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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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 CARLOS TORRES, on behalf of himself and all :  
 others similarly situated, :  
 :  
 Plaintiffs, : 04 Civ. 3316 (PAC)  
 :  
 -against- : ORDER  
 :  
 GRISTEDE’S OPERATING CORP., et al., :  
 :  
 Defendants. :  
 -----X

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiffs filed this action in 2004 alleging that Defendants willfully failed to record, credit, and compensate similarly situated employees for hours worked in excess of forty hours per week, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., and New York Labor Law (“NYLL”) §§ 650 et seq. In the fall of 2008, Plaintiffs filed two related suits, Amaro v. Gristede’s Operating Corp., No. 08 Civ. 8531, and Barreto v. Gristede’s Operating Corp., No. 08 Civ. 9627, which brought similar wage and hour claims on behalf of individuals who did not opt into this action by the deadline. On June 5, 2009, on the eve of trial, the parties reached a \$3,530,000 settlement on the issue of Plaintiffs’ damages, excluding attorneys’ fees and costs. On June 1, 2010, after further negotiation by the parties, the Court granted preliminary approval of the settlement. On December 21, 2010, after a notice and opt-out period, the Court held a fairness hearing and approved the settlement. Plaintiffs now move for attorneys’ fees in the amount of \$4,026,683.54 and costs in the amount of \$472,369.47. For the reasons discussed, the Court grants Plaintiffs’ motion in part and awards Plaintiffs \$3,415,450.00 in attorneys’ fees and \$442,609.85 in costs.

## DISCUSSION

Under the FLSA and NYLL, a prevailing plaintiff is entitled to recover reasonable attorneys' fees and costs from the defendant. 29 U.S.C. § 216(b); N.Y. Labor Law § 663(1).<sup>1</sup> Defendants concede that Plaintiffs are the prevailing party for purposes of recovering attorneys' fees and costs but dispute the requested amounts.

Courts traditionally determine a fee award based on a "lodestar" calculation, which 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). Although the Second Circuit has since adopted a "presumptively reasonable fee" approach in place of the term "lodestar," see Arbor Hill Concerned Citizens' Neighborhood Ass'n v. County of Albany and Albany Bd. of Elections, 522 F.3d 182, 190 (2d Cir. 2008), the Court must still consider: (1) the number of hours actually spent by counsel and other personnel "that are deemed reasonably necessary to a successful outcome for the client," and (2) a reasonable hourly rate for counsel. See Davis v. City of New York, No. 10 Civ. 699, 2011 WL 4946243, at \*2 (S.D.N.Y. Oct. 18, 2011) (citation omitted). "[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley, 461 U.S. at 437. In light of the purposes underlying fee-shifting statutes, fees sought pursuant to the FLSA "are not to be linked to the dollar value of the claim." Clover v. Shiva Realty of Mulberry, Inc., No. 10 Civ. 1702, 2011 WL 1832581, at \*4 (S.D.N.Y. May 13, 2011). See also Millea, 658 F.3d at 169.

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<sup>1</sup> Contrary to Defendants' position at oral argument, recovery of attorneys' fees under federal and state labor law is not limited to 1/3 of Plaintiffs' recovery. Indeed, the purpose of fee-shifting statutes "is to generate attorneys' fees that are *disproportionate* to the plaintiff's recovery," thereby "assuring that civil rights claims of modest cash value can attract competent counsel." Millea v. Metro-North R.R. Co., 658 F.3d 154, 169 (2d Cir. 2011). Furthermore, Defendants are not third party beneficiaries of Plaintiffs' counsel and Plaintiffs' contingency fee arrangement.

A. Hourly Rates

To determine a reasonable hourly rate under the lodestar method, the Court “looks to the prevailing market rates in the relevant community.” Perdue v. Kenny A., -- U.S. --, 130 S.Ct. 1662, 1672 (2010). The prevailing market rate is “the rate prevailing in the relevant community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” Farbotko v. Clinton County of New York, 433 F.3d 204, 208 (2d Cir. 2005). “The rates used by the court should be current rather than historic hourly rates.” Reiter v. MTA New York City Transit Auth., 457 F.3d 224, 232 (2d Cir. 2006) (internal quotation and citation omitted). The relevant community “is normally the district in which the court sits.” Id.

Plaintiffs are represented by the law firm of Outten & Golden, LLP (“O&G”), which specializes in employment law and wage and hour class actions. Plaintiffs have reduced their full lodestar amount of \$5,293,853 by approximately 25%, and now seek \$4,026,683.54 in fees.<sup>2</sup> Five attorneys account for approximately 75% of the attorney hours billed to Plaintiffs’ case. (Pl’s Mem. at 10.) The proposed hourly rates for these five attorneys are as follows: \$650 for partner Adam T. Klein (reduced from an hourly rate of \$740); \$600 for partner Justin M. Swartz (reduced from an hourly rate of \$675); \$525 for partner Linda A. Neilan; \$400 for associate

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<sup>2</sup> In their initial brief, Plaintiffs sought \$4,652,635.92 in counsel fees, or 12% less than their lodestar. (Pl’s Mem. at 8.) Plaintiffs further reduced this request in their reply brief by an additional 13%, or 978.85 hours, and then applied a 5% reduction to the total, resulting in their request of \$4,026,683.54.

