

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MICHAEL ROSENGART,

Plaintiff,

v.

BYNDFIT, LLC *et al.*,

Defendants.

Case No.: 2020 CA 001710 B

Judge Jason Park

Mediation: 1/19/2022

**ORDER**

This matter is before the Court on the plaintiff's motion for attorneys' fees and costs against the three corporate defendants and the plaintiff's motion for attorneys' fees and costs against defendant Raymond R. Rahbar, Jr., filed September 1, 2021. Upon consideration of the plaintiff's motions and the accompanying bill of fees, and for the reasons discussed below, the Court grants in part Mr. Rosengart's motion against the corporate defendants and awards the plaintiff \$17,295.81 in reimbursement of fees and costs from the corporate defendants and grants Mr. Rosengart's motion against defendant Rahbar and awards the plaintiff \$15,354.76 in reimbursement of fees and costs from defendant Rahbar.

**BACKGROUND**

On March 10, 2020, plaintiff Michael Rosengart filed a seven-count complaint against defendants BYNDfit, LLC; BYND Holding, LLC; BF Management, LLC; and Raymond Rahbar,

Jr., the chief executive officer of the corporate defendants,<sup>1</sup> alleging unpaid wages and retaliation in violation of the D.C. Wage Payment and Collection Law (“DCWPCL”), breach of contract, breach of implied duty of good faith and fair dealing, fraud, fraud in the inducement, and appropriation of image. *See generally* Compl.

On July 31, 2021, the plaintiff filed a motion to compel defendant Raymond Rahbar, Jr. to respond to discovery and to identify fact witnesses and for sanctions. *See generally* Pl.’s Mot. to Compel Def. Raymond Rahbar, Jr. to Respond to Disc. and to Identify Fact Witnesses and for Sanctions, with Incorporated P. & A. On August 9, 2021, the plaintiff filed a motion to compel discovery and for sanctions against the corporate defendants. *See generally* Pl.’s Mot. to Compel Defs. BYNDfit, LLC, BF Management, LLC, and BYND Holding, LLC to Fully Respond to Disc. and for Sanctions, with Incorporated P. & A. (“Pl.’s Mot. to Compel Disc. against Corp. Defs.”). At the August 25, 2021 hearing on the plaintiff’s motions to compel against the corporate defendants and defendant Rahbar, the Court orally granted the plaintiff’s motion to compel discovery and for sanctions against defendant Rahbar, who declined to respond to the motion or appear at the hearing.<sup>2</sup> As to the plaintiff’s motion to compel discovery against the corporate defendants, the Court granted the motion in part as to the fee petition and denied the motion in part as to the remainder of the requests.

On September 1, 2021, the plaintiff filed two motions: (1) the motion for attorneys’ fees and costs against the corporate defendants, requesting \$34,115.20 in fees and \$238.21 in costs

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<sup>1</sup> The complaint also named Ryan Macaulay and Carl Pierre as defendants. *See generally* Compl. On January 30, 2021, the plaintiff and defendants Macaulay and Pierre jointly filed a stipulation dismissing Mr. Macaulay and Mr. Pierre from the case. *See generally* Stipulation and Order for Dismissal without Prejudice as to Certain Defs. Pursuant to Super. Ct. Civ. R. 41(a)(1)(A)(ii).

<sup>2</sup> At the hearing held on December 20, 2021, the Court orally denied defendant Rahbar’s motion for reconsideration of the Court’s order granting the plaintiff’s motion to compel.

from the corporate defendants; and (2) the motion for attorneys' fees and costs against defendant Rahbar, requesting \$30,223.10 in fees and \$238.21 in costs from defendant Rahbar, Jr. *See generally* Pl.'s Mot. for Reasonable Att'ys' Fees and Costs against Defs.' BYNDfit, LLC, BYND Holding, LLC, and BF Management, LLC ("Pl.'s Mot. for Fees against Corp. Defs."); Pl.'s Mot. for Reasonable Att'ys' Fees and Costs against Def. Raymond R. Rahbar, Jr. ("Pl.'s Mot. for Fees against Def. Rahbar").

