UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WOODWARD HARBOR L.L.C. and LSU HEALTH FOUNDATION NEW ORLEANS	*	**CIVIL ACTION NO. 2:23-CV-05824**
	*	**JUDGE: BRANDON S. LONG**
versus	*	**MAG. JUDGE: EVA J. DOSSIER**
CITY OF MANDEVILLE and JASON ZUCKERMAN, INDIVIDUALLY	*	**DIVISION: O (3)**

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MEMORANDUM IN SUPPORT OF RENEWED MOTION FOR ATTORNEY'S FEES ON BEHALF OF JASON ZUCKERMAN AND CITY OF MANDEVILLE

Defendants Jason Zuckerman and the City of Mandeville provide this memorandum in support of their motion for reasonable attorney's fees. As the "prevailing party," Mr. Zuckerman asks this Court to award him the attorney's fees needed to defeat the plaintiffs' suit against him personally. The City joins this motion, as it was the City that actually paid the attorney's fees incurred in the representation of Councilman Zuckerman. Because the plaintiffs' lawsuit was "frivolous, unreasonable, and without foundation"—which is the governing standard—attorney's fees are warranted under 42 U.S.C. §1988.

I. INTRODUCTION

Prevailing defendants sued in meritless Section 1983 actions have a right to legal fees if the plaintiffs' claims were frivolous, unreasonable, or without foundation. The plaintiffs' aggressive claims against Councilman Jason Zuckerman fall into that category. Mr. Zuckerman's immunity for his acts as a public servant is apparent on the face of the complaint. The plaintiffs were unable to identify any case that would have put Mr. Zuckerman on notice that his voting against their

business interests, along with a unanimous Mandeville City Council, would subject him to personal liability. As explained below, the Court should award Mr. Zuckerman the fees and expenses incurred in defeating these claims. The amount sought is reasonable and supported by evidence.

II. BACKGROUND

A. The plaintiffs sue Mr. Zuckerman in his individual capacity for his actions considering and voting on a proposed development as a Mandeville City Councilmember.

Mr. Zuckerman is an elected member of the Mandeville City Council, which is the legislative body for the City of Mandeville. The plaintiffs sought approval to build a planned development on fifteen acres along Lake Pontchartrain, and that project brought them before the City Council.[1] In total, the plaintiffs wanted to build "[a]n 82 room boutique hotel, with corresponding amenities including a beach front, pool, and event space or ballroom[;] 201 age-restricted apartments[; a] restaurant[; and a] 103 boat marina."[2] After months of public debate and meetings, the City Council unanimously denied approval of the ordinance that would have allowed the plaintiffs' development.[3]

Disappointed with the outcome of the proceedings before the City Council, the plaintiffs sued Mandeville and Mr. Zuckerman in October 2023.[4] They asserted eight claims: (1) judicial review and declaratory relief that the plaintiffs' development plans are appropriate, (2) alternative declaratory relief that Mr. Zuckerman improperly calculated density, (3) an inverse condemnation claim under the Fifth and Fourteenth Amendments to the United States Constitution, (4) an

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1 R. Doc. 1 ¶ 1.

2 *Id.* ¶ 19.

3 *Id.* ¶ 72.

4 *Id.*

unconstitutional taking claim under the Louisiana Constitution and state law, (5) a substantive due process claim for denial of the proposed project, (6) a denial of procedural due process claim, (7) a denial of equal protection claim, (8) and claims against Mr. Zuckerman in his individual capacity under 42 U.S.C. § 1983.[5] Additionally, recognizing the role of fee-shifting, the plaintiffs sought an award of reasonable attorney's fees under 42 U.S.C. § 1988.[6]

Mr. Zuckerman moved to dismiss all claims asserted against him.[7] He asserted that he is entitled to absolute legislative immunity and qualified immunity under federal and state law (because the plaintiffs asserted both federal and state claims).[8] The plaintiffs opposed the motion with a 25-page memorandum, [9] and Mr. Zuckerman replied in further support of his motion.[10]

While that motion was pending, Mr. Zuckerman had to participate in the litigation. In compliance with the Court's December 20, 2024 order, Mr. Zuckerman drafted a status report, prepared for a conference with the Court by reviewing the arguments and authorities in the then-pending Rule 12 motion, and participated in that conference. [11] Later, in compliance with this Court's January 31, 2025 order,[12] Mr. Zuckerman prepared for (with position papers and client meetings) and participated in an in-person settlement conference with Magistrate Judge Dossier.[13]

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5 *Id.* ¶¶ 92–144.