Molly Brooks; and \$225 for associate Douglas C. James.<sup>3</sup> (Id.) In addition to these five attorneys, Plaintiffs seek fees for four additional partners, eleven additional associates, 19 law clerks, 67 paralegals, and three technical support staff members. The following chart shows the breakdown of hours worked, hourly rates requested, and total fees sought for each attorney and non-professional, based on Plaintiffs' revised calculations submitted with their Reply Brief:

NAME	POSITION	YEAR OF LAW SCHOOL GRADUATION	HOURS	RATE REQUESTED	TOTAL
Adam T. Klein	Partner	1990	366.80	\$650.00	\$238,420.00
Justin M. Swartz	Partner	1998	841.75	\$600.00	\$505,050.00
Tarik F. Ajami	Partner	1995	0.30	\$525.00	\$157.50
Linda A. Neilan	Partner	2001	118.65	\$525.00	\$62,291.25
Tammy Marzigliano	Partner	2001	49.20	\$525.00	\$25,830.00
Carmelyn P. Malalis	Partner	2001	35.90	\$525.00	\$18,847.50
Lewis M. Steel	Of Counsel	1963	273.90	\$650.00	\$178,035.00
Nantiya Ruan	Of Counsel	1999	207.50	\$550.00	\$114,125.00
Justin M. Swartz	Associate	1998	1,388.65	\$400.00	\$555,460.00
Tarik F. Ajami	Associate	1995	247.70	\$400.00	\$99,080.00
Linda A. Neilan	Associate	2001	1,137.80	\$400.00	\$455,120.00
Tammy Marzigliano	Associate	2001	148.70	\$400.00	\$59,480.00
Carmelyn P. Malalis	Associate	2001	26.10	\$400.00	\$10,440.00
Anjana Samant	Associate	2001	442.50	\$375.00	\$165,937.50
Cara E. Greene	Associate	2005	41.40	\$375.00	\$15,525.00
Douglas C. James	Associate	2002	628.95	\$225.00	\$141,513.75
Kristen Wander	Associate	2004	77.40	\$350.00	\$27,090.00
Molly Brooks	Associate	2004	1,031.40	\$400.00	\$412,560.00
Mariko Hirose	Associate	2008	137.50	\$290.00	\$39,875.00
Rachel M. Bien	Associate	2005	114.10	\$375.00	\$42,787.50
Tara Lai Quinlan	Associate	2004	93.00	\$375.00	\$34,875.00
Angela Hunt	Law Clerk	N/A	9.40	\$215.00	\$2,021.00
Cameron Banko	Law Clerk	N/A	49.30	\$215.00	\$10,599.50
Cara E. Greene	Law Clerk	N/A	18.70	\$215.00	\$4,020.50

<sup>3</sup> Defendants argue that Plaintiffs improperly applied partner billing rates for 2979.4 hours of work done by five attorneys who were associates during a substantial portion of this case. (Defs' Mem. at 19.) According to Defendants, these attorneys include Justin Swartz, who became a partner in January 2007; Linda Nielan, who became a partner in January 2009; Tammy Marzigliano, who became a partner in January 2009; Tarik Ajami, who became a partner in January 2007; and Carmelyn Malalis, who became a partner in January 2009. (Id. at 18.) Defendants argue that the Court should apply a revised associate hourly billing rate of \$254.38, resulting in a fee of \$757,899.77 for these five attorneys. This amount is revised from an original fee of \$1,670,182.50, or a net reduction of \$912,282.80. In their reply brief, Plaintiffs assert that the Court should disregard the opinions of Defendants' expert, Vincent D'Amelio, CPA, because he relied on time records produced during settlement, which Plaintiffs concede were inaccurate. (Pl's Reply Mem. at 2.) Plaintiffs also assert that they have reduced the billing rates for all work that partners did as associates to the current senior associate rate of \$400. (Swartz Reply Decl. at 2.) This change reduced the original fee request by \$441,369.38. (Pl's Reply Mem. at 1.)

