DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 800202 COLORADO CROSS-DISABILITY COALITION, *et al*, Plaintiffs, v. JOAN HENNEBERRY, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING , IN HER OFFICIAL CAPACITY, and COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, Defendants.	▲ **COURT USE ONLY** ▲
JOHN W. SUTHERS, Attorney General PATRICIA D. HERRON, Senior Assistant Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 303-866-6163 E-mail: pat.herron@state.co.us Registration Number: 32984 *Counsel of Record	Case No. 2009 CV 11761 Div.: 3 Judge Morris B. Hoffman
STATE DEFENDANTS' RESPONSE TO PLAINTIFFS' ATTORNEY FEE APPLICATION, PLAINTIFFS' RENEWED REQUEST FOR COSTS AND REQUEST FOR FEES FOR BRIEFING MOTION TO ENFORCE	

Defendants Joan Henneberry, Executive Director of the Department of Health Care Policy and Financing, in her official capacity, and Colorado Department of Health Care Policy and Financing, ("Defendants") by and through the Attorney General, respectfully respond to Plaintiffs' attorney fee application,

renewed request for costs and request for attorney fees for briefing the Motion to Enforce. The Defendants will respond fully to each of these issues below.

INTRODUCTION

Plaintiffs request fees of **$94,861.00** in attorneys and costs of **$964.74**, for a total of **$95,825.74** incurred in the litigation of the Fourth Amendment Due Process claims brought pursuant to 42 U.S.C. §1983 in this case.

On January 17, 2011 this Court entered its order granting Plaintiffs *reasonable* attorney fees and ordering each side to pay its own costs. Without waiving the issue on appeal, Defendants do not dispute that under the court's order, Plaintiffs are entitled to reasonable attorneys' fees for the litigation of this case. However, Plaintiffs' request is excessive and unreasonable in several respects. Based on the Tenth Circuit's holding in *Ramos v. Lamm,* 713 F.2d 546, Defendants have identified objectionable billing practices and excessive hourly rates set forth in Plaintiffs' Motion for Fees. For example:

(1) Kevin Williams and Andrew Montoya have each requested premium hourly rates that are not commensurate with the local market rates or consistent with their experience.

(2) The attorneys have billed time to unnecessary tasks and research insufficiently related to the advancement of the §1983 claims. The attorneys have also billed for time spent learning the subject matter. According to the Tenth Circuit, billing for this time is inappropriate. *See Ramos,* 713 F.2d at 553. The impropriety of these billing entries becomes even more apparent when considered

alongside the purported background and experience of counsel. It would not be acceptable to bill a private, paying client for such time, and therefore, it would also not be inappropriate to assess such fees against the State Defendants.

(3) There are also instances of block billing which is impermissible. *See Ramos,* 713 F.2d 553-556.

(4) In addition, there are entries related to media matters and press releases which are not furtherance of Plaintiffs' due process claims. As such, it would be improper to assess these against the Defendants.

(5) Plaintiffs' counsel has expended significant time on issues for which he was not successful. Plaintiffs unsuccessfully pursued the theory that each Plaintiff was entitled to a full hearing prior to an allocation decrease made as a result of an across the board budget cut ordered by the Governor of the State. Plaintiffs' theory is inconsistent with the Medicaid statutes and was ultimately abandoned by Plaintiff. However, the theory was not abandoned before Plaintiffs spent substantial time on discovery and conducting research on the issue. As a result of Plaintiff's refusal to concede this issue and focus on the due process question at issue, (the insufficient notices sent to some CDASS participants) much time, resources and money was spent on discovery that could have been avoided. Further, the discovery conducted by Plaintiffs was unnecessary as the Defendants had already given reassurances that 1) the problems with the notices were already being rectified by the Department; and 2) that no CDASS participant would be

penalized or have their allocation reduced until such time as the calculations were corrected.

