

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

FILED  
LORAIN COUNTY

2019 JUL -9 P 1:07

Case No.: 17CV193761

COURT OF COMMON PLEAS  
TOM ORLANDO

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

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PLAINTIFFS' APPLICATION FOR  
ATTORNEYS' FEES & LITIGATION EXPENSES

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**I. INTRODUCTION**

Following the close of evidence during the punitive phase of trial, the jury unanimously awarded David R. Gibson (“Dave”), Allyn W. Gibson (“Grandpa Gibson”), and Gibson Bros., Inc. (“Gibson’s Bakery”) attorney fees to be paid by both Oberlin College<sup>1</sup> and Dean Raimondo.<sup>2</sup> In light of the jury’s awards, the Court must decide the reasonable amount for the legal services provided by Plaintiffs’ counsel.<sup>3</sup> Plaintiffs submit that the reasonable fees for legal services rendered in this case are between \$9.5 million and \$14.5 million, which is the lodestar amount with a two to three multiplier enhancement.

**II. LAW & ARGUMENT**

**A. Standard of Review.**

In *Bittner v. Tri-Cty. Toyota, Inc.*, the Ohio Supreme Court established a two-step process to be utilized by Ohio courts to determine the amount of attorney fees to be awarded. 58 Ohio

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<sup>1</sup> “Oberlin College” refers to Defendant Oberlin College & Conservatory.

<sup>2</sup> “Dean Raimondo” refers to Defendant Meredith Raimondo.

<sup>3</sup> “Plaintiffs’ counsel” refers collectively to Tzangas Plakas Mannos, Ltd. (“TPM”), Krugliak Wilkins Griffiths & Dougherty Co., L.P.A. (“KWGD”), and James N. Taylor Co., LPA (“Taylor”).

St.3d 143, 145, 569 N.E.2d 464 (1991). First, the trial court must calculate the lodestar amount by multiplying the number of hours reasonably expended on the case by a reasonable hourly fee. *Id.* Second, the trial court must then determine whether an enhancement to the lodestar amount is appropriate utilizing the factors identified in Ohio R. Prof. Cond. 1.5(a). *Id.*

**B. The lodestar amount for the legal services provided by Plaintiffs' counsel is \$4,855,856.00.**

The first step in determining the reasonable attorney fees to be awarded is to calculate the lodestar amount: the number of hours expended multiplied by a reasonable hourly rate. *Bittner* at 145; *Welch v. Prompt Recovery Servs., Inc.*, 9th Dist. Summit No. 27175, 2015-Ohio-3867, ¶ 21. A reasonable hourly rate is one that is “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Unick v. Precision, Inc.*, 7th Dist. Mahoning No. 09 MA 171, 2011-Ohio-1342, ¶ 29, quoting *Blum v. Stenson*, 465 U.S. 886, 895–896, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984) at fn. 11.

In total, the lodestar amount for the legal services provided by Plaintiffs' counsel is \$4,855,856.00. In addition to the factors outlined below, Plaintiffs respectfully submit that Plaintiffs' counsel's lodestar amount will compare favorably with the legal fees charged by Defendants' counsel. Before discussing the specific rates and hours for each attorney, the complexity and magnitude of the litigation must be outlined. This case required five (5) weeks of trial with an additional week dedicated to arguing motions *in limine* and *Daubert* challenges. Combined, both parties called *thirty-three* (33) witnesses during trial with some examinations lasting numerous hours. In addition to actual trial time, discovery and pre-trial issues were complex and contentious, with nearly fifty (50) depositions, hundreds of thousands of pages of discovery exchanged, and numerous discovery and procedural motions filed.

Importantly, a significant portion of Plaintiffs' fees were expended because of Defendants'

counsel's actions:

*Depositions.* Defendants took *thirty-two* depositions, including nearly the entirety of the Oberlin Police Department. During these depositions, Defendants subjected numerous witnesses to multi-day questioning. For instance, Grandpa Gibson, who is *90 years old*, was subjected to *five (5) days of questioning lasting nearly nineteen (19) hours*. Similarly, Dave was subjected to *three (3) days of questioning lasting 20 hours*.<sup>4</sup>

