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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE WASHINGTON TRAVEL CLINIC PLLC, *et al.*,	*	
Plaintiffs,	*	
	*	Case No. 13 CA 3233 B
v.	*	Judge Laura A. Cordero
	*	
JOHN KANDRAC,	*	
Defendant.	*	

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION AND DENYING DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND COSTS

This matter comes before the Court on Defendant's Motion for Reconsideration, filed on December 20, 2013. Plaintiffs filed an Opposition on January 7, 2014 and Defendant filed a Reply on January 14, 2014. Plaintiffs filed a Surreply on February 7, 2014. Plaintiffs also filed a Supplement to their Opposition ("Supplement") on February 7, 2014. Defendant filed a Response to the Supplement on February 12, 2014. Defendant also filed a Motion for Attorneys' Fees And Costs ("Motion for Fees") on December 24, 2013. Plaintiffs filed an Opposition to the Motion for Fees on January 9, 2014. Defendant filed a Reply on January 21, 2014. On August 18, 2014, the parties filed a Joint Motion to Postpone Initial Scheduling Conference on the basis that the Motion for Reconsideration is pending.

On July 15, 2013, Defendant filed a Special Motion to Dismiss the Complaint ("Motion to Dismiss") pursuant to the D.C. Anti-SLAPP Act. *See* D.C. Code § 16-5502 (2001). On September 24, 2013, Plaintiffs Washington Travel Clinic, PLCC ("WTC") and Dr. Ziad Akl filed a Motion for Sanctions. On December 16, 2013, the Court issued an Omnibus Order, granting in part and denying in part Defendant's Motion to Dismiss, and denying Plaintiffs' Motion for Sanctions. For reasons stated below, Defendant's Motion for Reconsideration is denied and Defendant's Motion for Fees is denied.

A. Background

This case arises from a suit for defamation and tortious interference with a prospective business advantage stemming from a customer review posted on Yelp (www.yelp.com). Am. Compl. at 1. Defendant visited Plaintiff Akl, an infectious disease specialist, in preparation for an overseas trip. *Id.* ¶¶ 7-12. On January 28, 2013, Defendant posted a review of Plaintiffs WTC and Dr. Akl on Yelp. *Id.* ¶ 13. After Defendant posted the review, Plaintiff Akl e-mailed Defendant, requesting that Defendant correct several alleged factual inaccuracies in the review. *Id.* ¶ 19. Defendant posted a revised review on January 31, 2013. *Id.* ¶ 22. Plaintiffs, alleging that the revised review did not correct the claimed inaccuracies, filed suit. *Id.* ¶ 30.

On December 16, 2013, this Court issued an Omnibus Order, granting in part and denying in part Defendant's Special Motion to Dismiss the Complaint, pursuant to D.C. Code § 16-5502. [1] Omnibus Order at 1. Specifically, the Court held that Plaintiffs had put forward sufficient evidence to sustain a favorable judgment as to the existing defamation claim based on the statement that Defendant received other patients' information. Omnibus Order at 8-9. However, the Court held that Plaintiffs had not shown that they were likely to succeed on their remaining defamation claims and claim of tortious interference with a prospective business advantage. *Id.* at 9-17. The Court also dismissed Plaintiffs' claims for sanctions, which argued that Defendant and defense counsel made representations to the Court that lacked evidentiary support and failed to make reasonable inquiries into their allegations. *Id.* at 19-23.

In his Motion for Reconsideration, Defendant asserts that there was a dispositive issue that was not adjudicated and that, if decided, would result in the dismissal of Plaintiffs' existing defamation claim. Mot. for Reconsideration at 1. Namely, Defendant argues that the Court's

[1] D.C. Code § 16-5502 is commonly referred to as the D.C. Anti-SLAPP Act. "SLAPP" is an acronym for "Strategic Lawsuits Against Public Participation."