(6) Plaintiffs have billed a significant number or hours for class certification and related matters. Plaintiffs did not prevail on this issue and no class was certified. When the suit was filed, there were four Plaintiffs. During the course of the suit counsel recruited nine additional Plaintiffs (out of approximately 1400 total CDASS participants). As a result, the time spent on matters relating to certification of a class should be eliminated. *See Ramos*, 713 P.2d at 556. Further, Plaintiffs' counsel and his team spent substantial time in the pursuit of additional clients for his putative class action. These hours were incurred before counsel was engaged by the additional Plaintiffs. Such investigation and solicitations are not properly billable to a paying client. As a result they must be eliminated from this billing. *Id.*

(7) Despite his expertise in class action matters and in civil rights matters particularly those involving Medicaid and Medicare regulations, (see affidavit of Kevin Williams), counsel has improperly billed time to researching these issues and consulting with, attempting to engage and discussing the allocation of responsibilities with "outside" counsel. These charges should be excluded in full. *Ramos,* at 554.

(7) Billing entries that are vague and insufficiently described. Counsel also billed a significant number of time for "research." These billing entries are vague and insufficiently described. Defendants have been unable, as will the court, to

determine the precise nature of the research and if the time spent conducting the research is reasonable and necessary. Therefore these charges in their entirety should be excluded. *See Ramos*, 713 F.2d at 554.

(8) Billing for overhead. Counsel has also included a substantial number of hours for his "legal assistant" Brianna McCarty. Although the undersigned contacted Mr. Williams in an attempt to ascertain the nature of Ms. McCarty's training and any certification she may hold, counsel for Plaintiffs refused to disclose if she is a paralegal.[1] As a result of counsel's refusal, this counsel must assume Ms. McCarty is not a paralegal and has no such certification. Additionally, it is sufficient to focus on the character of the tasks performed by Ms. McCarty. Ms. McCarty's credentials aside, most of the entries for Ms. McCarty are for secretarial or administrative functions that are ordinarily considered to be "overhead." Many are for transcribing, mailing, copying and other administrative/secretarial tasks. At first blush, other entries that may appear to be for *research*, are instead for time spent "researching" potential client addresses or placing prospective client addresses on a spreadsheet or updating a spreadsheet. Counsel also attempts to bill Ms. McCarty's time for attending mediation sessions with counsel. There are a few entries that appear to reflect time for research conducted by Ms. McCarty. For example, Ms. McCarty bills 0.8 hour on October 14, 2010 "researching" the propriety of billing secretarial time and

[1] Mr. Williams also attaches the affidavit of Timothy Fox in support of his fee application. In the affidavit, Mr. Fox refers to Ms. McCarty as a paralegal and determines that her billing rate of $100 per hour is reasonable for a paralegal. If Ms. McCarty is not a certified paralegal, the assumptions made by Mr. Fox would not be correct.

emailing her results to Mr. Williams. If Ms. McCarty is not a paralegal and she is conducting research, it would also be improper to bill that time. Pursuant to *Ramos,* those hours would properly be consumed into overhead and would not billed to a paying client. Thus, it is also not appropriate to assess such fees against the State Defendants. *See Ramos*, 713 F.2d at 554.

I. Procedural History

This case was filed December 22, 2009 shortly after the Governor announced a second "across the board" budget cut that would impact CDASS participants. When the Governor announced the cuts, the Department of Health Care Policy and Financing notified the CDASS case managers throughout the state that they must contact their CDASS clients to notify them of the reduction in rates and the effect on their individual allocations.[2] Prior to the announcement of a second (subsequent) rate cut on December 1, 2010, the Department learned from CDASS recipients that the case managers were not able to perform the complex task of recalculating clients' allocation amounts. The Department's Rates Division immediately began assembling the data necessary to properly calculate each of the approximately 1400 individual CDASS recipient's allocation amounts.[3]. The Rates Division had already begun the process of assembling

[2] There are approximately 100 case managers in various locations across the state of Colorado. These individuals are case managers in the truest sense, responsible for the needs and welfare of their charges. Generally speaking, they are not mathematicians.

