

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

COURTHOUSE NEWS SERVICE; VERMONT)
PRESS ASSOCIATION, INC.; NEW ENGLAND)
FIRST AMENDMENT COALITION; GRAY)
MEDIA GROUP, INC. d/b/a WCAX-TV;)
GANNETT VERMONT PUBLISHING, INC.)
d/b/a *Burlington Free Press*; SAMPLE NEWS)
GROUP, LLC d/b/a *Barre-Montpelier Times*)
Argus and *Rutland Herald*; *VT Digger*, a project of)
the VERMONT JOURNALISM TRUST, LTD.;)
VERMONT COMMUNITY NEWSPAPER)
GROUP, LLC d/b/a *Stowe Reporter, News &*)
Citizen, South Burlington Other Paper, Shelburne)
News, and *The Citizen*; and DA CAPO)
PUBLISHING, INC. d/b/a *Seven Days*,)

Case No. 21-cv-00132-cr

Plaintiffs,)

v.)

PATRICIA GABEL, in her official capacity as the)
State Court Administrator of the Supreme Court of)
the State of Vermont; AMANDA STITES, in her)
official capacity as Clerk of Court for Addison,)
Bennington, and Rutland Counties; MARGARET)
VILLENEUVE, in her official capacity as Clerk of)
Court for Caledonia, Essex, Orleans, and)
Washington Counties; CHRISTINE BROCK, in)
her official capacity as Clerk of Court for)
Chittenden County; GAYE PAQUETTE, in her)
official capacity as Clerk of Court for Franklin,)
Grand Isle, and Lamoille Counties; and ANNE)
DAMONE, in her official capacity as Clerk of)
Court for Orange, Windham, and Windsor)
Counties,)

Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF COURTHOUSE NEWS SERVICE'S
MOTION FOR DETERMINATION OF AWARD OF ATTORNEYS' FEES AND COSTS**

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
RELEVANT BACKGROUND AND PROCEDURAL HISTORY.....	1
Pre-Litigation and Complaint	1
Discovery	2
Preliminary Injunction / Trial	3
Second Circuit Appeal	4
Post-Remand Proceedings	5
SUMMARY OF FEES SOUGHT	6
ARGUMENT	6
POINT I COURTHOUSE NEWS IS ENTITLED TO ATTORNEYS’ FEES AND COSTS AS A PREVAILING PARTY	6
POINT II THE ATTORNEYS’ FEES SOUGHT ARE REASONABLE AND SHOULD BE AWARDED IN THEIR ENTIRETY	8
A. Given the High Degree of Success Obtained in this Case, Courthouse News Is Entitled to Recoup All of the Fees Sought.....	8
B. The Discounted Hourly Rates Courthouse News Paid are Reasonable.....	9
C. Courthouse News Seeks Fees For a Reasonable Number of Hours	12
D. Courthouse News Should be Awarded Reasonable Costs and Expenses.	13
CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Anderson v. Sebelius</i> , No. 5:09-cv-16, 2011 WL 1832771 (D. Vt. May 12, 2011).....	8, 13
<i>Arbor Hill Concerned Citizens Neighborhood Ass’n v. County of Albany & Albany County Bd. Of Elections</i> , 522 F.3d 182 (2d Cir. 2008).....	8, 9, 10
<i>Centrella v. Ritz-Craft Corp. of Pennsylvania</i> , No. 2:14-CV-00111-JMC, 2018 WL 840041 (D. Vt. Feb. 12, 2018)	13
<i>Courthouse News Serv. v. Schaefer</i> , 484 F. Supp. 3d 273 (E.D. Va. 2020)	11
<i>Courthouse News Serv. v. Tingling</i> , No. 16 Civ. 8742 (ER), 2016 WL 8505086 2016 WL 8739010 (S.D.N.Y. Dec. 16, 2016)	11
<i>Crescent Publ’g Group, Inc. v. Playboy Enters., Inc.</i> , 246 F.3d 142 (2d Cir. 2001).....	9
<i>Hastings v. Maine-Endwell Cent. Sch. Dist.</i> , 676 F.2d 893 (2d Cir. 1982).....	7
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	6, 8, 9, 12
<i>Huminski v. Rutland Cnty. Sheriff’s Dep’t</i> , Civil No. 1:99CV160, 2006 WL 8431798 (D. Vt. Aug. 21, 2006)	12
<i>IMS Health Inc. v. Sorrell</i> , No. 1:07-cv-188-JGM, 2012 WL 2915845 (D. Vt. July 17, 2012)	12
<i>Johnson v. Georgia Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974)	8
<i>Kirsch v. Fleet St., Ltd.</i> , 148 F.3d 149 (2d Cir. 1998).....	12
<i>Kuzma v. Internal Revenue Serv.</i> , 821 F.2d 930 (2d Cir. 1987).....	14
<i>Kyros Law P.C. v. World Wrestling Entm’t., Inc.</i> , 78 F.4th 532 (2d Cir. 2023)	10

