

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES LUTCHER NEGLEY	§	
Plaintiff	§	
v.	§	CIVIL ACTION NO.
	§	SA-12-CV-362-OLG
	§	
FEDERAL BUREAU OF	§	
INVESTIGATION,	§	
Defendant	§	

PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT A

1. Plaintiff has agreed to omit from his original request for fees the amount of \$17,069 in pre-litigation fees.

2. As of the Status Conference on May 28, 2013, Plaintiff is asking for \$175,765.50 in attorneys' fees for all of the substantive, non-fee petition, work done on this case. This figure was arrived at by basing the calculation on the Laffey Matrix, which is widely used in our jurisdiction. The FBI asks that that figure be reduced by between 20 and 40 percent because of the difficulties with the Plaintiff's billing records. There were indeed significant problems with trying to understand the billing records originally submitted by Plaintiff. They were not organized either chronologically or by timekeeper. As of the Status Conference, Plaintiff had finally submitted billing records, through September 30, 2009, that were organized chronologically and by timekeeper.

However, there are still problems with Plaintiff's practice of redacting a great deal of information. While Plaintiff claims that all of the redacted information represents privileged attorney-client material, not only is the Court unable to verify that assertion, but, more importantly, it is extremely difficult to understand the billing entries because of the many redactions. The Government has correctly pointed out that "the redacted entries do not permit the Defendant and the Court to discover whether the various entries in the revised billing records were performed for this litigation or whether the time expended reflects the exercise of billing judgment." Def.'s Resp. at 3.

Plaintiff's lead counsel argues that most of the redacted material was included in the billings of Sol Wisenberg, who did relatively little work on the case once the Complaint was actually filed. In looking over Plaintiff's Exhibits A, B, and C, submitted along with the October 31, 2011, filing [Dkt. No. 133], the Court concludes that Plaintiff's description is not completely accurate. Looking

at Exhibits B and C reveals that many redactions were used, thus making it difficult for either the Defendant or the Court to assess what hours were actually and reasonably expended on this litigation. This is particularly true in light of Plaintiff's admission that counsel was also working on unrelated matters during the same period of time.

While it is definitely appropriate to impose a percentage reduction on Plaintiff's request for fees because of substantial difficulties in examining his evidence, the Court believes that a 30 percent reduction is unfairly high given the quality, doggedness, and persistence of Plaintiff's counsel, and the value to the public of the information obtained. Consequently, the Plaintiff shall have his request of \$175,165.50 reduced 20 percent to the amount of \$140,612.40.

3. Plaintiff has requested the amount of \$13,718.80 in attorneys' fees for the preparation of his Motion for Attorneys' Fees, which includes a reduction of 20 percent from the original amount requested of \$18,006.50, and an elimination of time spent on settlement discussions. The amount of \$13,718.80 represents approximately five and one half working days, which is not an unreasonable period of time to prepare a fee petition covering the duration of this case. Therefore, Plaintiff shall be awarded the \$13,718.80 he now requests for preparation of his Motion for Fees and Costs.

4. As to the costs for videotaping several FBI witnesses and for expedited transcripts of certain other depositions, Plaintiff requests \$7,312.39, after having voluntarily reduced his original request by \$7,475.19. After listening to counsel during the Status Conference, the Court rules that Plaintiff is entitled to the full amount of the \$7,312.39 he requests. As to the videotaping, the FBI told Plaintiff that these witnesses would not be available for trial, and in a conference call with all parties, the Court approved the videotaping in order to avert any further problems should the

testimony need to be taken in open court. As to the expedited transcripts, Plaintiff informed the Court that there was a period of only about two weeks between the taking of some depositions. Counsel needed the transcripts of the earlier depositions in order to prepare for the later depositions.¹

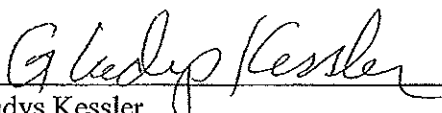
5. During this long tortuous process, Plaintiff has voluntarily reduced his original fee request several different time. He withdrew his request for pre-litigation fees as already noted. He agreed to use the Laffey Matrix, which he did not use in his original submission for attorneys' fees. He also reduced his request for attorneys' fees, using the Laffey Matrix, by \$30,000 to account for the difficulties with the billing records. He also removed the hours spent on settlement discussions from his request for fees. The Court has taken all these reductions into consideration.

6. Plaintiff has requested the Court to reconsider the Court's earlier denial of his request for \$6,500 in fees for the time period of December 5, 2009, through December 12, 2009, and now seeks only \$4,800 for this time period. The Court declines to reconsider its earlier ruling.

In conclusion, Plaintiff is awarded \$140,612.40 for his attorney fees, \$8,978.49 for costs, and \$13,718.80 for preparation of his Motion for fees, amounting to \$163,309.69.

IT IS SO ORDERED.

May 29, 2013



Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record

¹ The Court is certainly not pleased with the Government's misrepresentations about these two items.