[3] This information included identifying the pre budget cut (August 2009) allocation level and all subsequent changes to the allocation amount of each participant and then conducting the daunting task of recalculating each individual's new allocation amount.

information, programming spreadsheet functions and recalculating all CDASS recipients' rates when this lawsuit was filed.

When the case was filed December 22, 2009, CCDC asserted that it was a class action suit. At that time, counsel for CCDC represented four CDASS recipients. The Complaint was amended on June 21, 2010 to add nine more CDASS recipients and putative class members.

The Department filed a motion to dismiss on February 18, 2010. The motion was not fully briefed until April 19, 2010. The Court denied the motion on June 17, 2010 and Defendants timely answered the Amended Complaint July 19, 2010. Because the motion to dismiss was pending and the case was not yet at issue, the discovery conducted prior to answering the Amended Complaint was conducted was improper.

No depositions were taken, no hearings were held, no trial preparation was conducted, and this case was resolved without court intervention. It is inconceivable that Plaintiff's fees and costs could reach nearly $100,000 for such a case. Moreover, the issues were not novel or complex. The single issue that became the focus of this case, and the only issue for which CCDC can arguably claim success, was relatively straightforward: whether the Department had provided timely and sufficient notice to the CDASS participants of plans to implement allocation decreases or whether the notice was in violation of the participants' Constitutional right to due process. There was considerable wrangling over the content and timing of future notices, and other matters were all

discussed, however, before this suit was filed, the Department had already determined that the notice was deficient and that a second notice would be sent to all CDASS participants after the calculations were corrected. (See Affidavit of Barbara Prehmus). The Department had already halted plans to make allocation changes prior to the filing of this action. At no time were the allocations of any CDASS participant reduced. Further, no CDASS participant was penalized in any manner for overspending their monthly allocation as a result of the plans to implement a reduction. (see Affidavit of Joan Smith).

Plaintiff continues to take credit for achieving results and being responsible for the changes that were made by the Department, when, in fact, the Department had already undertaken the changes when the suit was filed. The issues in this case were not so complex that an extraordinary award of fees is warranted. The Department promised CCDC and other CDASS participants early in this suit that the notices would be corrected and that no CDASS participant would suffer any consequence as a result of the earlier deficient notice . Rather than staying the litigation to allow the Department the opportunity to take the steps needed, Plaintiffs moved full steam ahead to gather class action participants. The litigation was unnecessary from the beginning. Further, Plaintiffs' actions protracted the litigation (Affidavit of Joan Smith) and needlessly cost the taxpayers of the State of Colorado to defend the action.

II. Plaintiff's Fee Application Is Rife with Entries Not Reasonable and Necessary and not Proper Pursuant to 42 U.S.C. §1988.

"To determine a reasonable attorneys' fee, the district court must arrive at a 'lodestar' figure by multiplying the hours plaintiffs' counsel reasonably spent on the litigation by a reasonable hourly rate." *Jane L. vl Bangerter,* 61 F.3d 1505, 1509 (10th Cir. 1995). "[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Mares v. Credit Bureau of Raton,* 801 F.2d 1197, 1201 (10th Cir. 1986), *quoting Hensley v. Eckerhar,* 461 U.S. 424, 437 (1983).

The district court should take the first step in calculating the lodestar by determining the number of hours reasonably spent by counsel for the party seeking fees. *See Ramos v. Lamm,* 713 F.2d 546, 552 (10th Cir. 1983). The district court must ensure that the prevailing attorneys have exercised "billing judgment." *Id.* at 553. Hours that would not be properly billed to his or her client cannot reasonably be billed to the adverse party, making certain time presumptively unreasonable. *Id.* Numerous hours set forth in counsel's time records fall into this category.