Cristina Gallo	Law Clerk	N/A	12.90	\$215.00	\$2,773.50
Christopher J. Willet	Law Clerk	N/A	10.60	\$215.00	\$2,279.00
Carmel Mushin	Law Clerk	N/A	7.00	\$215.00	\$1,505.00
Delyanne Barros	Law Clerk	N/A	11.00	\$215.00	\$2,365.00
Hollis Pfitsch	Law Clerk	N/A	21.35	\$215.00	\$4,590.25
Jamuna Kelley	Law Clerk	N/A	8.20	\$215.00	\$1,763.00
Jennifer Liu	Law Clerk	N/A	11.90	\$215.00	\$2,558.50
Joseph J. Shepard	Law Clerk	N/A	16.90	\$215.00	\$3,633.50
Laureve Blackstone	Law Clerk	N/A	3.50	\$215.00	\$752.50
Katherine Greenberg	Law Clerk	N/A	72.60	\$215.00	\$15,609.00
Colorado Law Clerk	Law Clerk	N/A	8.00	\$215.00	\$1,720.00
Kristen Wander	Law Clerk	N/A	75.60	\$215.00	\$16,254.00
Rachel Wilhelm	Law Clerk	N/A	23.80	\$215.00	\$5,117.00
Vanessa Conway	Law Clerk	N/A	0.70	\$215.00	\$150.50
Zaid Hydari	Law Clerk	N/A	15.90	\$215.00	\$3,418.50
New York Law Clerk	Law Clerk	N/A	10.00	\$215.00	\$2,150.00
Alicia D. Brooks	Paralegal	N/A	0.70	\$150.00	\$105.00
Andrew Vasquez	Paralegal	N/A	183.65	\$150.00	\$27,547.50
Brian Flannigan	Paralegal	N/A	1.90	\$170.00	\$323.00
Christopher Jurek	Paralegal	N/A	179.60	\$150.00	\$26,940.00
Christopher Boerger	Paralegal	N/A	5.00	\$150.00	\$750.00
Cristina Proodian	Paralegal	N/A	0.50	\$90.00	\$45.00
Cynthia Via	Paralegal	N/A	2.30	\$90.00	\$207.00
Diane Fisher	Paralegal	N/A	0.10	\$90.00	\$9.00
David J. Wall	Paralegal	N/A	3.60	\$150.00	\$540.00
Elizabeth Markey	Paralegal	N/A	15.20	\$150.00	\$2,280.00
Erica Rivera	Paralegal	N/A	0.20	\$90.00	\$18.00
File Clerk	Paralegal	N/A	35.00	\$90.00	\$3,150.00
Fernando Gracia	Paralegal	N/A	2.20	\$185.00	\$407.00
Faith S. Bekermus	Paralegal	N/A	217.90	\$170.00	\$37,043.00
Garrett D. Kaske	Paralegal	N/A	1,313.40	\$150.00	\$197,010.00
Glonic Saint-Aime	Paralegal	N/A	185.75	\$150.00	\$27,862.50
Hector Jacome	Paralegal	N/A	21.10	\$90.00	\$1,899.00
Johnny Cadavid	Paralegal	N/A	2.30	\$90.00	\$207.00
Johanna Echeverria	Paralegal	N/A	249.80	\$150.00	\$37,470.00
Jerrimia A. Garcia	Paralegal	N/A	72.70	\$150.00	\$10,905.00
Jean Herskowitz	Paralegal	N/A	0.20	\$90.00	\$18.00
Jacqueline Ha	Paralegal	N/A	0.30	\$150.00	\$45.00
Jennifer Jung	Paralegal	N/A	48.70	\$175.00	\$8,522.50
Jill Maxwell	Paralegal	N/A	3.00	\$90.00	\$270.00
Jonathan M. Yan	Paralegal	N/A	117.10	\$150.00	\$17,565.00
Jason Prager	Paralegal	N/A	7.90	\$90.00	\$711.00
Jamy Rodriguez	Paralegal	N/A	243.45	\$160.00	\$38,952.00
Jacob W. Mermelstein	Paralegal	N/A	3.00	\$150.00	\$450.00
Jennifer N. Escobar	Paralegal	N/A	1.20	\$150.00	\$180.00
Jenny X. Hoxha	Paralegal	N/A	1.80	\$175.00	\$315.00
James Yu	Paralegal	N/A	330.05	\$150.00	\$49,507.50
Kevin Ayala	Paralegal	N/A	607.50	\$150.00	\$91,125.00

Kristen Cabildo	Paralegal	N/A	105.45	\$160.00	\$16,872.00
Katherine R. Riva	Paralegal	N/A	1.50	\$150.00	\$225.00
Kristen Sisko	Paralegal	N/A	55.00	\$150.00	\$8,250.00
Kim Xhaferi	Paralegal	N/A	6.40	\$150.00	\$960.00
Leila Mokhtarzadeh	Paralegal	N/A	373.65	\$150.00	\$56,047.50
Lena Moy Borgen	Paralegal	N/A	88.00	\$150.00	\$13,200.00
Laura S. Johnson	Paralegal	N/A	0.30	\$185.00	\$55.50
Mary Ann Ragusa	Paralegal	N/A	8.80	\$160.00	\$1,408.00
Melissa B. Francisco	Paralegal	N/A	53.40	\$150.00	\$8,010.00
Marwan F. Sehwal	Paralegal	N/A	24.65	\$160.00	\$3,944.00
Michelle Lee	Paralegal	N/A	250.45	\$150.00	\$37,567.50
Melanie L. Cristol	Paralegal	N/A	299.95	\$150.00	\$44,992.50
Matthew L. Paulson	Paralegal	N/A	22.40	\$150.00	\$3,360.00
Marie Santos	Paralegal	N/A	0.30	\$90.00	\$27.00
Michelle Leung	Paralegal	N/A	160.45	\$150.00	\$24,067.50
Noah B. Koretz	Paralegal	N/A	48.55	\$150.00	\$7,282.50
Olivia J. Quinto	Paralegal	N/A	294.40	\$160.00	\$47,104.00
Piel A. Lora	Paralegal	N/A	76.65	\$150.00	\$11,497.50
Part Time Paralegal	Paralegal	N/A	208.60	\$150.00	\$31,290.00
Rosemary Almonte	Paralegal	N/A	0.60	\$150.00	\$90.00
Ru Juan Li	Paralegal	N/A	54.90	\$90.00	\$4,941.00
Raymonda L. Jones	Paralegal	N/A	5.00	\$90.00	\$450.00
Rita M. Farmer	Paralegal	N/A	5.80	\$160.00	\$928.00
Rosan M. Harriram	Paralegal	N/A	24.70	\$160.00	\$3,952.00
Roseni Plaza	Paralegal	N/A	10.60	\$90.00	\$954.00
Rachel S. Kitson	Paralegal	N/A	2.30	\$160.00	\$368.00
Sara Archila	Paralegal	N/A	2.00	\$90.00	\$180.00
Shante Greene	Paralegal	N/A	2.00	\$90.00	\$180.00
Sarah G. Outten	Paralegal	N/A	1.60	\$90.00	\$144.00
Sara Raisner	Paralegal	N/A	9.10	\$150.00	\$1,365.00
Sarai Sanabria	Paralegal	N/A	24.90	\$90.00	\$2,241.00
Susan Zheng	Paralegal	N/A	108.10	\$160.00	\$17,296.00
TEC	Paralegal	N/A	2.00	\$185.00	\$370.00
Taina Francois	Paralegal	N/A	0.60	\$90.00	\$54.00
William H Graham	Paralegal	N/A	118.90	\$160.00	\$19,024.00
Amel Edmond	Tech Support	N/A	7.20	\$185.00	\$1,332.00
Arron Johnson	Tech Support	N/A	2.00	\$185.00	\$370.00
Michael D. Buckner	Tech Support	N/A	0.30	\$185.00	\$55.50