Not even nonparties were spared. Lorna Gibson, Dave's wife, was subjected to two (2) days of questioning lasting nearly *ten (10) hours*. Lieutenant Michael McCloskey was subjected to two (2) days of questioning with the vast majority of that questioning coming from Defendants. Local reporter Jason Hawk was likewise subjected to two (2) days of questioning, the vast majority of which was asked by Defendants' counsel. Store clerk Brent Gingery was questioned for more than seven (7) hours. Even 85-year-old Dr. Roy Ebihara was deposed on multiple days. Witness Eric Gaines poignantly described Defendants' tactics at his deposition:

9       Q. Let me ask, then, what is the basis of  
10       your knowledge, specifically, that Oberlin  
11       College has done to bully Gibson's Bakery?       1  
12       A. The basis of my knowledge is the fact  
13       that I'm over here testimony – or testifying in  
14       this case. I gave a video affidavit speaking to  
15       the character of the family and the legacy in the  
16       community that they've had, and instead of taking  
17       that testimony on its surface for being what it  
18       is, truthful and from the heart, I get carted 30  
19       minutes way, I get paid \$34, and I sit in a room  
20       for five hours while you dissect everything I've  
21       said. That's a classic bullying tactic.  
22       You know, if you put Dr. Ebihara, for  
23       instance, if you bring him in here and you do  
24       that to him for six hours, that's bullying. If  
25       you bring my wife in here and you send her

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<sup>4</sup> This calculation includes the deposition of Dave individually and as representative of Gibson's Bakery.

1 through the ringer for eight hours dissecting  
2 every word that she said, "What about this? What  
3 do you mean by that?" I think that that is  
4 disingenuous, I think it's intimidating, and I  
5 think it's bullying. 13:03:37

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20 Q. Other than you being subpoenaed to  
21 testify today, how else in your estimation has  
22 Oberlin College – well, let me back up.  
23 You being subpoenaed to testify isn't –  
24 how is that bullying to Gibson's?  
25 A. Because, again, as I said, it's like

1 this entity has latched onto this host, and every  
2 tentacle that goes out and you squeeze that, it  
3 damages the host. It hurts them. They see their  
4 friends and their colleagues that they've built  
5 up over the year being – having their 1  
6 testimonies and their heartfelt affidavits  
7 minimized by legalese. And I think that hurts  
8 them as well as their friends. I think that the  
9 tactics would potentially limit the number of  
10 people who want to come forward, which is, I  
11 think, probably their ultimate intent anyway.

[E. Gaines Dep., pp. 115-17]. Regardless of the actual intent behind Defendants' tactics throughout this litigation, there can be no doubt that they led to an extraordinary amount of time required of Plaintiffs' counsel to take this case through trial.

***Motion Practice.*** Defendants also littered the pre-trial docket with numerous unnecessary procedural and discovery motions. By Plaintiffs' count, Defendants filed seventeen (17) motions. Defendants lost, at least in part, the vast majority of these motions. Additionally, a substantial portion of the documents Defendants produced were withheld for several months due to unnecessary motion practice on the extent of discoverable ESI.

*Evidentiary Motions.* By Plaintiffs' count, Defendants filed sixteen (16) motions *in limine* and *Daubert* challenges that required a week of hearings and arguments to resolve.

Based on the complexity and length of the case and the actions of Defendants' counsel, the lodestar amount for the legal services provided by Plaintiffs' counsel is inherently reasonable.

**1. The hourly rates and hours expended by Plaintiffs' counsel are inherently reasonable.**

To calculate the lodestar amount, a reasonable hourly rate must be identified and multiplied by the reasonable hours expended.

The lodestar calculations for Plaintiffs' counsel are as follows:

- **Attorney Lee E. Plakas:** Mr. Plakas' reasonable hourly rate for this type of case in this jurisdiction is \$675.00 per hour. Mr. Plakas has been engaged in the practice of law for more than forty (40) years. He has tried dozens of jury trials, including serving as lead counsel for the longest civil trial in Stark County, Ohio history.<sup>5</sup> Additionally, Mr. Plakas' professional skill and experience has been recognized by three leading professional organization, all of which require recommendations and peer review by attorneys and judges who have observed the professional work of Mr. Plakas in actual trials. Mr. Plakas is certified by the National Board of Trial Advocacy as a Civil Trial Advocate, admitted as an Advocate by the American Board of Trial Advocates, and admitted and recognized as outstanding in the field of advocacy by the International Society of Barristers. Further, he is regularly recognized as one of the top 100 attorneys in Ohio by Super Lawyers and was recognized as Lawyer of the Year in personal injury litigation by *Best Lawyers in America* in 2013, 2015, and 2019, among numerous other professional recognitions. Based on Mr. Plakas' experience, professional reputation, and the complexity of this case, an hourly rate of \$675.00 is reasonable. Additionally, the 1,708.1 hours expended by Mr. Plakas in this case are inherently reasonable. (See, Plakas Aff., Ex. A-B).<sup>6</sup> In total, the lodestar amount for the legal services provided by Mr. Plakas is \$1,152,967.50. (Id.).
- **Attorney Terry A. Moore:** Mr. Moore's reasonable hourly rate for this type of case in this jurisdiction is \$435.00 per hour. Terry Moore served as Managing Director for KWGD for 18 years stepping down in April 2018. He continues to serve on the firm's Management Committee while maintaining a large business practice servicing manufacturing and service companies. Mr. Moore has developed a sub-specialty in business litigation handling major litigation in federal and state courts around the

