

Treatment which expanded Defendants' community placement obligations; and (7) a fairness hearing, which Plaintiffs describe as contentious, to approve the new settlement.

In response, Defendants assert that the total amount which should be awarded is \$215,770, about forty percent of Plaintiffs' request, comprised of \$214,451 in fees and \$1,319 in costs. In suggesting this figure, Defendants argue that a significant amount of time expended by various counsel and paralegals is not compensable, that the rates requested by Plaintiffs are too high, and that certain costs ought not be reimbursed. For the reasons which follow, the court will allow Plaintiffs' motion as follows: \$388,375.75 in fees and \$1,504.09 in costs will be awarded.

I. DISCUSSION

The court need not retread its prior rulings in which it found Plaintiffs to be prevailing parties entitled to reasonable fees and costs for work done monitoring and ensuring the implementation of the initial Settlement Agreement. *See Rolland v. Romney*, 292 F. Supp. 2d 268 (D. Mass. 2003); *Rolland v. Cellucci*, 164 F. Supp. 2d 182 (D. Mass. 2001); *Rolland v. Cellucci*, 151 F. Supp. 2d 145 (D. Mass. 2001). Instead, the court will address Defendants' various challenges to particular components of Plaintiffs' current fee request.

A. COMPENSABLE TIME

Defendants' first challenge centers on what they believe are uncompensable requests, namely, time spent on what Defendants describe as unsuccessful claims and duplicative, excessive or unnecessary hours. Were the court to accept Defendants'

arguments, it would eliminate 85.3 of the 442 attorney hours claimed by Steven Schwartz, 155.5 of the 508.9 attorney hours claimed by Cathy Costanzo, 35.7 of the 149.7 attorney hours claimed by Frank Laski, 265.0 of the 370.4 paralegal hours claimed by Marcia Boundy, and all of the attorney hours claimed by Matthew Engel (47.5), Jeffrey Follet (67.2), Carrie Wicker (87.4), Christopher Boundy (3.9), and Rachel Brown (19.8), the latter four being, respectively, a partner and junior associates with the law firm of Foley Hoag.

For the reasons which follow, the court will not fully accept Defendants' arguments. With regard to compensable time, the court divides its discussion into six categories: (1) diversion; (2) active treatment; (3) the Groton parents; (4) additional discrete activities; (5) duplication; and (6) conferencing.

1. Diversion

Defendants claim first that Plaintiffs are not entitled to their unsuccessful efforts to convince the court to impose new diversion-related requirements. These hours total 19.6 for Mr. Schwartz, 17.3 for Ms. Constanzo, 49.0 for Mr. Laski, 29.1 for Ms. Boundy, 2.3 for Mr. Engel, 4.4 for Mr. Follett, and 18.2 for Ms. Wicker. For their part, Plaintiffs argue that they have sought no fees for their initial work on their diversion noncompliance motion. Rather, Plaintiffs assert, they only seek fees for their efforts in 2007 responding to the court's January 16, 2007 directive that Defendants show cause why it ought not withdraw its approval of Defendants' diversion plan, in which the court directed the parties to discuss possible modification of the plan and submit a revised plan or separate memoranda explaining their positions. *See Rolland v. Patrick*, 2007

WL 184626, at *7 (D. Mass. Jan. 16, 2007).

When the parties could not fully agree, Defendants submitted a memorandum on March 16, 2007 (Document No. 428) and Plaintiffs submitted theirs on April 2, 2007 (Document No. 429). On September 7, 2007, the court ruled that it would *not* withdraw its prior approval of Defendants' diversion plan "based on (a) Defendants' substantial compliance with paragraph 12 of the Settlement Agreement, (b) Defendants' representations that they will report pre-admission diversions separately from post-admission diversions, (c) the appointment of a court monitor to oversee Defendants' compliance with their active treatment obligations and, in light of said appointment, (d) the court's reluctance to impose new obligations on Defendants at this time." (Electronic Order dated Sep. 7, 2007.)