<i>Lackey v. Stinnie</i> , 604 U.S. 192 (2025).....	7
<i>Perdue v. Kenny A. ex rel. Winn</i> , 559 U.S. 542 (2010).....	8
<i>Reichman v. Bonsignore, Brignati & Mazzotta P.C.</i> , 818 F.2d 278 (2d Cir. 1987).....	13
<i>Texas State Teachers Ass’n v. Garland Indep. Sch. Dist.</i> , 489 U.S. 782 (1989).....	7
<i>United States v. One Star Class Sloop Sailboat</i> , 546 F.3d 26 (1st Cir. 2008).....	9
<i>Weyant v. Okst</i> , 198 F.3d 311 (2d Cir. 1999).....	12
Statutes	
42 U.S.C. § 1983.....	6, 8
42 U.S.C. § 1988.....	7, 8, 13, 14
42 U.S.C. § 1988(b).....	1

PRELIMINARY STATEMENT

Courthouse News Service (“Courthouse News”), along with the Vermont Media Plaintiffs listed in the caption, commenced this action to address unconstitutional delays in access to newly filed civil complaints in the Superior Courts of Vermont resulting from Defendants’ practice of withholding access until after the completion of administrative review and processing. The Plaintiffs prevailed at trial and on appeal, with the Second Circuit observing: “[w]e find no error in the district court’s determination that, with respect to the period examined in the trial evidence, the First Amendment gave Plaintiffs a right of access to complaints newly filed in the Superior Court and that the Defendants’ pre-access review process in that period violated that right.” ECF 78-1, at 17.

On remand, the Court entered an amended judgment declaring that the pre-access review process challenged by the Plaintiffs “violated Plaintiffs’ First Amendment right of access to newly filed complaints,” and “permanently enjoined [them] from continuing to employ [that] pre-access review process.” ECF 95 at 3-4. Courthouse News, as a prevailing party, is entitled to recover its attorneys’ fees and costs pursuant to 42 U.S.C. § 1988(b).¹

RELEVANT BACKGROUND AND PROCEDURAL HISTORY

Pre-Litigation and Complaint

Prior to commencing this action, Courthouse News made efforts to raise and address the access delays in the Vermont Superior Courts following their transition to electronic filing beginning in April 2020. Hibsher Decl., ¶ 3. Despite Plaintiffs requests that they change their practices, Defendants and their attorneys declined and steadfastly denied any undue delays,

¹ Because Courthouse News paid Plaintiffs’ attorneys’ fees and expenses incurred in this matter, only Courthouse News brings the instant application. *See* ECF 67-1 (Declaration of William Hibsher (“Hibsher Decl.”)), ¶ 2.

necessitating this lawsuit. *Id.* Accordingly, on May 20, 2021, Plaintiffs filed suit seeking a declaration that Defendants' delay-causing practice violated the Plaintiffs' First Amendment right of access, and an injunction prohibiting them from continuing their practice. ECF No. 1. Plaintiffs filed an Amended Complaint on June 7, 2021. ECF No. 16.

On July 8, 2021, the parties filed a Stipulation and Proposed Order to set a briefing schedule for Plaintiffs' preliminary injunction motion and Defendants' motion to dismiss, which was So Ordered by this Court. ECF No. 25.