A. Plaintiff's billing statements reflect improper block billing.

Plaintiffs' counsel engaged in substantial "block billing." Counsel failed to separately bill for discrete activities, thereby preventing this Court and the Defendants from determining whether a particular entry was reasonable and necessary or excessive. Entries that have multiple activities without specific time being allocated to each activity make it difficult, if not impossible, to review the amount of time spent on any of the activities involved in the litigation to determine whether it was necessary or immoderate.

Clients expect to have specific activities itemized in their bills. Block billing should not be submitted to private, paying clients, and this Defendant should not be made to pay for block of time without realizing the value of each activity. Plaintiffs' attorney's fees bills should be reduced accordingly to compensate for the inappropriate block billing.

B. Plaintiff has sought compensation for time spent learning the subject matter and research insufficiently related to the §1983 claims.

"The court should determine whether the tasks sought to be charged to the adversary party would normally be charged to a paying client. Lawyers charging fees to adversaries rather than clients may be less likely to carefully scrutinize the hours spent to determine if payment for the task performed is justified." *Ramos,* 713 F.2d at 554. The *Ramos* court cautioned that the court should pay special attention to "time spent reading background cases . . . and other materials designed to familiarize the attorney with this area of law – time that would be absorbed in a private firm's general overhead and for which the firm would not bill a client." *Id.* Lawyers are charged with the responsibility to exercise billing discretion by thoroughly reviewing each entry before submitting a fee application. Counsel has failed to exercise billing discretion and has included a number of hours for matters not billable to a private client. Defendants have attached a spreadsheet depicting the problem hours.

Plaintiffs have sought compensation for time spent by the attorneys researching and learning the subject matter. Plaintiff has also sought time for

other tasks unrelated to the litigation of the §1983 claims, such as time spent researching the Attorney General's knowledge of the law.[4] These fees cannot be awarded pursuant to §1988. Plaintiffs have also sought compensation for vague categories described only as "research" without disclosing the subjects being researched. Those entries are too vague to allow the defendants or the court to determine if it is reasonable and necessary and they must therefore be excluded. For the Court's convenience, each of these entries is set forth on the spreadsheet attached.

III. The Hourly Rates Charged by The Attorneys in this Case Exceed the Prevailing Rates in Denver for Their Experience and Level of Participation.

"Attorneys' fees awarded under §1988 are to be calculated on the basis of the prevailing market rates in the relevant community." *Lucero v. Trinidad,* 815 F.2d 1384, 1385 (10th Cir. 1987) (citing *Blum v. Stenson,* 465 U.S. 886, 895 (1984)). The rate must be related to "what lawyers of comparable skill and experience practicing in the area in which the litigation occurs would charge for their time." *Ramos,* 713 F. 2d at 555. The burden of establishing the reasonableness of the fee is on the applicant. *Lucero,* 815 F. 2d at 1385.

Plaintiff's Motion requests hourly rates that exceed the prevailing rates in Denver for their levels of experience and participation in this case. The rate sought for Kevin Williams is $345 per hour. The rate sought for Andrew Montoya while he was a law student is $100 per hour and Mr. Montoya's time is largely

[4] Although it is difficult to appreciate what this entry means, it is hard to conceive of any interpretation under which this fee would be properly paid by the State of Colorado.

spent doing duplicative and unnecessary research and learning the subject matter. Two days after admission to the bar Mr. Montoya's begins billing at a rate of $200 per hour. These rates are excessive and should be reduced. *See* Affidavit of David R. Brougham, Esq.