In support of their proposed hourly rates, Plaintiffs provided the Court with: (1) declarations from Swartz, Klein, and Wayne Outten, founding partner of O&G; (2) redacted retainer agreements from August 2008 through July 2010, which indicate hourly billing rates of \$675 for partner Anne Golden and \$350 for Brooks as of 2010; (3) declarations from employment law attorneys Laura Hoguet, James Finberg, Barry Weprin, Robert Herbst; and (4) a

declaration from Samuel Estreicher, Dwight D. Opperman Professor of Law at New York University School of Law.

“Consistent precedent in the Southern District reveals that rates awarded to experienced civil rights attorneys over the past ten years have ranged from \$250 to \$600, and that rates for associates have ranged from \$200 to \$350, with average awards increasing over time.” Clover, 2011 WL 1832581, at \*5 (quoting Mogavero v. Arms Acres Inc., 03 Civ. 5724, 2010 WL 451045, at \*5 (S.D.N.Y. Feb. 9, 2010). See also id. (awarding rates of \$500 per hour for a partner with approximately 23 years experience in employment law and \$300 for an associate with nearly nine years of experience); Anthony v. Franklin First Financial, LTD., No. 09 Civ. 5578, 2012 WL 546668, at \*2-3 (S.D.N.Y. Feb. 21, 2012) (awarding hourly rate of \$350 to employment law partners who graduated law school in 2001 and 2003 where firm’s clients were regularly charged this rate, but reducing hourly rate of associate with three years of experience from \$225 to \$175); Allende v. Unitech Design, Inc., 783 F. Supp. 2d 509, 514 (S.D.N.Y. 2011) (awarding rates of \$450 for a partner and associate who both graduated law school in 2001, \$275 for an associate who graduated in 2007, and \$125 for law clerks at “well-known and highly respected law firm”); Finch v. New York State Office of Children and Family Servs., No. 04 Civ. 1668, 2012 WL 695419, at \*5 (S.D.N.Y. March 5, 2012) (awarding solo practitioner with 42 years experience in civil rights matters an hourly rate of \$450).

Although courts in this district have awarded hourly rates of \$550 or more, such rates “are reserved for extraordinary attorneys held in unusually high regard by the legal community.” Finch, 2012 WL 695419, at \*5. See also Scott v. City of New York, No. 02 Civ. 9530, 2011 WL 867242, at \*1 n.2, 6 (S.D.N.Y. Mar. 9, 2011), *vacated on other grounds by* 643 F.3d 56 (2d Cir.

2011) (reducing solo practitioner's requested hourly rate, which ranged from \$750 to \$1,000, to \$550 in FLSA collective action with over 10,000 plaintiffs).

Plaintiffs cite Rozell v. Ross-Holst, 576 F. Supp. 2d 527 (S.D.N.Y. 2008), in support of their requested hourly rate. In Rozell, plaintiff retained O&G to represent her in connection with employment discrimination claims under Title VII, state, and local law. Following settlement, plaintiff moved for attorneys' fees in the amount of \$1,428,952.75. Id. at 535. Plaintiffs requested hourly rates of \$675 for partner Kathleen Peratis; \$625 for Lewis Steel, of counsel; \$375 for senior associates; \$275 for junior associates; \$195 for law clerks; and \$150 for paralegals. Id. Magistrate Judge James C. Francis found that recent decisions in this district as well as the "relatively straightforward nature" of plaintiff's case warranted a reduction in O&G's rates. See id. at 546. The court awarded reduced rates of \$600 for O&G partners and counsel; \$350 for senior associates; \$250 for junior associates; \$175 for law clerks; and \$125 for paralegals. See id.

Notwithstanding that the retainer agreements submitted by Plaintiffs indicate that O&G regularly charges its clients hourly rates in excess of \$650 for partners and \$350 for associate time, (Declaration of Wayne Outten, Ex. A), Plaintiffs' requested rates exceed what "a client who wished to pay no more than necessary would be willing to compensate his attorney" for the services provided. Arbor Hill, 522 F.3d at 191. "There is no question that [Plaintiffs] could have induced a capable attorney to undertake [their] representation at rates far lower" than those charged by O&G in this case. See Gurung v. Malhotra, No. 10 Civ. 5086, 2012 WL 983520, at \*11 (S.D.N.Y. March 16, 2012) (reducing proposed hourly rates of \$1,081.60 for partner, \$450 to \$610 for associates, \$435 to 450 for law clerks, and \$373.82 for paralegal, and awarding



FLSA Plaintiff's counsel, Gibson, Dunn & Crutcher, rates of \$450 for partner, \$275 for junior associates, \$150 for law clerks, and \$100 for paralegal); Allende, 783 F. Supp. 2d at 514-15.

Plaintiffs' requested rates of \$215 for law clerks, \$90 to \$185 for paralegals, and \$185 for technical support specialists have no support in the retainer agreements submitted to the Court and are above rates customarily awarded in this district. See Barfield v. New York City Health and Hosp. Corp., 537 F.3d 132, 151 (2d Cir. 2008) (affirming award of \$75 per paralegal hour in FLSA action); Gurung, 2012 WL 983520, at \*12 (awarding FLSA plaintiff \$150 per hour for law clerks and \$100 per hour for paralegals); Allende, 783 F. Supp. 2d at 514-15 (awarding rate of \$125 for law clerks and \$100 for paralegals at "well-known and highly respected" employment law firm).