Discovery

To efficiently litigate this case to conserve resources for the parties and the Court, the parties agreed to conduct discovery in two phases: Phase 1 to address limited discovery regarding issues raised in Plaintiffs' motion for a preliminary injunction and Defendants' motion to dismiss, and Phase 2 to address any discovery issues deemed necessary following the hearing on the motions. Hibsher Decl., ¶ 4. As part of initial discovery, Plaintiffs sought electronic data from Defendants detailing delays in access since the inception of e-filing in Defendants' courts, as well as data on the number of occasions that Defendants' pre-access administrative review of new filings gave rise to a rejection of a filing because it contained a personal identifier – one of the stated reasons Defendants had asserted for delays. *Id.*, ¶ 5.

Though Defendants did not dispute Plaintiffs' proof of the delays set forth in the Amended Complaint, which was confirmed in the electronic data produced by Defendants, they steadfastly opposed Plaintiffs' challenge to their practice of restricting and delaying access to new complaints until after completion of all clerk processing. *Id.*, ¶ 6. In addition to opposing Plaintiffs' preliminary injunction motion, Defendants moved to dismiss the action on abstention and mootness grounds, as well as on the faulty premise that their courts provide better access

than other states' courts covered by Courthouse News. *Id.*, ¶ 7. To support this theory, Defendants sought, and Courthouse News responded to, discovery regarding: (i) the date of Courthouse News' first publication of every new civil complaint that Courthouse News covered nationwide in May and June during the last 10 years and (ii) the frequency that Courthouse News visited each of those courts during that period, despite Courthouse News' repeated explanations that Courthouse News' publication dates do not accurately measure access delays in other courts and its assertion that access in other courts has no relevance to whether Defendants provide constitutional access. *Id.*

Defendants' discovery demands required Courthouse News, through counsel, to: (i) compile and produce electronic publication data for over 1.4 million cases it has covered in the last 10 years, and (ii) based on the best recollections of its five bureau chiefs that collectively supervise the almost 240 reporters covering over 3,000 courts across all 50 states (as well as United States territories), provide the frequency (*i.e.*, daily, weekly, biweekly, etc.) that Courthouse News has visited each of those courts over the last 10 years. *Id.*, ¶ 8. Defendants then used data provided by Courthouse News to advance a series of arguments in an attempt to justify the delay in their courts. Defendants' tactics, which included the retention of an expert, James Donohue, to analyze Courthouse News' data, compelled Plaintiffs to retain their own expert, Amita Kancherla. Hibsher Decl., ¶¶ 57-58.

Preliminary Injunction / Trial

On October 25, 2021, the Court held a preliminary injunction hearing, which, with the parties' consent, was converted to a trial on the merits without live witnesses. Hibsher Decl., ¶ 21. The court reviewed the delays resulting from Vermont's pre-access review process during the approximately sixteen months between the Vermont trial court's transition to e-filing and

August 6, 2021 (“Trial Evidence Period”). ECF 95 at 2-3. Despite the Court’s recognition during the October 25, 2021 hearing that this case is not a popularity contest and does not invite a survey to determine how Defendants’ courts compare to others (*see* October 25, 2021 Hearing Transcript, ECF No. 57 at 5:19-24, 46:8-22), Defendants continued to pursue arguments related to their theory that the Vermont Superior Courts provide better access than other states’ courts covered by Courthouse News in a post-hearing submission, which required a response by Plaintiffs and their expert. Hibsher Decl., ¶ 9.

On November 19, 2021, this Court issued its Opinion and Order (ECF No. 62) (“Opinion”), which, among other things, denied Defendants’ motion to dismiss, found that Defendants failed to carry their burden of justifying their practice under constitutional scrutiny resulting in a First Amendment violation, and issued a permanent injunction enjoining Defendants from withholding access to newly filed non-confidential civil complaints until Defendants complete their administrative review process. Opinion at 25, 27. This Court entered Judgment pursuant to the Court’s Opinion on November 22, 2021. ECF No. 63.

