

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

MICHAEL W. MOORE)	
Appellant,)	
)	
v.)	CAVC No. 19-257
)	EAJA
)	
ROBERT L. WILKIE,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

APPELLANT'S APPLICATION FOR AN
AWARD OF ATTORNEYS FEES AND EXPENSES
PURSUANT TO 28 U.S.C. § 2412(d)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$14,743.76.**

The basis for the application is as follows:

Grounds for an Award

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys' fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement

of the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (quoting *Bazalo*, 9 Vet. App. at 308). See also 28 U.S.C. §§ 2412(d)(1)(A),(B).

As will be demonstrated below, Appellant satisfies each of the above-enumerated requirements for EAJA.

1. THE APPELLANT SATISFIES EACH OF THE REQUIREMENTS FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES

A. *The Appellant Is a Prevailing Party*

In *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 121 S.Ct 1835 (2001) (hereafter "Buckhannon"), the Supreme Court explained that in order to be a prevailing party the applicant must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. 532 U.S. at 603-605. The Federal Circuit adopted the *Buckhannon* test in *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371 (Fed. Cir. 2002) and applied it to an EAJA applicant. The Federal Circuit explained in *Rice Services, LTD. v. United States*, that "in order to demonstrate that it is a prevailing party, an EAJA applicant must show that it obtained an enforceable judgment on the merits or a court ordered consent decree that materially altered the legal relationship between the parties, or the equivalent of either of those." 405 F.3d 1017, 1025 (Fed. Cir. 2005).

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that the Federal Circuit case of *Akers v. Nicholson*, 409 F.3d 1356 (Fed. Cir. 2005) "did not change the focus for determining prevailing party status from a standard that looks to the basis for the remand to one that looks to the outcome of the remand. *Akers* simply did not involve a remand that was predicated on an administrative error." 19 Vet. App. at 547. (internal quotations omitted). The Court held in *Zuberi* that *Motorola* provided the proper test for prevailing party. *Id.* Next in *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006), the Federal Circuit held that:

To be considered a prevailing party entitled to fees under EAJA, one must secure some relief on the merits. Securing a remand to an agency can constitute the requisite success on the merits. [W]here the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party ... without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court.

Id. at 1353 (internal citations and quotations omitted).

Most recently, this Court in *Blue v. Wilkie*, 30 Vet.App. 61 (2018), laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination.

Id. at 67, *citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016).

The Court reversed and remanded the Board's October 22, 2018 decision based upon the Board's error when it improperly shifted the burden of proof and based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-4 of the Memorandum Decision. The mandate was issued on July 23, 2020. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Moore had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Moore is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or the Court was not reasonable, either in law or in fact, and accordingly the

Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's error when it improperly shifted the burden of proof or in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

2. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (*quoting Elczyn*, 7 Vet. App. at 176-177).

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Kaitlyn Degnan, Dvora Louria, Lisa Ioannilli, Nicholas Phinney, Christian McTarnaghan, Luke Wilder, Danielle M. Gorini, and Zachary Stolz.¹ Attorney Kaitlyn Degnan graduated from Syracuse University Law School

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th

in 2017 and the *Laffey* Matrix establishes that \$353.00 is the prevailing market rate for an attorney with her experience.² Dvora Louria graduated from University of Connecticut Law School in 2016 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with her experience. Lisa Ioannilli

Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See* *Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

²The U.S. Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also* *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

graduated from George Washington University Law School in 2009 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience. Christian McTarnaghan graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with his experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.

Paige Ingram is a 2019 graduate of Syracuse University Law School, and at the time her work was performed, she was admitted to practice as a non-attorney practitioner. Luke Wilder is a 2018 graduate of Boston University Law School, and at the time some of his work was performed, he was admitted to practice as a non-attorney practitioner. Both Ms. Ingram and Mr. Wilder have entered their appearance in multiple cases before the Court of Appeals for Veterans Claims.

The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Ms. Ingram’s and Mr. Wilder’s court experience, Appellant seeks attorney’s fees at the rate of \$173.00 per hour for representation services before the Court for their time before each was admitted to practice law.³ After Mr. Wilder’s admittance date of March 15, 2019, his billing rate as an attorney is \$353.00.

³ The US Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by the years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d. 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. See, e.g., *Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); see also *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) See Exhibit B (Laffey Matrix).

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$207.73 hour for Ms. Degnan, Ms. Louria, Ms. Ioannilli, Mr. Phinney, Mr. McTarnaghan, Mr. Wilder after his admittance date, Ms. Gorini, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these eight attorneys (67.80) results in a total attorney's fee amount of \$14,084.10.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Ms. Ingram's and Mr. Wilder's time as non attorney practitioners. This rate per hour, multiplied by the number of hours billed (3.60) results in a total attorney's fee amount of \$622.80.