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<sup>5</sup> See, *CSAHA/UHHS-Canton, Inc. d/b/a Mercy Medical Center v. Aultman Health Foundation, et al.*, Stark Cty. Ct. Cmn. Pleas Case No. 2007 CV 05277.

<sup>6</sup> A true and accurate copy of the Affidavit of Attorney Lee E. Plakas with exhibits is being contemporaneously filed with this application under seal and is incorporated herein as **Exhibit 1**.

country including obtaining a jury verdict with local counsel out of Oklahoma City of approximately \$25,000,000 for the Collier family from Naples, Florida. Mr. Moore's experience as a corporate/ business attorney provides him with a unique and diverse ability to assist in the direction and evaluation of major litigation. Based on his experience and reputation, Mr. Moore's hourly rate of \$435.00 is reasonable. Further, with the complexity of the case, the 1,092.53 hours expended by Mr. Moore are also reasonable. (See, Moore Aff., Ex. B).<sup>7</sup> In total, the lodestar amount for the legal services provided by Mr. Moore is \$475,250.55. (Id.).

- **Attorney Owen J. Rarric:** Mr. Rarric's reasonable hourly rate for this type of case in this jurisdiction is \$435.00 per hour. Owen Rarric is a partner at KWGD, whose practice has been exclusively devoted to litigation since joining the firm in 2002. Attorney Rarric graduated *summa cum laude*, in the top 5 of his class, at the University of Akron School of Law where he was a member of the *Akron Law Review*. He has been named to the *Ohio Super Lawyers® Rising Stars* list each year from 2009-2016 and has been listed in *Best Lawyers in America®* each year from 2016-2019. Mr. Rarric has significant first chair experience representing plaintiffs and defendants in 7-figure disputes in matters such as contract disputes, partnership/shareholder disputes, business torts, significant personal injury or wrongful death, and construction-related matters. Based on his experience and reputation, Mr. Rarric's hourly rate of \$435.00 is reasonable. Further, with the complexity of the case, the 1,736.59 hours expended by Mr. Rarric are also reasonable. (See, Moore Aff., Ex. B). In total, the lodestar amount for the legal services provided by Mr. Rarric is \$755,416.65. (Id.)
- **Attorney Matthew W. Onest:** Mr. Onest's reasonable hourly rate for this type of case in this jurisdiction is \$325.00 per hour. Matthew Onest has more than seven years' experience defending the interests of manufacturers, businesses of all sizes, property owners, and energy companies in all aspects of civil litigation. He has significant trial experience in numerous courts in the State of Ohio. Mr. Onest is also a member of KWGD's appellate practice group and has successfully handled appellate cases before Ohio's Fifth, Seventh, Ninth, Eleventh, and Twelfth District Courts of Appeal and the Ohio Supreme Court. Mr. Onest is also a member of the firm's oil and gas practice group and has successfully represented companies and landowners in numerous aspects, including civil litigation, arbitration, and administrative proceedings before the Ohio Oil and Gas Commission. Mr. Onest has experience negotiating oil and gas contracts and other energy-related agreements, including leases and easements. Based on his experience and reputation, Mr. Onest's hourly rate of \$325.00 is reasonable. Further, with the complexity of the case, the 1,623.19 hours expended by Mr. Onest are also reasonable. (See, Moore Aff., Ex. B). In total, the lodestar amount for the legal services provided by Mr. Onest is \$527,536.75. (Id.)
- **Attorney Brandon W. McHugh:** Mr. McHugh's reasonable hourly rate for this type of case in this jurisdiction is \$315.00 per hour. Mr. McHugh graduated *summa cum laude* and in the top five of his graduating class from the University of Akron School

