

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN
SCAER,

Plaintiffs,

V.

CITY OF NASHUA,

Defendant.

Case No. 1:24-cv-00277-LM-TSM

THE DEFENDANT CITY OF NASHUA'S MEMORANDUM OF LAW
IN SUPPORT OF ITS OBJECTION TO THE PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND EXPENSES

NOW COMES the Defendant, City of Nashua (the “City”), by and through counsel, and hereby submits its Memorandum of Law in support of its objection to the Plaintiffs, Bethany R. Scaer and Stephen Scaer’s (the “Plaintiffs”) Motion for Attorney’s fees and Expenses. As stated in greater detail below, the Plaintiffs have only obtained a partial, pyrrhic victory, which does not entitle them to an attorneys’ fees award. In the alternative, the attorneys’ fees and expenses sought by the Plaintiffs should be substantially reduced because the rates charged, hours billed, and expenses incurred are unreasonable.

I. BACKGROUND

The Plaintiffs’ filed a Complaint against the City, alleging that the City of Nashua violated their First Amendment rights.¹ (ECF Doc. No. 1). The Plaintiffs sought injunctive relief and nominal damages. (ECF Doc. No. 1 and 2).

¹ The Plaintiffs originally made these allegations against the City, as well as its Mayor, James W. Donchess, and its Risk Manager, Jennifer Deshaies. James W. Donchess and Jennifer Deshaies have since been dismissed from this matter.

The City prevailed before this Court on a Motion for Preliminary Injunction. (ECF Doc 39). The Plaintiffs then appealed to the First Circuit. (ECF Doc. 40). On December 22, 2026, the First Circuit issued a Judgment, reversing and remanding with instructions to this Court to enter an interim declaratory judgment. (ECF Doc. 49 and 50). On February 2, 2026, this Court entered an Order consistent with the First Circuit's opinion. (ECF Doc. 54).

On February 10, 2026, the City's Board of Alderman passed City ordinance O-26-001, which closed the subject flagpole to the public, and only permits the City government to use it. The Plaintiffs then accepted a Rule 68 Offer of Judgment providing only nominal damages and requiring the City to comply with City Ordinance O-26-001, or any future ordinance that similarly restricts the flagpoles in front of City Hall to exclusive City use. (ECF Doc. 59 and 60).

On June 15, 2026, the Plaintiffs filed a Motion for Attorneys' Fees and Expenses along with a supporting Memorandum of Law in which they seek \$249,960.90 in fees and costs. (ECF Doc. 63). The Plaintiffs request compensation for 441.4 total hours of work performed Attorneys Ristuccia at \$500 per hour (330.6 hours), Kolde at \$800 per hour (85.1 hours), and McCandless at \$475 per hour (25.7 hours). See Ristuccia Aff., ¶¶24, 33; Kolde Aff., ¶¶10, 15; McCandless Aff., ¶¶20, 31.

II. STANDARD

Pursuant to 42 U.S.C. § 1988(b), a court may award reasonable attorney's fees to a prevailing party in civil rights actions. 42 USCS § 1988. A "reasonable" fee is one "that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." Lochard v. Daniels Moving & Storage LLC, 2025 U.S. Dist. LEXIS 276074, *18 (D.N.H. 2025) (citations omitted). To calculate a reasonable fee, courts employ the "lodestar"

method, which multiplies the number of hours reasonably expended by a reasonable hourly rate. Frost v. Town of Hampton, 2010 U.S. Dist. LEXIS 43176, *3 (D.N.H. 2010). The fee applicant bears the burden of establishing the reasonableness of the requested fee. Id.

Accordingly, the court calculates “the number of hours reasonably expended by the attorneys for the prevailing party, excluding those hours that are ‘excessive, redundant, or otherwise unnecessary.’” Cent. Pension Fund of the Int’l Union of Operating Eng’rs & Participating Emps. v. Ray Haluch Gravel Co., 745 F.3d 1, 5 (1st Cir. 2014) (citation omitted). The court then identifies “a reasonable hourly rate or rates — a determination that is often benchmarked to the prevailing rates in the community for lawyers of like qualifications, experience, and competence.” Id.