In addition, Appellant seeks reimbursement for the following expenses:

Federal Express: \$31.11

Postage: \$5.75

Based upon the foregoing, the total fee and expense sought is **\$14,743.76.**

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to August 2019 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,
Michael W. Moore
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
321 S Main St #200
Providence, Rhode Island 02903
(401) 331-6300
Fax: (401) 421-3185

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 265307

Client: Moore, Mr. Michael W.

			<u>Hours</u>
11/20/2018	LISA	Reviewed and annotated BVA decision for possible appeal to CAVC. Made recommendation for appeal.	0.60
1/14/2019	NICK	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
1/16/2019	NICK	Reviewed docket and confirmed Court's docketing of appeal documents; updated client file	0.10
1/30/2019	LWILDER	Drafted and filed notice of appearance, updated client file	0.10
2/13/2019	LWILDER	Received and reviewed copy of BVA decision; confirmed with decision on file; updated client file	0.10
3/5/2019	LWILDER	Received and reviewed notice of appearance of attorney for OGC; updated client file	0.10
3/14/2019	LWILDER	Received and reviewed notice of transmittal of RBA; updated client file	0.10
3/19/2019	NICK	Reviewed RBA to determine need for dispute	0.60
3/24/2019	LWILDER	Drafted and filed notice of appearance as atty; updated client file	0.10
4/3/2019	LWILDER	Drafted RBA status letter to be sent to client; updated client file	0.10
4/4/2019	LWILDER	Reviewed pp 1-461 of RBA to identify evidence relevant to possible dispute; updated client file	0.90
4/4/2019	LWILDER	Received and reviewed order scheduling brief; calculated brief due date; updated client file	0.10
4/5/2019	LWILDER	Reviewed pp 462-2288 of RBA to identify evidence relevant to possible dispute; updated client file	2.20
4/10/2019	LWILDER	Reviewed Board decisions to identify legal errors, and casemap for pertinent evidence; conducted additional research on caselaw and language for reduction cases; drafted PBC memo outline; updated client file	1.40
4/23/2019	LWILDER	Received and reviewed order scheduling PBC; calculated memo due date; updated client file	0.10
4/26/2019	LWILDER	Client called regarding status of case and to provide update on his medical situation; documented conversation in client file	0.20
4/29/2019	KDEGNAN	Reviewed memo outline for LW. Made suggestions re: arguments and places for additional analysis and clarity.	1.50
5/1/2019	LWILDER	Reviewed suggestions on PBC memo outline; conducted additional research; began drafting PBC memo; updated client file	1.20
5/2/2019	LWILDER	Continued drafting PBC memo; updated client file	0.90
5/3/2019	LWILDER	Continued drafting PBC memo, completed initial draft of DM argument; researched and began drafting back argument; updated client file	2.50
5/4/2019	LWILDER	Completed draft of PBC memo; reviewed for style and substance and incorporated edits; updated client file	1.20
5/6/2019	KDEGNAN	Reviewed PBC memo for LW, made suggestions for clarity and areas for greater explanation.	1.70
5/6/2019	LWILDER	Received correspondence from OGC requesting to reschedule PBC; reviewed client file and calendar, drafted and sent correspondence responding with proposed dates; updated client file	0.10
5/7/2019	LWILDER	Reviewed PBC memo for style and substance; redrafted arguments and incorporated edits based on review; updated client file	0.60
5/7/2019	LWILDER	Reviewed comments on PBC memo draft; conducted additional research on relevant language; redrafted arguments; updated client file	1.80
5/7/2019	LWILDER	Conducted additional research; began editing arguments in memo	0.60
5/21/2019	LWILDER	Made additional revisions to PBC memo; updated client file	0.60

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 265307

Client: Moore, Mr. Michael W.