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<sup>7</sup> A true and accurate copy of the Affidavit of Attorney Terry Moore with exhibits is being contemporaneously filed with this application under seal and is incorporated herein as **Exhibit 2**.

of Law in 2017 where he served as an editor on the *Akron Law Review*, as a participant in the Moot Court Honor Society, and received the CALI award for the highest grade in class more than a dozen times. Mr. McHugh also scored in the 100<sup>th</sup> percentile on the Ohio Bar Exam. Based on his experience and reputation, Mr. McHugh's hourly rate of \$315.00 is reasonable. Further, with the complexity of the case, the 1,601.4 hours expended by Mr. McHugh are also reasonable. (See, Plakas Aff., Exs. A-B). In total, the lodestar amount for the legal services provided by Mr. McHugh is \$504,441.00. (Id.).

- **Attorney Jeananne M. Ayoub:** Ms. Ayoub's reasonable hourly rate for this type of case in this jurisdiction is \$275.00 per hour. Ms. Ayoub graduated from the University of Akron School of Law and the University of Akron simultaneously with her JD and her MBA, where she also served as the president of the nationally recognized Trial Team. While on the Trial Team, Ms. Ayoub obtained experience in a courtroom setting, competing and becoming the Regional Champion of the American Association for Justice Student Trial Advocacy Competition in both 2017 and 2018, the National Runner-Up of the same competition in 2018, and winning the Professionalism Award at Baylor's Top Gun competition. Thus, the hourly rate of \$275.00 for a first-year attorney and \$150.00 for her pre-license status<sup>8</sup> for Attorney Ayoub is reasonable in this case. In addition, as with the others, the 1,421.6 hours expended by Ms. Ayoub in this case is inherently reasonable. (See, Plakas Aff., Exs. A-B). In total, the lodestar amount for the legal services provided by Ms. Ayoub is \$346,290.00. (Id.).
- **Attorney James N. Taylor:** Mr. Taylor's reasonable hourly rate for this type of case in this jurisdiction is \$385.00 per hour. Mr. Taylor is the President of James N. Taylor Co., L.P.A. He has 38 years' experience after graduating from Ohio University and Cleveland-Marshall College of Law. Mr. Taylor started practicing law in 1981 as an associate with Bennet & Harbarger Co., L.P.A. In 1983, he started his own practice as James N. Taylor, Attorney at Law, but left in 1984 to become a partner with Baumgartner, Breunig, & Taylor Co., L.P.A. Mr. Taylor was with that firm until 1997, when he started James N. Taylor, Co., L.P.A., which became Taylor, Breunig & Robinson Co., L.P.A. Mr. Taylor chose to become a solo practitioner in 2012, where he has since concentrated his practice in the areas of business law, family law, and estate planning. Based on his experience and reputation, Mr. Taylor's hourly rate of \$385.00 is reasonable. Further, with the complexity of the case, the 138.1 hours expended by Mr. Taylor are also reasonable. (See, Taylor Aff., Ex. A).<sup>9</sup> In total, the lodestar amount for the legal services provided by Mr. Taylor is \$53,168.50. (Id.).
- **Non-Trial Legal Counsel:** in addition to the above listed attorneys, Plaintiffs were required to use numerous non-trial litigation counsel to assist in research, drafting, and review of the hundreds of thousands of documents produced in discovery. The reasonable hourly rates for these attorneys ranged from \$275.00 per hour to \$435.00

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<sup>8</sup> During the pendency of the litigation, Attorney Ayoub received her law license. These reasonable hourly rates represent her hourly rate after receiving her license (\$275.00) and before receiving her license (\$150.00).

<sup>9</sup> A true and accurate copy of the Affidavit of Attorney James Taylor with exhibits is being contemporaneously filed with this application under seal and is incorporated herein as **Exhibit 3**.