“Once the court calculates the lodestar amount, it ‘may then elect to adjust the lodestar amount, either upward or downward, if the specific circumstances of the case warrant such an adjustment.’” Lochard, 2025 U.S. Dist. LEXIS 276074, *19 (quoting Perez-Sosa v. Garland, 22 F.4th 312, 321 (1st Cir. 2022)). Courts look to the following factors when adjusting the lodestar amount:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney(s) due to acceptance of the case; (5) the customary fee; (6) the nature of the fee (fixed or contingent); (7) the 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 attorney(s); (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) the size of awards in similar cases.

Coutin v. Young & Rubicam P.R., Inc., 124 F.3d 331, 337 n.3 (1st Cir. 1997).

The purpose of determining a reasonable fee, “is to do rough justice, not to achieve auditing perfection.” Perez-Sosa, 22 F.4th at 322 (quoting Fox v. Vice, 563 U.S. 826, 838 (2011)). To achieve this end, the court “may take into account [its] overall sense of a suit, and may use estimates in calculating and allocating an attorney’s time.” Id. (quoting Fox, 563 U.S. at 838).

Courts will exclude the number of hours billed for work that is “excessive, redundant, or otherwise unnecessary.” Lochard, 2025 U.S. Dist. LEXIS 276074, *19 (quoting Ray Haluch Gravel Co., 745 F.3d at 5). Also, “courts in this circuit typically reduce attorney time spent solely on travel by fifty percent.” Sinclair v. Berryhill, 284 F. Supp. 3d 111, 117 (D. Mass. 2018); see also Norkunas v. HPT Cambridge, LLC, 969 F. Supp. 2d 184, 196 (D. Mass. 2013) (“Travel time is typically compensated to account for only half of the time actually spent travelling.”).

III. ARGUMENT

Three attorneys represent the Plaintiffs. Ristuccia Aff., ¶1; Kolde Aff., ¶1; McCandless Aff., ¶1. Attorneys Nathan Ristuccia (“Attorney Ristuccia”) and Endel Kolde (“Attorney Kolde”), are employed by the Institute for Free Speech headquartered in Washington, D.C. Ristuccia Aff., ¶¶11, 36; Kolde Aff., ¶¶6,9. They were admitted *pro hac vice* upon application made by Attorney Roy McCandless (“Attorney McCandless”), who practices in New Hampshire and is serving as local counsel. McCandless Aff., ¶1,3.

Attorney Ristuccia, is a 2022 law school graduate who began working for the Institute for Free Speech in 2023. Ristuccia Aff., ¶¶9, 11. He charges \$500 per hour. Ristuccia Aff., ¶33. Attorney Kolde is a senior attorney with over 30 years of experience. Kolde Aff., ¶3. He charges \$800 per hour. Kolde Aff., ¶10. Attorney McCandless is a New Hampshire based

attorney who has over 30 years of experience. McCadless Aff., ¶5. He charges \$475.00 per hour.² McCandless Aff., ¶20.

Combined, the Plaintiffs' attorneys are seeking \$249,960.90 in attorneys' fees and expenses. For the following reasons, the City maintains that these fees and expenses are unreasonable and should be disregarded entirely, or otherwise reduced.

