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February 26, 2024

**VIA CM/ECF**

The Honorable Lydia Kay Griggsby, U.S.D.J.  
U.S. District Court for the District of Maryland  
101 West Lombard Street  
Chambers 5C  
Baltimore, MD 21201

**RE: *Baltimore County Branch of the NAACP, et al. v. Baltimore County, et al.*  
Civil Action No. 1:21-cv-3232-LKG**

Dear Judge Griggsby:

Pursuant to Paragraph II.A.1 & 2 of this Court’s December 28, 2021 Case Management Order, ECF 5, Defendant Baltimore County, Maryland (the “County”) hereby provides notice of its intention to file a Motion to Strike the Declarations of Cyril V. Smith, ECF 105-5, and Mitchell Y. Mirviss, ECF 105-6 (the “Declarations”), attached to Plaintiffs’ Memorandum in Support of their Motion for Attorneys’ Fees and Litigation Expenses, or, in the alternative, a Motion for Entry of Scheduling Order Relating to the Disclosure of Experts on Attorneys’ Fees.

As this Court is aware, Appendix B of this Court’s Local Rules, entitled Rules and Guidelines for Determining Attorneys’ Fees in Certain Cases (the “Guidelines”), sets the presumptively reasonable rates and fee ranges for requests for attorneys’ fees in this Court.

Here, Plaintiffs request rates higher than those set forth in the Guidelines and seek fees for work performed inconsistent with the standards set forth in the Guidelines. Plaintiffs submitted the Declarations in support of that request. The Declarations, however, should be stricken because they: (1) are insufficient on their face to overcome the Guidelines’ presumption of reasonableness and (2) provide inadmissible expert opinion untethered to Plaintiffs’ actual billing records. *See* Fed. R. Evid. 702 (expert opinion admissible only if it “will help the trier of fact”); Fed. R. Civ. P. 56(c)(4) (declarations must “set out facts that would be admissible in evidence and show that the affiant or declarant is competent to testify on the matters stated”).

First, the Declarations on their face fail to rebut the presumption that “the guideline rates are more representative of a broader range of fees charged by practitioners appearing in federal court in Maryland.” *Reyazuddin v. Montgomery Cnty., Maryland*, No. CV DKC 11-951, 2022 WL 4608331, at \*12 (D. Md. Sept. 30, 2022) \*12 (citations omitted) (in case against another county in

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Maryland, applying Guidelines and other considerations, including degree of success, in reducing BGL and its co-counsel's requested fees through trial from \$1,672,575 to \$782,390). Judge Chasanow recently explained:

[Plaintiff] must provide “specific evidence” that those rates match the market for the type of work for which [s]he seeks an award. [Plaintiff's] evidence is not sufficiently specific. While she provides affidavits from local attorneys, those affidavits merely state that Plaintiff's requested rates as a whole are “generally comparable” to “market rates,” and “in line with” rates charged at another firm. Beyond those generalized statements, [Plaintiff] does not provide specific evidence that local attorneys with experience comparable to [the attorneys in the case] charge the requested rates for comparable work.

*Id.* at \*14; *see also Carrera v. EMD Sales, Inc.*, No. JKB-17-3066, 2021 WL 3856287, at \*6 (D. Md. Aug. 27, 202); *Burley v. Balt. Police Dep't*, No. CV SAG-18-1743, 2020 WL 1984906, at \*4 (D. Md. Apr. 27, 2020) (applying Guidelines and reducing BGL's fee request for motion to compel from \$11,137 to \$3,382.50). Indeed, the declarations submitted here make no effort to explain why a departure from the Guidelines would be justified in this case. Accordingly, these declarations fail to support the fee request for the very reason the declarations in *Reyazuddin* failed—they provide only “generalized statements” that fall far short of the “specific evidence” required to establish market rates in the Fourth Circuit. *Reyazuddin*, 2022 WL 4608331, at \*14.

In addition, at least Mr. Smith's declaration seeks to provide expert opinion on the reasonableness of Plaintiffs' fee petition—the very question this Court must answer. But neither declarant has been qualified as an expert on these matters, nor could they so qualify based on vague and unsupported generalizations. Indeed, neither declarant states that he has reviewed Plaintiffs' billing entries vis-à-vis the Guidelines and therefore cannot opine that “the total fees sought of approximately \$900,000 (plus expenses) are also reasonable and appropriate.” ECF 105-5 ¶ 11.<sup>1</sup>

Accordingly, the Declarations are insufficient and should be stricken.

In the alternative, if the Court is inclined to consider these Declarations, the County respectfully requests that the Court enter an appropriate scheduling order so that the County may designate its own experts and conduct discovery regarding (1) whether the declarant's opinions are based on sufficient facts or data, (2) the reliability of their principles and methods, and (3) whether their opinions reflect a reliable application of principles and methods to the facts of this case. *See Fed. R. Evid.* 702.

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<sup>1</sup> Perhaps not surprisingly, the declaration submitted by Cyril Smith, who worked on the Fee Petition Subcommittee of the Court's Bench-Bar Liaison Committee, which surveyed Maryland firms in 2013 and established the Guideline rates, makes no effort to demonstrate why this Court should permit a departure from the presumptively reasonable rates set forth in the Guidelines or permit billing practices proscribed by the Guidelines.

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We look forward to a conference with your Honor relating to these matters.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ava Lias-Booker". The signature is fluid and cursive, with the first name "Ava" being the most prominent.

Ava Lias-Booker

cc via CM/ECF:

Deborah A. Jeon  
Tierney Peprah  
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