The corporate defendants filed an opposition on September 15, 2021. *See generally* Defs.' Opp'n to Mot. for Reasonable Att'ys' Fees and Costs ("Defs.' Opp'n"). The plaintiff filed a reply on September 22, 2021, requesting the following additional fees: (1) \$7,629.50 for attempting to resolve the dispute without judicial intervention; (2) \$2,064.75 for the hours expended finalizing and filing this motion that were not previously listed because those hours were expended contemporaneously with the finalization and filing of the motion; and (3) \$14,563.30 for preparing the reply brief and the accompanying documents, amounting to a total of \$50,743.25 in fees and \$238.21 in costs requested from the corporate defendants. *See generally* Pl.'s Reply Br. in Supp. of his Mot. for Fees ("Pl.'s Reply"); Pl.'s Reply, Ex. 1 (Supplemental Decl. of David L. Scher in Supp. of Mots. for Fees against All Defs.) ("Supplemental Decl. of David Scher"). Defendant Rahbar did not file an opposition to the plaintiff's motion for fees against him.

## ANALYSIS

### **I. THE COURT GRANTS IN PART THE PLAINTIFF'S MOTIONS FOR ATTORNEYS' FEES AND COSTS**

In his motions, the plaintiff argues that, under the DCWPCL, fees in DCWPCL actions shall be computed pursuant to the *Laffey* matrix approved in *Salazar v. District of Columbia*, 132 F.Supp. 2d 8 (D.D.C. 2008). *See* Pl.' Mot. for Fees against Corp. Defs. at 6; Pl.'s Mot. for Fees against Def. Rahbar at 6. The plaintiff asserts that, based on the *Laffey* matrix, the experience of

his counsel, and the hours spent on the attempts to resolve the dispute without judicial intervention and on motion practice, he is entitled to \$50,743.25 in attorneys' fees. *See* Pl.' Mot. for Fees against Corp. Defs. at 10-11; Supplemental Decl. of David Scher ¶¶ 16-20.<sup>3</sup>

In response, the corporate defendants argue that “[t]here is no basis for such an overreaching award,” because, first, “as a matter of law, [the *Laffey* matrix] has no application at this stage in the case, *i.e.*, pre-judgment,” and, second, the plaintiff seeks “an unreasonable award for work that [was] duplicative, excessive, and [] not entirely successful.” Defs.’ Opp’n at 2. Mr. Rahbar has not filed a response to the fee petition.

#### **A. Hourly Rates Charged by the Plaintiff’s Counsel**

The formula for computing reasonable attorneys’ fees begins with calculating the lodestar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate. *See, e.g., Campbell-Crane & Assocs., Inc. v. Stamenkovic*, 44 A.3d 924, 947 (D.C. 2012). The DCWPCL expressly mandates that courts use the *Laffey* matrix adopted in *Salazar* to compute reasonable attorneys’ fees in DCWPCL actions. *See* D.C. Code § 32-1308(b)(1) (“In any judgment in favor of any employee under this section . . . the court shall award to each attorney for the employee an additional judgment for costs, including attorney’s fees computed pursuant to the matrix approved in [*Salazar*], and updated to account for the current market hourly rates for attorney’s services.”); *Salazar*, 123 F. Supp. 2d at 13 (citing *Laffey v. Northwest Airlines*, 572 F.

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<sup>3</sup> For the plaintiff’s counsel David L. Scher, the plaintiff requests approval of hourly rates of \$919 per hour. *See* Pl.’s Mot for Fees, Ex. 1 (Decl. of David L. Scher in Supp. of Mots. for Fees against All Defs. (“Decl. of David L. Scher”) ¶ 20). Counsel Scher represents that he has twenty-eight years of experience. *See* Decl. of David L. Scher ¶¶ 14, 20. For the plaintiff’s counsel David C. Fulleborn, the plaintiff requests \$676 per hour. *See id.* ¶ 20. Counsel Scher represents that Counsel Fulleborn has eight years of experience. *See id.* ¶ 18. For counsel Sean Estes, “who worked on the fee petition,” counsel requests \$764 per hour. *See id.* ¶ 20. Counsel Scher represents that Counsel Estes has thirteen years of experience. *See id.* ¶ 19.

Supp. 354, 371-75 (D.D.C. 1983)). The statutory requirement for use of the *Laffey* matrix applies even if the prevailing party does not obtain a judgment. *See Hercules v. Logan Grill, Inc.*, 2020 D.C. Super. LEXIS 23, at \*3 (D.C. Super. Ct. Aug. 10, 2020) (holding that plaintiff who prevailed through settlement instead of judgment was entitled to attorney’s fees because the purpose of DCWPCL’s fee-shifting provision is to provide “better access to legal representation for wage theft victims,” permitting a more liberal application to effectuate that purpose). The rates set in the *Laffey* matrix are “presumptively reasonable.” *Tenants of 710 Jefferson St. v. D.C. Rental Hous. Comm’n*, 123 A.3d 170, 184 (D.C. 2015) (holding that “[d]eviations from the *Laffey* Matrix’s presumptively reasonable measure should not be lightly undertaken and need to be substantially supported”).

