

Appeal No. 23-2309

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

FLOR I. ARRIAZA DE PAREDES and
FRANCISCO HERNAN TEJADA LOPEZ,
Plaintiffs-Appellants,

v.

ZEN NAILS STUDIO LLC; PHONZ NGUYEN and
LIHN NGUYEN,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

**BRIEF FOR METROPOLITAN WASHINGTON
EMPLOYMENT LAWYERS ASSOCIATION
AND PUBLIC JUSTICE CENTER AS *AMICI CURIAE* IN
SUPPORT OF APPELLANTS AND FOR REVERSAL**

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STATEMENT OF INTEREST OF *AMICI*

The Metropolitan Washington Employment Lawyers Association (“MWELA”), founded in 1991, is a professional association and is the local chapter of the National Employment Lawyers Association, a national organization of attorneys who specialize in employment law. MWELA conducts continuing legal education programs for its more than 300 members, including an annual day-long conference which usually features one or more judges as speakers. MWELA also participates as *amicus curiae* in important cases in the federal and state courts of the District of Columbia, Maryland, and Virginia, the three jurisdictions in which its members primarily practice. Because the outcome of this case will directly impact the ability of MWELA members to take cases on behalf of Maryland workers, MWELA has an interest in the fair resolution of the issues presented in this appeal.

The Public Justice Center (“PJC”), founded in 1985 and based in Baltimore, Md., is a public interest litigation and advocacy organization committed to anti-poverty, anti-discrimination, and anti-racism work in Maryland and beyond. Its litigation advocates for a more just society through direct client representation and *amicus* participation. The PJC

has a longstanding commitment to ensuring a robust private attorney general scheme to increase access to courts for its client communities enforcing their civil rights in work, housing, education, health care, and other areas.

Both MWELA and PJC, and their clients, have an important interest in the provision of attorneys' fees in civil rights fee-shifting cases, and in the fairness and adequacy of fee awards in such cases, in all the federal courts in which they appear, particularly including the U.S. District Court for the District of Maryland.

ARGUMENT

I. Fee determinations under fee-shifting statutes are required to use market rates.

As litigation under the federal fee-shifting statutes has developed over the past half-century, it has become ever clearer that fees must be based on the "lodestar," *i.e.*, "the number of hours worked multiplied by the prevailing hourly rates." *Perdue v. Kenny A.*, 559 U.S. 542, 546 (2010). The lodestar must be based on current rates in the relevant market for legal services in federal cases. *Id.* at 554-55. *Perdue* explicitly addressed the question that concerns us when it held that adjustments to the lodestar should be made so that "an attorney is

compensated at the rate that the attorney would receive in cases not governed by the federal fee-shifting statutes.” *Id.* at 555. The Supreme Court continued: “[I]n order to provide a calculation that is objective and reviewable, the trial judge should adjust the attorney's hourly rate in accordance with specific proof linking the attorney's ability to a prevailing market rate.” *Id.*

The Fourth Circuit has explained what evidence is relevant to this inquiry as follows: “In addition to the attorney's own affidavits, the fee applicant must produce satisfactory ‘specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award.’” *Plyler v. Evatt*, 902 F.2d 273, 277-78 (4th Cir. 1990), quoting *Spell v. McDaniel*, 824 F.2d 1380, 1402 (4th Cir. 1987), which in turn quoted *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). The *Plyler* Court continued: “Although the determination of a ‘market rate’ in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable, . . . the Court has nonetheless emphasized that market rate should guide the fee inquiry.” *Id.*, citing *Blum*, 465 U.S. at 895-96 n. 11.

This Court has cited *Plyler v. Evatt* many times, and has repeatedly explained that “competent evidence” of market rates is typically the affidavits of counsel who practice in the relevant market. *See, e.g., Doe v. Kidd*, 656 F. App’x 643, 654 (4th Cir. 2016) (“The evidence we have deemed competent to show prevailing market rates includes ‘affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community’”), quoting *McAfee v. Boczar*, 738 F.3d 81, 91 (4th Cir. 2013); *Eastern Associated Coal Corp. v. Director, U.S. Office of Workers Comp. Programs*, 724 F.3d 561, 571-73 (4th Cir. 2013).

Civil rights lawyers should not be left on the outside of the legal services market looking in. There is no second tier for civil rights plaintiffs that is lower than overall market rates. *Blum*, 465 U.S. at 894-95; *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). The goal of fee-shifting is to incentivize lawyers just as much to take these cases as others that pay market rates, since fee awards should correspond to fees “in other types of equally complex Federal litigation, such as antitrust cases,” and “counsel for prevailing parties should be paid, as is traditional with attorneys compensated by fee-paying clients, for all

time reasonably expended on a matter.” *See* Senate Report No. 94-1011, at 6 (June 29, 1976), *reprinted in* 1976 U.S.C.C.A.N. 5908, 5913 (committee report on fee-shifting statute, 42 U.S.C. § 1988). Therefore, a “prevailing plaintiff ‘should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *Hensley*, 461 U.S. at 429 (quoting Senate Report No. 94-1011, at 4, 1976 U.S.C.C.A.N. at 5912).

It would be ironic for the District of Maryland’s Appendix B rates to “define” the market for prevailing civil rights plaintiffs’ counsel even when it places no such thumb on the market scales for defense attorneys in employment cases. *See, e.g., EEOC v. Freeman*, 126 F. Supp. 3d 560, 575-76 (D. Md. 2015) (awarding employment defense counsel hourly rates of \$65 to \$80 above the Appendix B guidelines); *In re Creative Hairdressers, Inc. et al.*, No. 20-14583-TJC, Doc. 793 (Bkr. D. Md. Dec. 22, 2020) (granting 100% of fees sought, including partner rates of \$840 and \$850 per hour, for large employer-side firm’s defense services on employment issues) (order attached hereto as Exhibit 1, with the motion it granted).

The court below made at least one further error that calls urgently

for correction: it decided that Appendix B rates could not be exceeded if the case for which fees were sought was “not particularly novel or complex.” Dist. Ct. Op. at 5, JA809.

It is true that the “novelty and difficulty of the questions raised” is one factor among 12 listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974) (interpreting this to refer specifically to cases of first impression). However, victories in first-impression cases are not the only litigation for which counsel fees at prevailing market rates are presumptively appropriate. *Hensley*, 461 U.S. at 429 (“a prevailing plaintiff should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust”) (quotation marks omitted), *quoting* S. Rep. No. 94-1011 at 4 (1976).

Furthermore, the *Johnson* factors, including novelty or difficulty, are typically used to aid determinations of the reasonable number of hours, not determinations of a reasonable hourly rate, since the latter is determined by the market. *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (*Johnson* factors used “[i]n determining the reasonableness of the number of hours” claimed, whereas rates are to be determined under *Hensley* based on the relevant market); *Grissom*

v. Mills Corp., 549 F.3d 313, 321 (4th Cir. 2008) (requiring evidence that the requested rates “align with prevailing rates” in the relevant market, without reference to any *Johnson* factor), citing *Plyler*, 902 F.2d at 277; *Blum*, 465 U.S. at 895 & n. 11 (suggesting that application of *Johnson* factors should not yield a below-market hourly rate); cf. *Denton v. Pennymac Loan Servs., LLC*, 252 F. Supp. 3d 504, 518 (E.D. Va. 2017) (using *Johnson* factors most analogous to *Hensley*, but determining in the case before it that novelty, difficulty, and skill required were all “neutral factors” in assessing the relevant market).