6 *Id.* ¶¶ 138–44.

7 R. Doc. 15.

8 *Id.* ¶¶ 3–5.

9 R. Doc. 30.

10 R. Doc. 38. The plaintiffs sought leave to file a sur-reply in further opposition (ECF No. 39), but their request was denied (ECF No. 40).

11 R. Doc. 46.

12 R. Doc. 47.

13 R. Doc. 58.

The settlement conference was unsuccessful through no fault of the Magistrate Judge.[14]

B. Mr. Zuckerman prevails; this Court dismisses all claims against Mr. Zuckerman with prejudice.

Weeks after the settlement conference, this Court granted Mr. Zuckerman's motion to dismiss. It found that the plaintiffs "have not met their burden to plead facts sufficient to overcome [Mr.] Zuckerman's qualified-immunity defenses under federal and Louisiana law. So they fail to state any claims against him."[15] In so holding, this Court noted that the plaintiffs "paint[] one member of the Mandeville City Council—Defendant Jason Zuckerman—as the Sucette Harbor Project's chief antagonist."[16] But the plaintiffs did not "plead facts—not mere legal conclusions—sufficient to overcome [Mr.] Zuckerman's properly raised qualified-immunity defense."[17] Despite the central role of precedent in the qualified-immunity arena, the plaintiffs "'fail to cite any case that governs the facts here and holds that sufficiently similar conduct violates the Constitution.' More specifically, [the plaintiffs] cite[] no published Fifth Circuit case, or any Supreme Court opinion, holding that a councilmember violated a property owner's or property developer's statutory or constitutional rights in the course of considering, and voting on, a proposed commercial development through conduct that remotely resembles Mr. Zuckerman's alleged conduct here."[18] This Court recognized that the cases the plaintiffs did cite have nothing to do with these facts.[19]

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14 *Id.*

15 R. Doc. 69 at p. 1.

16 *Id.* at p. 3.

17 *Id.* at p. 10.

18 *Id.* at pp. 13–14 (citation and footnotes omitted; quoting *Bakutis v. Dean*, 129 F.4th 299, 305 (5th Cir. 2025).

19 *Id.* at p. 14 (The plaintiffs "next invoke[] [t]here fundamental Louisiana Supreme Court zoning decisions' that [the plaintiffs] say[] clearly establish the law. But none does") (quoting R. Doc. 30 at p. 17); *id.* at p. 15 ("None of them provides fair warning that [Mr.] Zuckerman's alleged conduct

This Court also denied the plaintiffs' "bare footnoted request" to amend.[20] Beyond procedural failings, leave to amend was denied because the plaintiffs gave "no indication that [they] could plead facts sufficient to overcome [Mr.] Zuckerman's qualified-immunity defenses."[21] Further, the plaintiffs "failed to cite any precedent of any court that clearly established the unlawfulness of [Mr.] Zuckerman's particular alleged conduct."[22] In other words, Plaintiffs could cite no factual or legal support for their claims against Mr. Zuckerman individually, but they nevertheless chose to include him as a defendant. All claims against Mr. Zuckerman were dismissed with prejudice.[23]

C. The defendants move for reasonable attorney's fees; the plaintiffs oppose, but do not object to the amount sought in the motion.

Mr. Zuckerman previously moved for fees.[24] Because it was obligated to pay his fees, the City joined in the motion.[25] The parties sought $42,926.18 in fees and $2,321.87 in costs.[26] The plaintiffs opposed the request but focused their arguments on their belief that the motion was

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violated the U.S. Constitution because none of them involves conduct remotely resembling [Mr.] Zuckerman's alleged conduct here. [The plaintiffs'] state cases involve constitutional challenges to zoning ordinances; none considers the individual-capacity liability of one member of a multi-member legislative or quasi-legislative body for constitutional violations the member allegedly committed through the evaluation of, and vote against, an ordinance for a proposed commercial development."); *id.* ("The facts presented there are nothing like the facts alleged here. [The plaintiffs'] second case—*Modica*—is as far afield as its first."); *id.* at p. 16 ("To describe *Modica* is to distinguish it from this regulatory takings case.").

20 *Id.* at p. 18.

21 *Id.* at pp. 18–19.

22 *Id.* at p. 19.