As support for its requested rates, Plaintiff attaches the Colorado Bar Association 2008 Economic Survey. The CBA reports that the mean hourly rate for civil rights practitioners in this market is $259. Although the survey lists an hourly fee of $360 as reported by the 95th percentile of attorneys responding, with only five practitioners responding, the 95th percentile is likely the rate reported by only one participating attorney. This survey hardly qualifies as persuasive evidence in support for Plaintiffs' request for $345 per hour. Plaintiff also attaches the affidavit of local attorney Timothy Fox which conclusively states the rates requested by Plaintiff are commensurate with the going rate in this market. However Mr. Fox bases his conclusions on incorrect information and inaccurate presumptions. For example, Mr. Fox claims that he reviewed the itemized statement of billing that was provided to Defendants' counsel on September 15, 2010, and that he has discussed the case and the work done on the case with Plaintiffs' counsel. Despite those undertakings, M. Fox is apparently unaware that Mr. Williams is now seeking a higher rate of $345 per hour rather than $330 per hour set forth in the September version of his fees application. Mr. Fox has also based his opinions on his misunderstand that Mr. Williams' legal assistant is a

paralegal rather than an administrative assistant or a secretary and that counsel is billing her hours at $95, not $100. *See* Affidavit of Timothy Fox.

Mr. Fox avers that the issues in this case were novel, when in fact there was only one issue for which Mr. Williams can argue he achieved success. That issue was a straight forward due process claim.

Mr. Fox also reviewed the Colorado Bar Association salary survey in an effort to find support for the fees application in this case. However, Mr. Fox incorrectly likens this case to one filed and litigated in federal court that, indeed contained complex and novel questions of law as well as substantially different circumstances.[5]

Finally, Mr. Fox incorrectly concludes that counsel's fees are appropriate and reasonable because similar fees are being paid to the top 5% of employment attorneys. This is not an employment case, it did not include novel issues, it was not pursued in federal court, and Mr. Williams is not one of the top 5% employment attorneys. Further, Mr. Williams was unsuccessful at two of the three claims he raised in this suit and on the third issue, the Department had already taken steps to remedy the problems before the suit was filed. Accordingly, Plaintiff has not met its burden to substantiate that the rates requested are comparable with the rates normally charged clients for civil rights litigation in the

[5] The *K-Mart* case referenced by Mr. Fox was, by all accounts, a hard fought nationwide class action suit involving multiple national law firms representing the parties. The *K-Mart* litigation spanned seven years. The Court notes in its opinion that the majority of the work in the case was performed by the firm of Fox and Robertson (Mr. Fox' firm). In the *K-Mart* case, the fees were paid by agreement of the parties. The *K-Mart* case and the case at bar have few, if any, similarities.

Denver market. *See Citizens for Responsible State Government State Political Action Committee v. Davidson,* 236 F. 3d 1174 (10th Cir. 2000).

TIMEKEEPERS AND HOURLY RATES

I. CCDC

A. Kevin Williams

The $345 hourly rate claimed by attorney Kevin Williams does not reflect the prevailing market rate in this community for this type of litigation.

Although Mr. Williams is experienced in civil rights litigation, the hourly rate he claims in this case is unreasonable. Mr. Williams is the Legal Program Director for a non-profit organization, CCDC, which specializes and focuses on litigation involving the due process rights of individuals with disabilities in the Medicaid program as well as disability rights cases under the Americans with Disabilities Act, Fair Housing Act, Section 504 of the Rehabilitation Act and other disability rights statutes and rules. (Williams Affidavit at ¶ 14) As a result of his employment with the non-profit corporation, it is doubtful that Mr. Williams has ever been paid an hourly rate of $345. If so, he was likely not paid that rate by a client for litigating a civil rights case. The more appropriate and prevailing hourly rate for counsel with his experience, practicing civil rights litigation in the Denver area, is in the range of $250-$275. *See* Affidavit of David Brougham.

Furthermore, there are numerous objectionable entries in Mr. Williams' timekeeping records, as set forth in Defendants' spreadsheet. Mr. Williams acknowledges in his own affidavit that he has been published on the topic of

Americans with Disabilities Act, and he used to be the Co-chair of the Colorado Bar Association Disability Law Forum Committee. Despite his accomplishments in this particular specialty, in this case, he spent significant time researching the law in this area. Time spent learning the subject matter would not be billed to a private client. *See Ramos*, 713 F.2d at 554.