II. The relevant market rates are defined by the actual legal services market.

Just as a monopoly, a situation with many buyers but only one seller or provider, distorts the market, so too does its opposite, a “monopsony,” an economic structure in which there are many sellers or providers but only one buyer. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 311, 320-321 (2007).¹

¹ See also *Monopsony*, Oxford English Dictionary (online ed. 2024), <https://www.oed.com/search/dictionary/?scope=Entries&q=monopsony> (last visited August 4, 2024), citing Joan Robinson, *The Economics of Imperfect Competition* 215 (1933) (first proposing the term for the relationship formerly called “buyer’s monopoly”).

To avoid the distortion—indeed the circularity—of turning courts into monopsonists, fee-shifting doctrine has never treated court decisions themselves as creating the relevant market, but has instructed courts to refer to real legal services markets external to the fee-shifting world. *Perdue*, 559 U.S. at 551 (“the lodestar looks to the prevailing market rates in the relevant community”); *Blum*, 465 U.S. at 895 (“reasonable fees ... are to be calculated according to the prevailing market rates in the relevant community”); *Plyler*, 902 F.2d at 278 (“the [Supreme] Court has ... emphasized that market rates should guide the fee inquiry”).

The District Court here defied that long-standing recognition, making its opinion the more grievously erroneous. Dist. Ct. Op. at 5, JA809 (opining that civil rights attorneys should expect rates no higher than those of Appendix B, since that was “the attorneys’ expectation[] at the outset of the litigation”).

III. No judicial supposition or presumption of reasonableness can substitute for evidence of current market rates for legal services.

The District Court was content to rely completely on Appendix B rates, calling them “presumptively reasonable,” Dist. Ct. Op. at 3,

JA807, but it did not then accept any evidence for adjusting them—thus rendering the presumption conclusive.

When a District of Maryland court invokes Appendix B to decide a fee petition, does it first make findings that legal fees have not changed in the past ten years, when Appendix B was last updated in 2014? Does it first find that the evidence of market rates submitted by plaintiff or her counsel was not credible? The answer, in *amici*'s experience, is no. The District Court here and in numerous other cases has simply asserted that Appendix B applies.

The irony is that the Local Rule itself says that Appendix B is a guideline or starting point only: “These rates are intended solely to provide practical guidance to lawyers and judges when requesting, challenging, and awarding fees.” *See* U.S. Dist. Ct., D. Md., Local Rules, App. B, at 127 & note (July 1, 2023). Yet the federal courts in Maryland have been using Appendix B as a substitute for evidence ever since Appendix B came into being, a pattern of which the case on appeal is but one example. *See* Dist. Ct. Op. at 3-5, JA807-809.

It is past time for this Court to correct this accelerating “guideline creep.” *Amici* believe that at most, Appendix B rates, if and only if

regularly adjusted for legal services cost inflation since their adoption (see Part IV *infra*, 11-12), can serve the limited purpose for which they were intended: they can be claimed by the party seeking fees without submitting evidence about market rates, thereby streamlining fee petitions and saving all parties and the courts time and effort. However, *amici* urge that where a party seeks to demonstrate, using methods respected by case law, that the actual market rates for that party's legal fees are higher, then even an Appendix B-like rate table adjusted for inflation should exert no weight or impact, and at most should be viewed as a floor, not a ceiling. Any presumption of the reasonableness of such rates as a cap should dissolve, and the court should turn to the independent evidence presented without reference to them. In short, once a fee petitioner submits admissible evidence in accordance with case law, it is error to place more weight on even an inflation-adjusted Appendix B than on evidence properly before the court, typically sworn declarations from attorneys currently practicing in the relevant market.

This is because Appendix B is not "evidence" in any usual sense of the term. Not only did the Appendix originate, as far as *amici* understand, in an informal and unscientific snapshot survey of a few

Maryland lawyers whom the U.S. District Court asked for help in 1998 or earlier, but also, unlike court rules that merely establish procedures, Appendix B purports to substitute itself for adjudicative facts, an undertaking the District of Maryland itself understood was fraught with danger and should be strictly constrained: “The factors established by case law obviously govern over them [Appendix B rates].” *See* U.S. Dist. Ct., D. Md., Local Rules, App. B, at 127 & note (July 1, 2023).

Therefore, *amici* urge that it is both clear error and an abuse of discretion to give dispositive weight to Appendix B rates—even adjusted for inflation (*see* discussion *infra* at 13-14)—once a fee petitioner submits admissible evidence that market rates are higher.

IV. It is unacceptable under our precedents to cap fees at rates unadjusted in over a decade.

The nationwide Legal Services Price Index, the authoritative economic metric compiled by the U.S. Bureau of Labor Statistics, has risen from 194.4 in June 2014 to 288.5 in February 2024, the latest month for which actual figures are available.² That represents a 45%

² Table available at https://data.bls.gov/timeseries/PCU5411--5411--?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true (last visited August 4, 2024).

average increase in legal services rates across the country, from the most urban to the most rural, in the ten years since Appendix B was last updated.

Although Maryland's geographical regions run that gamut, a fact that presumably prompted the Appendix B drafters to suggest a range of hourly rates, it remains true that after a decade of rising prices—both overall and in legal services particularly, in every region of the country, and regardless of population density—the Appendix B rates are no longer in touch with economic reality. By restricting fee petitioners to rates that are a decade out of date even by their own terms, Maryland's federal trial courts are creating an artificial cap that by definition does not exist in the market itself: if that cap reflected the true state of the legal services economy, the price rises reflected in the BLS table would never have occurred.

At least some District of Maryland judges have recognized this in awarding rates higher, indeed significantly higher, than those set out in Appendix B. *See, e.g., Plasterers' Local Union No. 96 Pension Plan v. Perry*, 711 F. Supp. 2d 472, 477-78 (D. Md. 2010) (noting that in the ERISA context, rates have been approved that exceed the guidelines),

rev'd on other grounds, 663 F.3d 210 (4th Cir. 2011); *Life Techs. Corp. v. Life Techs. Corp.*, No. 10-cv-3527, 2012 WL 4748080, at *2 (D. Md. Oct. 2, 2012) (finding rates “still higher than the guidelines ranges in Appendix B” reasonable due to the expertise and skills of counsel); *Astornet Techs., Inc. v. BAE Systems, Inc.*, 201 F. Supp. 3d 721, 730-31 (D. Md. 2016) (approving above-guideline rates).

U.S. District Judge Titus specifically noted that the Appendix B “guidelines are non-binding.” *Astornet Technologies*, 201 F. Supp. 3d at 730. Similarly, U.S. District Judge Davis concluded that “under the circumstances of this case, a limitation on hourly rates to those recommended in this district’s guidelines would result in unwarranted unfairness.” *Stone v. Thompson*, 164 F. Supp. 2d 639, 640 (D. Md. 2001).

This Court has agreed. “[D]istrict courts are not required to follow any particular fee matrix.” *Harwood v. American Airlines, Inc.*, 37 F.4th 954, 961 (4th Cir. 2022). A fee matrix or table is merely a “useful starting point to determine fees, not a required referent.” *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 251 (4th Cir. 2004). And yet in case after case, District of Maryland judges are imposing Appendix B rates as a ceiling, ignoring this Court’s

pronouncements and effectively refusing to take actual evidence.

The District Court here compounded its clear errors of fact in this regard when it purported to “find” that inflation justified nothing more than the “high end” of the decade-old Appendix B rates. *See* Dist. Ct. Op. at 5, JA809. This improperly assumed that the Appendix B figures themselves were evidence of the toll inflation took on them, a decade after they were set forth in the table. The District Court did not even mention legal services inflation rates, even though they are easy to locate and may even be judicially noticed (*see* Bureau of Labor Statistics data, *supra* at 11 n.2). Such a “finding” in effect defies the facts. It is contrary to reason as well as law.