23 *Id.*

24 R. Doc. 75.

25 *Id.*

26 *Id.*

premature.[27] The plaintiffs made no objection to the *amounts* sought in the original motion.[28]

D. The Court denies the previous motion without prejudice and invites a re-urged motion; the defendants accept that invitation.

On February 5, 2026, this Court denied the motion for attorney's fees without prejudice.[29] It allowed the parties to renew their motion after the entry of a final judgment.[30] The Court issued final judgment that same day, so the request for attorney's fees is ripe. And though Mr. Zuckerman incurred additional fees since the filing of his original motion, the movers have elected not to seek those additional amounts on this application. That said, should the defendants contest this application or appeal (whether on the immunity ground or a future fee award), Mr. Zuckerman reserves the right to seek those additional expenses later.

III. LAW AND ARGUMENT

A. Mr. Zuckerman is the prevailing party.

42 U.S.C. § 1988 provides that "[i]n any action or proceeding to enforce a provision of" 42 U.S.C. § 1983, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." "A party 'prevails' when a court conclusively resolves his claim by granting enduring relief on the merits that alters the legal relationship between the parties."[31] The Fifth Circuit has "established that 'a dismissal with prejudice is tantamount to a judgment on

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27 R. Doc. 78.

28 R. Doc. 80 (pointing out the plaintiffs' failure to object and stating: "Although plaintiffs argue against the award of attorney's fees, they do not contest the amount of fees and costs sought in this case. If this Court grants attorney's fees, it should award the full amount requested by Mr. Zuckerman: $42,926.18 in fees and $2,321.87 in costs.").

29 R. Doc. 101 at p. 23.

30 *Id.*

31 *Lackey v. Stinnie*, 604 U.S. 192, 207 (2025).

the merits' and renders a defendant the prevailing party for the purpose of allocating costs."[32] Mr. Zuckerman's dismissal with prejudice conclusively resolves the case against him. Under § 1988, Mr. Zuckerman is the "prevailing party."

B. Mr. Zuckerman is entitled to attorney's fees because the plaintiffs' suit against him, personally, was objectively meritless.

The rules for fee awards differ based on which side is requesting them. A prevailing *defendant* is entitled to a fee award "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation."[33] The inquiry is an objective one. "A claim is frivolous under § 1988 if it is not 'colorable' and lacks 'arguable merit.'"[34] "To make that determination, "a district court may consider various 'factors,' such as, *inter alia*, whether the plaintiff 'established a prima facie case' or whether the claims were foreclosed by 'squarely controlling precedent.'"[35] "[T]he purpose of § 1988 is not only to encourage potentially meritorious civil-rights suits, but also to discourage frivolous suits."[36] Consider a few examples from the Fifth Circuit.

First, a district court did not abuse its discretion in awarding attorney's fees under § 1988 when the plaintiff's claim was time-barred.[37] The Fifth Circuit explained that the "the one-year

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32 *U.S. ex rel. Long v. GSDMIdea City, L.L.C.*, 807 F.3d 125, 128 (5th Cir. 2015) (quoting *Schwarz v. Folloder*, 767 F.2d 125, 130 (5th Cir. 1985)).

33 *Haygood v. Morrison*, 116 F. 4th 439, 444 (5th Cir. 2024) (quoting *Fox v. Vice*, 563 U.S. 826, 833 (2011)).

34 *Id.* (quoting *Vaughan v. Lewisville Indep. Sch. Dist.*, 62 F. 4th 199, 204 (5th Cir. 2023)).

35 *Id.* at 444–45 (quoting *Vaughan*, 62 F. 4th at 204–05).

36 *DeLeon v. City of Haltom*, 113 F. App'x 577, 578 (5th Cir. 2004).

37 *Haygood*, 116 F. 4th at 446.

limitations began to run on September 26, 2011, and the district court did not err in finding that the February 13, 2013, federal complaint was so clearly time-barred that is lacked arguable merit."[38]

Second, the district court did not abuse its discretion in awarding attorney's fees when the plaintiff's case "lacked a factual basis."[39] In that case, police officers did not lack probable cause to arrest when the plaintiff "admitted to officers that he shot [an individual] and that bystanders identified him as the shooter."[40]

Third, a district court did not abuse its discretion in awarding attorney's fees when it "found that even when all allegations in the complaint were taken as true, they 'fell far short of what is necessary to state a claim under § 1983.'"[41]

And finally, a district court did not err in finding a suit was frivolous because the defendant "was unequivocally protected from liability by absolute judicial immunity."[42]

Here, the lawsuit against Mr. Zuckerman was not colorable. This Court held that Mr. Zuckerman was entitled to qualified immunity. That means that the plaintiffs' lawsuit was meritless

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38 *Id.*

39 *Loftin v. City of Prentiss*, 33 F. 4th 774, 783 (5th Cir. 2022).