per hour. Attorneys Andrew Byler (89.7 hours), Matthew Hull (37.8 hours), Jessica Kincaid (62.19 hours), Zachary Soehnlén (638.4 hours), Amanda Connelly (48.31 hours), Danielle Halachoff (57.4 hours), and Wayne Boyer (26.55 hours) are associates at KWGD. These attorneys assisted in the preparation of this case for trial by, among other things, research and review of discovery document production. Attorney Soehnlén contributed significant time in the review of extensive e-discovery in this case. Attorney James Williams (29.6 hours) is an associate at KWGD who obtained his license in 2011 and who was involved, among other things, with defending depositions in this case. Attorneys John Burnworth (38.16 hours), John Maxwell (26.3 hours), Aletha Carver (36.1 hours), and David Lewis (13.3 hours) are partners at KWGD with between 16 to 32 years of experience. These attorneys assisted with, among other things, pleading/brief preparation and/or strategic analysis. Attorney Jacqueline Caldwell (403.25 hrs) is a partner at KWGD with 34 years of experience. Attorney Caldwell assisted in brief preparation and argued several motions throughout the trial. The total lodestar calculation for the non-trial litigation counsel is \$487,597.00. (See, Moore Aff., Ex. B).

- **Paralegals, Law Clerks, and Support Staff:** under longstanding Ohio precedent, expenses for paralegals, law clerks, and other support staff are recoverable as part of an attorney fee award.<sup>10</sup> Both TPM and KWGD employed paralegals, law clerks, and support staff to perform a myriad of tasks including, but not limited to, research, background checks, filing documents with the court, scheduling depositions, application of trial presentation software, and preparing, organizing, and marking exhibits for trial. The hourly rates for the paralegals, law clerks, and support staff fell within a range of \$120.00 per hour to \$165.00 per hour. These rates are reasonable. Further, the paralegals, law clerks, and support staff expended a combined 3,585.45 hours on this case. Considering the complexity of the case, number of witnesses, volume of discovery, and length of trial, those hours are reasonable. The lodestar amount for paralegals, law clerks, and support staff in this case is \$553,188.05. (See, Plakas Aff., Exs. A-B; Moore Aff., Ex. B).

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<sup>10</sup> See, e.g. *In re Adoption of Bruner*, 7th Dist. Mahoning No. 05MA68, 2006-Ohio-497, ¶ 34 (“When the expenses generated in an attorney’s office can be clearly and directly traced to the costs associated with a particular matter, those expenses are not properly considered part of an attorney’s overhead and can properly be charged as legal fees for that particular matter.”).



In total, the lodestar amount for the legal services provided by Plaintiffs' counsel is \$4,855,856.00.<sup>11</sup> Importantly, Plaintiffs' lodestar amount is in line with the amount charged by Defendants' counsel.<sup>12</sup>

***C. Plaintiffs are entitled to an attorneys' fees enhancement of two to three times the lodestar amount.***

Once a court calculates the lodestar amount the court "may modify that calculation by application of the factors listed in" Ohio R. Prof. Cond. 1.5(a). *Bittner*, 58 Ohio St.3d at 145, 569 N.E.2d 464. The relevant factors to consider are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; [and]
- (8) whether the fee is fixed or contingent.

Ohio R. Prof. Cond. 1.5(a)(1)-(8).

The decision to apply an enhancement to the lodestar amount rests solely in the discretion of the trial court and will not be overturned on appeal "[u]nless the amount of fees is so high or so

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<sup>11</sup> Importantly, the hourly rates for Plaintiffs' counsel fall significantly below the reasonable rates identified in the Laffey Matrix, which has been recognized by Ohio courts a relevant source for fees in the Northeast Ohio area. *See, e.g. Livingston v. Cavalry Portfolio Services, LLC*, N.D. Ohio Case No. 1:09-cv-384, 2009 WL 4724268 at \*6 (Dec. 2, 2009). The current version of the Laffey Matrix can be found at: <http://www.laffeymatrix.com/see.html> and is attached hereto as **Exhibit 4**.

<sup>12</sup> Defendants' counsel produced documents evidencing their attorneys' fees and hours expended. The documents were marked as CONFIDENTIAL under the protective order and will be discussed in detail during the fee hearing.

low as to shock the conscience.” *Landmark Disposal, Ltd. v. Byler Flea Mkt.*, 5th Dist. Stark No. 2005CA00291, 2006-Ohio-3935, ¶ 15 [citations omitted]. After applying the factors found in Ohio R. Prof. Cond. 1.5(a), Plaintiffs are entitled to a multiplier of two to three times the lodestar amount. *See, e.g. Faieta v. World Harvest Church*, 147 Ohio Misc.2d 51, 2008-Ohio-3140, 891 N.E.2d 370, ¶ 155 (C.P.) (“The court ... finds that a multiplier of two should be applied to enhance the lodestar amount.”). *See also, Davis v. Mutual Life Ins. Co. of New York*, 6 F.3d 367, 382-83 (CA6 1993) (approving a 1.75 multiplier of the lodestar amount in reliance on *Bittner*).