Second Circuit Appeal

On December 17, 2021, Defendants filed their notice of appeal commencing appellate proceedings, Doc. 66, and Second Circuit heard oral argument on April 10, 2023.

On March 11, 2025, the Second Circuit issued an opinion affirming the judgment in favor of Plaintiffs. ECF No. 78-1. The Second Circuit affirmed the judgment in favor of Plaintiffs to the extent that it found that the practice this Court reviewed during the Trial Evidence Period violated the First Amendment. *Id.* at 47. The Second Circuit rejected the arguments advanced by Defendants in their attempt to avoid constitutional scrutiny (i.e., abstention and mootness), *id.* at 40-41, and concluded that Defendants’ failed to carry their burden of justifying their pre-review

practice under such scrutiny. *Id.* at 33 (“In short, we find no merit to the Defendants’ argument and conclude [...] that they have failed to show that there was error in the district court’s ruling that pre-access review process during the period covered in the trial evidence violated the Plaintiffs’ right of access guaranteed by the First Amendment.”). However, the Second Circuit vacated the permanent injunction entered by this Court for overbreadth, and remanded for proceedings consistent with its opinion. *Id.* at 47.

On April 15, 2025, the Second Circuit granted Courthouse News’ motion for an order determining that it is entitled to an award of attorneys’ fees incurred in connection with the appeal in this case, and for a referral to the district court to determine a reasonable amount. Order, Case No. 21-3098, Dkt. 167 (2d Cir. Apr. 15, 2025).

Post-Remand Proceedings

On remand, the Parties agreed to stay court proceedings while they unsuccessfully explored the possibility of a resolution that would avoid further proceedings. Doc. Nos. 74, 75; *see also* Fetterly Decl., ¶ 13. Following a status conference on August 18, 2025, the Court entered an amended judgment consisting of a declaratory judgment and permanent injunction. Doc. No. 95. Consistent with the Second Circuit’s opinion affirming Plaintiff’s victory following trial, the amended judgment declared Defendants’ practice of restricting access until after processing, as reflected in the trial evidence, violated the Plaintiffs’ First Amendment right of access, and it permanently enjoined that practice. *Id.*

The Court did not adopt the Defendants’ proposed amended judgment, which attempted to re-write this history of the case by ignoring the holding of the Second Circuit opinion and omitting *any* reference to a First Amendment violation. *See* ECF 92, 93. Instead, the Court

entered an amended judgment that largely adopted the proposed amended judgment submitted by Plaintiffs. *Compare* ECF 88-1, *with* ECF 95.

SUMMARY OF FEES SOUGHT

Courthouse News seeks a total of \$2,039,408.58 in fees, costs, and expenses for the district court proceedings prior to appeal, the appeal, and post-appeal district court proceedings through September 2025.² Fetterly Decl. ¶ 40. This amount consists of \$1,980,263.00 in attorneys' fees, and \$59,145.58 in expenses and costs, broken down as follows.

District Court Fees (non-fee motions)	\$1,108,456.50
Second Circuit / Appellate Fees	\$703,637.00
Expenses / Costs	\$59,145.58
Motions for Attorneys fees (District Court and Second Circuit)	\$168,169.50
TOTAL	\$2,039,408.58

See also Fetterly Decl. ¶ 41 (further breaking down total by time-period and phases of litigation).

The number of hours worked, and the rates for each timekeeper who worked them, are set out in the supporting declarations of William Hibsher (¶¶ 23-56, 68, 71), Jonathan Fetterly (¶¶ 20-30, 39), and Matthew Byrne (¶ 6).

ARGUMENT

POINT I

COURTHOUSE NEWS IS ENTITLED TO ATTORNEYS' FEES AND COSTS AS A PREVAILING PARTY

Under 42 U.S.C. § 1983, a “prevailing plaintiff “should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.”” *Hensley v. Eckerhart*,

² Courthouse News will claim fees and costs incurred after September 2025 in its reply papers.