Based on the experience of Plaintiff's counsel and the rates awarded in this district, Klein and Steel are entitled to recover fees for their work on this case at the rate of \$550 per hour, reduced from their requested rate of \$650 per hour. Swartz's rate is reduced from \$600 to \$500 per hour for work performed on this case while a partner, and from \$400 to \$300 for the hours he billed as an associate. Rates of the remaining O&G partners are reduced from \$525 to \$450 per hour for their work on this case as partners, and from \$400 to \$300 for the hours they billed as associates. Senior Associates with eight or more years of experience (class years 2004 and earlier) are awarded \$300 per hour, reduced from their requested rates of \$370 to \$400.<sup>4</sup> Plaintiffs are entitled to rates of \$275 per hour for junior associates Greene, Hirose and Bein, reduced from their requested rates of \$290 to \$375; \$175 for law clerks, reduced from \$215;

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<sup>4</sup> As Plaintiffs seek a rate of only \$225 for associate Douglas James, the Court will not modify this request.

\$125 for paralegals, reduced from \$150 to \$185<sup>5</sup>; and \$150 for technical support staff, reduced from \$185.

B. Time Expended

Plaintiffs' counsel worked a total of 15,094 hours, including hours worked by law clerks, paralegals, and technical support staff. (Reply Declaration of Justin M. Swartz ("Swartz Reply Decl."), Ex. A.) In their reply, Plaintiffs reduced this total to 14,115.15 hours. (Id.) Defendants contend that Plaintiffs' counsel billed an excessive number of hours on this case due to overstaffing, inaccurate, and duplicative entries. They assert that the Court should reduce Plaintiffs' total number of hours billed by 67.35%. (Defs' Mem. at 14.) Plaintiffs state that in response to these objections, they voluntarily reduced their number of hours billed by approximately 25%, thereby eliminating recovery for: (1) time spent by attorneys who billed fewer than 30 hours to this case; (2) media or press-related work; (3) half of all travel time; (3) asserted "overstaffing" and time spent integrating new attorneys into the case; (4) time spent revising billing entries; and (5) duplicative, vague, or erroneously billed entries. (Swartz Reply Decl. ¶ 5.) The Court notes that much of the work performed by Plaintiffs was due to Defendants' choice of litigation tactics. Given the Defendants' vigorous approach to litigating this case, they cannot now complain as to the amount that Plaintiffs were forced to expend in response. In light of this history, Plaintiffs' proposed hours are reasonable. Accordingly, Plaintiffs are entitled to fees in the amount of \$3,415,450.00, calculated as follows:

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<sup>5</sup> To the extent that Plaintiffs seek an hourly rate of less than \$125 for paralegals, the Court awards the lower rate.

NAME	POSITION	YEAR OF LAW SCHOOL GRADUATION	HOURS	RATE REQUESTED	RATE AWARDED	TOTAL REQUESTED	TOTAL AWARDED
Adam T. Klein	Partner	1990	366.80	\$650.00	\$550.00	\$238,420.00	\$201,740.00
Justin M. Swartz	Partner	1998	841.75	\$600.00	\$500.00	\$505,050.00	\$420,875.00
Tarik F. Ajami	Partner	1995	0.30	\$525.00	\$450.00	\$157.50	\$135.00
Linda A. Neilan	Partner	2001	118.65	\$525.00	\$450.00	\$62,291.25	\$53,392.50
Tammy Marzigliano	Partner	2001	49.20	\$525.00	\$450.00	\$25,830.00	\$22,140.00
Carmelyn P. Malalis	Partner	2001	35.90	\$525.00	\$450.00	\$18,847.50	\$16,155.00
Lewis M. Steel	Of Counsel	1963	273.90	\$650.00	\$550.00	\$178,035.00	\$150,645.00
Nantiya Ruan	Of Counsel	1999	207.50	\$550.00	\$475.00	\$114,125.00	\$98,562.50
Justin M. Swartz	Associate	1998	1,388.65	\$400.00	\$300.00	\$555,460.00	\$416,595.00
Tarik F. Ajami	Associate	1995	247.70	\$400.00	\$300.00	\$99,080.00	\$74,310.00
Linda A. Neilan	Associate	2001	1,137.80	\$400.00	\$300.00	\$455,120.00	\$341,340.00
Tammy Marzigliano	Associate	2001	148.70	\$400.00	\$300.00	\$59,480.00	\$44,610.00
Carmelyn P. Malalis	Associate	2001	26.10	\$400.00	\$300.00	\$10,440.00	\$7,830.00
Anjana Samant	Associate	2001	442.50	\$375.00	\$300.00	\$165,937.50	\$132,750.00
Cara E. Greene	Associate	2005	41.40	\$375.00	\$275.00	\$15,525.00	\$11,385.00
Douglas C. James	Associate	2002	628.95	\$225.00	\$225.00	\$141,513.75	\$141,513.75
Kristen Wander	Associate	2004	77.40	\$350.00	\$300.00	\$27,090.00	\$23,220.00
Molly Brooks	Associate	2004	1,031.40	\$400.00	\$300.00	\$412,560.00	\$309,420.00
Mariko Hirose	Associate	2008	137.50	\$290.00	\$275.00	\$39,875.00	\$37,812.50
Rachel M. Bien	Associate	2005	114.10	\$375.00	\$275.00	\$42,787.50	\$31,377.50
Tara Lai Quinlan	Associate	2004	93.00	\$375.00	\$300.00	\$34,875.00	\$27,900.00
Angela Hunt	Law Clerk	N/A	9.40	\$215.00	\$175.00	\$2,021.00	\$1,645.00
Cameron Banko	Law Clerk	N/A	49.30	\$215.00	\$175.00	\$10,599.50	\$8,627.50
Cara E. Greene	Law Clerk	N/A	18.70	\$215.00	\$175.00	\$4,020.50	\$3,272.50
Cristina Gallo	Law Clerk	N/A	12.90	\$215.00	\$175.00	\$2,773.50	\$2,257.50
Christopher J. Willet	Law Clerk	N/A	10.60	\$215.00	\$175.00	\$2,279.00	\$1,855.00
Carmel Mushin	Law Clerk	N/A	7.00	\$215.00	\$175.00	\$1,505.00	\$1,225.00
Delyanne Barros	Law Clerk	N/A	11.00	\$215.00	\$175.00	\$2,365.00	\$1,925.00
Hollis Pfitsch	Law Clerk	N/A	21.35	\$215.00	\$175.00	\$4,590.25	\$3,736.25
Jamuna Kelley	Law Clerk	N/A	8.20	\$215.00	\$175.00	\$1,763.00	\$1,435.00
Jennifer Liu	Law Clerk	N/A	11.90	\$215.00	\$175.00	\$2,558.50	\$2,082.50
Joseph J. Shepard	Law Clerk	N/A	16.90	\$215.00	\$175.00	\$3,633.50	\$2,957.50
Laureve Blackstone	Law Clerk	N/A	3.50	\$215.00	\$175.00	\$752.50	\$612.50
Katherine Greenberg	Law Clerk	N/A	72.60	\$215.00	\$175.00	\$15,609.00	\$12,705.00
Colorado Law Clerk	Law Clerk	N/A	8.00	\$215.00	\$175.00	\$1,720.00	\$1,400.00
Kristen Wander	Law Clerk	N/A	75.60	\$215.00	\$175.00	\$16,254.00	\$13,230.00