The court believes that Defendants have the better argument that at least some of the claimed hours should be eliminated. Accordingly, the court has eliminated 50.3 hours claimed by Plaintiffs from March 12, 2007 (the date when it first appears Plaintiffs began work on their diversion memorandum) through September of 2007. However, one-half the time spent by Plaintiffs' attorneys prior to March 12, 2007, will not be eliminated. These efforts were undertaken by Plaintiffs at the court's request, were reflective of Plaintiffs' monitoring obligations and were partially successful; for example, as Defendants explained in their March 16, 2007 memorandum, the DMR would thereafter report preadmission diversions separately from post-admission diversions. All told, the court will make the following reductions: Mr. Schwartz (14.5 hours), Ms. Constanzo (13.2 hours), Mr. Laski (2.4 hours), Mr. Engel (0.9 hours), Ms. Boundy (18.2

hours), Mr. Follett (4.4 hours), and Ms. Wicker (12.6 hours).¹

2. Active Treatment

Defendants also argue that Plaintiffs are not entitled to fees for their “failed” attempt to impose active treatment standards applicable only to ICF/MRs. Defendants make clear that they are not opposed to time reasonably spent by Plaintiffs in May and June of 2007 which led to the parties’ agreement on revised active treatment standards proposed and approved by the court. However, Defendants do challenge the time expended by Plaintiffs in their efforts to impose two additional sets of active treatment standards. These efforts, Defendants claim, amount to 8.8 hours by Mr. Schwartz, 2.1 hours by Ms. Costanzo, 0.9 hours by Mr. Engel and 2.5 hours by Mr. Laski.

Plaintiffs dispute that their efforts were unsuccessful. They describe the court’s Memorandum of April 2, 2007 (Document No. 455) as a “split decision” in which the court rejected proposals from both Plaintiffs and Defendants concerning admission requirements, but included requirements concerning the competency and training of staff, albeit not the specific references allocated by Plaintiffs,

Here, Plaintiffs have the better argument. The overall effort on Plaintiffs’ part led to entirely new and significantly more comprehensive standards that they had long sought despite Defendants’ ongoing resistance. Given the nexus of facts which led to

¹ It should be noted that, in making these calculations, the court has only considered hours in which it is clear that Plaintiffs were addressing diversion issues; despite Defendants’ inclusion of other time as part of this effort, it appears from the record that Plaintiffs were scrupulous in not seeking fees prior to January 16, 2007 for diversion matters.

this result, Defendants' attempt to segregate each aspect of their dispute is, in the court's view, inappropriate and, relatively speaking, insignificant. Accordingly, the court will not eliminate the 14.3 hours identified by Defendants.

3. Groton Parents

Defendants also assert that time spent by Plaintiffs' counsel on "disputes" with parents and guardians of class members who reside at the Seven Hills Pediatric Center in Groton (hereinafter "the Groton parents") ought not be compensated. Defendants describe this as an intra-class dispute and, as a consequence, seek the elimination of the following hours from Plaintiffs' fee request: Mr. Schwartz (8.1); Ms. Costanzo (13.6 hours); Mr. Laski (2.7 hours); Ms. Boundy (9.4 hours); and Ms. Wicker (8.5 hours). Defendants argue that, when a defendant stands aside or joins a plaintiff in repelling a third-party attack on a settlement agreement, the plaintiff ought not recover fees from defendant. In response, Plaintiffs assert that their efforts were necessary to safeguard the interests of the class as a whole, to protect the rights secured by various court orders and, indeed, to respond to Defendants' request that Plaintiffs' counsel attend meetings with the Groton parents.