461 U.S. 424, 429 (1983). The same rule extends to attorneys’ fees on appeal. *Hastings v. Maine-Endwell Cent. Sch. Dist.*, 676 F.2d 893, 896 (2d Cir. 1982). “A party ‘prevails’ when a court conclusively resolves his claim by granting enduring relief on the merits that alters the legal relationship between the parties.” *Lackey v. Stinnie*, 604 U.S. 192, 207 (2025). A plaintiff achieves prevailing party status where it “succeed[s] on the merits,” *Lackey*, 604 U.S. at 201-02, such as “a judgment vindicating ... First Amendment rights.” *Texas State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989).

Here, Plaintiffs sought a declaratory judgment “declaring Defendants’ policies and practices that knowingly effect delays in access to newly filed civil complaints... as unconstitutional under the [First Amendment]” and an injunction “prohibiting them from continuing their policies and practices that deny Plaintiffs contemporaneous access to newly filed civil complaints.” ECF 16 at 20-21. After the Second Circuit agreed with this Court that “the First Amendment gave Plaintiffs a right of access to complaints newly filed in the Superior Court and that the Defendants’ pre-access review process in [the trial evidence period] violated that right,” ECF 78-1, at 17, this Court entered an amended judgment declaring that the practice challenged by Plaintiffs violated their First Amendment right of access, and a permanent injunction prohibiting that practice. ECF 95; *see Lackey*, 604 U.S. at 207 (“A party ‘prevails’ when a court conclusively resolves his claim by granting enduring relief on the merits that alters the legal relationship between the parties.”

Courthouse News previously moved the Second Circuit for an order declaring it is entitled to an award of attorneys’ fees incurred in connection with the appeal in this action, and the Second Circuit granted that motion. [2nd Cir. Docket], 161, 167. Plaintiffs are clearly the “prevailing parties” for purposes of 42 U.S.C. Section 1988.

POINT II

THE ATTORNEYS' FEES SOUGHT ARE REASONABLE AND SHOULD BE AWARDED IN THEIR ENTIRETY

In the Second Circuit, attorneys' fees are awarded by determining a "presumptively reasonable fee," which is calculated by multiplying a reasonable hourly rate by the number of reasonably expended hours. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany & Albany County Bd. Of Elections*, 522 F.3d 182, 183-84 (2d Cir. 2008). A reasonable hourly rate "is the rate a paying client would be willing to pay." *Id.*, at 190. And in determining a fee award, the Second Circuit has instructed that a district court should consider "case-specific variables," among others, the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *Arbor Hill*, 522 F. 3d at 190.³

A. Given the High Degree of Success Obtained in this Case, Courthouse News Is Entitled to Recoup All of the Fees Sought

In determining the proper amount of a fee award under 42 U.S.C. § 1988, "the most critical factor is the degree of success obtained." *Hensley*, 461 U.S. at 436; *see also Anderson v. Sebelius*, No. 5:09-cv-16, 2011 WL 1832771, at *3-4 (D. Vt. May 12, 2011). Plaintiffs asserted one claim in this lawsuit – violation of the First Amendment and 42 U.S.C. § 1983 for delaying access to newly filed civil complaints until after the completion of administrative review and

³ The twelve factors set forth in *Johnson* "are (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Arbor Hill*, 522 F.3d at 186 n.3. The Supreme Court has since criticized the *Johnson* factors as overly subjective, making clear that case-specific factors should be considered in determining the reasonable hourly rate and hours billed. *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551-53 (2010).

processing – and Plaintiffs were entirely successful on that claim: the Court issued a declaratory judgment that the challenged practice violated the Plaintiffs’ First Amendment right of access, and an injunction enjoining the practice giving rise to this action. ECF 95.

Indeed, this lawsuit represents a decisive victory not only for Courthouse News and the Vermont Media Plaintiffs but for other media and the public at large. This litigation not only resulted in Defendants ceasing the challenged practice giving rise to this action, Declaration of Adam Angione (“Angione Decl.”), ¶¶ 9-18, Exs. 1-4, but it also resulted in a determination that the challenged practice was unconstitutional and a permanent injunction prohibiting Defendants from returning to that unconstitutional practice. By prompting a change in “institutional practices” and deterring unconstitutional conduct, Plaintiffs’ suit achieved an excellent result of “significant import” because their success conferred a benefit on the public. *See Hensley*, 461 U.S. at 436-38. As the Supreme Court explained in *Hensley*, “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” *Id.* at 435.

