$231,844.38⁶⁹ in attorneys' fees and costs it has already paid.

Respectfully Submitted,

/s/ Paul M. Adkins

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⁶⁸ *Fox v. Vice, supra* at fn. 12.

⁶⁹ This amount is a combination of Liskow & Lewis invoices at \$213,084.38 and Breaux Law, LLC invoices at \$18,760. *See* Exhibit A, Declaration of Paul M. Adkins, and Exhibit B, Declaration of James L. Breaux.

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2026 the foregoing was filed electronically using the CM/ECF system which will send notice of electronic filing to all counsel of record.

/s/ Paul M. Adkins