Although the number of hours which Defendants seek to eliminate is relatively insignificant, the issue raised is not. As Defendants argue, there are, in fact, several decisions -- although none by the First Circuit -- which in general have held that fees are precluded when a defendant stands aside or joins the plaintiff in repelling a third-party attack on a settlement agreement. For example, in *Bigby v. Chicago*, 927 F.2d 1426, 1429 (7th Cir. 1991), the Seventh Circuit held that the plaintiffs were not entitled

to fees from the city-defendant in successfully opposing the intervenors' appeal since the city, which had also contested that appeal, was "as much a prevailing party" as were the plaintiffs. Similarly, in *Gratz v. Bollinger*, 353 F. Supp. 2d 929, 940 (E.D. Mich. 2005), the court determined that the plaintiffs were not entitled to attorneys' fees for hours expended litigating against intervenors from the defendants, who had remained neutral in the matter. See also *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 176-78 (4th Cir. 1994) (plaintiff's fees and expenses for opposing claims by intervenor not recoverable against the defendant).²

In contrast, Plaintiffs point to the Supreme Court's decision in *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546 (1986), not only for the general proposition that "[p]rotection of the full scope of relief afforded by the consent decree" is "properly compensable as a cost of litigation," *id.* at 558, but the underlying decision in which the Third Circuit affirmed the district court's award of fees for opposing post-judgment intervention motions, see *Delaware Valley Citizens' Council v. Pennsylvania*, 762 F.2d 272, 272 (3d Cir. 1985), *affirming* 581 F. Supp. 1412, 1428-30 (E.D. Pa. 1984).

There is no doubt that the general proposition set forth by the Supreme Court in

² The Groton parents here, of course, are not technically intervenors. See *Rolland v. Patrick*, 2008 WL 4104488, at *2 (D. Mass. Aug. 19, 2008). Nonetheless, the principles set forth in the cited cases may be said to apply to the Groton parents as third parties. In this regard, it should be noted that the Supreme Court has held that a prevailing party in a civil rights lawsuit cannot recover attorneys' fees from an "intervenor" who has not violated the law unless the intervention is "frivolous, unreasonable, or without foundation." *Independent Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989).

Delaware Valley is a benchmark to be respected. See also *Garrity v. Sununu*, 752 F.2d 727, 738-39 (1st Cir. 1984) (post-judgment enforcement activities are compensable as “a necessary aspect of plaintiffs’ ‘prevailing’ in the case”). Nonetheless, a court’s consideration of the issue depends on the particular facts of each case. For example, the Third Circuit in *Delaware Valley* awarded certain fees against the defendant-state for plaintiffs’ successful opposition to the intervention of various Pennsylvania legislators in the underlying action. Even though the defendant-state also opposed that intervention, the court awarded fees in part because “the identity of the legislators was not wholly independent from the identity of the executive” and because “all branches of the Commonwealth were equally bound by the consent decree.” *Id.*, 762 F.2d at 277. The plaintiff, the court concluded, “acted reasonably in refusing to rely on defendants to promote [the plaintiff]’s interests.” *Id.* Here, in contrast, the court can easily parse out the role and responsibility of Defendants as state actors from those of the Groton parents. See also *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 284 F.3d 1163, 1168 (9th Cir. 2002) (holding that court has discretion to award fees to prevailing party who defends against a collateral attack in a separate action but finding that lower court did not abuse its discretion when denying the fee request).

Despite the apparent complexity of the legal issue, the decision here is not difficult. Having combed through the particular hours which Defendants seek to eliminate, it is clear to the court that none of those hours should be eliminated from Plaintiffs’ request simply because they concerned matters -- sometimes directly, sometimes indirectly -- related to the Groton parents. All the hours targeted, it must be

understood, arose between April 18, 2008 and June 25, 2008, *i.e.*, both shortly before the fairness hearing on May 22, 2008, and until the parties had time to respond to the Groton parents' motion to decertify the class. Prior to this time, on March 21, 2008, the parties had jointly filed their notice of settlement (Document Nos. 468-71), the fairness hearing was scheduled, letters were filed with the court by various class members or their families (Document Nos. 472-476, 480-483), an opposition to the settlement was filed on May 12, 2008, (Document No. 477), memoranda were prepared and filed by the parties (Document Nos. 479, 484), and a motion to decertify the class was filed on May 20, 2008 (Document Nos. 485-87). After the fairness hearing but before the court issued its memorandum approving the settlement (Document No. 496), Plaintiffs filed on June 2, 2008, an opposition to the motion to decertify (Document No 488), together with a reply thereto (Document No. 495). All these efforts were intertwined with Plaintiffs' obligation to ensure that the settlement was approved by the court, an effort that was clearly successful. Accordingly, Plaintiffs' efforts are compensable.

