

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Steven C. Lefemine,)
d/b/a Columbia Christians for Life,)

Plaintiff,)

vs.)

Dan Wideman, individually and in his)
official capacity; Mike Frederick,)
individually and in his official capacity;)
Lonnie Smith, individually and in his)
official capacity; Brandon Strickland,)
individually and in his official capacity;)
and Tony Davis, Sheriff, in his official)
capacity,)

Defendants.)

C.A. No. 8:08-3638-HMH

OPINION & ORDER

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit. On April 9, 2013, this court denied Plaintiff Steven Lefemine’s (“Lefemine”) motion for attorney’s fees, finding that special circumstances rendered an award of attorney’s fees to Lefemine, the prevailing party, unjust. Lefemine v. Wideman, C.A. No. 8:08-3638-HMH, 2013 WL 1499152, at *7 (D.S.C. Apr. 9, 2013) (unpublished). On July 11, 2014, the Fourth Circuit reversed this court’s finding of special circumstances and remanded the matter “to allow Lefemine to make a fee application and for an ensuing determination of the reasonable fee award” Lefemine v. Wideman, 758 F.3d 551, 559 (4th Cir. 2014).

I. FACTUAL AND PROCEDURAL HISTORY

The facts of this case have been thoroughly outlined in the court's previous orders, and the court does not repeat them here. See Lefemine, 2013 WL 1499152 at **1-3; Lefemine v. Davis, 732 F. Supp. 2d 614, 617-20 (D.S.C. 2010), rev'd in part sub nom by Lefemine v. Wideman, 133 S. Ct. 9 (2012). Lefemine filed a complaint against Sheriff Wideman, Chief Deputy Frederick, Major Smith, and Deputy Strickland on October 31, 2008, alleging violations of his First Amendment rights under 42 U.S.C. § 1983 and seeking monetary damages, a declaratory judgment, a permanent injunction, and attorney's fees. Lefemine, 732 F. Supp. 2d at 619-20. On February 27, 2009, Lefemine filed an amended complaint adding Sheriff Tony Davis ("Sheriff Davis") as a defendant. Id. at 619. The parties filed cross motions for summary judgment. Id. This court held that the Defendants had infringed Lefemine's rights of free speech, peaceable assembly, and free exercise of religion. Id. at 624-25. However, the court found that the Defendants were entitled to qualified immunity because their actions did not violate clearly established constitutional rights of which a reasonable person would have known. Id. at 626-27. Further, the court found that the Defendants were not liable in their official capacities because the Greenwood County Sheriff's Office did not have a policy or custom of violating a citizen's First Amendment rights. Lefemine, 732 F. Supp. 2d at 627. Thus, the court awarded no monetary damages. The court permanently enjoined the Defendants from "engaging in content-based restrictions on Plaintiff's display of graphic signs without narrowly tailoring its restriction to serve a compelling state interest." Id. The court denied Lefemine's request for attorney's fees, finding that "[u]nder the totality of the facts in this case the award of attorney's fees [was] not warranted." Lefemine, 732 F. Supp. 2d at 627.

Lefemine appealed and on March 5, 2012, the Fourth Circuit affirmed and further held that Lefemine did not qualify for attorney’s fees “in light of the lack of findings that Plaintiff was a prevailing party within the meaning of [42 U.S.C.] § 1988.” Lefemine v. Wideman, 672 F.3d 292, 303 (4th Cir. 2012). Thereafter, “Lefemine sought a writ of certiorari to review the Fourth Circuit’s determination that he was not a prevailing party under § 1988.” Lefemine, 133 S. Ct. at 11. On November 5, 2012, the Supreme Court held that “[b]ecause the injunction ordered the defendant officials to change their behavior in a way that directly benefited the plaintiff, we vacate the Fourth Circuit’s decision and remand for further proceedings.” Id. at 10. Further, the Supreme Court stated that “[b]ecause Lefemine is a prevailing party, he should ordinarily recover any attorney’s fee unless special circumstances would render such an award unjust.” Id. at 11 (internal quotation marks omitted). Subsequently, the Fourth Circuit remanded the matter to this court for further proceedings consistent with the Supreme Court’s opinion. Lefemine v. Wideman, No. 10-1905 (4th Cir. Feb. 7, 2013) (unpublished). On April 9, 2013, this court found that special circumstances rendered an award of attorney’s fees to the Plaintiff unjust. Lefemine, 2013 WL 1499152 at *7. Plaintiff appealed, and on July 11, 2014, the Fourth Circuit reversed this court’s finding of special circumstances and remanded the matter to this court “to allow Lefemine to make a fee application and for an ensuing determination of the reasonable fee award” Lefemine, 758 F.3d at 559. On August 18, 2014, Plaintiff filed his motion for attorney’s fees, and on August 25, 2014, Plaintiff filed an amended motion for attorney’s fees. (Am. Mot. Atty’s Fees, ECF No. 103.); (Mot. Atty’s Fees, ECF No. 102.) Defendants submitted their response in opposition to the amended motion on September 18, 2014, and Plaintiff filed his reply on September 25, 2014. (Defs. Mem. Opp’n