			<u>Hours</u>
5/28/2019	LWILDER	Reviewed and incorporated final edits into PBC memo; extracted and redacted relevant pages of RBA; drafted and sent correspondence to OGC and CLS containing both; updated client file	0.50
5/28/2019	LWILDER	Drafted and file rule 33 certificate of service; updated client file	0.10
5/28/2019	LWILDER	Drafted letter to be sent with PBC memo to client; updated client file	0.10
6/11/2019	LWILDER	Reviewed PBC memo and casemap in preparation for PBC; participated in PBC and discussed the secretary's offer and arguments on the issues; summarized PBC in client file	0.70
6/11/2019	LWILDER	Called client regarding PBC; documented call in client file	0.10
6/18/2019	ZACH	Participated in meeting concerning case strategy.	0.10
8/12/2019	LWILDER	Reviewed notes from client file; conducted additional research on language; began drafting opening brief; updated client file	3.30
8/13/2019	LWILDER	Reviewed casemap; completed draft of statement of the case; summary of the argument; and statement of the issues; updated client file	3.00
8/13/2019	LWILDER	Completed initial draft of arguments for brief; updated client file	2.00
8/13/2019	LWILDER	Began reviewing opening brief for style and substance; edited arguments and incorporated noted edits; discussed case with KD; updated client file	2.00
8/16/2019	KDEGNAN	Reviewed opening breif for legal and grammatical accuracy. Made suggestions for expanding argument.	1.40
8/19/2019	KDEGNAN	Reviewed revised draft of opening brief and made additional suggestions.	0.40
8/19/2019	LWILDER	Reviewed comments and proposed changes to opening brief; discussed changesd with KD; conducted additional research; edited arguments; reviewed for style and substance; updated client file	2.70
8/21/2019	LWILDER	Conducted additional research based; expanded on argumetns in opening brief based on research and suggestions; updated client file	1.90
8/23/2019	LWILDER	Client called; discussed status of the case; updated client file	0.20
8/26/2019	LWILDER	Performed final proofread brief, made final edits; filed opening brief	2.40
10/8/2019	DVORA	Drafted and filed notice of appearance and updated client file.	0.10
10/9/2019	PAIGE	Prepared and filed notice of appearance. Reviewed docket for procedural status and updated client file.	0.20
10/16/2019	PAIGE	Spoke with OGC regarding post-brief remand offer.	0.10
10/18/2019	DVORA	Reviewed arguments in brief and discussed offer with PI.	0.20
10/18/2019	PAIGE	Called OGC regarding terms of offer.	0.10
10/18/2019	PAIGE	Received and reviewed email from OGC regarding offer	0.10
10/21/2019	KDEGNAN	Reviewed remand offer for sufficiency and drafted memo to file with my assessment.	0.30
10/22/2019	DVORA	Reviewed case file notes and pleadings. Prepared notes for lit strat meeting.	1.00
10/22/2019	PAIGE	Corresponded with OGC regarding her extension to file appellee brief.	0.10
10/22/2019	PAIGE	Received and reviewed OGC motion to extend time to file appellee brief. Updated client file.	0.10
10/23/2019	PAIGE	Received and reviewed CAVC order granting appellee motion to extend time to file brief. Updated client file.	0.10
10/29/2019	DVORA	Participated in lit strat meeting.	0.10
10/29/2019	DVORA	Drafted case strategy notes for the file	0.10
10/29/2019	DVORA	Reviewed case file notes in preparation for lit strat meeting.	0.20

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 265307

Client: Moore, Mr. Michael W.

			<u>Hours</u>
10/29/2019	PAIGE	Called client to discuss OGC remand offer. Left voice mail. Note to the file.	0.10
10/29/2019	ZACH	Participated in discussion regarding briefing and litigation strategy.	0.10
11/5/2019	PAIGE	Called client again to discuss OGC remand. Left voice mail. Note to the file.	0.10
11/8/2019	PAIGE	Called client to discuss OGC remand; left voice mail. Note to the file.	0.10
11/12/2019	PAIGE	Discussed case strategy with DL.	0.10
11/12/2019	PAIGE	Drafted "please contact letter" to client and messaged CORRESPONDENT. Updated client file.	0.10
11/12/2019	PAIGE	Emailed OGC to notify her that the Veteran will reject the remand offer. Updated client file.	0.10
11/12/2019	PAIGE	Called alternate contact, Azulene Moore (spouse) to get in touch with Veteran re: post-brief remand. Left VM. Will follow-up with letter. Updated client file.	0.10
11/12/2019	PAIGE	Spoke with Veteran who confirmed he wishes to reject OGC remand offer. I explained that OGC offered settlement on back and remand on diabetes, and that by rejecting the remand we also reject the settlement on the back and the whole claim will go before the court. He agreed to those terms.	0.10
12/10/2019	PAIGE	Draft and send email to OGC regarding status of appellee's brief.	0.10
12/11/2019	DVORA	Reviewed email from Court regarding OGC brief and case file notes.	0.10
12/11/2019	PAIGE	Reviewed and received OGC response regarding status of brief. Updated client file.	0.10
12/11/2019	PAIGE	Received and reviewed Court order that Secretary file motion for leave to file a late document within 7 days. Updated client file.	0.10
12/19/2019	PAIGE	Reviewed opening brief and OGC brief. Reviewed VA's change of position and drafted note to the file.	1.30
1/8/2020	KDEGNAN	Discussed VA's brief with client.	0.30
1/9/2020	KDEGNAN	Participated in litigation strategy meeting for reply brief.	0.60
1/9/2020	KDEGNAN	Reviewed materials to prepare for strategy meeting.	0.70
2/11/2020	KDEGNAN	Collected and organized arguments for reply brief. Began drafting diabetes argument.	2.90
2/11/2020	KDEGNAN	Continued drafting reply brief.	0.70
2/12/2020	KDEGNAN	Researched presumption of regularity and continued drafting diabetes arguments of reply brief. Began drafting back arguments.	2.90
2/12/2020	KDEGNAN	Finished drafting back reversal argument.	1.00
2/13/2020	CMC	Begin to review argument section in reply about diabetes rating reduction.	1.60
2/13/2020	CMC	Review opening brief, BVA decision, and VA's brief to ascertain validity of reply brief arguments. Edit reply brief section on back disability for legal accuracy. Suggest distinguishing all of the cases VA cited.	2.80
2/14/2020	CMC	Finish review DM section of reply brief.	0.80
2/14/2020	KDEGNAN	Reviewed and implemented edits to reversal argument. Added analysis of Faust and Murincsek.	1.70
2/14/2020	KDEGNAN	Began implementing diabetes edits.	0.80
2/18/2020	KDEGNAN	Made final revisions to reply brief. Checked citation to record and authority, efiled. Updated client file accordingly.	1.10
2/18/2020	KDEGNAN	Continued implementing edits to reply	2.50
3/5/2020	KDEGNAN	Received, reviewed, and responded to email from OGC regarding a motion for leave.	0.10
3/9/2020	KDEGNAN	Received and reviewed clerk stamp granting VA's motion for leave to file an ROP out of time. Updated client file accordingly.	0.10