4. Additional Discrete Activities

Defendants maintain that Plaintiffs ought not be compensated for certain other discrete activities in which Plaintiffs' representatives participated. These can be addressed in short order.

First, the court rejects Defendants' claim that 12.2 hours spent by Ms. Costanzo on tours of several nursing facilities should be eliminated. While it is true that the court previously disallowed time spent by Ms. Costanzo's accompanying experts on tours of nursing homes, the tours at issue here were undertaken by the court on its own

initiative and necessitated the participation of counsel for both Plaintiffs and Defendants.

Second, Defendants assert that the court should not allow Plaintiffs' counsel to recover for certain times for travel incurred by Plaintiffs' representatives, most particularly, Mr. Schwartz (39.7 hours), Ms. Constanzo (59.7 hours), Ms. Boundy (40.1 hours) and Mr. Laski (12.0 hours). Defendants described these hours as "commuting to work" and should be disallowed or, at the very least, substantially reduced. If the court were to allow recovery of travel time, Defendants continue, it could be compensated at no more than forty percent of the reasonable hourly rate for each attorney or paralegal.

The court is not persuaded. As Plaintiffs argue, this court has previously approved the very type of travel time presently requested, (which is not "commuting time") at fifty percent of the otherwise applicable rate, an approach reflected in Plaintiffs' fee request. Defendants' assertion that forty percent rather than fifty percent of the fee is appropriate is, simply put, nit-picking.

Third, Defendants argue that time spent by Plaintiffs seeking fees should be excluded as either "duplicative or unnecessary." As best the court can tell, this appears to amount to 2.5 hours for Mr. Schwartz and 1.1 for Ms. Costanzo. As Plaintiffs note, however, Defendants' argument has been previously raised and rejected by the court, *see Rolland*, 151 F. Supp. 2d at 152-53, and will be rejected here as well.

Fourth, Defendants challenge 1.9 hours spent by Ms. Costanzo on inquiries from reporters and 3.9 hours sought by Mr. Laski for post-June 30, 2008 efforts, challenges

which are conceded by Plaintiffs and, accordingly, eliminated by the court. The court, however, will not eliminate the one hour spent by Ms. Costanzo with regard to a “filing error,” Defendants’ request notwithstanding, since, as Plaintiffs represent, this was not internal to Ms. Costanzo’s office but involved a clerical error by the court.

5. Duplication

Plaintiffs argue that, even at this stage of the litigation, the novelty and complexity of the case required multiple attorneys with discrete responsibilities and expertise. Although this case was in a “remedial phase,” Plaintiffs argue, they had to undertake unprecedented efforts to require that residents of nursing facilities with developmental disabilities receive the same level of care that their counterparts in intermediate care facilities for persons with mental retardation were afforded. Plaintiffs also argue that, given the complexity of the issues (ranging from the development of new active treatment standards to the appointment of a court monitor to the negotiation of new settlement parameters), it was necessary to utilize the services of multiple attorneys from both private and public interest firms. In addition, Plaintiffs assert, they undertook numerous steps to ensure that the attorneys’ work was efficient and effective, not duplicative, and each firm voluntarily deleted time which, in total, constituted ten percent of the time actually spent by them. No further reduction, Plaintiffs argue, is necessary.

For their part, Defendants make two related arguments with regard to what they claim to be duplicative or unnecessary work on Plaintiffs’ behalf. First, Defendants maintain that most if not all of the time spent by Mr. Engel (44.4 hours), Mr. Follett (62.8

hours), Ms. Wicker (60.7 hours), Mr. Boundy (3.9 hours) and Ms. Brown (19.8 hours), amounting to 191.6 hours, was unnecessary.³ In essence, Defendants assert that these attorneys played no substantive role and performed no necessary work during the eighteen months preceding June 30, 2008. Rather, Defendants argue, the legal team of Mr. Schwartz, Ms. Costanzo and Mr. Laski, with the assistance of Ms. Boundy, was able to handle all the work which was reasonably necessary. Second, Defendants maintain that certain work engaged in by Mr. Schwartz (9.1 hours), Ms. Costanzo (26.9 hours), Mr. Laski (15.1 hours), and Ms. Boundy (136.5) was either duplicative or unnecessary.