Mot. Atty's Fees, ECF No. 106.); (Pl. Reply Supp. Mot. Atty's Fees, ECF No. 107.) This matter is now ripe for consideration.¹

II. DISCUSSION OF THE LAW

“In any action or proceeding to enforce a provision of section[] . . . 1983, . . . 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” 42 U.S.C. § 1988(b). The calculation of an attorney's fee award is a three-step process. McAfee v. Boczar, 738 F.3d 81, 88 (4th Cir. 2013). “First, the court must ‘determine the lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate.’” Id. (quoting Robinson v. Equifax Info. Servs., LLC, 560 F.3d 235, 243 (4th Cir. 2009)). Reasonable hours and reasonable rates are determined by applying “the factors set forth in Johnson v. Georgia Highway Express Inc., 488 F.2d 714, 717-19 (5th Cir. 1974).” Id. (citing Robinson, 560 F.3d at 243-44.) Second, “the court must ‘subtract fees for hours spent on unsuccessful claims unrelated to successful ones.’” Id. (quoting Robinson, 560 F.3d at 244). The final step is to “award ‘some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.’” Id. (quoting Robinson, 560 F.3d at 244).

A. Step One: The Lodestar Amount

In order to determine the reasonable number of hours and the reasonable rate in calculating the lodestar, the court must consider twelve non-exclusive factors:

- (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of

¹Pursuant to Local Civil Rule 7.08, motions may be determined without a hearing. The court finds a hearing unnecessary because the issues have been adequately briefed by the parties.

employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is 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 attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Rum Creek Coal Sales, Inc. v. Caperton, 31 F.3d 169, 175 (4th Cir. 1994) (citing Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)).

1. Reasonable Hours

“To establish the number of hours reasonably expended, the attorney ‘should submit evidence supporting the hours worked.’” Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co., Civil Action No. 4:09-1379-RBH, 2014 WL 2169075, at *2 (D.S.C. May 23, 2014) (unpublished) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The attorney should “exclude ‘hours that are excessive, redundant, or otherwise unnecessary’ in order to reflect the number of hours that would properly be billed to the client.” Id. (quoting Hensley, 461 U.S. at 434). “[T]he court should not simply accept as reasonable the number of hours reported by counsel.” Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. 5, C.A. No. 8:04-1866-HMH, 2007 WL 1302692, at *2 (D.S.C. May 2, 2007) (unpublished) (internal quotation marks and citation omitted).

Lefemine seeks an award of attorney’s fees for 1186.9 hours worked among five attorneys and two paralegals. See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours), ECF No. 103-9); (Pl. Reply Supp. Mot. Atty’s Fees Ex. 1 (Fitschen Aff.), ECF No. 107-1.) Defendants object to the number of hours Plaintiff claims as unreasonable. (Defs. Mem. Opp’n Mot. Atty’s Fees 14-19, ECF No. 106.) Specifically, Defendants argue that the hours claimed for the

following are excessive: preparation of the complaint, summary judgment motions, Plaintiff's first appeal to the Fourth Circuit, Plaintiff's appeal to the United States Supreme Court, Fourth Circuit mediation, and Plaintiff's second appeal to the Fourth Circuit. (Id. at 14-18, ECF No. 106.) Defendant also argues that Plaintiff's outside counsel's travel time is non-recoverable. (Id. at 18-19, ECF No. 106.)