Mr. Williams seeks compensation for **274.95** hours posted by him in this case. Based on the reductions set forth in Defendants' spreadsheet, Defendants request that Mr.Williams' compensable hours be reduced accordingly and that his hourly rate be set at no more than $275. Further, the Defendants request that the Court exercise its discretion and impose an additional 25% reduction to counsel's overall billing in order to accurately reflect the success Mr. Williams achieved in this case.

A. Montoya

The hourly rates sought by A. Montoya should also be reduced. The more reasonable rate commensurate with work performed by law students is $75-$90. (See Exhibit A). In addition, the majority of his time spent in this case was devoted to familiarizing himself with the basic principles of law at issue in the case. Pursuant to *Ramos,* time spent learning the subject matter is not compensable.[6] . *See* Affidavit of Dave Brougham. Defendants request that Mr.

[6] Defendants also object to the rate quoted for the time spent working on the case by Mr. Montoya only days after passing the bar. For an attorney who did not become a member of the bar until October 25, 2010, the rate of $200 per hour does not reflect the prevailing market rate in this community for an attorney with no experience and just two days admission to the bar. If any such hours are awarded for time spent after Mr. Montoya was licensed, the rate should be substantially reduced.

Montoya's hours billed in this case as a law student be excluded, and, should any be awarded, the rate be limited to no higher than $90 per hour.

III. Plaintiffs have reasserted their claim for an award of costs.

In its Order dated January 17, 2011, this Court ruled that the Settlement Agreement, under which Plantiffs assert a right to fees and costs, contains no provision for, or even suggests, that the parties have agreed that the Defendants would pay Plaintiffs' costs. As a result the Court properly entered an order directing each side to pay its own costs. Since entering the order, Plaintiffs have provided no evidence to the contrary. The Court's order regarding costs should not be disturbed.

IV. Discussion of a Fees Award as a Result of Defendants' Position on the Motion to Enforce.

In the Order entered by this Court on January 17, 2011 this Court invited the parties to include a discussion of whether Defendants' position on the motion to enforce was itself groundless and frivolous such that Plaintiffs should also recover the fees they incurred in briefing that motion. Defendants take issue with Plaintiffs' characterizations of the proceedings as set for the in their Motion to Enforce Settlement and in their Brief in Support of an Award of Attorney Fees. Plaintiffs have repeatedly referred to the fees mediation as a "sham" and they have encouraged this Court to believe that Defendants did not participate in good faith. The undersigned counsel and the Defendants take great umbrage with these accusations and instead states they they are categorically false.

As this Court is aware, the State of Colorado is self-insured and provides liability protection through the Division of Risk Management. C.R.S. § 24-30-1501. The fees mediation was required by the terms of the Settlement Agreement and was attended by the State of Colorado Risk Manager, counsel for Risk Management, counsel for the Department of Health Care Policy and Financing and Robert Douglas, legal advisor to the Department. [7] Each of the participants representing the State of Colorado participated in good faith and with the sincere hope that attorney fees could be fairly compromised and the case concluded at mediation. In contrast, Mr. Williams admits in his brief in support of his fee application that he deliberately failed to provide a copy of his fee application to any of the Defendants prior to the mediation because he believed the mediation was a sham. Mr. Williams' hostility pervaded the proceedings. Further, there was significant confusion as a result of Mr. Williams' decision to keep the fee application from the Defendants. Not having reviewed the proper fee application and not having the proper fee application from which to work at the mediation made it impossible to "get on the same page". It was only after approximately two hours of frustration that the Defendants and the mediator realized we were not working from the same fee application and that Mr. Williams was seeking approximately $10,000 more than the Defendants were aware. Under those conditions it is not difficult to imagine why the mediation did not result in a

[7] Although accurate, Plaintiffs' counsel has previoulsy referenced Ms. Davis as "someone from Risk Management" leaving the impression perhaps, that the State did not bring it "A" team to the mediation and furthering the misimpression that the State did not take the mediation seriously. If the Court was left with this impression, it is absolutely false.

settlement. Plaintiffs took an all or nothing approach to the negotiations. It was as though he wanted to teach the Defendants a lesson for what he misperceived to be their insincerity.