In contrast, in Washington, D.C. – a legal job market in which many Maryland lawyers routinely practice, just as many D.C. lawyers also practice in Maryland – there are two matrices for determining attorneys’ fees. *Salazar v. District of Columbia*, 809 F.3d 58, 63-65 (D.C. Cir. 2015) (discussing the two matrices). This Court can take judicial notice that both matrices are adjusted *each year* to account for the annual inflation in the market for legal services. The “Fitzpatrick” matrix, formerly known as the “Laffey” matrix, is updated annually and

published by the U.S. Attorney's Office for the District of Columbia. *See* Fitzpatrick matrix (attached hereto as Exhibit 2). The "LSI-Salazar" matrix, which is required by statute to be applied to wage and hour claims brought under the D.C. Wage Payment and Collection Law, D.C. Code Ann. § 32-1308(b)(1), is also updated annually by an economist. *See* LSI Salazar matrix (attached hereto as Exhibit 3).

As set forth in the attached spreadsheet, which compares the 2014 rates with the 2024 rates, the Fitzpatrick rates increased by an average of 164.51 percent in that period, and the LSI Salazar rates increased by an average of 136.91 percent in that period (the difference is largely because the Laffey/Fitzpatrick matrix had lagged the legal services market rates, so 2014 was a lower baseline). *See* Spreadsheet, 2014 and 2024 matrices (attached hereto as Exhibit 4). In contrast, the Appendix B rates have remained unchanged for the same period.

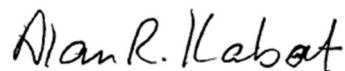
Given the lower court's refusal to depart from Appendix B, this Court must consider how little evidence of market rates a trial court may permit itself to consider as a basis for a fee award—and for how long it may continue to rely on old boilerplate rates after inflation has ravaged them—before the judicial function to take and weigh evidence

is entirely replaced by supposition. Even if a Maryland court may think that D.C. market rates are too high for Maryland, such a belief cannot supplant actual evidence of what fees—again, in the market outside fee-shifting cases—actually are at the time of the individual petition.

CONCLUSION

For the foregoing reasons, amici urge this Court either (a) to invalidate the rates in Appendix B altogether, as so outdated that its guidelines are no longer rational, or (b) to hold that it is reversible error to treat those guideline rates as a ceiling, to reject sworn evidence at variance with those rates, and to ignore the admonition of Appendix B itself that its rates are non-binding.

Respectfully submitted,



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Counsel to *Amici Curiae* Metropolitan Washington
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August 21, 2024

CERTIFICATE OF SERVICE

I certify that on this 21st day of August, 2024, I caused the foregoing brief to be filed with the Court's electronic filing system, through which it was transmitted to all counsel of record.

Alan R. Kabat

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CERTIFICATE OF WORD COUNT

I certify that the foregoing brief consists of 3,189 words, not including the Table of Contents or the Table of Authorities, and that it was prepared in Century Schoolbook 14 point font.

Alan R. Kabat

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FOR THE DISTRICT OF MARYLAND

**MOTION OF AMICI CURIAE METROPOLITAN WASHINGTON
EMPLOYMENT LAWYERS ASSOCIATION
AND PUBLIC JUSTICE CENTER
FOR LEAVE TO FILE ADDENDUM**

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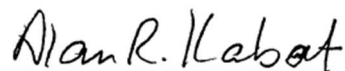
Amici Curiae Metropolitan Washington Employment Lawyers Association (MWELA), and Public Justice Center (PJC), respectfully seek leave of court, pursuant to Local Rule 28(b), to file the exhibits to their *amicus* brief as an addendum.

Amici Curiae included four documents as exhibits to their *amicus* brief, including an unreported court order that is publicly available on Pacer (Exhibit 1); two publicly available attorney fee matrices (Exhibits 2 and 3); and a spreadsheet comparing the 2014 and 2024 rates in the two attorney fee matrices (Exhibit 4). Each of these four documents is relevant to the issues before this Court.

At the request of the Clerk, *Amici Curiae* are resubmitting these exhibits as a separately docketed addendum, and they seek leave of court to do so, pursuant to Local Rule 28(b).

Counsel for Appellants consents to the requested relief. Counsel for Appellees stated that “Appellees decline to affirmatively consent to the motion.”

Respectfully submitted,



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August 21, 2024

CERTIFICATE OF SERVICE

I certify that on this 21st day of August, 2024, I caused the foregoing motion to be filed with the Court's electronic filing system, through which it was transmitted to all counsel of record.

Alan R. Kabat

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CERTIFICATE OF WORD COUNT

I certify that the foregoing motion consists of 413 words, and that it was prepared in Century Schoolbook 14 point font.

Alan R. Kabat

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Amici Curiae Metropolitan Washington Employment Lawyers Association (MWELA), and Public Justice Center (PJC), respectfully submit their Addendum, pursuant to Local Rule 28(b), containing the four exhibits to their *amicus* brief.

Respectfully submitted,



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Exhibits to Amicus Brief

1. *In re Creative Hairdressers, Inc. et al.*, No. 20-14583-TJC, Order, Doc. 793 (Bkr. D. Md. Dec. 22, 2020); Fee Petition, Doc. 778 (Bkr. D. Md. Nov. 25, 2020).
2. U.S. Attorney's Office for the District of Columbia, Fitzpatrick Matrix, 2013-2024, available at: <https://www.justice.gov/usao-dc/civil-division> (viewed Aug. 7, 2024).
3. LSI *Laffey* Matrix, 1988-2024, available at: <https://www.tpmlaw.com/lsi-laffey-matrix> (viewed Aug. 7, 2024).
4. Changes in Fitzpatrick and LSI *Laffey* matrices from 2014 to 2024 (derived from Exhibits 2 and 3).

Exhibit 1

In re Creative Hairdressers, Inc. et al., No. 20-14583-TJC,
Order, Doc. 793 (Bkr. D. Md. Dec. 22, 2020);
Fee Petition, Doc. 778 (Bkr. D. Md. Nov. 25, 2020).


Entered: December 22nd, 2020

Signed: December 22nd, 2020

SO ORDERED

No response or opposition.




THOMAS J. CATLIOTA
U.S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re: * Chapter 11
**CREATIVE HAIRDRESSERS,
INC., et al.¹,** * Case Nos. 20-14583, 20-14584-TJC
* (Jointly Administered)
Debtors. *

* * * * *

**ORDER GRANTING LITTLER MENDELSON, P.C.’S FIRST AND
FINAL APPLICATION FOR ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES AS SPECIAL EMPLOYMENT
COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR THE PERIOD MAY 28, 2020 THROUGH AUGUST 31, 2020**

Upon consideration of the Application of Littler Mendelson, P.C. for a Final Allowance of Compensation and for Reimbursement of Expenses as special employment counsel to the debtors and debtors in possession For the Period May 28, 2020 Through August 31, 2020 (the “Application Period”), and good cause therefor having been shown, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED that the law firm of Littler Mendelson, P.C. is hereby awarded and allowed interim compensation in the amount of \$67,298.75 for the Application Period; and it is further

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

ORDERED that Littler Mendelson, P.C. is authorized to received up to the sum of \$67,298.75, representing the total amount of fees due for the Application Period but not yet paid, provided, however, that Littler Mendelson, P.C. shall give credit for all amounts previously paid for the Application Period in accordance with the Administrative Order.

cc: Joel I. Sher, Esquire
Richard M. Goldberg, Esquire
SHAPIO SHER GUINOT & SANDLER
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Counsel to Official Committee of Unsecured Creditors

Paul J. Kennedy, Shareholder
LITTLER MENDELSON, P.C.
815 Connecticut Avenue NW, Suite 400
Washington, DC 20006
Special Employment Counsel to the Debtors and Debtors in Possession

-END OF ORDER-

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re: * Chapter 11
**CREATIVE HAIRDRESSERS,
INC., et al.**¹ * Case Nos. 20-14583, 20-14584-TJC
* (Jointly Administered)
Debtors. *