Omnibus Order did not address Plaintiffs' obligation to demonstrate a likelihood of success on the merits with respect to damages for the surviving defamation claim. *Id.* at 2. In his Motion for Fees, Defendant asserts that he is entitled to his "costs of litigation, including reasonable attorney fees," pursuant to D.C. Code § 16-5504(a), which authorizes the awarding of fees to a moving party who prevails, in whole or in part, on an anti-SLAPP motion. *Id.*

B. Motion for Reconsideration – Standard of Review

i. The D.C. Anti-SLAPP Act

Under Section 16-5502 of the D.C. Code, "a party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest . . ." D.C. Code § 16-5502 (2001). "If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits . . ." D.C. Code § 16-5502(b) (2001).

ii. Rule 59(e)

Defendant moves pursuant to Rule 59(e), and alternatively under Rules 54(b) and 60(b). However, the motion properly falls under Rule 59(e) because Defendants claim that the Omnibus Order is legally erroneous. Defendants do not request consideration of additional circumstances, which would appropriately fall under Rule 60(b). *Household Fin. Corp. III v. First Am. Title Ins. Co.*, 669 A.2d 703, 705 (D.C. 1995) (internal citations omitted). A Rule 59(e) motion is appropriate if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law. *Household Fin. Corp. III*, 669 A.2d at 705 (citing *Wallace v. Warehouse Emp.'s Union No. 730*, 482 A.2d 801 (D.C. 1984)); *see also District No.1—Pacific*

Coast Dist. v. Travelers Cas. and Sur. Co., 782 A.2d 269, 278 (D.C. 2001) (stating that "[a] timely motion asserting that the court committed an error of law is normally treated under Rule 59(e)"). When the movant presents no additional circumstances to the court in support of its motion for reconsideration and claims that an order is legally erroneous, such a motion falls under Rule 59(e) and not Rule 60(b). *See Household Fin. Corp. III*, 669 A.2d at 706.

While Plaintiffs argue that Defendant cannot move for reconsideration under Rules 59 and 60 because these rules only apply to final appealable judgments, these arguments are not persuasive. *See* Opp'n to Mot. for Reconsideration at 2-3. "Judges are constantly reexamining their prior rulings in a case on the basis of new information or argument, or just fresh thoughts . . . No one will suggest that a judge [himself or herself] may not change [his or her] mind and overrule [his or her] own order." *Blyther v. Chesapeake & Potomac Tel. Co.*, 661 A.2d 658, 662 (D.C. 1995) (quoting, *inter alia*, *Dictograph Prods. v. Sonotone Corp.*, 230 F.2d 131, 134 (2d Cir. 1956) (Hand, J.)). Therefore, "'so long as the court has jurisdiction over an action, it should have complete power over interlocutory orders made therein and should be able to revise them when it is consonant with equity to do so.'" *Schoen v. Washington Post*, 246 F.2d 670, 673 (D.C. Cir. 1957) (internal citations omitted). The Court of Appeals has also held that the "inflexible ten-day period" for filing a Rule 59 motion only applies to "a final, appealable judgment." *Williams v. Vel Rey Properties*, 699 A.2d 416 (D.C. 1997). Thus, motions to reconsider interlocutory orders are "not subject to the restrictive time limits imposed upon motions to reconsider final judgments." *Id.* Therefore, as Defendant's Motion requests that the Court reconsider the December 16, 2013 Omnibus Order due to an alleged improper legal decision, the Court will consider this Motion pursuant to Rule 59.

C. Motion for Reconsideration - Analysis

In his Motion for Reconsideration, Defendant argues that Plaintiffs failed to offer any evidence of damages with regard to their remaining claim for defamation and thus that Plaintiffs failed to demonstrate a likelihood of success on the merits, as required under the D.C. Anti-SLAPP Act.[2] Mem. of P&A to Mot. for Reconsideration ¶ 2. Plaintiffs, however, contend (1) that they are not required to show damages because the remaining claim rests on a theory of libel per se, (2) that Defendant's claim that a showing of malice is required for a claim of libel *per se* is incorrect and (3) that Plaintiffs can demonstrate special damages through discovery.

Therefore, Defendant argues that Plaintiffs failed to demonstrate special harm in relation to their remaining defamation claim. Plaintiffs, however, claim that that they successfully pled a cause of action for libel per se, and are therefore not required to demonstrate special harm. Indeed, in the Amended Complaint, Plaintiffs allege, "Defendant's statements are actionable as a matter of law irrespective of special harm as Plaintiffs are in the business of delivering medical services and the reputation of healthcare providers is their most valuable asset." Am. Compl. ¶ 62. Furthermore, Defendant's original Yelp review, posted on January 28, 2013, stated, "Like others, I have received other patients' receipts (more than one!) . . ." Ex. 1 to Am. Compl. In the amended review, posted on January 31, 2013, Defendant changed the statement to read "Like others below, I have received other patients' information from Dr. Akl via email." Ex. 2 to Am. Compl.