The court finds unpersuasive Defendants' argument for the wholesale disregard of the efforts of the five identified attorneys. In short, the court finds that Plaintiffs have met their burden of showing the need for multiple attorneys in this matter. The Foley Hoag firm in particular has been part of this case from its inception, has ethical duties to the class in accord with Fed. R. Civ. P. 23(a)(4), and, most importantly, has provided assistance and advice that has been essential to the case. To be sure, Defendants highlight certain hours spent by the firm as particularly duplicative or unnecessary. For example, as to Mr. Follett, Defendants assert that his affidavit fails to identify any work he personally did during the relevant period and, to the extent he describes briefing and arguing motions, particularly on diversion, those efforts were expended prior to the

³ Defendants also seek to eliminate 2.3 hours spent by Mr. Engel on diversion matters and 0.9 hours spent by him on active treatment standards, 4.4 hours spent by Mr. Follett on diversion matters, 8.5 hours spent by Ms. Wicker on matters involving the Groton parents and 18.2 hours spent by her on diversion. These issues have been addressed separately above.

period presently before the court. With regard to Ms. Wicker, Defendants assert that much of her time was spent observing the parties' settlement negotiations but none of that advanced the case; Defendants also assert that they ought not have to pay for Ms. Wicker's work updating her firm's files or observing or communicating with other members of Plaintiffs' legal team. As to Ms. Brown and Mr. Boundy, Defendants assert that Plaintiffs have failed to explain what research they performed or why Defendants ought to pay for time spent by Ms. Brown in particular reviewing materials for cases in preparation for conducting legal research. But Defendants' argument is not reason enough to erase these advocates' efforts in their entirety.

As to the particular hours identified by Defendants, the court, after reviewing the record, has decided to eliminate as duplicative only 6.7 of Mr. Follett's 62.8 hours targeted by Defendants, namely, those expended on May 7, 11 and 14, 2007 with regard to the selection of a court monitor. The remaining hours, the court finds, were appropriately spent on litigation and settlement activities. Defendants' description of many of these hours as "internal communications" only is belied by the specificity of the tasks described in his schedule.

As to Ms. Wicker, the court will eliminate 28.7 hours of the 60.7 hours at issue. These hours represent what appears to be purely clerical matters, non-essential participation in some of the settlement and court monitoring discussions, and activities which appear to be unrelated to other core assistance. The court, however, will not eliminate the 3.9 hours of research undertaken by Mr. Boundy or the 19.8 hours expended by Ms. Brown.

On the other hand, the court finds more persuasive Defendants' argument with regard to duplicative and/or unnecessary hours claimed by Mr. Engel. In his affidavit, Mr. Engel describes his primary responsibilities as follows: "to consult with other members of the Plaintiffs' team around important strategic decisions, to edit pleadings and participate in meetings with the Defendants and the Court Monitor." Mr. Engel also avows that he was "the primary contact for the Plaintiffs' team concerning difficulties individual class members were having in obtaining appropriate specialized services," and Plaintiffs themselves argue that Mr. Engel "made distinctive, albeit focused, contributions to this litigation in the period covered by this fee application." As Defendants point out, however, Mr. Schwartz -- who was responsible for allocating the work among the various attorneys -- did not specifically mention Mr. Engel in his affidavit. (See Pls.' Ex. 2 ¶¶ 25-28.) More to the point, the court has reviewed Mr. Engel's schedule and finds little if any time which can be attributed to his being the primary contact around specialized services. In addition, it appears to the court that much of his time was spent participating in conference calls with others or reviewing pleadings, most of which appears to be duplicative of efforts of other attorneys. Still, the court will recognize 6.25 hours of the 26.5 claimed by him for corresponding or editing documents and efforts fairly related thereto.