Here, although the corporate defendants argue that the *Laffey* matrix does not apply in the absence of a judgment for the plaintiff, “the *Laffey* matrix applies even if the prevailing party does not obtain a judgment.” *Hercules*, 2020 D.C. Super. LEXIS 23, at \*3; *see* Defs.’ Opp’n at 1-2. As to the defendants’ assertion that the *Laffey* matrix has no application here because “this is a straightforward wage claim without any novel or complex issues,” Defs’ Opp’n at 5, the use of the *Laffey* matrix to calculate attorneys’ fees in a case like this one is not only presumptively reasonable but mandatory. *See Tenants of 710 Jefferson St.*, 123 A.3d at 184; *see also* D.C. Code 32-1308(b) (referencing no novel or complex requirement for the *Laffey* matrix to apply). For this reason and because the requested rates are within the *Laffey* matrix, the Court finds the requested hourly rates—\$919 per hour for Counsel Scher, \$676 per hour for Counsel Fulleborn, and \$764 for Counsel Estes—reasonable. *See* Pl.’s Mot. for Fees, Decl. of David L. Scher ¶ 20; D.C. Code 32-1308(b); *Tenants of 710 Jefferson St.*, 123 A.3d at 186.

## **B. The Hours Billed by the Plaintiff's Counsel**

A party seeking an award of attorneys' fees must provide documentation "sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified." *Hampton Courts Tenants Ass'n v. D.C. Rental Hous. Com.*, 599 A.2d 1113, 1117 (D.C. 1991). The Court has the discretion to decrease compensable hours that are "excessive, redundant, or otherwise unnecessary." *District of Columbia v. Hunt*, 525 A.2d 1015, 1016 (D.C. 1987) (internal citation omitted). But a fee application "should not result in a second major litigation." *Driscoll v. George Wash. Univ.*, 55 F. Supp. 3d 106, 114 (D.D.C. 2014) (citing *Covington v. Dist. of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995)). Courts need not "engage in a detailed line-by-line analysis of the fee petition and the voluminous file in this case to determine, like a quasi-management consultant, if plaintiffs' counsel could have accomplished particular tasks or pleadings more efficiently." *Save Our Cumberland Mountains, Inc. v. Hodel*, 651 F. Supp. 1528, 1532 (D.D.C. 1986); *see also Copeland v. Marshall*, 641 F.2d 880, 896 (D.D.C. 1980) (holding that a trial court should not "become enmeshed in a meticulous analysis of every detailed facet of the professional representation").

In his motion concerning the corporate defendants, the plaintiff requests \$34,115.20 in fees from the corporate defendants, asserting that his counsel expended 45.8 hours on motion practice,<sup>4</sup> including preparation for the August 25, 2021 motion hearing and drafting this motion for fees.

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<sup>4</sup> In its declaration appended to this motion, Counsel Scher states that, on motion practice, "[their] firm expended . . . 33.7 hours relating to the [corporate defendants]," Counsel Scher expended 28.5 hours, and Counsel Fulleborn expended 55.3 hours. *See* Decl. of David L. Scher ¶¶ 21-23. Counsel Scher adds, "11.2 of [his] hours and 12 of Mr. Fulleborn's hours are attributable to both the Mr. Rahbar [sic] and the [corporate] defendants and should be split between them, as should Mr. Estes' one hour." *Id.* ¶ 23.

See Decl. of David L. Scher ¶ 23.<sup>5</sup> The corporate defendants object to the submitted time entries of the plaintiff's counsel, arguing that, because "[the p]laintiff's time entries [] are duplicative," the plaintiff's request for fees should be reduced. Defs.' Opp'n at 6-7.

Having reviewed the billing records submitted by the plaintiff, and the entirety of the record in this case, the Court finds that for attorneys with years of experience similar to and charging the rates sought by Counsel Scher, Counsel Freeborn, and Counsel Estes, 22.9 hours spent on this motion are reasonable, broken down per attorney in the same proportions as those submitted here. See Decl. of David L. Scher ¶¶ 21-23; see also *Fox v. Vice*, 563 U.S. 826, 827 (2011) ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection.").