"A plaintiff bringing a defamation action must show: (1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant's fault in publishing the statement

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[2] *See* D.C. Code § 16-5502(b).

amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm." *Beeton v. District of Columbia*, 779 A.2d 918, 923 (D.C. 2001). "One who publishes a slander that ascribes to another conduct, characteristics, or a condition that would adversely affect [his] fitness for the proper conduct of [his] lawful business, trade or profession . . . is subject to liability without proof of special harm." *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 877-78 (D.C. 1998).

Defendant's statements fall within the ambit of libel per se. In *Wallace*, the plaintiff, a former attorney, alleged that she was defamed by representations that she was out of the office during normal working hours, that a client was dissatisfied with the plaintiff's work and sought to have her removed from the client's matters, that her key was inactivated when she was terminated, which had previously only occurred in extremely serious instances of misconduct, and that the law firm responded to potential employers only with the dates of her employment, which "is a well known code in the legal professions for 'do not hire.'" *Id.* at 877. The Court of Appeals noted that all of these allegations were capable of defamatory meaning and "the defendants' alleged coup-de-grace – a directive to all attorneys to convey to prospective employers the coded message that the plaintiff should not be hired – tends to injure the plaintiff's reputation in her profession." *Id.* at 878.

Here, Defendant's edited review stated that he had received other patients' information from Dr. Akl. Omnibus Order at 3. However, his affidavit stated that he received an appointment notification by mistake, which did not have another patient's identifying information attached, and that he deleted emails that contained information about other patients. *Id.* A statement that Plaintiffs disseminated their patients' confidential information would tend to injure Plaintiffs'

reputation in the medical profession, as it is essentially a statement that Plaintiffs violated the Health Information Portability and Accountability Act ("HIPAA"). Plaintiffs have therefore successfully established a case for defamation per se and proof of special harm was not required.

Defendant also argues that if Plaintiffs' claim falls into the narrow category in which damages are presumed, Plaintiffs would be separately required to submit evidence that Defendant published the statement with constitutional malice. Mem. of P&A to Mot. for Reconsideration at 3 n.1. In *Gertz*, the Court held, " '[t]he constitutional guarantees require . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'-that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' " *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 334 (1974) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)). A public official is defined as someone who has either "achieve[d] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts . . ." or "voluntarily injects himself or is drawn into a public controversy and thereby becomes a public figure for a limited range of issues." *Id.* at 351.

Here, Plaintiffs have not achieved fame through their practice of medicine. Plaintiff WTC is a for-profit Professional Limited Liability Company with offices in the District of Columbia, owned by Plaintiff Akl. Am. Compl. ¶¶ 2-3. Defendant visited Plaintiffs in order to seek medical advice in preparation for an overseas trip. Plaintiffs did not insert themselves into any public controversy prior to or as a result of the dispute in this case. Therefore, Plaintiffs are not required to show constitutional malice in order prevail on their defamation claim. Moreover, Plaintiffs were not required to provide evidence of damages for the remaining defamation claim in order to show that this claim is likely to succeed on the merits. Plaintiffs have alleged a claim that is

"actionable as a matter of law irrespective of special harm." The parties' Joint Motion to Postpone Initial Scheduling Conference is denied as moot.

D. Motion for Attorneys' Fees and Costs - Analysis

A determination of reasonableness of an attorney's fee is a matter within the trial judge's discretion. *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1289 (D.C. 1990). D.C. Code § 16-5504(a) states, "a court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 . . . the costs of litigation including reasonable attorney fees." D.C. Code § 16-5504(a) (2001). Furthermore, Rule 11 of the Superior Court Rules of Civil Procedure states, in relevant part, that a party moving for sanctions may be awarded "the reasonable expenses and attorney's fees incurred in presenting or opposing the motion." Super. Ct. R. Civ. P. 11(c)(1)(A). Rule 54(d) also states, "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the Court otherwise directs . . . ." Super. Ct. R. Civ. P. 54(d). Court filing fees are allowed as a matter of course. *Talley v. Varma*, 689 A.2d 547, 555 (D.C. 1997) (citing *Robinson v. Howard Univ.*, 455 A.2d 1363, 1368 (D.C. 1983)).