Continuing, the court rejects Defendants' request to eliminate the 9.1 hours spent by Mr. Schwartz (which, for the most part, concerned the fee request (see discussion, *supra*)) or the 26.9 spent by Ms. Costanzo (except for the 1.9 hours mentioned above on a press inquiry), both of whom were lead counsel in this case.

The same holds true for Mr. Laski (except for the 3.9 hours spent after June 30, 2008, mentioned above).

In a similar vein, the court will only slightly reduce the 370.4 hours claimed by Ms. Boundy, the paralegal at the Center for Public Representation. To be sure, Defendants seek to eliminate 136.5 hours as duplicative or unnecessary. In essence, Defendants argue that Ms. Boundy spent many hours observing but not participating in the parties' settlement negotiations and never participated in any of the court conferences or hearings she attended. In counterpoint, Ms. Boundy describes herself as the "primary paralegal" assigned to this matter who devoted approximately one-quarter of her time on the case, spending significant time on diversion and active treatment matters, reviewing government reports, culling information about specialized services and referrals as well as community placement figures. Having conducted its own review, the court finds practically all the time expended by Ms. Boundy appropriate for Plaintiffs' litigation, enforcement and monitoring activities. Given her indispensable (and less expensive) participation, the court is simply not convinced that the hours which Defendants describe as duplicative or unnecessary were indeed so, including attendance at court hearings, meetings with defense counsel and settlement conferences. Nonetheless, the court has eliminated 3.1 hours spent by Ms. Boundy with regard to the selection of candidates for court monitor.

6. Conferencing

Defendants seek to eliminate a substantial number of hours which they describe as "excessive conferencing" by Ms. Costanzo (100 of the 158.4 hours spent on

conferencing) and Ms. Boundy (90 of the 112.4 hours spent on conferencing).⁴

Defendants, however, do accept the hours spent by Mr. Schwartz (71.4) and Mr. Laski (24.1) on internal conferencing since those hours represent what Defendants deem to be an appropriate percentage of time (twenty and twenty-one percent respectively) on matters which Defendants themselves consider compensable.⁵

Defendants' argument is interesting but flawed. Ms. Boundy actually spent approximately thirty-one percent of her time conferencing, not fifty-eight percent as Defendants assert. Defendants' figure is obviously skewed since the court, for the reasons described above, has rejected their argument for eliminating 265 hours from her fee request. Using the same approach, Ms. Costanzo's conferencing hours represent about thirty-two percent of the hours which the court has found compensable, not the forty-one percent asserted by Defendants. Thus, were the court to utilize the twenty to twenty-one percent figure which Defendants find acceptable for conferencing, it would be called upon to eliminate only 24 instead of 90 hours from Ms. Boundy's total hours and 33 instead of 100 hours from Ms. Costanzo's total. Rather than take this percentage approach, however, the court has looked at the actual hours expended and has determined that 17 hours should be eliminated as duplicative from Ms. Boundy's

⁴ There are some unexplained discrepancies in the hours cited in Defendants' chart at page 515 of their memorandum and the attached exhibits which reflect the total number of hours spent by each representative on internal conferencing. The court has opted to use the numbers in the chart.

⁵ For purposes of accuracy, it should be understood that Mr. Schwartz and Mr. Laski spent closer to sixteen and seventeen percent, respectively, of their compensable time -- as that time has been determined by the court, not Defendants -- on internal conferencing.

total and 18 hours from Ms. Costanzo's total.

B. HOURLY RATES

Plaintiffs next assert that they are entitled to hourly rates which reflect each attorney's experience and expertise, consistent with private market rates for similarly qualified attorneys. Plaintiffs also assert that the determination of reasonable rates in this case is significantly simplified because the base rates of the Foley Hoag attorneys are those charged to the firm's paying clients and, consistent with the voluntary reduction of rates offered and approved by the court in *Rosie D. v. Patrick*, 593 F. Supp. 2d 325 (D. Mass. 2009), those attorneys are only seeking sixty-seven percent of their market rates. The requested rates for the Foley Hoag attorneys are as follows: Mr. Follett (\$371.85); Ms. Wicker (\$251.25); Mr. Boundy (\$251.25); and Ms. Brown (\$231.15).