The Court declines to further reduce the award because the plaintiff "was not entirely successful on the motion to compel and for sanctions, which was granted in part and denied in part." Defs.' Opp'n at 7. At the crux of the Court's determination as to reasonableness of the hours billed by the plaintiff's counsel is the significance of the overall relief the plaintiff obtained on his motion to compel discovery against the corporate defendants, not a review of the plaintiff's success as to every request made in that motion. See *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (recognizing that courts should focus on the significance of overall relief obtained by the plaintiff because counsel's time is devoted to litigation as a whole, leading to difficulties dividing hours spent on individual claims) (overturned on other grounds); *Nat. Motion by Sandra, Inc. v. D.C.*

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<sup>5</sup> In his reply, the plaintiff seemingly attempts to amend his motion by increasing the sought fees from \$34,115.20 to \$50,743.25, requesting the following additional fees: \$7,629.50 for 16.2 hours expended on discovery efforts, \$4,129.50 for 5.7 hours expended on finalizing this motion, and, finally, \$14,563.30 for 21.4 hours expended on preparing a reply memorandum. See Pl.'s Reply at 10; Supplemental Decl. of David L. Scher ¶¶ 11-16. Because the plaintiff asserted these claims for the first time in his reply memorandum, the Court declines to consider it here. See *Gathy v. United States*, 754 A.2d 912, 916 (D.C. 2000). Furthermore, the Court finds that awarding fees for the 21.4 hours spent on the reply memorandum to be excessive and unwarranted under the circumstances, particularly where the Court did not direct the plaintiff to file such a reply.

*Comm'n on Human Rights*, 726 A.2d 194, 198 (D.C. 1999) (affirming trial court's decision not to reduce overall fee award simply because the plaintiff lost on the issue of back pay because that claim was interrelated with the greater discrimination claim that was ultimately successful). Put differently, taken as a whole, the Court does not find that the corporate defendants' failure to comply with their discovery obligations was substantially justified or that considerations regarding the success of the plaintiff's motion render the award unjust. *See* D.C. Super. Ct. Civ. R. 37(a)(5). Accordingly, for the reasons discussed above, the Court awards the plaintiff attorneys' fees in the amount of \$17,057.60.

### **C. Request for Costs**

The plaintiff, as the prevailing party, is entitled to an award of costs. *See* D.C. Code § 32-1308(b)(1); D.C. Super. Ct. Civ. R. 54(d)(1). The plaintiff requests \$238.21 in costs from the corporate defendants. *See* Pl.'s Mot. for Fees at 7; Decl. of David L. Scher ¶ 28. The plaintiff did not submit billing records for the costs he seeks, but the defendants do not dispute the requested costs. *See generally* Defs.' Opp'n. Accordingly, the Court assumes the request for costs is reasonable and awards the plaintiff \$238.21 in costs.

## **II. THE COURT GRANTS THE PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS AGAINST DEFENDANT RAHBAR**

In his motion against defendant Rahbar, the plaintiff stresses that “[t]he Court granted the entirety of [the p]laintiff’s motion [to compel and sanction defendant Rahbar] after Mr. Rahbar failed to respond to or oppose [the p]laintiff’s motion . . . .” Pl.’s Mot. for Fees against Def. Rahbar at 4. The plaintiff raises the same argument as in his motion for fees against the corporate defendants, i.e., that that fees in this DCWPCL action shall be computed pursuant to the *Laffey* matrix approved in *Salazar*. *See id.* at 6; *Salazar*, 132 F. Supp. 2d at 8. The plaintiff asserts that, based on the *Laffey* matrix, the experience of his counsel, and the hours spent on “numerous efforts

to secure responses from Mr. Rahbar,” “the preparation of the motion to compel Mr. Rahbar, [the p]laintiff’s attendance at the hearing on the motion, and [] the preparation of this fee petition,” he is entitled to \$30,223.10 in fees and \$238.21 in costs. Pl.’s Mot. for Fees against Def. Rahbar at 2-3; *see id.*, Ex. 1 (Decl. of David L. Scher) ¶ 28.<sup>6</sup>

**A. Hourly Rates Charged by the Plaintiff’s Counsel**

Here, because the use of the *Laffey* matrix to calculate attorneys’ fees in a case like this one is mandatory and the requested rates are within the *Laffey* matrix, the Court finds the requested hourly rates—\$919 per hour for Counsel Scher, \$676 per hour for Counsel Fulleborn, and \$764 for Counsel Estes—reasonable. *See* Pl.’s Mot. for Fees against Def. Rahbar, Decl. of David L. Scher ¶ 20; D.C. Code 32-1308(b); *Tenants of 710 Jefferson St.*, 123 A.3d at 186.