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 265307

Client: Moore, Mr. Michael W.

			<u>Hours</u>
3/9/2020	KDEGNAN	Prepared and efiled ROP response.	0.10
3/9/2020	KDEGNAN	Received court order for Secretary to file ROP. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
3/9/2020	KDEGNAN	Received VA's motion for leave to file ROP out of time. Reviewd for accuracy and downloaded to client file. Updated client file accordingly.	0.10
3/9/2020	KDEGNAN	Received ROP. Reviewed and downloaded to client file. Updated file to reflect receipt.	0.40
3/10/2020	KDEGNAN	Received and reviewed judge assignment and updated client file accordingly.	0.10
4/27/2020	KDEGNAN	Received and reviewed email with decision of court. Reviewed against pleadings. Prepared summary of decision and updated client file accordingly.	0.60
5/11/2020	ZACH	Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.70
5/12/2020	KDEGNAN	Left voicemail for client. Note to the file.	0.10
5/19/2020	KDEGNAN	Received and reviewed VA attorney Prince notice of appearance. Updated client file accordingly.	0.10
5/29/2020	KDEGNAN	Left voicemail for client to inform him of decision. Prepared please contact letter.	0.20
6/1/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
6/9/2020	KDEGNAN	Listened to voicemail from client. Left voicemail for client in response. Note to the file.	0.10
6/11/2020	KDEGNAN	Listened to voicemail from client. Left follow up voicemail. Note to the file.	0.10
6/22/2020	KDEGNAN	Left voicemaiil for client. Note to the file.	0.10
7/7/2020	KDEGNAN	Left voicemail for client. Note to the file.	0.10
7/27/2020	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
7/27/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.20
7/27/2020	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.30

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
CMC	5.2	\$ 207.73	\$ 1,080.20
DANIELLE	1.4	\$ 207.73	\$ 290.82
DVORA	1.8	\$ 207.73	\$ 373.91
KDEGNAN	22.9	\$ 207.73	\$ 4,757.02
LISA	0.6	\$ 207.73	\$ 124.64
LWILDER	33.6	\$ 207.73	\$ 6,979.73
NICK	0.8	\$ 207.73	\$ 166.18
PAIGE	3.2	\$ 173.00	\$ 553.60

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
ZACH	1.5	\$ 207.73	\$ 311.60
LWILDER	0.4	\$173.00	\$69.20
Expenses: Federal Express:	\$31.11		
Postage:	\$5.75	Total:	\$14,743.76

USAO ATTORNEY'S FEES MATRIX — 2015-2020

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20
31+ years	568	581	602	613	637
21-30 years	530	543	563	572	595
16-20 years	504	516	536	544	566
11-15 years	455	465	483	491	510
8-10 years	386	395	410	417	433
6-7 years	332	339	352	358	372
4-5 years	325	332	346	351	365
2-3 years	315	322	334	340	353
Less than 2 years	284	291	302	307	319
Paralegals & Law Clerks	154	157	164	166	173

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). See *Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. See, *e.g.*, *EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working with other parties to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging that "both the plaintiff and defense sides of the bar" should "work together and think creatively about how to produce a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").