As for the public interest attorneys, Plaintiffs request the following rates: Mr. Schwartz (\$425); Ms. Costanzo (\$375); Mr. Laski (\$425); and Mr. Engel (\$375). The requested rate for Ms. Boundy, a paralegal, is \$125. These are the same rates utilized in *Rosie D.* (except for Mr. Engel who evidently played no part in that litigation); between 2000 and 2006, at least two years earlier than the period covered by the instant motion. Plaintiffs also assert that the requested rates actually fall below those awarded to other public interest attorneys in Boston.

In making these requests, Plaintiffs recognize that the court previously awarded lower rates in this matter, as follows: Mr. Schwartz (\$250) and Ms. Costanzo (\$180). See *Rolland*, 151 F. Supp. 2d. at 149. Plaintiffs also recognize that, in November of

2003, the court accepted the parties' agreement to award fees at an hourly rate of \$275 for Mr. Schwartz and \$205 for Ms. Costanzo. Nonetheless, Plaintiffs maintain that these rates are now more than six to eight years old. See *Dillard v. City of Greensboro*, 213 F.3d 1347, 1355 (11th Cir. 2000) (prior awards not controlling).

In turn, Defendants argue that the court should utilize its most recent rates adjusted for inflation of 13.5 percent through September of 2007, the midpoint of the eighteen month period presently before the court. This adjustment, Defendants argue, would produce hourly rates of \$312 for Mr. Schwartz and \$233 for Ms. Costanzo. These rates, Defendants assert, are consistent with objective survey data gathered for the Massachusetts Bar Association which show average hourly rates in Massachusetts in 2004 of \$277 for law partners and \$209 for associates; adjusted for inflation through September of 2007, those rates would be, respectively, \$306 and \$231. Defendants argue that these inflation-adjusted rates are consistent with other recent fee awards in this District. See, e.g., *Cerqueira v. Am. Airlines, Inc.*, 484 F. Supp. 2d 241, 250 (D. Mass. 2007) (“[T]he prevailing rate for lead civil rights attorneys in the Boston area ranges between \$200 and \$350 per hour”), *rev'd on other grounds*, 520 F.3d 1 (1st Cir. 2008). Finally, Defendants argue that, since this case was filed in Springfield, the rates prevailing in Boston would be excessively high. See *Wagenmann v. Pozzi*, 1986 WL 11754, at *4 (D. Mass. 1986), *aff'd sub nom Wagenmann v. Adams*, 829 F.2d 196 (1st Cir. 1987).

As for Mr. Laski, Defendants argue that it would not be appropriate to award him the same hourly rate as Mr. Schwartz, despite the court's previous practice, because he

played a less demanding role and might not be awarded “lead counsel” rates. Ms. Boundy, Defendants argue, should have her prior paralegal rate adjusted for inflation to \$85 per hour. As for Mr. Follett and Mr. Engel, Defendants argue that the court, if it were going to award their efforts, should apply an hourly rate of \$200. The three junior associates from the Foley Hoag firm should not get more than \$100 per hour.

Defendants also argue that the application of *Rosie D.* rates here would (1) go against the evidence of prevailing market rates for similar services in Springfield, (2) ignore the finding in *Rosie D.* that the instant case was “far less complex” than the proceedings there, and, finally, (3) provide Plaintiffs’ counsel with an “inappropriate windfall.” As might be expected, Plaintiffs disagree, asserting in particular that the activities undertaken by them in the instant case were “equally challenging and as complex to those litigated in *Rosie D.*”

As an initial matter, the court rejects several of Defendants’ threshold arguments. First, the court declines to adopt Defendants’ contention that Plaintiffs’ public interest attorneys would receive a “windfall” if rates higher than those suggested by Defendants were applied. As the Supreme Court stated twenty-five years ago, “‘reasonable fees’ . . . are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). In its particulars, Defendants’ approach also fails to appreciate the fact that public interest law firms often extend significant time and resources on cases for which no compensation is sought from either the client or the opposing party. The court also rejects Defendants’

argument that lower rates than those utilized in Boston should apply; this case is obviously one of state-wide import in which such distinctions quickly fade. Similarly, the court is unconvinced by Defendants' reliance on purported average hourly rates in Massachusetts in 2004, since those rates were not broken down by years of experience. Finally, the court is not convinced that application of an inflation rate to attorneys fees is necessarily appropriate, particularly given the supporting affidavits which accompany Plaintiffs' motion.