B. The Discounted Hourly Rates Courthouse News Paid are Reasonable

The touchstone inquiry in determining a “reasonable hourly rate” is “what a reasonable, paying client would be willing to pay.” *Arbor Hill*, 522 F.3d at 184; *see also id.* at 192 (“By asking what a reasonable, paying client would do, a district court best approximates the workings of today’s market for legal services”) (citation omitted). Thus, “the rate that private counsel actually charges for his or her services, while not conclusive, is a reliable indicium of market value.” *United States v. One Star Class Sloop Sailboat*, 546 F.3d 26, 40 (1st Cir. 2008) (citing *Crescent Publ’g Group, Inc. v. Playboy Enters., Inc.*, 246 F.3d 142, 151 (2d Cir. 2001)).

While the Second Circuit applies a presumption in favor of the “forum rule,” under which attorneys’ fees are calculated based on the rates prevalent in the forum in which the litigation was brought, the Second Circuit has “not insisted on strict adherence to the forum rule” and has

“urged district courts... to employ out-of-district rates in calculating the fee due” where appropriate. *Arbor Hill*, 522 F.3d at 192-93. A litigant overcomes the presumption by establishing a reasonable client would have selected out-of-district counsel because doing so would likely produce a substantially better net result. *Kyros Law P.C. v. World Wrestling Entm’t., Inc.*, 78 F.4th 532, 547 (2d Cir. 2023). Among the factors “district courts should consider in making that determination is counsel’s special expertise in litigating the particular type of case, if the case is of such nature as to benefit from special expertise.” *Id.*

Here, unlike a contingency fee case, Courthouse News seeks a fee award based on the hourly rates it actually paid its BCLP lawyers and paralegals – which are the normal discounted rates paid by Courthouse News – as well as its local counsel, Gravel & Shea. Hibsher Decl., ¶¶ 22, 56; ECF 67-11 (Declaration of Rachel Matteo-Boehm (“Matteo-Boehm Decl.”)), ¶¶ 6-7; Declaration of William Girdner (“Girdner Decl.”), ¶ 17. All BCLP rates were discounted by at least 10% for this matter. Fetterly Decl. ¶ 32; Matteo-Boehm Decl. ¶ 6.

Courthouse News has worked with BCLP for nearly 20 years. Matteo-Boehm Decl., ¶ 3; Girdner Decl. ¶ 10. Over this time, BCLP attorneys have developed unique and specialized experience with the different ways state and federal courts provide access to new e-filed civil complaints (which is relevant to the availability of less restrictive alternatives under the applicable constitutional test), Courthouse News’ unique reporting practices, and the importance of protecting the right of the press and public to know about civil litigation in a timely fashion, while the news is still fresh. Fetterly Decl. ¶¶ 6, 16-17; Girdner Decl., ¶¶ 10, 11, 15, 16.

Courthouse News’ out-of-district counsel have also developed specialized knowledge, skill and experience and expertise in the niche and complex area of constitutional law involving the First Amendment right of access to newly filed civil complaints. *Id.* For instance, lead trial

counsel, William Hibsher, successfully represented Courthouse News in a variety of First Amendment-related matters since 2015, including acting as lead counsel in *Courthouse News Serv. v. Tingling*, No. 16 Civ. 8742 (ER), 2016 WL 8505086 & 2016 WL 8739010 (S.D.N.Y. Dec. 16, 2016), *Courthouse News Serv. v. Schaefer*, 484 F. Supp. 3d 273 (E.D. Va. 2020), and other federal court access lawsuits. Hibsher Decl., ¶¶ 13-20; *see also* Fetterly Decl., ¶¶ 5-8. BCLP attorneys Roger Myers and Rachel Matteo-Boehm, who led the Second Circuit appeal, and Jonathan Fetterly, who led the post-remand proceedings, successfully represented Courthouse News in the Ninth Circuit *Planet* litigation, and numerous other access cases across the nation. Fetterly Decl., ¶¶ 7-9, 14.