* * * * *

**LITTLER MENDELSON, P.C.’S FIRST AND FINAL APPLICATION
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES
AS SPECIAL EMPLOYMENT COUNSEL FOR THE DEBTORS AND DEBTORS-IN-
POSSESSION FOR THE PERIOD MAY 28, 2020 THROUGH AUGUST 31, 2020**

Applicant: Littler Mendelson, P.C.
Authorized to Provide Professional Services to: Debtors and Debtors-in-Possession
Date of Retention: Order Retaining Littler Mendelson, P.C.
(*nunc pro tunc* as of May 28, 2020)
[June 24, 2020; Docket No. 554]
Period for Which Compensation and Reimbursement is Sought: May 28, 2020 through August 31, 2020
Amount of Compensation Sought as Actual, Reasonable and Necessary: \$67,298.75
Amount of Expense Reimbursement Sought as Actual, Reasonable, and Necessary: \$0.00

This is a: Final Application

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

Dated: November 25, 2020

/s/ Paul J. Kennedy

Paul J. Kennedy, Shareholder
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*Special Employment Counsel to the Debtors and
Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re: * Chapter 11
**CREATIVE HAIRDRESSERS,
INC., et al.²,** * Case Nos. 20-14583, 20-14584-TJC
* (Jointly Administered)
Debtors. *

* * * * *

**FIRST AND FINAL APPLICATION OF LITTLER MENDELSON, P.C. FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES AS
SPECIAL EMPLOYMENT COUNSEL FOR DEBTORS AND DEBTORS-IN-
POSSESSION FOR THE PERIOD MAY 28, 2020 THROUGH AUGUST 31, 2020**

In accordance with Administrative Order Pursuant to 11 U.S.C. §§ 105(a), 328 and 331 Establishing Procedures for Interim Compensation and Reimbursement of Professionals (the “Administrative Order”) entered by the Court on May 26, 2020 [Docket No. 419], Littler Mendelson, P.C. (the “Applicant” or “Littler”), special employment counsel to the debtors and debtors in possession (the “Debtors”), applies for its first and final allowance of compensation and reimbursement of expenses (the “Application”) for the period May 28, 2020 through August 31, 2020 (the “Application Period”). In support of the Application, Littler respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 328, 330 and 331, Bankruptcy Rule 2016 and Local District Court Rule 402. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is appropriate before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

² The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

2. The statutory bases for the relief requested herein are §§ 328, 330(a) and 331 of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 2016-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland (the “Local Rules”) and the Compensation Guidelines for Professionals in the United States Bankruptcy Court for the District of Maryland (the “Compensation Guidelines”), contained as *Appendix D* to the Local Rules.

BACKGROUND

3. On April 23, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court seeking relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. On April 28, 2020, this Court entered the Order Approving Joint Administration of the Chapter 11 cases of the Debtors [Docket No. 86] that provided for the joint administration of these cases in accordance with Bankruptcy Rule 1015(b).

5. On May 1, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “Creditors’ Committee”). [Docket No. 128]

6. A description of the Debtors’ businesses and the reasons for filing these chapter 11 cases is set forth in the Declaration of Phil Horvath, President and Chief Operating Officer of Creative Hairdressers, Inc. in Support of the First Day Motions (the “First Day Declaration”), which was filed on April 23, 2020 [Docket No. 6] and is incorporated herein by reference.

7. On the Petition Date, the Debtors filed an application to approve the employment *nunc pro tunc* of Littler as special employment counsel for the Debtors [Docket No. 483]. The

Court approved Littler’s retention by Order entered on June 24, 2020 (the “Retention Order”) [Docket No. 554].

8. On May 26, 2020, the Court entered the Administrative Order. The Administrative Order was entered in light of the size and complexity of these cases and the need for an order establishing procedures for the interim payment of fees to professionals.

9. Pursuant to the Administrative Order, professionals employed in this case pursuant to Sections 327 and 1102 of the Bankruptcy Code (the “Professionals”) may file periodic interim fee applications at set intervals seeking Court approval of the fees and expenses incurred for special time periods.

COMPENSATION REQUESTED AND THE LEGAL STANDARD TO BE APPLIED

10. In this first and final Application, the Applicant requests an award of compensation in the amount of \$67,298.75 for services rendered incurred during the Application Period. The aggregate amounts of compensation requested and expenses incurred for each project category are set forth as follows:

TOTAL PROFESSIONAL TIME ANALYSIS – FIRST FEE APPLICATION BY CATEGORY				
	Project Category	Total Hours	Total Fees Incurred	Total Fees Requested
	General Special Employment Services	88.5	\$67,298.75	\$67,298.75
	TOTAL	88.5	\$67,298.75	\$67,298.75

11. The Applicant did not incur any out of pocket expenses during the Application Period.

12. The hours spent in these cases during the Application Period for which Littler now seeks allowance of compensation, the hourly rates deemed appropriate for each professional, and the resulting fees are as follows:

Name	Position	Hourly Rate	Hours	Fees Earned
Bruce R. Millman	Shareholder	\$830.00	32.25	\$26,767.50
Paul J. Kennedy	Shareholder	\$500.00	4.25	\$2,125.00
Robert C. Long	Shareholder	\$840.00	31.5	\$26,460.00
Sean Brown	Shareholder	\$595.00	0.25	\$148.75
Steven J. Friedman	Shareholder	\$850.00	3.50	\$2,975.00
Warren Fusfeld	Shareholder	\$850.00	2.50	\$2,125.00
Shawn M. Clark	Associate	\$470.00	14.25	\$6,697.50
	TOTAL		88.5	\$67,298.75

13. During the Application Period, the Applicant has provided services to the Debtors for time expended by professionals based on hourly rates at a blended cost of \$760.44 per hour³.

14. The expenses requested are customarily not considered part of overhead by the Applicant or companies in this geographical area. Moreover, the Applicant customarily requires all of its clients to pay such out-of-pocket expenses in addition to professionals' fees at the Applicant's normal hourly rates.

15. The Applicant's request for compensation is made pursuant to the twelve criteria originally enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 714-19 (5th Cir. 1974), and expressly adopted by the United States Court of Appeals for the Fourth Circuit in *Barber v. Kimbrells, Inc.*, 577 F.2d 216 (4th Cir. 1978), *Anderson v. Booths*, 658 F.2d 246 (4th Cir. 1978), and *Harman v. Levin (In re: Robertson)*, 772 F.2d 1150 (4th Cir. 1985). The twelve criteria are as follows:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount of controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between the attorney and client; and (12) attorney awards in similar cases.

³ The blended hourly rate of \$760.44 per hour is derived by dividing the total fees of \$67,298.75 by the total hours of 88.5.

Barber v. Kimbrells Inc., 577 F.2d at 226 n 28. These criteria are discussed in detail below.

16. When considering an attorney’s application for compensation, the Court should first determine the attorney’s “lodestar” by multiplying the number of hours reasonably expended by a reasonable hourly rate. *In re LBH Associates Ltd. Partnership*, 109 B.R. 157, 158-62 (Bankr. D.Md. 1989). *See also, In re Leonard Jed Co.*, 118 B.R. 339, 345 (Bankr. D.Md. 1990).

17. Fees should be adjusted upward if the results achieved by the attorney are exceptional in light of the hourly rate charged. *Blum v. Stersor*, 465 U.S. 889 (1984). *See generally, Pennsylvania v. Delaware Valley Citizens’ Counsel*, 478 U.S. 546 (1986); *Hansley v. Eckerhardt*, 461 U.S. 424 (1983). Based upon the twelve *Johnson* criteria as discussed below, there is no basis for any downward adjustment of the Applicant’s fees.

18. The total fees requested by the Applicant are reasonable under the circumstances, and the *Johnson* twelve-factor analysis, discussed below, supports an award of interim compensation in the amount requested.