The court, however, is reluctant to apply the Foley Hoag billing rates as the starting point in its analysis, whether to the private attorneys or the public interest attorneys who worked on this case. There is merit to District Judge William Young's observation in *McDonough v. City of Quincy*, 353 F. Supp. 2d 179, 187 (D. Mass. 2005), "that published billing rates are of little aid to a court in establishing the actual market for the legal services provided here." See also *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 296 (1st Cir. 2001) ("the court may take guidance from, but is not bound by, an attorney's standard billing rate") (citation omitted). Indeed, Plaintiffs themselves appear to agree with this notion, at least in part, since the Foley Hoag billing rates in fact have been discounted by one-third.

Instead, the court prefers to look first at the rates for the public interest lawyers, in light of the history of this litigation. In that regard, the court has taken into account the previous rates utilized, the passage of time since at least July of 2001 when the court originally set the rates, additional years of experience, the particular efforts undertaken by counsel, the affidavits of supporting counsel, and comparable rates

applied in this District by other courts. In the end, the court has determined that the following hourly rates should apply: Mr. Schwartz (\$375); Ms. Costanzo (\$305); Mr. Laski (\$325); Mr. Engel (\$305); Ms. Boundy (\$90); Mr. Follett (\$305); Ms. Wicker (\$200); Mr. Boundy (\$200); and Ms. Brown (\$175). Based on these rates, the court will make the following award based on compensable hours for each of the advocates:

	Hours	Rate	Amount
Mr. Schwartz	381.4	\$ 375.00	\$ 143,025.00
	39.7 (travel)	187.50	7,443.75
Ms. Costanzo	412.7	305.00	125,873.50
	59.7 (travel)	152.50	9,104.25
Mr. Laski	127.3	325.00	41,372.50
	12.0 (travel)	162.50	1,950.00
Mr. Engel	6.35	305.00	1,936.75
Ms. Boundy	281.0	90.00	25,290.00
	40.1 (travel)	45.00	1,804.50
Mr. Follett	56.1	305.00	17,110.50
Ms. Wicker	46.1	200.00	9,220.00
Mr. Boundy	3.9	200.00	780.00
Ms. Brown	19.8	175.00	3,465.00
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		Total	\$ 388,375.75

C. COSTS

Finally, Plaintiffs seek \$5,583.90 in recoverable costs even though their actual costs amounted to \$7,565.14. Plaintiffs have omitted expenses for overnight mail,

telephone, faxes and computerized research. Plaintiffs, however, ask the court to reimburse their costs for travel, meals and copying when done at the firm (as opposed to a contract organization), despite the court having denied such items of reimbursement in the past. See *Rolland*, 151 F. Supp. 2d at 158-159. Most other courts allow for such costs in one way or another, Plaintiffs aver, referencing *Rosie D.*, 593 F. Supp. 2d at 334, and *Ackerley Communications of Mass., Inc. v. City of Sommerville*, 901 F.2d 170 (1st Cir. 1990). The court is not convinced. Accordingly, it will follow its prior practice and award Plaintiffs \$1,504.09 in costs (for stenographers, Pacer research, and Active Treatment Manuals), all of which was incurred by the Center for Public Representation.

II. CONCLUSION

For the reasons stated, the court grants Plaintiffs' motion as follows: \$388,375.75 in fees and \$1,504.09 in costs. Since, on August 13, 2009, the court ordered Defendants to forthwith pay Plaintiffs \$215,770, the amount acknowledged by Defendants as due, Defendants are now ordered to pay forthwith the remaining amount of \$174,109.84

IT IS SO ORDERED.

DATED: October 2, 2009

/s/ Kenneth P. Neiman
KENNETH P. NEIMAN
U.S. Magistrate Judge