40 *Id.*

41 *Broyles v. Texas*, 381 F. App'x 370, 373 (5th Cir. 2010); *see also Bowles v. Harris Cnty.*, 58 F. App'x 596, 596 (5th Cir. 2003) ("It is well within the district court's discretion to grant attorney's fees to prevailing defendants in § 1983 litigation where the plaintiff fails to make out a prima facie case."); *see also Montelepre v. Greater New Orleans Expressway Comm'n*, No. 08-3857, 2009 WL 2176057, at *1 (E.D. La. July 20, 2009) ("Despite a paucity of legal and factual support for his claim of double jeopardy, plaintiff nevertheless opposed the Motion for Judgment on the Pleadings."); *Jumonville v. City of Kenner*, No. 06-4022, 2008 WL 1805434, at *1 (E.D. La. Apr. 18, 2008) ("Jumonville did not allege grounds for her § 1983 claim because she did not identity an ordinance, regulation, or a well-settled custom or policy in violation of her constitutional rights.").

42 *DeLeon v. City of Haltom*, 113 F. App'x 577, 578 (5th Cir. 2004).

even without considering the evidence refuting their allegations. The plaintiffs could point to no case in support of their position. Even amending their complaint would have been futile.

C. Mr. Zuckerman's requested attorney's fees are reasonable and appropriate.

Assessing the amount of reasonable attorney's fees is a two-step process. First, "the district court must determine the reasonable number of hours expended on the litigation and reasonable hourly rates for the participating lawyers."[43] A reasonable hourly rate "is 'computed according to the prevailing market rates in the relevant legal market.'"[44] And, second, "the district court must multiply the reasonable hours by the reasonable hourly rates."[45] Together, "the product of this multiplication is the lodestar, which the district court then either accepts or adjusts upward or downward, depending on the circumstances of the case."[46] In deciding whether to adjust the lodestar, the court should consider the twelve *Johnson* factors.[47] In weighing the *Johnson* factors, "the most critical factor is the degree of success obtained."[48]

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43 *La. Pow. & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995).

44 *Holmes v. Reddoch*, No. 19-12749, 2024 WL 4989454, at *3 (E.D. La. Dec. 5, 2024) (quoting *Hopwood v. Texas*, 236 F.3d 256, 281 (5th Cir. 2000)).

45 *La. Pow. & Light Co.*, 50 F.3d at 324.

46 *Id.*

47 *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The factors are: "(1) the time and labor required to represent the client or clients; (2) the novelty and difficulty of the issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Sazion v. Delta Concrete Prods. Co., Inc.*, 448 F.3d 795, 800 n.18 (5th Cir. 2006).

48 *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Flanagan Partners LLP represented Mr. Zuckerman through attorneys Thomas Flanagan and Kansas Guidry.[49] The lead attorney, Thomas Flanagan, is a 1989 summa cum laude graduate of Tulane Law School, a former clerk on the U.S. Fifth Circuit Court of Appeals, an adjunct professor at Tulane Law School, and a veteran litigator in complex cases.[50] His declaration and professional biography are attached. Mr. Flanagan charged a reduced rate because his client was a public official.[51] Indeed, the City of Mandeville is paying Mr. Zuckerman's fees in this matter. That rate—$375/hr.—is far below the rates Mr. Flanagan 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.[52] Courts have blessed rates in the range of Mr. Flanagan's.[53] Mr. Flanagan personally reviewed the billing statements and removed entries for certain tasks (shown by redactions on the statements), leaving only those that plainly should be the subject of a fee award.[54]

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49 Additionally, Anders F. Holmgren is enrolled in this case, but Mr. Zuckerman is not seeking fees for the minimal time he spent on this litigation.

50 Exh. A, Flanagan Declaration, ¶¶ 1–2.

51 *Id.* ¶¶ 6–7.

52 *Id.* ¶ 7.