**THE SERVICES RENDERED AND THE MANNER OF RECORDING
THE APPLICANT’S FEES AND EXPENSES RELATED THERETO**

19. The Compensation Guidelines require that all fee applications set forth the services rendered and expenses incurred by general categories reflecting the major discrete areas for which services were performed. During the Application Period, the Applicant provided services to the Debtors that are general employment services, of which contains a chronological descriptive listing of services performed and expenses incurred in connection with that category.

20. This Application contains a description of the services that the Applicant provided to the Debtors. All of the time expended and the nature of the services rendered by the Applicant were recorded on time sheets maintained on a daily basis. Attached as *Exhibit A* is a compilation

of the Littler's billing reports for the Application Period, showing all services provided. The billing reports set forth the date of each service rendered, the individual rendering the service, a description of the services rendered and the amount of time spent performing each service.

21. For each time entry, the Applicant provided in reasonable detail the amount of information necessary to give a description of the services rendered while simultaneously protecting the attorney-client and work-product privileges. Each entry includes a description of the services, and discloses the name of the professional performing each service as well as the amount of time spent on each particular service. Certain time entries cannot be written in any more substantive detail because one or more privileges would be violated. Additionally, certain descriptions have been redacted due to the privileged and confidential nature of the services provided to the Debtors. The Applicant attempted, in accordance with the *Compensation Guidelines*, not to lump services; for significantly all entries in excess of one hour of time, the time entries provide a breakdown of the amount of time spent on a specific activity included in that time entry if more than one service was rendered.

22. Due to the significant amount of work performed by Littler, it adopted a "team approach" to complete successfully many of the tasks it was required to perform. By way of example, but not limitation, there were many instances in which several of the Littler's professionals were each required to perform separate tasks simultaneously. Littler's professionals, however, did not engage in duplication of effort.

23. Based upon the Applicant's experience, it believes that the team approach is the most effective, efficient and least costly manner of handling extremely large and sophisticated tasks in short periods of time, while at the same time providing the highest level of representation to the Debtors. In addition to the entries recorded on *Exhibit A*, the Application

contains charts that set forth in summary fashion the aggregate value of the services rendered and the aggregate amount of disbursements.

24. The Applicant's fees were computed at discounted standard hourly rates charged by the Applicant to all of its creditor, debtor and committee clients. The hourly rates vary by professional depending upon experience, subject matter, expertise and seniority.

25. The disbursements are reasonable and necessary and are in accordance with the *Compensation Guidelines*.

26. The Applicant charges 20 cents per page for in-house copying. The Applicant always reviews copy jobs to determine whether it would be more cost and time efficient to send such jobs to outside copy services.

**THE SERVICES RENDERED AND EXPENSES INCURRED
SPECIAL EMPLOYMENT COUNSEL TO THE DEBTORS**

27. During the Application Period, the Applicant acted as special employment counsel to the Debtors and performed such services as requested by the Debtors. The following is a summary of services and the related fees for services rendered by Applicant during the Application Period, as authorized by the Retention Order:

(a) General Employment Services

28. In general, the Applicant provided legal advice related to labor and employment issues, including with respect to the Debtors' pre-petition employees, advice on the asset purchase agreement, WARN Act, COBRA obligations, and Transition Services Agreement matters, as well as ordinary course employment issues, and any claims asserted by employees or government bodies against the Debtors' estates or related inquiries or demands, as well as representation in any possible claims related thereto.

29. A summary of the hours and fees incurred by professional is annexed hereto as *Exhibit A*, including time records describing such services in detail. Littler maintains contemporaneous records of the time expended for the professional services and expenses related hereto performed in connection with these chapter 11 cases and such records are maintained in the ordinary course of business.

30. The fees applied for herein are based on the usual and customary fees Littler charges to clients and are commensurate with the usual and customary rates charged for services performed.

31. During the Application Period, Littler billed the Debtors for time expended by professionals based on discounted hourly rates ranging from \$470.00 to \$850.00 per hour. Of the aggregate time expended, 74.25 hours were expended by shareholders, and 14.25 hours were expended by associates.

32. Littler respectfully submits that the amounts applied for herein for professional services rendered on behalf of the Debtors in these cases to date are fair and reasonable given: (a) the time expended; (b) the nature and extent of the services performed at the time at which such services were rendered; (c) the value of such services; and (d) the costs of comparable services other than in these chapter 11 cases.

33. During the Application Period, CMAG provided a focused range of special employment services as requested by the Debtors. Littler respectfully submits that these services: (a) were necessary and beneficial to the successful and prompt administration of these cases; and (b) have been provided in a cost efficient manner.

ANALYSIS OF TWELVE FACTORS GUIDING AWARD OF COMPENSATION
(LODESTAR CRITERIA)

(a) The Time and Labor Required

34. During the Application Period, Littler has devoted 88.5 hours of professional time to this case. Those services are described in more detail in the attached *Exhibit A*. Littler believes that all services have been effectively and efficiently rendered within a reasonable amount of time commensurate with the complexity and nature of the issues and tasks addressed. Furthermore, Littler believes that no duplication of services has occurred.

(b) Novelty and Difficulty of Questions Raised

35. These cases present a number of novel issues related to the Debtors' employment issues. Littler is capably providing special employment services in furtherance of the Debtors' ongoing efforts to address such issues as they arise.

(c) Level of Skill Required

36. Littler is a sophisticated employment firm and has exercised the skill and expertise required to perform its services.

(d) Customary Fee For Like Work

37. The hourly rates for the Applicant's individual professionals working in this case are the normal and customary rates charged by the Applicant for its services to debtors, trustees, and committees in other bankruptcy cases and to clients in matters not involving bankruptcy in the Baltimore area.

(e) Applicant's Expectation at the Outset

38. The Applicant expected that it would be compensated for services rendered at its discounted standard hourly rates and would be reimbursed for all out-of-pocket disbursements

made on behalf of the Debtors. The Applicant has sought reimbursement only for the out-of-pocket expenses that are normally not considered overhead.

(f) Time Limitations

39. Littler has promptly and appropriately provided the Debtors with necessary employment advisory services in light of the facts and circumstances of the case.

(g) Amount in Controversy and Results Obtained

40. Littler has worked with the Debtors' professionals on various issues related to the Debtors' employee issues in an effort to advise the Debtors on employment matters.

(h) Experience, Reputation and Ability of the Applicant

41. Littler is highly experienced, qualified and regarded in the employment field.

(i) Undesirability of the Case

42. This factor has only limited applicability to these cases. However, as a result of its financial services provided to the Debtors, the Applicant has necessarily been forced to accept delays in obtaining compensation, which delays do not occur in representing clients in other bankruptcy cases or clients outside of bankruptcy.

(j) Nature and Length of Professional Relationship with Client

43. The Applicant was not involved with the Debtors prior to this case. The Applicant has not shared or agreed to share any compensation for services rendered in this case with any person other than its company.

(k) Professional Fee Awards in Comparable Cases

44. Littler submits that payment of the requested compensation, in accordance with the Court's approval of the retention of Littler, in accordance to the Retention Order, is appropriate.

(I) General Conditions

45. All professional services for which compensation are requested in this Application were performed for and on behalf of the Debtors and not on behalf of any other entity. After the filing of these cases, no beneficial interests, direct or indirect, or claim against or interest in the Debtors has been acquired by the Applicant or for its account.

46. No agreement or understanding exists between the Applicant and any other person for the sharing of compensation to be received by it for services rendered in connection with this case, except within the company of Littler. No agreement or understanding exists between the Applicant and any other person rendering services in connection with this case for the sharing of compensation of such other person.