A. The Plaintiffs have not substantially prevailed in this matter.

In their Complaint, the Plaintiffs seek to enforce provisions of 42 U.S.C. § 1983. As such, 42 U.S.C. § 1988 provides that “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” A prevailing party in a civil rights action requires that the plaintiff “obtain at least some relief on the merits of his claim Whatever relief the plaintiff secures must directly benefit him at the time of the judgment or settlement.” Farrar v. Hobby, 506 U.S. 103, 111 (1992). “[A] plaintiff who wins nominal damages is a prevailing party under § 1988.” Id. at 112. That is because “[a] judgment for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay.” Id. at 113. “The prevailing party inquiry does not turn on the magnitude of the relief obtained.” Id. at 114. However, the award of nominal damages does bear on the propriety of fees awarded under section 1988. Id. The twelve factors articulated in Coutin determine the reasonableness of a fee award. 124 F.3d at 337 n.3. The most critical factor in determining the reasonableness of a fee award is the degree of success obtained. Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 789 (1989).

² Attorney McCandless states that he charges \$475 per hour, but admits that he represents the Plaintiffs *pro bono*. McCandless Aff., ¶19.

In a civil rights suit for damages the awarding of nominal damages highlights the plaintiff's failure to prove actual, compensable injury. See Carey v. Piphus, 435 U.S. 247, 254-264 (1978). Damages awarded in a § 1983 action must always be designed to compensate injuries caused by the [constitutional] deprivation. Memphis Community School Dist. v. Stachura, 477 U.S. 299, 309 (1986) (cleaned up). Fee awards under § 1988 were never intended to produce windfalls to attorneys. Riverside v. Rivera, 477 U.S. 561, 580 (1986). Courts may award “low fees or no fees without reciting the 12 factors bearing on reasonableness” Farrar, 506 U.S. at 115. Moreover, courts “may disallow time spent litigating failed claims.” De Jesus Nazario v. Rodriguez, 554 F.3d 196, 207 (1st Cir. 2009) (citing Lipsett v. Blanco, 975 F.2d 934, 940-41 (1st Cir. 1992)).

In this case, the Plaintiffs received nominal damages because the City conceded that if the First Circuit found that the 2022 Flagpole Policy did not constitute government speech, then it engaged in viewpoint discrimination. (ECF Doc. 49, 50, and 54). However, the Plaintiffs did not obtain the preliminary injunction that they had sought, instead conceding to the First Circuit that an interim declaratory judgment was the appropriate remedy. (ECF Doc. 49, 50, and 54). The Plaintiffs then accepted an Offer of Judgment providing only nominal damages and requiring the City to comply with City Ordinance O-26-001 or any future ordinance that similarly restricts the flagpoles in front of City Hall to exclusive City use. (ECF Doc. 59 and 60). That is a far cry from the Plaintiffs goal of raising their own flags in front of City Hall. (ECF Doc. 1 and 2).

Ultimately, this litigation accomplished little beyond giving the Plaintiffs “the moral satisfaction of knowing that a federal court concluded that [their] rights had been violated.”

Farrar, 506 U.S. at 114. Given the Plaintiffs’ limited degree of success, the Court should find that an award of attorney’s fees is improper.

B. The Attorneys’ Fees and Expenses sought by the Plaintiffs is unreasonable.

1. The Plaintiffs’ must use the hourly rates charged in Concord, New Hampshire.

If the Court is inclined to award attorneys’ fees, despite the limited degree of success by the Plaintiffs, then it must consider whether Plaintiffs’ counsel has charged reasonable attorneys’ fees. “Generally, the relevant community is the forum in which the district court sits.” Barjon v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997); see also Norkunas v. Brossi Bros. Ltd. P’ship, 2012 U.S. Dist. LEXIS 30474, *24 (D. Mass. 2012) (“The ‘relevant community’ is the community where the court sits.”).

In this matter, the relevant community is Concord, New Hampshire because that is where this Court sits. Any departure from rates charged in Concord, New Hampshire requires the fee applicant to make a particularized showing that competent local counsel was unavailable. Kyros Law P.C. v. World Wrestling Ent., Inc., 78 F.4th 532, 549 (2d Cir. 2023); Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992). The Plaintiffs have made no such showing here, and they cannot because the Plaintiffs retained Attorney McCandless, an experienced New Hampshire attorney that has handled First Amendment litigation. See McCandless Aff., ¶¶15-16.