Courthouse News Serv. v. Schaefer is particularly instructive on the issue of awarding non-forum rates. After Courthouse News prevailed in its challenge to delays in access to newly filed civil complaints at two Virginia circuit courts following a four-day bench trial, Courthouse News sought its attorneys' fees and costs. *See Schaefer*, 484 F. Supp. 3d 273 (E.D. Va. 2020). Defendants objected to the hourly rates charged by BCLP as unreasonable in light of the fact they were out-of-state, and contended that the case was not highly complex or specialized. *Id.*, at 277. In rejecting those arguments and finding that BCLP's out-of-district rates "were reasonable under the circumstances presented," the district court concluded:

This case involved a sophisticated constitutional issue of first impression in this circuit...The issues presented in this case go beyond basic issues of First Amendment law. It is entirely reasonable that Plaintiff should be entitled to recover fees for the use of lawyers that have familiarity with both the Plaintiff's media practices and the complex intricacies that are involved in these right of access for the press cases.

Id., at 278-79.⁴

⁴ *Schaefer* was a similar access case in which Courthouse News prevailed at trial and thereafter in the Fourth Circuit. The district court awarded Courthouse News \$1,978,738 in district court and appellate fees and costs. Hibsher Decl., ¶¶ 17-18.

The same conclusion is warranted here. *See IMS Health Inc. v. Sorrell*, No. 1:07-cv-188-JGM, 2012 WL 2915845, at *3 (D. Vt. July 17, 2012) (holding that “the presumption in favor of the forum rule is overcome in this case” because out-of-state counsel “had just successfully litigated the same issues” and a “reasonable paying client would have continued using the same counsel that had just secured them a victory in a very similar case”).

Based on their extensive history of successfully representing Courthouse News in this unique and complex area of constitutional law, it was reasonable for Courthouse News to “have selected [its] out-of-district counsel because doing so would likely (not just possibly) produce a substantially better net result.” *Kyros L. P.C.*, 78 F.4th at 547; *see also* Girdner Decl., ¶¶ 15-16 (discussing reasons why Courthouse News turns to BCLP to handle its federal court access litigation); *and* Berger Decl., ¶ 9 (“Not only does BCLP have extensive experience litigating cases involving First Amendment court record access issues, but it also has a long-standing history of successfully representing CNS in these types of suits”).

C. Courthouse News Seeks Fees For a Reasonable Number of Hours

A reasonable fee will normally encompass all hours reasonably expended on the litigation, *see Hensley*, 461 U.S. at 435, including “time reasonably spent in preparing and defending a fee motion under § 1988... particularly...where the underlying fees were allowed.” *IMS Health*, 2012 WL 29915845, at *6 (citing *Weyant v. Okst*, 198 F.3d 311, 316 (2d Cir. 1999)); *see also Huminski v. Rutland Cnty. Sheriff’s Dep’t*, Civil No. 1:99CV160, 2006 WL 8431798, at *2 (D. Vt. Aug. 21, 2006). “Applications for fee awards should generally be documented by contemporaneously created time records that specify, for each attorney, the date, the hours expended, and the nature of the work done.” *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (citations omitted). In examining the hours expended, the court “need

not...scrutinize[] each action taken or the time spent on it.” *Anderson*, 2011 WL 1832771 at *3 (internal citations omitted).

Here, prior to commencing this action, Courthouse News made efforts to raise and address the access delays in the Vermont Superior Courts, and asked that Defendants provide access prior to their administrative review of newly filed complaints. Hibsher Decl., ¶ 3; Girdner Decl., ¶¶ 13-15. Despite these requests, Defendants did not change their unconstitutional conduct and steadfastly defended this case. *Id.* They did so by vigorously pursuing unsuccessful legal theories – *e.g.*, abstention (despite Second Circuit authority to the contrary) and mootness (despite their continuation of the challenged conduct until after losing the case at trial) – that dictated the number of hours Plaintiffs’ counsel spent on this case. *See, e.g.*, Hibsher Decl., ¶ 7; *see also* Fetterly Decl. ¶ 13 (address post-remand work Courthouse News attorneys were required to perform). The need for this work, and this litigation, could have been avoided if Defendants had simply implemented the change requested by Courthouse News prior to litigation, which they quickly implemented after losing at trial. Angione Decl., ¶¶ 10-12, 18; Girdner Decl., ¶ 12.