47. Consideration of the circumstances of this case and the twelve-factor test of *Barber v. Kimbrells, Inc.* indicates that no downward adjustment in the overall fees of the Applicant is warranted. The work performed by the Applicant has provided the Debtors and their creditors with significant benefits.

STATEMENT PURSUANT TO LOCAL RULE 9013-2

48. Pursuant to Local Rule 9013-2, Littler states that, in lieu of submitting a memorandum in support of this Application, it will rely solely upon this Application.

NOTICE

49. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) THE OFFICE OF THE UNITED STATES TRUSTEE, 6305 Ivy Lane, Suite 600, Greenbelt, Maryland 20770, Attn: Jeanette Rice, Email: Jeanette.Rice@usdoj.gov; (301) 344-8431 (facsimile); (b) Counsel to the DIP Lender, DLA PIPER LLP (US), 444 West Lake Street, Chicago, IL 60606-0089, Attn: Richard A. Chesley, Esquire, Email:

richard.chesley@dlapiper.com; (312) 630-5330 (facsimile); (c) Creditors' Committee Counsel, FAEGRE DRINKER BIDDLE & REATH LLP, 1177 Avenue of the Americas, 41st Floor, New York, NY 10036-2714, Attn: Keith N. Costa, Esquire, Email: keith.costa@faegredrinker.com; (212) 248-3141 (facsimile); and (d) and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, Littler Mendelson, P.C. respectfully requests the following relief:

A. That Littler Mendelson, P.C. be awarded final compensation in the amount \$67,298.75 for fees;

B. That the Debtors be authorized to pay to Littler Mendelson, P.C. up to the sum of \$67,298.75; representing the total amount of fees due for the Application Period but not yet paid; provided, however, that Littler Mendelson, P.C. shall give credit for all amounts previously paid for the Application Period; and

C. That Littler Mendelson, P.C. be granted such other and further relief as is just and equitable.

Dated: November 25, 2020

/s/ Paul J. Kennedy

Paul J. Kennedy, Shareholder
LITTLER MENDELSON, P.C.
815 Connecticut Avenue NW, Suite 400
Washington, DC 20006
Tel: (202) 414-6855
Email: PKennedy@littler.com

*Special Employment Counsel to the Debtors and
Debtors in Possession*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2020, a copy of the *foregoing* was served on the parties listed by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party.

Richard A. Chesley, Esquire
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Counsel for HC Salon Holdings, Inc.

Jeanette Rice, Assistant United States Trustee
Lynn A. Kohen, Esquire
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Keith Costa, Esquire
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
Counsel to Official Committee of Unsecured Creditors

I HEREBY FURTHER CERTIFY that on the 25th day of November, 2020, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *foregoing* will be served electronically by the Court's CM/ECF system on the following:

- **Aaron Solomon Applebaum** aaron.applebaum@saul.com, catherine.santangelo@saul.com
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- **Leonidas Koutsouftikis** lkouts@magruderpc.com, mcook@magruderpc.com

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Dated: November 25, 2020

/s/ Joel I. Sher

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Exhibit 2

U.S. Attorney's Office for the District of Columbia,
Fitzpatrick Matrix, 2013-2024,
available at: <https://www.justice.gov/usao-dc/civil-division>
(viewed Aug. 7, 2024).

THE FITZPATRICK MATRIX

Hourly Rates (\$) for Legal Fees for Complex Federal Litigation in the District of Columbia

Years Exp. / Billing Yr.	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
35+	535	563	591	619	647	675	703	731	736	760	807	864
34	534	562	590	618	646	674	702	729	734	758	805	862
33	532	560	588	616	644	672	700	728	733	757	804	861
32	530	558	586	614	642	670	698	726	730	754	801	858
31	527	555	583	611	639	667	695	723	728	752	799	856
30	524	552	580	608	636	664	692	720	725	749	795	851
29	521	549	577	605	633	661	689	717	721	745	791	847
28	517	545	573	601	629	657	685	713	717	741	787	843
27	512	540	568	596	624	652	680	708	713	736	782	838
26	508	536	564	592	620	648	676	704	708	731	776	831
25	502	530	558	586	614	642	670	698	703	726	771	826
24	497	525	553	581	609	637	665	693	697	720	765	819
23	491	519	547	575	603	630	658	686	691	714	758	812
22	484	512	540	568	596	624	652	680	684	707	751	804
21	477	505	533	561	589	617	645	673	677	699	742	795
20	470	498	526	553	581	609	637	665	670	692	735	787
19	462	490	518	546	574	602	630	658	662	684	726	778
18	453	481	509	537	565	593	621	649	653	675	717	768
17	445	473	500	528	556	584	612	640	645	666	707	757
16	435	463	491	519	547	575	603	631	635	656	697	746
15	426	454	482	510	538	566	593	621	626	647	687	736
14	416	443	471	499	527	555	583	611	615	635	674	722
13	405	433	461	489	517	545	573	601	605	625	664	711
12	394	422	450	478	506	534	562	590	594	614	652	698
11	382	410	438	466	494	522	550	578	582	601	638	683
10	371	399	427	455	483	510	538	566	570	589	625	669
9	358	386	414	442	470	498	526	554	558	576	612	655
8	345	373	401	429	457	485	513	541	545	563	598	640
7	332	360	388	416	444	472	500	528	532	550	584	625
6	319	347	375	403	431	458	486	514	518	535	568	608
5	305	332	360	388	416	444	472	500	504	521	553	592
4	290	318	346	374	402	430	458	486	489	505	536	574
3	275	303	331	359	387	415	443	471	474	490	520	557
2	260	287	315	343	371	399	427	455	458	473	502	538
1	244	272	300	328	356	384	412	439	442	457	485	519
0	227	255	283	311	339	367	395	423	426	440	467	500
P*	130	140	150	160	169	179	189	199	200	207	220	236

* = Paralegals/Law Clerks

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared to assist with resolving requests for attorney's fees in complex civil cases in District of Columbia federal courts handled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been developed to provide "a reliable assessment of fees charged for complex federal litigation in the District [of Columbia]," as the United States Court of Appeals for the District of Columbia Circuit urged. *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, nor has it been adopted by other Department of Justice components.
2. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *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). A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The matrix is not intended for use in cases in which the hourly rate is limited by statute. *E.g.*, 28 U.S.C. § 2412(d).
3. For matters in which a prevailing party agrees to payment pursuant to this fee matrix, the United States Attorney's Office will not request that a prevailing party offer the additional evidence that the law otherwise requires. *See, e.g., Eley v. District of Columbia*, 793 F.3d 97, 104 (D.C. Cir. 2015) (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'")).
4. The years in the column on the left refer to an attorney's years of experience practicing law. Normally, an attorney's experience will be calculated based on the number of years since an attorney graduated from law school. If the year of law school graduation is unavailable, the year of bar passage should be used instead. Thus, an attorney who graduated from law school in the same year as the work for which compensation is sought has 0 years of experience. For all work beginning on January 1 of the calendar year following graduation (or bar admission), the attorney will have 1 year of experience. (For example, an attorney who graduated from law school on May 30 will have 0 years of experience until December 31 of that same calendar year. As of January 1, all work charged will be computed as performed by an attorney with 1 year of experience.) Adjustments may be necessary if an attorney did not follow a typical career progression or was effectively performing law clerk work. *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).
5. The data for this matrix was gathered from the dockets of cases litigated in the U.S. District Court for the District of Columbia using the following search in Bloomberg Law: keywords ("motion n/5 fees AND attorney!") + filing type ("brief," "motion," or "order") + date ("May 31, 2013 – May 31, 2020" under "Entries (Docket and Documents)"). This returned a list of 781 cases. Of those, cases were excluded if there was no motion for fees filed, the motions for fees lacked necessary information, or the motions involved fees not based on hourly rates, involved rates explicitly or implicitly based on an existing fee matrix, involved rates explicitly or implicitly subject to statutory fee caps (*e.g.*, cases subject to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)), or used lower rates prescribed by case law (*e.g., Eley*, 793 F.3d at 105 (Individuals with Disabilities in Education Act cases)). After these excisions, 86 cases, many

of which included data for multiple billers (and 2 of which only provided hourly rate data for paralegals), remained.