The Plaintiffs argue that this case involved “unsettled questions of law” and that Institute for Free Speech attorneys brought “specialized experience in civil rights litigation.” The City disputes the assertion that this case presents unsettled questions of law, particularly in light of the Supreme Court’s recent decision in Shurtleff v. City of Boston, 596 U.S. 243 (2022), which is substantially similar to the matter presently before the Court. Also, specialized expertise alone

does not justify departure from the forum rule when competent local counsel is available. Barjon, 132 F.3d at 500; Kyros Law P.C., 78 F.4th at 547-548. The Plaintiffs needed to present evidence that New Hampshire counsel willing and able to handle this case could not be found, or that the use of counsel in the local community would have produced a substantially inferior result. Id. They failed to do so. Accordingly, the relevant community for determining prevailing market rates is Concord, New Hampshire.

2. The Plaintiffs have submitted no evidence of prevailing rates in Concord, New Hampshire.

To support an award of attorneys' fees, the Court must have documentation of the qualifications of each of the attorneys whose fees the Plaintiffs seek to recover and “independent evidence that the hourly rates charged by those attorneys . . . are in line with those prevailing in the local community.” Northeastern Lumber Mfrs. Ass'n v. Northern States Pallet Co., 2011 U.S. Dist. LEXIS 11876, *28 (D.N.H. 2011). The New Hampshire Supreme Court has recognized that while “customary fees in the area” is a factor to consider in determining reasonableness, it does not automatically render a fee award correct. Town of Barrington v. Townsend, 164 N.H. 241, 251 (2012); see also Change the Climate v. Mass. Bay Transp. Auth., 2005 U.S. Dist. LEXIS 40681, *8 (D. Mass. 2005) (finding it “helpful to look to the usual billing practices of law firms in the area.”).

Here, the Plaintiffs have not submitted any evidence establishing the prevailing market rates for civil rights litigation in New Hampshire. Their reliance on Boston-area rate surveys and generalized assertions about “the Boston and Concord area” does not satisfy the requirement that fee applicants produce satisfactory evidence of the prevailing rates in the relevant community. Most significantly, the surveys relied upon by the Plaintiffs do not reference New Hampshire.

The Plaintiffs' only evidence regarding New Hampshire rates consists of citations to prior District of New Hampshire cases approving various hourly rates. This selective set of cases in which unusually high hourly rates were approved is not evidence of customary rates in the relevant market.

By contrast, in this case, Attorney Peter Callaghan and his associate, Kat Mail, who represented Jennifer Deshaies prior to her dismissal from the lawsuit, billed at hourly rates of \$450.00 and \$260.00, respectively. See Def. Exhibit A, attached. Similarly, Attorney Michael Pignatelli and his associate, Adam Pignatelli, who represented Mayor James Donchess before his dismissal from this action, charged \$375.00 per hour and \$275.00 per hour, respectively. See Def. Exhibit B, attached. In addition, Attorney Brian Cullen, who represented Celia Leonard in Ortolano v. Bolton et al., 2026 U.S. Dist. LEXIS 91382 (D.N.H. 2026), before this Court, billed at a rate of \$250.00 per hour, while his associate billed at \$225.00 per hour. See Def. Exhibit C, attached. Moreover, Plaintiffs' local counsel, Attorney McCandless, is billing at a rate of \$475.00 per hour in this matter. See McCandless Aff., ¶20. Each of these rates is significantly lower than the rates sought by Plaintiffs here.

Furthermore, in Frost, this Court determined that, in an ordinary civil rights case, a New Hampshire attorney with 24 years of experience could reasonably charge \$210.00 per hour, while an attorney with 11 years of experience could reasonably charge \$160.00 per hour. 2010 U.S. Dist. LEXIS 43176, at *16. Adjusted for inflation using the U.S. Bureau of Labor Statistics CPI Inflation Calculator, those rates would equate to approximately \$322.00 per hour and \$246.00 per hour today.