**B. The Hours Billed by the Plaintiff’s Counsel**

In his motion, the plaintiff requests \$30,223.10 in fees from defendant Rahbar, asserting that the plaintiff’s counsel expended 39 hours on motion practice,<sup>7</sup> including preparation for the August 25, 2021 motion hearing and drafting this motion for fees. *See* Decl. of David L. Scher ¶ 23. Having reviewed the billing records submitted by the plaintiff, the Court finds that for attorneys with years of experience similar to and charging the rates sought by Counsel Scher, Counsel Freeborn, and Counsel Estes, 19.5 were reasonably expended on this motion, broken down per

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<sup>6</sup> In his motion for fees against defendant Rahbar, the plaintiff requests approval of the same hourly rates for Counsel Scher, Counsel Fulleborn, and Counsel Estes as in his motion for fees against the corporate defendants. *See* Pl.’s Mot. for Fees against Def. Rahbar, Decl. of David L. Scher ¶ 20.

<sup>7</sup> In his declaration appended to this motion, Counsel Scher states that, on motion practice, “[their] firm expended 26.9 hours relating to Mr. Rahbar,” Counsel Scher expended 28.5 hours, and Counsel Fulleborn expended 55.3 hours. *See* Decl. of David L. Scher ¶¶ 21-23. Counsel Scher adds, “11.2 of [his] hours and 12 of Mr. Fulleborn’s hours are attributable to both the Mr. Rahbar [sic] and the [corporate] defendants and should be split between them, as should Mr. Estes’ one hour.” *Id.* ¶ 23.

attorney in the same proportions as those submitted here. *See* Decl. of David L. Scher ¶¶ 21-23; *see also Fox v. Vice*, 563 U.S. 826, 827 (2011) (“The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection.”). Accordingly, for the reasons discussed above, the Court awards the plaintiff attorneys’ fees in the amount of \$15,116.55.

**C. Request for Costs**

The plaintiff, who is entitled to an award of costs as the prevailing party, requests \$238.21 in costs from defendant Rahbar. *See* Pl.’s Mot. for Fees against Def. Rahbar at 7; Decl. of David L. Scher ¶ 28; D.C. Code § 32-1308(b)(1); D.C. Super. Ct. Civ. R. 54(d)(1). Accordingly, the Court assumes the request for costs is reasonable and awards the plaintiff \$238.21 in costs.

**CONCLUSION**

For the foregoing reasons, it is this 21st day of December, 2021, hereby

**ORDERED** that the plaintiff’s motion for an award of attorneys’ fees and costs against defendants BYNDfit, LLC; BYND Holding, LLC; and BF Management, LLC is **GRANTED in PART**; and it is further

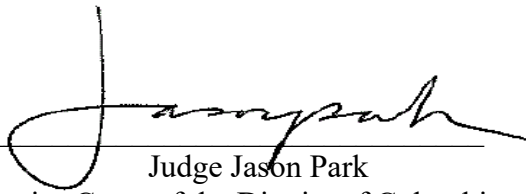
**ORDERED** that the plaintiff is awarded attorneys’ fees and costs in the amount of \$17,295.81 from defendants BYNDfit, LLC; BYND Holding, LLC; and BF Management, LLC; and it is further

**ORDERED** that the plaintiff’s motion for an award of attorneys’ fees and costs against defendant Raymond R. Rahbar, Jr. is **GRANTED**; and it is further

**ORDERED** that the plaintiff is awarded attorneys’ fees and costs in the amount of \$15,354.76 from defendant Raymond R. Rahbar, Jr.; and it is further

**ORDERED** that the defendants shall remit these amounts to the plaintiff on or before January 21, 2022.

**SO ORDERED.**



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Judge Jason Park  
Superior Court of the District of Columbia

Copies to:

David Scher, Esq.  
Steven Freeman, Esq.  
Raymond Rahbar, Pro Se  
*Via CaseFileXpress.*