Rachel Wilhelm	Law Clerk	N/A	23.80	\$215.00	\$175.00	\$5,117.00	\$4,165.00
Vanessa Conway	Law Clerk	N/A	0.70	\$215.00	\$175.00	\$150.50	\$122.50
Zaid Hydari	Law Clerk	N/A	15.90	\$215.00	\$175.00	\$3,418.50	\$2,782.50
New York Law Clerk	Law Clerk	N/A	10.00	\$215.00	\$175.00	\$2,150.00	\$1,750.00
Alicia D. Brooks	Paralegal	N/A	0.70	\$150.00	\$125.00	\$105.00	\$87.50
Andrew Vasquez	Paralegal	N/A	183.65	\$150.00	\$125.00	\$27,547.50	\$22,956.25
Brian Flannigan	Paralegal	N/A	1.90	\$170.00	\$125.00	\$323.00	\$237.50
Christopher Jurek	Paralegal	N/A	179.60	\$150.00	\$125.00	\$26,940.00	\$22,450.00
Christopher Boerger	Paralegal	N/A	5.00	\$150.00	\$125.00	\$750.00	\$625.00
Cristina Proodian	Paralegal	N/A	0.50	\$90.00	\$90.00	\$45.00	\$45.00
Cynthia Via	Paralegal	N/A	2.30	\$90.00	\$90.00	\$207.00	\$207.00
Diane Fisher	Paralegal	N/A	0.10	\$90.00	\$90.00	\$9.00	\$9.00
David J. Wall	Paralegal	N/A	3.60	\$150.00	\$125.00	\$540.00	\$450.00
Elizabeth Markey	Paralegal	N/A	15.20	\$150.00	\$125.00	\$2,280.00	\$1,900.00
Erica Rivera	Paralegal	N/A	0.20	\$90.00	\$90.00	\$18.00	\$18.00
File Clerk	Paralegal	N/A	35.00	\$90.00	\$90.00	\$3,150.00	\$3,150.00
Fernando Gracia	Paralegal	N/A	2.20	\$185.00	\$125.00	\$407.00	\$275.00
Faith S. Bekermus	Paralegal	N/A	217.90	\$170.00	\$125.00	\$37,043.00	\$27,237.50
Garrett D. Kaske	Paralegal	N/A	1,313.40	\$150.00	\$125.00	\$197,010.00	\$164,175.00
Glonic Saint-Aime	Paralegal	N/A	185.75	\$150.00	\$125.00	\$27,862.50	\$23,218.75
Hector Jacome	Paralegal	N/A	21.10	\$90.00	\$90.00	\$1,899.00	\$1,899.00
Johnny Cadavid	Paralegal	N/A	2.30	\$90.00	\$90.00	\$207.00	\$207.00
Johanna Echeverria	Paralegal	N/A	249.80	\$150.00	\$125.00	\$37,470.00	\$31,225.00
Jerrimia A. Garcia	Paralegal	N/A	72.70	\$150.00	\$125.00	\$10,905.00	\$9,087.50
Jean Herskowitz	Paralegal	N/A	0.20	\$90.00	\$90.00	\$18.00	\$18.00
Jacqueline Ha	Paralegal	N/A	0.30	\$150.00	\$125.00	\$45.00	\$37.50
Jennifer Jung	Paralegal	N/A	48.70	\$175.00	\$125.00	\$8,522.50	\$6,087.50
Jill Maxwell	Paralegal	N/A	3.00	\$90.00	\$90.00	\$270.00	\$270.00
Jonathan M. Yan	Paralegal	N/A	117.10	\$150.00	\$125.00	\$17,565.00	\$14,637.50
Jason Prager	Paralegal	N/A	7.90	\$90.00	\$90.00	\$711.00	\$711.00
Jamy Rodriguez	Paralegal	N/A	243.45	\$160.00	\$125.00	\$38,952.00	\$30,431.25
Jacob W. Mermelstein	Paralegal	N/A	3.00	\$150.00	\$125.00	\$450.00	\$375.00
Jennifer N. Escobar	Paralegal	N/A	1.20	\$150.00	\$125.00	\$180.00	\$150.00
Jenny X. Hoxha	Paralegal	N/A	1.80	\$175.00	\$125.00	\$315.00	\$225.00
James Yu	Paralegal	N/A	330.05	\$150.00	\$125.00	\$49,507.50	\$41,256.25
Kevin Ayala	Paralegal	N/A	607.50	\$150.00	\$125.00	\$91,125.00	\$75,937.50
Kristen Cabildo	Paralegal	N/A	105.45	\$160.00	\$125.00	\$16,872.00	\$13,181.25
Katherine R. Riva	Paralegal	N/A	1.50	\$150.00	\$125.00	\$225.00	\$187.50
Kristen Sisko	Paralegal	N/A	55.00	\$150.00	\$125.00	\$8,250.00	\$6,875.00
Kim Khaferi	Paralegal	N/A	6.40	\$150.00	\$125.00	\$960.00	\$800.00