Defendant claims he is entitled to fees as a result of prevailing on his special motion to dismiss Plaintiffs' defamation claim as to all but one statement, and on Plaintiffs' tortious interference claim. Mem. of P&A to Mot. for Fees at 1. Defendant argues that Plaintiffs aggressively litigated the instant case and this, coupled with Defendant's "substantial success" in defending the action, warrants the award of fees and costs. *Id.* at 7. Defendant also seeks repayment of the costs and fees associated in opposing Plaintiffs' Motion for Sanctions under Rule 11, which was denied in the Omnibus Order. Plaintiffs contest Defendant's arguments in their Opposition.[3]

[3] Plaintiffs argue: (1) the Anti-SLAPP Act was not intended to prevent the litigation in the instant case, (2) Plaintiffs demonstrated that the suit was unlikely to be SLAPP, (3) the tortious interference claim may be reinstated on appeal,

i. The potential for an appeal

Plaintiffs contend that the tortious interference claim and the other stricken allegations may be reinstated on appeal, and therefore that Defendant should not be permitted to collect the costs and fees associated with the Special Motion to Dismiss. Opp'n to Mot. for Fees at 3-8. In support of their assertion, Plaintiffs argue that the Court is not authorized to strike particular allegations within a cause of action under the Anti-SLAPP Act. Opp'n to Mot. for Fees at 6. While Plaintiffs suggest that Defendant is not entitled to an award of attorneys' fees because Plaintiffs have made a case for defamation per se, they provide no authority for the proposition that the awarding of attorneys' fees should be delayed due to the possibility of an appeal.

In *Purcell v. Thomas*, the D.C. Court of Appeals held that a prevailing party bringing a claim under the District of Columbia Human Rights Act was, upon filing and serving a motion, entitled to attorney fees. *Purcell v. Thomas*, 28 A.3d 1138 (D.C. 2011). The Court further stated that "a request for attorneys' fees raises issues that are, for all practical purposes 'collateral to' and 'separate from' the decision on the merits of the underlying litigation." *Id.* at 1141 (internal citations omitted). Therefore, "a party wishing to appeal the underlying judgment should not wait until a decision on the attorney fees has been rendered; the judgment disposing of the merits is immediately appealable, and the decision regarding attorney fees may be appealed separately." *Id.* Thus, Defendant is not precluded from collecting attorneys' fees and costs as a result of the potential for appeal by Plaintiffs. As *Purcell* suggests, a pending appeal or the possibility thereof does not preclude the trial court from awarding attorney fees.

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(4) the stricken allegations may be reinstated on appeal, (5) only the anti-SLAPP motion is subject to an award of fees, (6) Defendant is not entitled to any award under Rule 11, (7) the determination of attorney fees requires submission of details of the retainer agreement, and (8) the calculation of attorney fees is subject to the court's discretion. However, the Court will deny Defendant's Motion for Fees on other grounds.

ii. Prevailing on particular allegations within a cause of action

Moreover, Plaintiffs' contention that the Anti-SLAPP Act only authorizes a court to strike a cause of action, but not particular allegations within a cause of action, is without merit. *See* Opp'n to Mot. for Fees at 5. Plaintiffs rely on *Oasis West Realty* to argue that Anti-SLAPP legislation authorizes a trial court to strike a cause of action, but not individual allegations within a cause of action. Opp'n to Mot. for Fees at 6; *see Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811 (2011). However, *Oasis* has subsequently been read to allow the striking of part of a cause of action. For example, in *Cho*, the California Court of Appeals held that "a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action'." *Cho v. Chang*, 219 Cal. App. 4th 521, 527 (2013). The court proceeded to note that striking an entire cause of action brought under an Anti-SLAPP statute due to the presence of some protected claims would be wholly inconsistent with the purposes of the statute. *Id.* Therefore, Plaintiffs' argument regarding the striking of individual allegations is without merit. However, for the reasons stated below, Defendant will not be awarded attorneys' fees.

iii. Fees relating to the Motion to Unseal

In his Motion for Fees, Defendant requests an award for all fees and costs incurred in the litigation. Defendant argues that this includes work regarding Defendant's motion to unseal the case. Mot. for Fees at 8. Plaintiffs, however, argue that the court should only consider Defendant's Anti-SLAPP Motion in awarding fees. Opp'n to Mot. for Fees at 8.