The court has considered the time and labor required, the novelty and difficulty of the questions, the time limitations imposed by the client or the circumstances, and the amount involved and the results obtained in determining the reasonableness of the hours claimed. "The rationale for allowing high-end fees in civil rights cases is that attorneys with experience in [sic] skill in civil rights cases will be able to avoid excess time and research on the issues." Child Evangelism Fellowship, 2007 WL 1302692 at *3 (internal quotation marks and citation omitted). Moreover, "the law is clear that in seeking attorney's fees under section 1988, attorneys are under a duty to minimize expenses." Id. at *4 (quoting Trimper v. City of Norfolk, Va., 58 F.3d 68, 76 (4th Cir. 1995)). The court finds that Lefemine's attorneys have claimed hours that are excessive, redundant, or otherwise unnecessary, rendering significant portions of their time unreasonable and potentially calling into question the entirety of their claimed hours.²

²Lefemine has voluntarily reduced some of his attorneys' hours. See (Am. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 22-23, 27, 29-33, 36-37, 39, 44, 178, 197, 222, 256, 341, 407, 410-411, 415, 434, 443-44, 454, 483, 489, 493, 500, 519, 527, 551-52, 555, 558, 562-63, 567-68, 570, 623, 659), ECF No. 103-9) (reducing these hours by 100 percent); (Id. Ex. 9 (Documented Hours, Entries 3, 9, 13-21, 34, 38, 40, 43, 46, 52, 318, 359, 363, 604), ECF No. 103-9) (reducing these hours by 25 percent). The court accepts these reductions and uses the reduced hours as a starting point in its evaluation of the reasonableness of hours worked.

Defendants argue that the amount of time Lefemine’s counsel spent preparing the complaint is excessive. Plaintiff claims 13.5 hours³ for preparing and filing the complaint. As Defendants point out, the drafting of the complaint was spread out over several months, with the first draft of the complaint on March 22, 2007, and the final edits occurring over a year later on September 5, 2008, with filing taking place on October 31, 2008.⁴ The court finds these hours “excessive, redundant, or otherwise unnecessary” and reduces these hours by 50 percent to 6.25 hours. Crossmann, 2014 WL 2169075 at *2 (citation omitted).

Defendants argue that the number of hours claimed by Lefemine’s counsel for the summary judgment motions, responses, and replies is excessive. Plaintiff claims that counsel spent 218.8 hours⁵ on the summary judgment motions, responses, and replies. The court is intimately familiar with these filings and finds these hours “excessive, redundant, or otherwise unnecessary.” Id. For example, on April 10, 2010, the date that Plaintiff filed summary judgment, Plaintiff’s attorneys expended 22 hours⁶ preparing and filing the motion. On April 26, 2010, the date that Plaintiff filed one of his responses to Defendant Frederick’s motion

³See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entries 6, 10-12, 48-49, 53, 56-57, 79), ECF No. 103-9).

⁴See (Id. Ex. 9 (Documented Hours, Entries 6, 57, 59), ECF No. 103-9).

⁵See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entries 174, 177, 179-80, 183, 185-86, 190-91, 193, 195, 199-200, 209, 217, 226, 228, 230, 232, 236, 239-40, 244, 246, 249-50, 252, 254, 257, 262, 314-16, 321-25, 338-40, 342-43, 348-49, 352, 358, 366, 368, 371, 377-79, 381-83, 393-99), ECF No. 103-9).

⁶See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entries 324-25), ECF No. 103-9).

for summary judgment, Plaintiff's attorneys submit 12.3 hours⁷ for final drafting and review of the response. Accordingly, the court reduces these hours by 50 percent to 109.4 hours.

Defendants argue that the hours claimed by Lefemine for hours worked on Lefemine's first appeal to the Fourth Circuit Court of Appeals are excessive. Lefemine's attorneys submitted 164.3 hours⁸ for the briefing for the first appeal to the Fourth Circuit and another 37.2 hours⁹ on the petition for rehearing to the Fourth Circuit. The court finds these hours "excessive, redundant, or otherwise unnecessary." Id. For example, on January 6, 2011, Plaintiff's attorney logged 14.8 hours¹⁰ editing and filing the brief, creating the appendix, and mailing the brief and appendix. Lefemine's attorney expended at least 8.2 hours¹¹ solely on moot courts and additional "oral prep." Additionally, portions of Plaintiff's opening brief are reproduced verbatim from Plaintiff's filings in this court at the summary judgment stage. See (Brief of Appellant, Lefemine v. Wideman, 672 F.3d 292 (4th Cir. 2012) (Nos. 10-1905, 10-2014), 2011 WL 50486 at **18-19, 21, 25); (Pl. Mot. Summ. J. 9, 19, ECF No. 42); (Pl. Mem. Opp'n Defs. Mot. Summ. J. 10-11, ECF No. 51). Accordingly, the court reduces these hours by 50 percent to 82.15 hours for the Fourth Circuit appeal, and to 18.6 hours for the petition for rehearing.