Leila Mokhtarzadeh	Paralegal	N/A	373.65	\$150.00	\$125.00	\$56,047.50	\$46,706.25
Lena Moy Borgen	Paralegal	N/A	88.00	\$150.00	\$125.00	\$13,200.00	\$11,000.00
Laura S. Johnson	Paralegal	N/A	0.30	\$185.00	\$125.00	\$55.50	\$37.50
Mary Ann Ragusa	Paralegal	N/A	8.80	\$160.00	\$125.00	\$1,408.00	\$1,100.00
Melissa B. Francisco	Paralegal	N/A	53.40	\$150.00	\$125.00	\$8,010.00	\$6,675.00
Marwan F. Schwail	Paralegal	N/A	24.65	\$160.00	\$125.00	\$3,944.00	\$3,081.25
Michelle Lee	Paralegal	N/A	250.45	\$150.00	\$125.00	\$37,567.50	\$31,306.25
Melanie L. Cristol	Paralegal	N/A	299.95	\$150.00	\$125.00	\$44,992.50	\$37,493.75
Matthew L. Paulson	Paralegal	N/A	22.40	\$150.00	\$125.00	\$3,360.00	\$2,800.00
Marie Santos	Paralegal	N/A	0.30	\$90.00	\$90.00	\$27.00	\$27.00
Michelle Leung	Paralegal	N/A	160.45	\$150.00	\$125.00	\$24,067.50	\$20,056.25
Noah B. Koretz	Paralegal	N/A	48.55	\$150.00	\$125.00	\$7,282.50	\$6,068.75
Olivia J. Quinto	Paralegal	N/A	294.40	\$160.00	\$125.00	\$47,104.00	\$36,800.00
Piel A. Lora	Paralegal	N/A	76.65	\$150.00	\$125.00	\$11,497.50	\$9,581.25
Part Time Paralegal	Paralegal	N/A	208.60	\$150.00	\$125.00	\$31,290.00	\$26,075.00
Rosemary Almonte	Paralegal	N/A	0.60	\$150.00	\$125.00	\$90.00	\$75.00
Ru Juan Li	Paralegal	N/A	54.90	\$90.00	\$90.00	\$4,941.00	\$4,941.00
Raymonda L. Jones	Paralegal	N/A	5.00	\$90.00	\$90.00	\$450.00	\$450.00
Rita M. Farmer	Paralegal	N/A	5.80	\$160.00	\$125.00	\$928.00	\$725.00
Rosan M. Harriram	Paralegal	N/A	24.70	\$160.00	\$125.00	\$3,952.00	\$3,087.50
Roseni Plaza	Paralegal	N/A	10.60	\$90.00	\$90.00	\$954.00	\$954.00
Rachel S. Kitson	Paralegal	N/A	2.30	\$160.00	\$125.00	\$368.00	\$287.50
Sara Archila	Paralegal	N/A	2.00	\$90.00	\$90.00	\$180.00	\$180.00
Shante Greene	Paralegal	N/A	2.00	\$90.00	\$90.00	\$180.00	\$180.00
Sarah G. Outten	Paralegal	N/A	1.60	\$90.00	\$90.00	\$144.00	\$144.00
Sara Raisner	Paralegal	N/A	9.10	\$150.00	\$125.00	\$1,365.00	\$1,137.50
Sarai Sanabria	Paralegal	N/A	24.90	\$90.00	\$90.00	\$2,241.00	\$2,241.00
Susan Zheng	Paralegal	N/A	108.10	\$160.00	\$125.00	\$17,296.00	\$13,512.50
TEC	Paralegal	N/A	2.00	\$185.00	\$125.00	\$370.00	\$250.00
Taina Francois	Paralegal	N/A	0.60	\$90.00	\$90.00	\$54.00	\$54.00
William H Graham	Paralegal	N/A	118.90	\$160.00	\$125.00	\$19,024.00	\$14,862.50
Amel Edmond	Tech Support	N/A	7.20	\$185.00	\$150.00	\$1,332.00	\$1,080.00
Arron Johnson	Tech Support	N/A	2.00	\$185.00	\$150.00	\$370.00	\$300.00
Michael D. Buckner	Tech Support	N/A	0.30	\$185.00	\$150.00	\$55.50	\$45.00

<b>TOTAL</b>	<b>Requested<sup>6</sup></b>	<b>Awarded</b>
	<b>\$4,026,683.54</b>	<b>\$3,415,450.00</b>

<sup>6</sup> This total incorporates Plaintiffs' 5% reduction on their revised request of \$4,238,614.25.