Section 16-5504 of the D.C. Code states, "The court may award a moving party who prevails, in whole or in part, on a motion sought under § 16-5502 . . . *the costs of litigation,* including reasonable attorney fees." D.C. Code § 16-5504 (2001) (emphasis added). In

Metabolife Int'l, the California federal court held, "the entire lawsuit is subject to the anti-SLAPP motion because all causes of action . . . relate to free speech and all of the activity . . . occurred in the context of, and are inextricably intertwined with, the anti-SLAPP motion," and thus that the moving party was entitled to recover fees and costs incurred "in connection with" the Anti-SLAPP motion. *Metabolife Int'l v. Wornick*, 213 F. Supp. 2d 1220, 1223 (S.D. Cal. 2002). Similarly, Defendant incurred the costs and fees referred to in his Motion for Fees as a result of the Anti-SLAPP proceedings, and therefore Plaintiffs' argument that Defendant is only entitled to fees stemming directly from the Anti-SLAPP motion itself is without merit.

However, in the instant case, Plaintiffs filed a Motion to Seal because the Complaint contained information about Defendant that contained confidential health information under the Privacy Rule. Mot. to Seal ¶ 14. Therefore, the filing of an unsealed complaint would raise issues relating to HIPAA. *Id.* ¶ 15. Defendant filed a Motion to Unseal on June 26, 2013, thereby consenting to the disclosure of his health information related to the allegations in the Complaint and Amended Complaint. *See* Mot. to Unseal. Subsequently, this Court ordered the unsealing of the records. July 31, 2013 Order at 5.

While Defendant contends that he was "forced" to litigate the Motion to Unseal as a result of Plaintiffs' "aggressive litigation," Mot. for Fees at 7, Plaintiffs' failure to seal Defendant's medical records at the onset of the litigation would have potentially given rise to issues involving HIPAA. Therefore, Defendant is not entitled to collect attorneys' fees relating to the Motion to Unseal.

iv. Reasonableness of fees

In *Johnson v. Georgia Highway Express, Inc.*, the court set forth twelve factors that should be evaluated when determining whether a fee is reasonable. The twelve factors are: (1)

the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) 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. *See Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)). In order for this Court to determine whether defense counsel's fees are warranted it must first evaluate whether the quoted fees are "reasonable" pursuant to the *Johnson* factors. *Johnson's* "list of 12" provides a useful catalog of the many factors to be considered in assessing the reasonableness of an award of attorney's fees but no one factor standing alone is dispositive. *See Blanchard v. Bergeron*, 489 US 87, 93 (1989).

Defendant argues that the fees and costs requested in his motion are reasonable. *See* Mot. for Fees at 9. Defense counsel bear the burden of establishing the reasonableness of their fee request and must do so with supporting documentation that is "of sufficient detail and probative value to enable the court to determine with a high degree of certainty such hours were actually and reasonably expended." *See Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 970 (D.C. Cir. 2004). Generic entries, such as "legal research" or "continue to draft," are inadequate to meet a fee applicant's "heavy obligation to present well-documented claims." *See id.* (citing *Kennecott Corp. v. EPA*, 804 F.2d 763, 767 (D.C. Cir. 1986).

Defense counsel submitted documentation, in the form of a Memorandum in Support of Their Motion for Attorneys' Fees and Costs, the Affidavit of Seth Berlin, and exhibits to establish that the compensation they seek is reasonable.

Hours claimed or spent on a case should not be the sole basis for determining a fee; however, they are a necessary ingredient to be considered. *See Johnson*, 488 F.2d at 717. Defense counsel alleges that they spent a total of 282.40 hours working on the litigation for their client. Ex. 1 to Mot. for Fees. Additionally, defense counsel alleges that they voluntarily eliminated 26.30 hours, resulting in a reduction of $8,704.50 in the amount sought in Defendant's Motion for Fees. Berlin Aff. ¶ 13. Defense counsel also claims not to seek reimbursement for an additional 10.5 hours. *Id.* Defense counsel claims that the value of the 10.5 hours was $3,797.50, which represents time incurred in connection with the remaining statement as to which the Court denied Defendant's anti-SLAPP motion, and included drafting the motion and filing a reply in support of the motion.[4] Ex. 1 n.1 to Mot. for Fees.[5] Defense counsel, Seth Berlin, asserts that he spent a total of 76.30 hours working on the litigation, while defense counsel, Shaina Jones Ward, asserts that she spent a total of 188.60 hours. Ex. 1 to Mot. for Fees. Defense counsel also included, in their calculation of total fees, 17.50 hours worked by three paralegals. *Id.*

"An award for time spent by two or more attorneys is proper *so long as it reflects the distinct contribution of each lawyer to the case . . .*" *Fred A. Smith Mgmt. Co. v. Cerpe*, 957 A.2d 907, 920 (D.C. 2008) (emphasis added). Accordingly, when more than one attorney is involved, the possibility of duplication of effort, along with proper utilization of time should be

[4] It is unclear how defense counsel determined that this specific amount was spent analyzing this particular statement.