⁷(Id. Ex. 9 (Documented Hours, Entries 366, 368), ECF No. 103-9.)

⁸See (Am. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 423-24, 426-27, 429-31, 435-36, 439-442, 445, 448-453, 455-57, 460-62, 465-66, 469-70, 473, 481-82, 484-88, 490-92, 494-99, 501-07, 509-10, 512), ECF No. 103-9).

⁹See (Id. Ex. 9 (Documented Hours, Entries 514-18), ECF No. 103-9).

¹⁰(Am. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 448-49), ECF No. 103-9.)

¹¹(Id. Ex. 9 (Documented Hours, Entries 504-05), ECF No. 103-9.)

Defendants argue that the hours claimed by Lefemine for his appeal to the United States Supreme Court are excessive. (Defs. Mem. Opp'n Mot. Atty's Fees 16, ECF No. 106.) Lefemine seeks attorney's fees for 79.2 hours¹² on the appeal to the Supreme Court. Defendants also argue that they should not be responsible for the fees incurred on the Supreme Court appeal because Plaintiff appealed an issue raised sua sponte by the Fourth Circuit. (Defs. Mem. Opp'n Mot. Atty's Fees 13, ECF No. 106.) However, as Plaintiff points out in his reply, Defendants filed a Brief in Opposition and argued to uphold the Fourth Circuit's decision. Accordingly, the court finds that Plaintiff is entitled to a portion of the attorney's fees claimed for the Supreme Court appeal.

However, the court finds the total hours spent on the Supreme Court appeal to be "excessive, redundant, or otherwise unnecessary." Crossmann, 2014 WL 2169075 at *2 (citation omitted). For example, on July 30, 2012, Plaintiff's counsel logged 14.6 hours on drafting, editing, and providing tables for the petition for certiorari. (Pl. Mem. Supp. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 530-31), ECF No. 103-9.) Accordingly, the court reduces the hours claimed for the Supreme Court appeal by 50 percent to 39.6.

Defendants also argue that the hours submitted for mediation during Lefemine's second appeal to the Fourth Circuit and the hours claimed for briefing that appeal are excessive. (Defs. Mem. Opp'n Mot. Atty's Fees 17, ECF No. 106.) Plaintiff claims 71.9 hours¹³ for mediation

¹²See (Am. Mot. Atty's Fees Ex. 9 (Documented Hours, 520-22, 524-26, 528-31, 533-41), ECF No. 103-9).

¹³See (Am. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 566, 569, 572-74, 576-603, 605), ECF No. 103-9).

activities and 140.5 hours¹⁴ for briefing on the second appeal. The court finds these hours “excessive, redundant, or otherwise unnecessary.” Crossmann, 2014 WL 2169075 at *2 (citation omitted). Plaintiff alleges that he is unable to provide further detail about the time spent on mediation activities because the Fourth Circuit requires such activities to remain confidential. (Pl. Reply Supp. Mot. Atty’s Fees 10, ECF No. 107.) Although the activities remain confidential, their confidentiality does not remove them from this court’s review of their reasonableness. According to Defendants, mediation took place on June 5, 2013. Although mediation was unsuccessful, Plaintiffs’ counsel worked another 55.3 hours¹⁵ on mediation activities over the subsequent two months. Additionally, on the briefing for the second Fourth Circuit appeal, Plaintiff’s attorneys logged 20.9 hours¹⁶ on October 7, 2013 to research and draft the brief and convert it to an appropriate file format. On December 11-12, 2013, Plaintiff’s attorneys expended 23.9 hours¹⁷ on the reply brief. Accordingly, the court reduces these amounts by 50 percent to 35.95 hours for mediation activities and 70.25 hours for the briefing associated with Lefemine’s second appeal to the Fourth Circuit.