53 *Oreck Direct, LLC v. Dyson, Inc.*, No. 07-2744, 2009 WL 1649503, at *4 (E.D. La. June 8, 2009) ("As the Court stated in its previous order, the Court is familiar with the local legal market and knows that the top rate for partner-level attorneys here is between $400 and $450 per hour."); *see also Altier v. Worlet Catastrophe Response, LLC*, No. 11-241, 2012 WL 161824, at *22 (E.D. La. Jan. 18, 2012) (finding reasonable in 2012 the "hourly rates for [two] plaintiffs' attorneys," who charged $400 and $375 per hour respectively.").

54 Exh. A, Flanagan Declaration, ¶ 10. For example, Mr. Zuckerman deducted time spent by law clerks who assisted in researching the case and the time spent by partner Anders F. Holmgren in his initial evaluation of the case.

Ms. Guidry is an associate of Flanagan Partners.[55] She graduated *summa cum laude* from Tulane Law School in 2020 where she served as editor-in-chief of the *Tulane Law Review*.[56] She clerked for the Honorable Jacques L. Wiener, Jr. of the U.S. Fifth Circuit Court of Appeals and, before that, the Honorable Barry W. Ashe of the United States District Court for the Eastern District of Louisiana.[57] Courts have blessed similar fees in the range of Ms. Guidry's, and her rates for this matter are below what the firm typically charged its clients for litigation and below rates in the Eastern District for lawyers of her caliber.[58] The vast majority of time spent researching and drafting pleadings was spent by Ms. Guidry, and the amount sought thus reflects her lower rate.

In total, Flanagan Partners' services amounted to $48,821.68 in defending this case. In the process of preparing this motion, Mr. Flanagan exercised his discretion to redact additional charges in the amount of $5,895.50. In total, therefore, Mr. Zuckerman seeks $42,926.18.

"Additionally, it is well settled that, 'under 42 U.S.C. § 1988, a prevailing party may also recover '[a]ll reasonable out-of-pocket expenses, including charges for photocopying, paralegal assistance, travel, and telephone . . . because they are part of the costs normally charged to a fee-paying client.'"[59] Mr. Flanagan exercised his discretion to deduct $652.81 in Westlaw-related charges. Mr. Zuckerman's costs in the amount of $2,321.87 should also be awarded.

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55 Exh. B, Guidry Declaration, ¶ 5.

56 *Id.* ¶¶ 1–2.

57 *Id.* ¶ 3.

58 *Johnson v. Big Lots Stores, Inc.* is a 2009 case that approved a billing rate of $225 per hour for an associate. 639 F. Supp. 2d 696, 702 (E.D. La. 2009).

59 *Holmes v. Reddoch*, No. 19-12749, 2024 WL 4989454, at *3 (E.D. La. Dec. 5, 2024) (quoting *DeLeon v. Abbott*, 687 F. App'x 340, 342 (5th Cir. 2017)).

D. The City of Mandeville joins this motion.

The City of Mandeville joins in this motion to preclude any argument that Mr. Zuckerman did not personally incur the attorney's fees at issue. While the City was more than willing to assist in the defense of the frivolous claims against Mr. Zuckerman, that decision was not completely voluntary, and in fact is compelled by an ordinance of the City of Mandeville.

Section 2-6 of the Code of Ordinances of the City of Mandeville provides, in part, as follows:

Sec. 2-6. Indemnity.

> (a) *Indemnification—Limitation.* The City of Mandeville shall indemnify, hold harmless, and defend city employees, officers, and officials, including council members and members of boards and commissions established by this Code, from any claim or cause of action arising from the good faith performance of duties within the scope of their employment or official capacity and in a manner he or she reasonably believed to be in the best interests of the City of Mandeville. The city shall retain the right to select counsel for the purpose of such defense. Officials or employees may select their own counsel at their own expense. It is the intent of this section to encourage public service by protecting officials and employees from personal liability in the good faith conduct of city affairs. [60]

As the City is legally obligated to pay for the cost of Mr. Zuckerman's attorney's fees (and has, in fact, paid them), it joins this motion.

IV. CONCLUSION

The plaintiffs had no colorable basis to add Councilman Zuckerman to their lawsuit. It should have been apparent to them that he was immune from suit for discharging the functions for

[60] The indemnity provision contains several exclusions, none of which apply in this case.

which he was elected. Such suits should be discouraged. The Court should award fees and expenses to Mr. Zuckerman and the City as allowed by 42 U.S.C. § 1988.

Respectfully submitted,

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