6. The cases used to generate this matrix constitute complex federal litigation—which caselaw establishes as encompassing a broad range of matters tried in federal court. *E.g.*, *Reed v. District of Columbia*, 843 F.3d 517, 527-29 (D.C. Cir. 2016) (Tatel, J., concurring) (noting that cases arising under the Freedom of Information Act, Title VII, the Americans with Disabilities Act, Constitutional Amendments, antitrust statutes, and others have been deemed complex, and even “relatively small” cases can constitute complex federal litigation, as they too require “specialized legal skills” and can involve “complex organizations,” such as “large companies”); *Miller v. Holzmann*, 575 F. Supp. 2d 2, 14-16, 17 (D.D.C. 2008) (prevailing market rates for complex federal litigation should be determined by looking to “a diverse range of cases”). That the attorneys handling these cases asked the court to award the specified rates itself demonstrates that the rates were “adequate to attract competent counsel, [while] not produc[ing] windfalls to attorneys.” *West v. Potter*, 717 F.3d 1030, 1033 (D.C. Cir. 2013) (quoting *Blum v. Stenson*, 465 U.S. 886, 897 (1984)). As a consequence, the resulting analysis yields the “prevailing market rate[] in the relevant community” for complex litigation undertaken in federal courts in the District of Columbia. *See Blum*, 465 U.S. at 895.
7. From these 86 complex federal cases, the following information was recorded for 2013 and beyond: hourly rate, the calendar year the rate was charged, and the number of years the lawyer was out of law school when the rate was charged (or, if law school graduation year was unavailable, years since bar passage), as defined above. If the graduation or bar passage year was not stated in a motion or its exhibits, then the lawyer’s biography was researched on the internet. Although preexisting fee matrices for the District of Columbia provide for mid-year rate changes, very few lawyers in the data submitted rates that changed within a calendar year. For this reason, the matrix was modeled using one rate for each calendar year. On the occasions when a lawyer expressed an hourly rate as a range or indicated the rate had increased during the year, the midpoint of the two rates was recorded for that lawyer-year.
8. The matrix of attorney rates is based on 675 lawyer-year data points (one data point for each year in which a lawyer charged an hourly rate) from 419 unique lawyers from 84 unique cases. The lawyer-year data points spanned from years 2013 to 2020, from \$100 to \$1250, and from less than one year of experience to 58 years.
9. Paralegal/law clerk rates were also recorded. The following titles in the fee motions were included in the paralegal/law clerk data: law clerk, legal assistant, paralegal, senior legal assistant, senior paralegal, and student clerk. The paralegal/law clerk row is based on 108 paralegal-year data points from 42 unique cases. They spanned from 2013 to 2019 and from \$60 to \$290. (It is unclear how many unique persons are in the 108 data points because paralegals were not always identified by name.)
10. The matrix was created with separate regressions for the lawyer data and the paralegal data. For the paralegal data, simple linear least-squares regression was used with the dependent variable hourly rate and the independent variable the year the rate was charged subtracted from 2013; years were combined into one variable and subtracted from 2013 rather than modeled as separate indicator variables to constrain annual inflation to a constant, positive number. The resulting regression formula was rate =

$129.8789 + 9.902107 * (\text{year}-2013)$. For the lawyer data, least-squares regression was used with the dependent variable hourly rate and independent variables the year the rate was charged and the number of years of experience of the lawyer when the rate was charged. The year the rate was charged was subtracted from 2013 and modeled linearly as with the paralegal data. The number of years out of law school (or since year of bar passage) was modeled with both linear and squared terms, as is common in labor economics to account for non-linear wage growth (e.g., faster growth earlier in one's career than at the end of one's career). See, e.g., Jacob Mincer, *Schooling, Experience, and Earnings* (1974). The resulting regression formula was $\text{rate} = 227.319 + 16.54492 * \text{experience} - 0.2216217 * \text{experience}^2 + 27.97634 * (\text{year}-2013)$. Regressions were also run with log transformed rates and with a random-effect model (to account for several lawyers appearing more than once in the data), but both alternatives resulted in mostly lower rates than those reflected here; in order to minimize fee disputes, these models were therefore rejected in favor of the more generous untransformed, fixed-effect model. Rates from one case comprised 20% of the data; the regression was also run without that case, but the resulting rates were mostly lower and therefore rejected, again to minimize fee disputes.

11. The data collected for this matrix runs through 2020. To generate rates after 2020, an inflation adjustment (rounded to the nearest whole dollar) has been added. The United States Attorney's Office determined that, because courts and many parties have employed the legal services index of the Consumer Price Index to adjust attorney hourly rates for inflation, this matrix would do likewise. E.g., *Salazar v. District of Columbia*, 809 F.3d 58, 64-65 (D.C. Cir. 2015); *Eley*, 793 F.3d at 101-02; *DL*, 924 F.3d at 589-90. That was the approach followed for the years 2021 through and including 2023. However, the Bureau of Labor Statistics has now ceased consistently publishing monthly data for the legal services index of the Consumer Price Index. As an alternative, the legal services index of the Producer Price Index, which continues regularly to provide updated data, has been used to generate the rates for 2024.
12. This matrix was researched and prepared by Brian Fitzpatrick, the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt Law School, with the help of his students.
13. This matrix and an alternative, preexisting matrix were extensively examined, and, based on that analysis, this matrix was the one selected for computation of the hourly rates for the attorneys' fees awarded in *J.T. v. District of Columbia*, 652 F. Supp. 3d 11 (D.D.C. 2023) (Howell, C.J.), and in *Brackett v. Mayorkas*, Civ. A. No. 17-0988, 2023 WL 5094872 (D.D.C. Aug. 9, 2023) (Boasberg, C.J.).

Exhibit 3

LSI *Laffey* Matrix, 1988-2024,
available at: <https://www.tpmlaw.com/lsi-laffey-matrix>
(viewed Aug. 7, 2024).

Adjustments to the 1988-1989 *Laffey* Matrix Rates Using the Legal Services Index¹

Years Out of Law School	06/01/88-05/31/89 ²	06/01/89-05/31/90	06/01/90-05/31/91	06/01/91-05/31/92	06/01/92-05/31/93	06/01/93-05/31/94	06/01/94-05/31/95	06/01/95-05/31/96	06/01/96-05/31/97	06/01/97-05/31/98
20th+	\$265	\$284	\$306	\$320	\$336	\$355	\$363	\$375	\$389	\$406
11th - 19th	\$220	\$235	\$254	\$265	\$279	\$294	\$301	\$311	\$323	\$337
8th - 10th	\$195	\$209	\$225	\$235	\$247	\$261	\$267	\$276	\$287	\$299
4th - 7th	\$135	\$144	\$156	\$163	\$171	\$181	\$185	\$191	\$198	\$207
1st - 3rd	\$110	\$118	\$127	\$133	\$139	\$147	\$151	\$155	\$162	\$168
Paralegal/Law Clerk	\$60	\$64	\$69	\$72	\$76	\$80	\$82	\$85	\$88	\$92
Adjustment Factor ³		1.070028	1.079406	1.044462	1.051083	1.055228	1.023726	1.032038	1.039630	1.041931

¹ *Laffey* refers to *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), affirmed in part and reversed in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), overruled in part on other grounds, *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988)(en banc).

² The rates in this column represent the 1989 update to the *Laffey* matrix rates for Washington, D.C. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904 (D.D.C. 1993).