Taken together, this evidence demonstrates that the rates requested by Plaintiffs are substantially higher than prevailing rates charged by attorneys practicing before this Court. The

Plaintiffs have not provided persuasive evidence establishing that their requested rates are reasonable in light of the relevant market or the rates customarily charged by comparable practitioners in this Court.

3. The surveys relied upon by the Plaintiffs have not been authenticated and constitute inadmissible hearsay.

“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Joseph v. Lincare, Inc., 989 F.3d 147, 156 (1st Cir. 2021) (quoting Fed. R. Evid. 901(a)). The proponent must lay an adequate foundation, which requires more than unsupported assumptions or broad generalities. United States v. Andino-Rodríguez, 79 F.4th 7, 25 (1st Cir. 2023).

Here, the surveys attached to the Plaintiff’s memorandum as Exhibits 7 and 8 are not accompanied by an affidavit, declaration, custodian testimony, or testimony from a qualified witness. There is no evidence regarding who prepared the surveys, whether they accurately reflect 2024 data, whether that data remains applicable in 2026, whether the methodology was reliable, or whether the documents have been altered.

The surveys are also hearsay because they are out-of-court statements offered to prove prevailing hourly rates. See Articulate Sys., Inc. v. Apple Computer, Inc., 53 F. Supp. 2d 78, 82 (D. Mass. 1999). The Plaintiffs have identified no applicable exception and have laid no foundation for one. Courts require surveys and statistical compilations to be supported by proper authentication and foundational testimony before admission. Uncommon, LLC v. Spigen, Inc., 926 F.3d 409, 417 (7th Cir. 2019); Evory v. RJM Acquisitions Funding L.L.C., 505 F.3d 769,

776 (7th Cir. 2007); United States v. 478.34 Acres of Land, 578 F.2d 156, 159 (6th Cir. 1978). Accordingly, the surveys are inadmissible and should be afforded no weight.

4. The surveys relied upon by the Plaintiffs likely require expert testimony.

Survey evidence ordinarily requires expert testimony because survey design, sampling, question formulation, and statistical analysis involve specialized knowledge. Uncommon, LLC, 926 F.3d at 417. The rate surveys offered here purport to establish prevailing attorney billing rates across legal markets. Assessing whether the surveys employ representative samples, reliable methodologies, and accurate reporting requires specialized expertise. The Plaintiffs have attached an affidavit of Attorney Marc Randazza to their memorandum. See Randazza Aff.³ But Attorney Randazza is not the author of these surveys. Id.; see also Plf. Exhibit 6. Attorney Randazza alleges that “Boston is part of the relevant community for calculating prevailing rates.” Randazza Aff., ¶48. However, he offers no basis for this assertion. This Court does not need to consider “opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.” Hollyer v. Trs. of Dartmouth Coll., 2022 U.S. Dist. LEXIS 142141, *7-8 (D.N.H. 2022). Moreover, Attorney Randazza is not admitted to practice in New Hampshire. Randazza Aff., ¶3; Plf. Exhibit 6.

While Attorney Randazza might be an accomplished attorney, his appearances on CNN do not qualify him to opine about the reasonableness of hourly rates in New Hampshire. Without reliable expert testimony, the Court lacks a sufficient basis to rely on the surveys as evidence of prevailing market rates.

³ On October 10, 2018 the State Bar of Nevada disciplined Attorney Randazza for violating Rule of Professional Conduct 1.8(a) (conflict of interest: current clients: specific rules) and Rule of Professional Conduct 5.6 (restrictions on right to practice).

5. The Court may rely on its own knowledge.

The Court is entitled to rely on its own knowledge of attorney's fees in its surrounding area in arriving at a reasonable hourly rate. Andrade v. Jamestown Hous. Auth., 82 F.3d 1179, 1190 (1st Cir. 1996). The First Circuit has affirmed district court rate determinations where the court utilized its knowledge and experience of the local market while considering the customary rates of the parties' counsel and other local attorneys. Id.