The hours worked by Courthouse News’ counsel were all reasonably necessary to successfully prosecute this First Amendment litigation, both in the district and circuit court.

D. Courthouse News Should be Awarded Reasonable Costs and Expenses

“[R]easonable out-of-pocket expenses incurred by the attorney and which are normally charged fee-paying clients,” including expert witness fees, are recoverable under 42 U.S.C. § 1988. *Reichman v. Bonsignore, Brignati & Mazzotta P.C.*, 818 F.2d 278, 283 (2d Cir. 1987) (citation omitted); *see also Centrella v. Ritz-Craft Corp. of Pennsylvania*, No. 2:14-CV-00111-JMC, 2018 WL 840041, at *11 (D. Vt. Feb. 12, 2018). Courthouse News claims a total of

\$59,145.58 in costs and expenses through September 2025. Hibsher Decl. ¶ 72; Fetterly Decl. ¶¶ 37, 41. These expenses have been paid by Courthouse News. *See* Matteo-Boehm Decl., ¶ 11.

Included as part of these expenses is \$47,025.00 in expert witness fees. Hibsher Decl., ¶ 63, Ex. B. Defendants' tactics concerning Courthouse News' coverage of newly filed civil complaints nationwide and their stated intention to retain an expert to analyze Courthouse News' data, as well as the need to review electronic data produced by Defendants regarding access delays since the inception of electronic filing in the Vermont Superior Courts, compelled Plaintiffs to retain their own expert, Amita Kancherla, to analyze and calculate the data, review the three declarations of Defendants' expert, James Donohue, and submit two declarations in response, one of which was necessary to respond to Defendants' post-trial submissions. Hibsher Decl., ¶¶ 58-62. The sums sought in connection with Ms. Kancherla's work are reasonable. Berger Decl., ¶ 24 ("There can be no dispute as to the reasonableness of [Courthouse News'] decision to retain Ms. Kancherla to analyze the electronic data gathered by CNS and that produced by the State. The work performed by Ms. Kancherla was critical to the prosecution of this case").⁵

The remaining \$12,120.58 in (non-expert) expenses are generally costs related to travel, shipping and courier expenses, document scanning and reproduction, and other litigation support expenses that are recoverable under Section 1988. *See Kuzma v. Internal Revenue Serv.*, 821 F.2d 930, 933-34 (2d Cir. 1987) ("Identifiable, out-of-pocket disbursements for items such as photocopying, travel, and telephone costs are generally taxable under § 1988"). Exhibits to the

⁵ Notably, Defendants' out of state expert, James Donohue, charged \$650 per hour for his time. *See* ECF No. 43-4. Mr. Donohue is Vice President of the New York office of Charles River Associates. *See* ECF No. 43-5. In contrast, Plaintiffs' expert, Amita Kancherla, charged \$450 per hour for her time. *See* ECF No. 50-9.

Hibsher Declaration and Fetterly Declaration itemize each of the expenses incurred and shows those expenses to have been reasonably necessary to the prosecution of this litigation. Hibsher Decl., ¶ 72, Exs B and E; Fetterly Decl., ¶ 37, Ex. 3.

CONCLUSION

Courthouse News, along with the Vermont Media Plaintiffs, filed this action challenging the constitutionality of the Defendants' practice of restricting and delaying access to new e-filed civil complaints filed with the Vermont Superior Courts and achieved a decisive victory, both in the district and circuit court. The amended judgment reflects this victory by declaring the challenged practice unconstitutional, and permanently enjoining Defendants from continuing that practice. ECF 95. Courthouse News and the Vermont Media Plaintiffs have won a victory not only for themselves but for their subscribers and readers, other non-subscribing news organizations, and for the public as well. Courthouse News is entitled to recover its attorneys' fees and costs.

Dated: October 16, 2025

Respectfully submitted,

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