The court has also reviewed the hours claimed for activities associated with the filings made to this court on remand from the Supreme Court and the filings associated with the instant motion for attorney’s fees. The court finds these hours “excessive, redundant, or otherwise

¹⁴See (Id. Ex. 9 (Documented Hours, Entries 571, 606, 608, 611-14, 617-20, 624-31, 633-46, 648-49, 652-54, 656-57), ECF No. 103-9).

¹⁵See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entries 578-603, 605), ECF No. 103-9).

¹⁶See (Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entry 620), ECF No. 103-9).

¹⁷See (Id. Ex. 9 (Documented Hours, Entries 630-31), ECF No. 103-9).

unnecessary.” Crossmann, 2014 WL 2169075 at *2 (citation omitted). Lefemine claims 17.3 hours¹⁸ on the briefing on remand from the Supreme Court, 14 of which occurred on the day of filing. For the instant motion, Lefemine seeks 108.4 hours¹⁹ of time associated with compiling the information for the filings, researching, and drafting the documents. These hours include 18.9 hours²⁰ on the day Lefemine filed the motion, and another 16 hours²¹ on the day he filed the reply. The court reduces the claimed amounts by 50 percent to a reasonable 8.65 hours for the briefing on remand from the Supreme Court, and 54.2 hours for the briefing for the instant motion.

Finally, Defendants argue that Lefemine should not be awarded attorney’s fees for outside counsel’s travel time. (Defs. Mem. Opp’n Mot. Atty’s Fees 18, ECF No. 106.) The court finds that Lefemine’s outside counsel may be compensated for their travel time at the reasonable rate to be determined by the court.

2. Reasonable Rates

“The hourly rates included in a request for attorney’s fees must also be reasonable.” Crossmann, 2014 WL 2169075 at *2 (citing Hensley, 461 U.S. at 433). Reasonable rates are determined “by compensating attorneys at the prevailing market rates in the relevant

¹⁸See (Id. Ex. 9 (Documented Hours, Entries 553-55), ECF No 103-9).

¹⁹See (Id. Ex. 9 (Documented Hours, Entries 660-62, 665-66, 668-69, 672, 675-78, 681, 684, 687, 689-90, 692-94, 696, 701-02), ECF No. 103-9.); (Pl. Reply Supp. Mot. Atty’s Fees Ex. 1 (Fitschen Aff. 2, Entry Dates 9/19/2014-9/25/2014), ECF No. 107-1).

²⁰(Am. Mot. Atty’s Fees Ex. 9 (Documented Hours, Entry 702), ECF No. 103-9.)

²¹(Pl. Reply Supp. Mot. Atty’s Fees Ex. 1 (Fitschen Aff. 2, Entry Date 9/25/2014), ECF No. 107-1.)

community.” Rum Creek, 31 F.3d at 175 (internal quotation marks omitted). “The relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits. In circumstances where it is reasonable to retain attorneys from other communities, however, the rates in those communities may also be considered.” Id. (internal citations omitted).

Lefemine argues that outside counsel should be awarded attorney fee rates for the Norfolk Division of the Eastern District of Virginia, where outside counsel regularly practice. (Pl. Mot. Atty’s Fees 3-4, ECF No. 103.) In support of its position that “[t]he instant case is another case in which the client could not obtain counsel locally,” Lefemine offers the affidavit of W. Andrew Arnold, a Greenville, South Carolina attorney. (Id. Ex. 2 (Arnold Aff.), ECF No. 102-2.) However, Arnold’s affidavit does not state that Lefemine would have been unable to procure qualified local counsel. Additionally, the facts and circumstances of this case do not suggest that Lefemine would have been unable to find qualified local counsel. Accordingly, the court declines to award an out-of-market rate.

Lefemine and Defendants disagree about the “relevant market” for determining a reasonable rate. Plaintiff argues that the relevant market is Greenville, South Carolina, where the courthouse is located. If Greenville rates were used, Plaintiff argues that his attorneys should be compensated at the following rates: \$330/hr for Attorneys Fitschen and Hodge; \$275/hr for Attorneys Myers and Martins; and the actual rates of \$250/hr for Attorney Churdar, and \$90/hr for Mr. Churdar’s paralegals. Defendants argue that the relevant market is Greenwood, South Carolina, where the conduct occurred. Accordingly, Defendants argue that the range of rates that should be charged for Greenwood would be from \$175/hr to a maximum