Defendants believe that filing this case was unnecessary because the Department had already begun working to remedy the problems that formed the basis of the claims in this suit. Throughout the course of the case, Mr. Williams protracted the litigation. He sought substantial discovery before the case was at issue, and rather than refuse, the Department cooperated and provided hundreds of documents. Mr. Williams acknowledges in his brief that the parties engaged in the document production and discovery process in a cooperative manner. (Brief at pg. 7) Even now, in his fee application, Mr. Williams is continuing the same conduct by threatening another suit over the same issue.

The Defendants are mindful of the Court's ruling that it finds the Settlement Agreement is subject to only one interpretation. The Defendants respectfully and humbly did not read the Agreement the same way and the undersigned had a duty to make those arguments to the Court. Although defense counsel can see how the Court reached its conclusion, the Defendants wish to again simply urge the Court to consider that an alternative reading of the Agreement is *possible* without the alternative reading being frivolous or groundless.

Further, the undersigned defense counsel has been depicted by Plaintiffs' counsel as an uscrupulous henchman lying in wait for the opportunity to perpetrate

a scam on Mr. Williams and CCDC. Again, this depiction is categorically false. It is common for different counsel to address attorney fees sought against State employees, agencies and entities. For those unaccustomed to dealing with the State and those unfamiliar with the dichotomy of obligations between the office of Risk Management and the various state entities, the change of attorneys may have seemed unusual. As attorneys for the State, we take very seriously our responsibilities to the public and the taxpayers, as well as our high obligation to the profession. Mediating in bad faith or pursuing a position known to be frivolous would be inconsistent with the duties of an attorney representing the citizens of Colorado. Further, it is unreasonable to think that this office would participate in mediation, include the Risk Manager, her counsel and three additional counsel if the intention was to pretend to be serious and engage in a scam. During the mediation Risk Management made a five figure offer to settle attorney fees in an effort to compromise the fees issue and conclude the case. Concluding a case is always a motivating factor for Risk Management to make a reasonable settlement proposal.

The Defendants regret that the false and misleading accusations advanced by Plaintiffs with respect to Mediation efforts and the incorrect picture that has painted for the Court. Defendants respectfully urge the Court to find that their position on the motion to enforce was not frivolous or groundless, but rather was based on a good faith argument.

V. Reasonableness Hearing

Defendants request this Court conduct a reasonableness hearing on the attorney fees requested in this matter.

CONCLUSION

Based on the arguments and authorities cited above, Defendants request this Court to reduce Plaintiff's attorneys' fees as follows:

Plaintiffs have submitted billing statements and requested compensation for attorney, law student and "legal assistant" fees in the total amount of **$94,861.00.** Based on the objectionable billing practices outlined by Defendants, as well as the factors set forth in *Ramos v. Lamm*, 713 F.2d 446, Defendants request that this amount be reduced to **$67,476**.

In addition, Defendants further request that the total amount of fees and costs stated above be reduced across-the-board by 25**%** to a total amount of **$50,607** in order to account for unsuccessful and unnecessary strategies pursued by Plaintiff that unnecessarily protracted the litigation.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Defendants' Response to Plaintiffs' Petition for Attorneys' Fees, Plaintiffs' renewed request for Cost and Plaintiffs request for fees for briefing motion to enforce settlement agreement upon all parties herein by LexisNexis File and Serve or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 8th day of March, 2011.

s/ Patricia Herron
Patricia Herron