C. Costs

“[A]ttorney’s fees awards include those reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients.” LeBlanc-Sternberg v. Fletcher, 143 F.3d 748, 763 (2d Cir. 1998) (citation omitted). Plaintiffs have reduced their original cost request from \$501,427.64 to \$472,369.47. The original request and Plaintiffs’ revised costs are as follows:

CATEGORY	INITIAL REQUEST	REVISED COSTS
Witness Travel	\$207.68	\$207.68
Subpoena	\$481.43	\$481.43
Computerized Research	\$10,480.32	\$5,040.27
Document Retrieval & Process	\$1,197.89	\$1,197.89
Court Reporters	\$80,797.87	\$80,797.87
Consultant & Expert	\$306,918.64	\$306,918.64
Messenger	\$2,419.38	\$2,419.38
Court Fees	\$743.95	\$743.95
Document Management	\$12,554.76	\$12,554.76
FedEx/UPS	\$5,904.52	\$5,904.52
Photocopies	\$47,236.25	\$23,618.13
Faxes	\$1,895.18	\$1,895.18
Phone	\$429.90	\$429.90
Postage	\$1,890.53	\$1,890.53
Velobinding	\$162.00	\$162.00
Travel	\$13,883.94	\$13,883.94
Meals	\$9,108.68	\$9,108.68
Miscellaneous	\$5,114.72	\$5,114.72
Total	\$501,427.64	\$472,369.47

(Swartz Reply Decl. Ex. A.) Plaintiffs do not seek interest on these costs.

Defendants contend that Plaintiffs failed to provide invoices for their costs along with their moving papers and argue that computerized research and meal costs are not recoverable. Plaintiffs submitted detailed invoices with their reply papers, which are adequate to support their requested costs. Computerized research expenses, however, are recoverable as a portion of attorneys’ fees rather than as costs. See U.S. for Use and Benefit of Evergreen Pipeline Const.

Co., Inc. v. Merritt Meridian Const. Corp., 95 F.3d 15, 173 (2d Cir. 1996) (“[C]omputer research is merely a substitute for an attorney’s time that is compensable under an application for attorney’s fees and is not a separately taxable cost.”). Meal costs are also not typically recoverable “where they are not attributable to out-of-town discovery,” and where counsel’s retainer agreements “do not suggest that they normally recover such costs from their clients.” Rozell, 576 F. Supp. 2d at 547 (disallowing O&G’s charges for meals). The O&G retainer agreements submitted to the Court make no mention of meal charges. Although the retainer agreements do state that O&G charges its clients for photocopying costs and transportation expenses, the invoices submitted reflect that the amounts charged for these items were excessive. The Court reduces Plaintiffs’ photocopying rate from twelve cents per page to ten cents, which is consistent with rates typically awarded in this district. See Febus v. Guardian First Funding Group, LLC, No. 10 Civ. 2590, 2012 WL 2368472, at \*3 (S.D.N.Y. June 22, 2012) (“For photocopying, the going rate in this district is 10 cents per page.”) (internal quotation and citation omitted). Plaintiffs are awarded \$3,000 for their out-of-town travel costs. Accordingly, Plaintiffs’ counsel are entitled to reimbursement of their itemized costs in the amount of \$442,609.85, calculated as follows:

CATEGORY	INITIAL REQUEST	REVISED COSTS	AWARDED COSTS
Witness Travel	\$207.68	\$207.68	\$207.68
Subpoena	\$481.43	\$481.43	\$481.43
Computerized Research	\$10,480.32	\$5,040.27	\$0
Document Retrieval & Process	\$1,197.89	\$1,197.89	\$1,197.89
Court Reporters	\$80,797.87	\$80,797.87	\$80,797.87
Consultant & Expert	\$306,918.64	\$306,918.64	\$306,918.64
Messenger	\$2,419.38	\$2,419.38	\$2,419.38
Court Fees	\$743.95	\$743.95	\$743.95
Document Management	\$12,554.76	\$12,554.76	\$12,554.76
FedEx/UPS	\$5,904.52	\$5,904.52	\$5,904.52
Photocopies	\$47,236.25	\$23,618.13	\$18,891.40

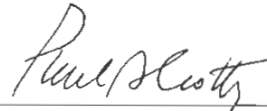
Faxes	\$1,895.18	\$1,895.18	\$1,895.18
Phone	\$429.90	\$429.90	\$429.90
Postage	\$1,890.53	\$1,890.53	\$1,890.53
Velobinding	\$162.00	\$162.00	\$162.00
Travel	\$13,883.94	\$13,883.94	\$3,000
Meals	\$9,108.68	\$9,108.68	\$0
Miscellaneous	\$5,114.72	\$5,114.72	\$5,114.72
Total	\$501,427.64	\$472,369.47	\$442,609.85

### CONCLUSION

For the reasons discussed, Plaintiffs' motion for attorneys' fees and costs is granted in part and denied in part. Plaintiffs are awarded a total of \$3,415,450.00 in attorneys' fees and \$442,609.85 in costs, recoverable from Defendants. The Clerk of Court is directed to terminate this motion at Docket No. 375.

Dated: New York, New York  
August 6, 2012

SO ORDERED



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PAUL A. CROTTY  
United States District Judge