Given the absence of reliable market evidence from the Plaintiffs, the Court could exercise this authority and set rates based on its familiarity with what attorneys of comparable skill and experience based in Concord, New Hampshire charge for civil rights litigation.

C. The Court should reduce the attorneys' fees and expenses.

1. At a minimum, the Court should reduce the requested rates.

If this Court is not inclined to deny the Plaintiff's attorneys fees and costs entirely, then it should, at a minimum, reduce the Plaintiffs' requested hourly rates to reflect reasonable compensation within the New Hampshire legal market. In Blue State Refugees v. Noem, Attorney Alan Gura, the Vice President of Litigation at the Institute for Free Speech, was one of several attorneys that represented the plaintiff. 2022 U.S. Dist. LEXIS 62361, *8-10 (D.S.D. 2022). In that matter, the South Dakota District Court determined that Attorney Gura's hourly rate of \$640.00 was excessive, and reduced it to \$300.00 per hour. Id.

Blue State Refugees serves as guidance in the Court in the present matter. Both cases involve First Amendment issues and attorneys from the Institute of Free Speech charging higher rates without "showing that local counsel was unwilling and unable to litigate this case." 2022 U.S. Dist. LEXIS 62361, *10. While Attorney Ristuccia and Attorney Kolde are capable attorneys, their requested rates of \$500 and \$800 per hour, respectively, are unsupported by any

evidence demonstrating that such rates are consistent with those charged by attorneys practicing in the Concord, New Hampshire area. Also, the assertion that these rates are reasonable is undermined by the fact that their local counsel, Attorney McCandless, is an experienced attorney, having handled First Amendment matters who charges \$475 per hour. McCandless Aff., ¶¶15-16, 20. Indeed, the Plaintiffs offer no persuasive explanation as to why Attorney Ristuccia, who graduated from law school four years ago, should command a higher hourly rate than Attorney McCandless, who has been practicing since 1988. Nor do they explain why Attorney Kolde should be compensated at a rate that is nearly double Attorney McCandless's rate. Accordingly, the appropriate rates should be substantially lower than those requested by Plaintiffs.

2. The billable hours and expenses charged by Attorneys Ristuccia and Kolde are unreasonable.

“[I]n assessing the reasonableness of a fee request, a court should ordinarily greet a claim that several lawyers were required to perform a single set of tasks with healthy skepticism.” Williams v. Poulos, 1995 U.S. App. LEXIS 10667, *17 (1st Cir. 1995) (citation omitted). Also, excessive and duplicative work should be disregarded. Ray Haluch Gravel Co., 745 F.3d at 5. Additionally, travel time should be reduced by fifty percent. Sinclair, 284 F. Supp. 3d at 117.

In this matter, Attorney Ristuccia performed the majority of the substantive legal work, including drafting the principal filings and presenting oral argument on both the Plaintiff's Motion for Preliminary Injunction and the appeal before the First Circuit. Compare Plf. Exhibit 2 with Plf. Exhibit 1 and Plf. Exhibit 4; see also Ristuccia Aff., ¶24 (alleging 330.6 hours billed); Kolde Aff., ¶15 (alleging 85.15 hours billed); McCandless Aff., ¶15 (alleging 25.7 hours billed).

By contrast, Attorneys Kolde and McCandless primarily reviewed and proofread filings and participated in strategy discussions. See Plf. Exhibit 1 and Plf. Exhibit 2. Although both attorneys attended hearings, neither presented oral argument. Id; see also Kolde Aff., ¶8.