of \$225/hr. Pursuant to this range, Attorneys Fitschen and Hodge would be compensated at \$225/hr; Attorneys Myers and Martins would be compensated at \$175/hr; and Attorney Churdar would be compensated somewhere in this range with his paralegals compensated at their ordinary rate. After considering the level of skill required to perform the legal service properly, the preclusion of employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, the experience, reputation, and ability of the attorneys; the undesirability of the case, the nature and length of the professional relationship with the client, and awards in similar cases, the court finds that an average of the proposed Greenville and Greenwood rates is appropriate for outside counsel, and that Attorney Churdar and his paralegals should be compensated at their ordinary rates.²² Accordingly, the court calculates the attorney's fees at the following rates: \$277.50/hr for Attorneys Hodge and Fitschen; \$225/hr for Attorneys Myers and Martins; \$250/hr for Attorney Churdar, and \$90/hr for his paralegals.²³ At these rates, the resulting lodestar amount is \$188,787.

²²The court notes that the cases Lefemine cites in support of his reasonable rates presented legal issues different from the instant case. See Uhlig, LLC v. Shirley, 895 F. Supp. 2d 707 (D.S.C. 2012) (misappropriation of trade secrets); Monster Daddy v. Monster Cable Prods., Inc., Civil Action No. 6:10-1170-MGL, 2014 WL 2780331, at *1 (D.S.C. June 18, 2014) (unpublished) (Lanham Act claims); Atkinson v. House of Raeford Farms, Inc., Civil Action Nos. 6:09-cv-01901-JMC, 6:09-cv-03137-JMC, 2012 WL 2923246, at *1 (D.S.C. July 18, 2012) (unpublished), rev'd on other grounds by, Barton v. House of Raeford Farms, Inc., 745 F.3d 95 (4th Cir. 2014) (Fair Labor Standards Act and South Carolina Payment of Wages Act Claims); CT & T EV Sales, Inc. v. 2AM Group, LLC, C/A No. 7:11-1532-TMC, 2012 WL 3010911, at *1 (D.S.C. July 13, 2012) (unpublished) (an uncontested fee application).

²³The court does not find Attorney Driscoll's reasonable rate because Lefemine voluntarily excluded all of Driscoll's claimed hours. See (Am. Mot. Atty's Fees Ex. 9 (Documented Hours, Entries 22-23, 27, 29-33, 36-37, 39, 44), ECF No. 103-9).

B. Steps Two and Three: Unsuccessful Claims and Lodestar Percentage

The court must “subtract fees for hours spent on unsuccessful claims unrelated to successful ones.” McAfee, 738 F.3d at 88 (quoting Robinson, 560 F.3d at 244). Defendants do not appear to argue for a deduction based on unsuccessful claims, and the court makes no deduction for any unsuccessful claim.

Finally, the court must “award ‘some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.’” Id. (quoting Robinson, 560 F.3d at 244). Plaintiff seeks an enhancement of either 10 percent or an award in the amount of the Virginia rates. (Pl. Mot. Atty’s Fees 11-13, ECF No. 103.) The court declines to make any adjustment or enhancement and awards the full lodestar figure. Accordingly, Lefemine is awarded attorney’s fees in the amount of \$188,787.

C. Costs

Plaintiff seeks an award of costs in the amount of \$9,062.89. (Pl. Mot. Atty’s Fees Ex. 10 (Itemized Costs), ECF No. 103-10.) Defendants argue that Plaintiff’s costs are not recoverable under 42 U.S.C. § 1988 and may only be recovered pursuant to Rule 54 of the Federal Rules of Civil Procedure. However, Plaintiff seeks costs pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure, which provides that “costs . . . should be allowed to the prevailing party.” Defendants also object to an award of costs for the first appeal to the Fourth Circuit. (Defs. Mem. Opp’n Mot. Atty’s Fees 23, ECF No. 106.) The court finds that Plaintiff’s itemized costs are recoverable and awards Plaintiff costs in the amount of \$9,062.89.

It is therefore

ORDERED that Lefemine's amended motion for attorney's fees, docket number 103, is granted in part. It is further

ORDERED that Lefemine's motion for attorney's fees, docket number 102, is denied as moot. It is further

ORDERED that Lefemine is awarded attorney's fees in the amount of \$188,787 and costs in the amount of \$9,062.89.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
December 1, 2014