[5] Defendant requested the awarding of the $3,797.50 should the Court grant Defendant's Motion for Reconsideration. Ex. 1 n.1 to Mot. for Fees.

scrutinized. *Johnson*, 488 F.2d at 717. In *Role Models America, Inc. v. Brownlee*, the District Court for the District of Columbia found that the lumping together of multiple tasks in a single time records renders the court's evaluation of reasonableness impossible. *Role Models*, 353 F.3d at 971 (citing *In re Olsen*, 884 F.2d 1415 (D.D.C. 1989)).

Here, defense counsel had numerous "lumped entries." Lumping occurs when inadequate documentation makes it impossible for the court to verify the reasonableness of the billings, either as to the necessity of the particular service or the amount of time expended on a given legal task. *See id.* at 972. The court is permitted to eliminate all lumped entries because it is impossible to determine how much time was allotted to each task and whether the time spent was reasonable. In the Total Fees sheet compiled by defense counsel, Ex. 1 to Mot. for Fees, defense counsel lists a series of tasks performed in a given week, followed by a breakdown of hours attributed to Mr. Berlin, Ms. Jones Ward, and the paralegals. For example, for the week of June 19, 2013 to June 26, 2013, the entry reads,

> Prepare and file (a) motion to unseal, affidavit and proposed order, (b) notices of appearance, and (c) consent motion for extension of time to respond to Complaint; telephone conferences with client, Plaintiffs' counsel and clerk's office regarding same; review and analyze Amended Complaint and formulate strategy for responding to same.

Ex. 1 to Mot. for Fees. Following the list of tasks, defense counsel provides a breakdown, attributing 2.60 hours to Mr. Berlin and 12.50 hours to Ms. Jones Ward. Defense counsel does not, however, delineate the specific amount of time spent on each task by each attorney, nor explain whether the entries are duplicative. Another example is from the period of September 24, 2013 to October 18, 2013:

> Review Plaintiffs' Motion for Rule 11 Sanctions and address strategy for responding to same; draft and revise opposition to Plaintiffs' Motion for Rule 11 Sanctions; conduct legal and additional factual research in connection with same; draft and revise attorney affidavit and proposed order; cite-check opposition brief

> and related papers; communicate with client, Plaintiffs' counsel and Judge's chambers regarding same and postponement of initial scheduling conference.

Id. In addition, lumping of entries in the instant case prevents the Court from being able to distinguish between tasks completed by defense counsel and those completed by paralegals. Defense counsel did not separate the billable tasks performed by the paralegals from those performed by Mr. Berlin and Ms. Jones Ward. *See* Ex. 1 to Mot. for Fees. Because defense counsel included lumped entries, it is impossible for the Court to decipher how much time was allotted to each task and individual, and whether the time spent was reasonable.

As stated above, it is impossible for the court to verify the reasonableness of the billings when the documentation of services contains "lumped" entries. *See Role Models*, 353 F.3d at 972. Defense counsel did not provide the Court with adequate information in order for the Court to assess the necessity or reasonableness of the attorneys' fees and therefore Defendant is not entitled to the awarding of fees.

E. Conclusion

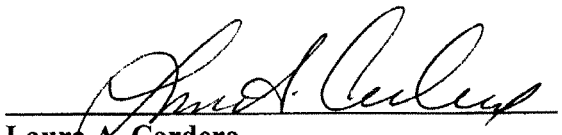
Upon consideration of Defendant's Motion for Reconsideration, Plaintiffs' Opposition to Defendant's Motion for Reconsideration, Plaintiffs' Supplement, Plaintiffs' Surreply, Defendant's Motion for Fees, Plaintiffs' Opposition to Defendant's Motion for Fees, Defendant's Reply, and the record herein, it is this 20th day of August, 2014, hereby:

ORDERED, that the Defendant's Motion for Reconsideration is **DENIED;** and it is further

ORDERED, that the Defendant's Motion for Attorneys' Fees and Costs is **DENIED**; and it is

FURTHER ORDERED, that the Joint Motion to Postpone Initial Scheduling Conference is **DENIED AS MOOT.**

SO ORDERED.



Laura A. Cordero
Associate Judge
(Signed in Chambers)

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