Several of the requested attorneys' fees and expenses are unreasonable because they reflect duplicative or otherwise unnecessary work. For instance, Attorney Kolde seeks \$7,400.00 in fees for traveling from Seattle to Boston and then driving to Concord in order to discuss oral argument with Attorney Ristuccia. He further seeks \$10,600.00 for attending the Motion for Preliminary Injunction hearing before driving from Concord to Boston and returning by air to Seattle. Likewise, Attorney Kolde billed \$3,536.00 for travel from Austin, Texas to Boston to attend oral argument before the First Circuit and an additional \$2,640.00 for observing Attorney Ristuccia's presentation of that argument. He then billed another \$4,800.00 for travel from Boston back to Seattle. In addition, Attorney Kolde claims \$2,125.10 in expenses for airfare, bus fare, taxis, hotels, and parking. These substantial fees and expenses are not justified, as they stem from excessive and duplicative travel-related work. See Ray Haluch Gravel Co., 745 F.3d at 5; Sinclair, 284 F. Supp. 3d at 117. Moreover, Attorney Kolde's attendance at the hearing was unnecessary given that Attorney McCandless was also present. See Plf. Exhibit 1.

Certain smaller charges are likewise improper. For example, Attorney Ristuccia seeks reimbursement of \$160.00 for a lunch with the Plaintiffs. Additionally, Attorney McCandless appears to have billed \$200.00 for *pro hac vice* admission applications on behalf of Attorneys Kolde and Ristuccia, while Attorney Ristuccia's expense records also reflect a \$200.00 charge for the same applications. Compare Plf. Exhibit 1 with Plf. Exhibit 5.

The City also maintains that the number of hours billed by Attorney Ristuccia is excessive and likely attributable to his relative inexperience. In addition, Plaintiffs' counsel necessitated the filing of a Motion to Dismiss former Defendants Mayor James Donchess and Jennifer Deshaies in their official capacities. (ECF Doc. 45). This motion should not have been required, and the Plaintiffs are not entitled to recover fees as a result. See De Jesus Nazario, 554 F.3d at 207.

Accordingly, the City requests that the Court exclude all time and expenses billed by Attorney Kolde for traveling to and attending hearings in this matter. See Ray Haluch Gravel Co., 745 F.3d at 5; Sinclair, 284 F. Supp. 3d at 117. The City further requests that the Court disallow Attorney McCandless's expenses associated with the *pro hac vice* applications and eliminate his billed time entirely, as he acknowledges that he agreed to represent the Plaintiffs on a *pro bono* basis. McCandless Aff., ¶19. Finally, the City requests that the Court reduce Attorney Ristuccia's compensable hours by one-third and reduce his travel-related time and expenses by fifty percent. See Ray Haluch Gravel Co., 745 F.3d at 5; Sinclair, 284 F. Supp. 3d at 117.

IV. CONCLUSION

The Plaintiffs have only obtained a partial, pyrrhic victory, which does not entitle them to an attorneys' fees award. Also, the Plaintiffs' fee and expense request of \$249,960.90 is unreasonable and unsupported by competent evidence of the prevailing market rates in Concord, New Hampshire. For the foregoing reasons, the City respectfully requests that this Court should not award the Plaintiffs their attorneys' fees and expenses, or in the alternative substantially reduce them.

WHEREFORE, the Defendant, City of Nashua, respectfully requests that this Honorable Court:

- A) DENY the Plaintiffs' Motion for Attorneys' Fees and Expenses; or
- B) REDUCE the attorneys' fees and expenses sought by the Plaintiffs; and
- C) GRANT any other relief that this Court deems just and proper.

Respectfully submitted,
City of Nashua, Defendant
By its Attorneys,

/s/ Jonathan A. Barnes
Steven A. Bolton, Esq. (NH Bar #67)
Jonathan A. Barnes, Esq. (NH Bar #20061)
City of Nashua
Office of Corporation Counsel
229 Main Street, P.O. Box 2019
Nashua, NH 03061-2019
(603) 589-3250
boltons@nashuanh.gov
barnesj@nashuanh.gov

Dated: June 25, 2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded through the Court's electronic filing system to Bethany R. Scaer and Stephen Scaer and to all counsel of record.

/s/ Jonathan A. Barnes
Jonathan A. Barnes