NRDC

July 10, 2018

CONFIDENTIAL SETTLEMENT COMMUNICATION

By email
Jennifer Jude
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Jennifer.Jude@usdoj.gov

Re: Settlement of attorneys' fees and costs in *Natural Resources Defense Council, Inc. v. United States Department of Commerce*, 18-cv-583 (AJN)

Dear Jen:

I write to offer a settlement of plaintiff Natural Resource Defense Council's (NRDC's) claim for attorneys' fees and costs incurred in this litigation. NRDC is entitled to recover reasonable attorneys' fees and costs incurred in litigating this case because the Department of Commerce voluntarily complied with NRDC's Freedom of Information Act request after NRDC filed this lawsuit. 5 U.S.C. § 552(a)(4)(E); *Warren v. Colvin*, 744 F.3d 841, 844-45 (2d Cir. 2014) (per curiam).

In the interest of settlement, NRDC offers to accept $14,545.38 to settle its claim for fees and costs. The basis for this calculation is set forth below and in the attached timesheet.

1. Attorneys' Fees

A. Reasonable Hourly Rates

NRDC is entitled to recover attorneys' fees based on reasonable hourly rates, i.e., the "prevailing market rates for counsel of similar experience to the fee applicant's counsel" in the forum district, here the Southern District of New York. *Farbotko v. Clinton Cty.*, 433 F.3d 204, 209 (2d Cir. 2005). Two junior attorneys and one senior attorney billed time for this case; for the purposes of settlement, NRDC is seeking fees only for the junior attorneys' time. The rate of $400/hour has been found reasonable in this District for junior attorneys in FOIA cases, and is the rate used here for purposes of settlement. *See New York Times Co. v. Central Intelligence Agency*, 251 F. Supp. 3d 710, 715 (S.D.N.Y. 2017).

B. Reasonable Hours Expended

For purposes of settlement, NRDC seeks recovery for 35.3 hours of junior attorney time, or $14,120 at a rate of $400/hour. These hours are reasonable and include cuts made in the interest of settlement. To facilitate settlement, NRDC is seeking no fees for (1) the time of Senior Attorney Catherine Rahm; (2) time spent by other attorneys and legal assistants; (3) time spent drafting certain case-initiating documents; and (4) time spent filing documents with the court. Please see the attached timesheet for details.

2. Costs

NRDC offers to settle its claim for litigation costs for $425.38. This reflects the $400 filing fee in the Southern District of New York, plus $25.38 in postage for service of case-initiating documents on the Department of Commerce, the Attorney General, and your office.

3. Conclusion

In sum, NRDC offers to settle its claim for attorneys' fees and costs in this case for $14,120 in attorneys' fees and $425.38 in costs, for a total of $14,545.38.

If the parties are unable to reach an agreement, NRDC reserves the right to seek full recovery of costs and fees from the Court, including those that were, in the interest of settlement, excluded from this letter, and which may be billed at higher rates, as appropriate. Plaintiffs would also seek to recover fees for the time spent preparing and litigating a fee motion.

We look forward to your response.

Sincerely,

Daniel Carpenter-Gold
dgold@nrdc.org
(212) 727-4656