³ The Adjustment Factor refers to the legal services component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor. The Adjustment Factor is calculated by dividing the legal services component for June of the current year by the component for June of the previous year.

<i>Years Out of Law School</i>	<i>06/01/97-05/31/98⁴</i>	<i>06/01/98-05/31/99</i>	<i>06/01/99-05/31/00</i>	<i>06/01/00-05/31/01</i>	<i>06/01/01-05/31/02</i>	<i>06/01/02-05/31/03</i>	<i>06/01/03-05/31/04</i>	<i>06/01/04-05/31/05</i>	<i>06/01/05-05/31/06</i>	<i>06/01/06-05/31/07</i>
20th+	\$406	\$424	\$445	\$468	\$487	\$523	\$549	\$574	\$599	\$614
11th - 19th	\$337	\$352	\$369	\$389	\$404	\$434	\$456	\$477	\$497	\$510
8th - 10th	\$299	\$312	\$327	\$345	\$359	\$385	\$404	\$423	\$441	\$452
4th - 7th	\$207	\$216	\$227	\$239	\$248	\$266	\$280	\$293	\$305	\$313
1st - 3rd	\$168	\$175	\$184	\$194	\$202	\$216	\$227	\$238	\$248	\$254
Paralegal/Law Clerk	\$92	\$96	\$101	\$106	\$110	\$118	\$124	\$130	\$136	\$139
Adjustment Factor ³		1.043902	1.049065	1.052895	1.040719	1.072663	1.050687	1.045537	1.042691	1.025641

⁴Column repeated from previous page.

<i>Years Out of Law School</i>	<i>06/01/06-05/31/07⁵</i>	<i>06/01/07-05/31/08</i>	<i>06/01/08-05/31/09</i>	<i>06/01/09-05/31/10</i>	<i>06/01/10-05/31/11</i>	<i>06/01/11-05/31/12</i>	<i>06/01/12-05/31/13</i>	<i>06/01/13-05/31/14</i>	<i>06/01/14-05/31/15</i>	<i>06/01/15-05/31/16</i>
20th+	\$614	\$646	\$672	\$686	\$709	\$734	\$753	\$772	\$790	\$797
11th - 19th	\$510	\$536	\$558	\$570	\$589	\$610	\$626	\$641	\$656	\$662
8th - 10th	\$452	\$475	\$494	\$505	\$522	\$541	\$554	\$568	\$581	\$586
4th - 7th	\$313	\$329	\$342	\$350	\$362	\$374	\$384	\$393	\$403	\$406
1st - 3rd	\$254	\$267	\$278	\$284	\$293	\$304	\$312	\$319	\$327	\$330
Paralegal/Law Clerk	\$139	\$146	\$152	\$155	\$161	\$166	\$171	\$175	\$179	\$180
Adjustment Factor ³		1.051500	1.040127	1.021848	1.033724	1.035168	1.025790	1.024383	1.023459	1.008873

⁵Column repeated from previous page.

<i>Years Out of Law School</i>	<i>06/01/15-05/31/16⁶</i>	<i>06/01/16-05/31/17</i>	<i>06/01/17-05/31/18</i>	<i>06/01/18-05/31/19</i>	<i>06/01/19-05/31/20</i>	<i>06/01/20-05/31/21</i>	<i>06/01/21-05/31/22</i>	<i>06/01/22-05/31/23⁷</i>	<i>06/01/23-05/31/24⁸</i>	<i>06/01/24-05/31/25</i>
20th+	\$797	\$826	\$865	\$895	\$899	\$914	\$919	\$997	\$1,057	\$0
11th - 19th	\$662	\$686	\$718	\$743	\$747	\$759	\$764	\$829	\$878	\$0
8th - 10th	\$586	\$608	\$636	\$658	\$661	\$672	\$676	\$733	\$777	\$0
4th - 7th	\$406	\$421	\$440	\$456	\$458	\$465	\$468	\$508	\$538	\$0
1st - 3rd	\$330	\$342	\$358	\$371	\$372	\$378	\$381	\$413	\$437	\$0
Paralegal/Law Clerk	\$180	\$187	\$195	\$202	\$203	\$206	\$208	\$225	\$239	\$0
Adjustment Factor ³		1.036943	1.046290	1.035079	1.004920	1.015894	1.006053	1.085091	1.059295	0.000000

⁶ Column repeated from previous page.

⁷ The Bureau of Labor Statistics of the United States Department of Labor did not issue the legal services component of the Consumer Price Index for June 2022. Therefore, the average of the May and July components was used to calculate the 2022 Adjustment Factor. As provided in footnote 3, the Adjustment Factor was calculated by dividing this average by the legal services component for June 2021, which is the same value as May and July 2021.

⁸ The Bureau of Labor Statistics of the United States Department of Labor did not issue the legal services component of the Consumer Price Index for June 2023. Therefore, the average of the May and July components was used to calculate the 2023 Adjustment Factor. As provided in footnote 3, the Adjustment Factor was calculated by dividing this average by the average of the legal services components for May and July 2022, since the Bureau of Labor Statistics of the United States Department of Labor also did not issue a legal services component of the Consumer Price Index for June 2022. See footnote 7.

Exhibit 4

Changes in Fitzpatrick and LSI Laffey matrices from 2014 to 2024
(derived from Exhibits 2 and 3).

THE FITZPATRICK MATRIX

Years	2014	2024	Percentage Increase
35+	563	864	153.46%
34	562	862	153.38%
33	560	861	153.75%
32	558	858	153.76%
31	555	856	154.23%
30	552	851	154.17%
29	549	847	154.28%
28	545	843	154.68%
27	540	838	155.19%
26	536	831	155.04%
25	530	826	155.85%
24	525	819	156.00%
23	519	812	156.45%
22	512	804	157.03%
21	505	795	157.43%
20	498	787	158.03%
19	490	778	158.78%
18	481	768	159.67%
17	473	757	160.04%
16	463	746	161.12%
15	454	736	162.11%
14	443	722	162.98%
13	433	711	164.20%
12	422	698	165.40%
11	410	683	166.59%
10	399	669	167.67%
9	386	655	169.69%
8	373	640	171.58%
7	360	625	173.61%
6	347	608	175.22%
5	332	592	178.31%
4	318	574	180.50%
3	303	557	183.83%
2	287	538	187.46%
1	272	519	190.81%
0	255	500	196.08%
P*	140	236	168.57%

* = Paralegals/Law Clerks

average 164.51%

LSI MATRIX

Years	2014	2024	Percentage Increase
35+	772	1057	136.92%
34	772	1057	136.92%
33	772	1057	136.92%
32	772	1057	136.92%
31	772	1057	136.92%
30	772	1057	136.92%
29	772	1057	136.92%
28	772	1057	136.92%
27	772	1057	136.92%
26	772	1057	136.92%
25	772	1057	136.92%
24	772	1057	136.92%
23	772	1057	136.92%
22	772	1057	136.92%
21	772	1057	136.92%
20	772	1057	136.92%
19	641	878	136.97%
18	641	878	136.97%
17	641	878	136.97%
16	641	878	136.97%
15	641	878	136.97%
14	641	878	136.97%
13	641	878	136.97%
12	641	878	136.97%
11	641	878	136.97%
10	568	777	136.80%
9	568	777	136.80%
8	568	777	136.80%
7	393	538	136.90%
6	393	538	136.90%
5	393	538	136.90%
4	393	538	136.90%
3	319	437	136.99%
2	319	437	136.99%
1	319	437	136.99%
0	175	239	136.57%
P*	175	239	136.57%

average 136.91%

CERTIFICATE OF SERVICE

I certify that on this 21st day of August, 2024, I caused the foregoing motion to be filed with the Court's electronic filing system, through which it was transmitted to all counsel of record.

Alan R. Kabat

Alan R. Kabat