- 1. This case was time and labor intensive and involved complex substantive and procedural issues that required a high degree of skill from Plaintiffs’ counsel and precluded Plaintiffs’ counsel from accepting other employment.**

The first two Rule 1.5 factors weigh strongly in favor of an enhancement:

**First.** This case was time and labor intensive. As discussed in detail above (*see, supra* Sec. II(A)), this case was extremely labor intensive and very complex. A look at the litigation by the numbers:

- The parties took a combined **forty-nine (49) depositions**, which were inordinately slanted toward depositions noticed by Defendants. In fact, thirty-two (32) of the forty-nine (49) depositions were taken by Defendants wherein Defendants deposed some witnesses for several days, including nearly **19 hours** for Grandpa Gibson;
- This case involved complex issues with ESI discovery and vendors, including the production of hundreds of thousands of pages of documents;
- The trial of this matter lasted 5 weeks, with thirty-three (33) total witnesses and an additional week of arguments on motions *in limine* and *Daubert* challenges;
- **Twenty-four (24)** motions *in limine* and *Daubert* motions were filed in advance of trial. Of the 24 motions, Defendants filed **sixteen (16)**; and
- This case also involved numerous discovery and procedural motions. Indeed, by Plaintiffs’ count, Defendants filed seventeen (17) discovery or procedural motions (and lost, at least in part, the vast majority).

**Second.** The factual issues in this case, which involved Defendants’ efforts to inject

distracting issues such as race and first amendment rights, were sensitive and required substantial skill by Plaintiffs' counsel to reach a favorable verdict.

*Third.* In general, defamation cases are extremely difficult to litigate. As the Court and the parties are well-aware, defamation cases involve complex issues surrounding the intersection of constitutional and common law. Indeed, after doing a brief survey of approximately 150 defamation cases in Ohio, Plaintiffs determined that the vast majority (approximately 71%) of cases that go to judgment are defense judgments or verdicts.

*Fourth.* This case precluded Plaintiffs' counsel from accepting other employment opportunities. For at least the past six months, numerous attorneys from both TPM and KWGD were working on this case to the exclusion of others. Indeed, from April 30, 2019 through June 13, 2019, Attorneys Lee Plakas, Owen Rarric, Matthew Onest, Brandon McHugh, and Jeananne Ayoub, as well as a paralegal from each firm, were living in Lorain County and working almost *exclusively* on this case for an average of approximately fifteen (15) hours every day.

Thus, Rule 1.5(a)(1) and (2) weigh heavily in favor of enhancement.

**2. The amount involved and the result obtained require an enhancement of the lodestar amount.**

This case involved a substantial amount of money. Since November of 2016, Plaintiffs have been hanging on to their business and lives by a thread with the continuation of the business completely dependent on the outcome of this trial.

Further, the jury verdicts speak for themselves. The Ohio Supreme Court expressly stated in *Bittner* that “the degree of success obtained by the prevailing party” is an important consideration when determining the lodestar enhancement. *Bittner* at 145–46. Here, Plaintiffs were awarded in excess of \$11 million in compensatory damages and in excess of \$33 million in punitive damages, which is, according to Plaintiffs' counsel's research, the highest defamation

verdict in Ohio history.

Thus, Rule 1.5(a)(4) weighs in favor of enhancement.

**3. The experience, reputation, and ability of Plaintiffs' counsel requires an enhancement of the lodestar amount.**

As explained in detail above (*see, supra* Sec. II(A)(1)), Plaintiffs' counsel has substantial experience, reputation and ability. For all the reasons stated above, Rule 1.5(a)(7) requires an enhancement of the lodestar amount.

**4. Plaintiffs' counsel accepted this case on a contingency fee basis, which equates to \$10,000,000 in attorneys' fees and thus requires an enhancement of the lodestar amount.**

Plaintiffs' counsel accepted this case and represented Plaintiffs on a contingency fee agreement. (See, Moore Aff., Ex. A). This representation arrangement involved a substantial amount of risk. Plaintiffs' counsel guided and represented the Gibsons through eighteen (18) months of litigation and six (6) weeks of trial without any guarantee that they would be compensated for their significant time investment. Because of the substantial risks of contingent fee litigation, and because such fees are not received, if at all, until the completion of the litigation, enhancement of the lodestar amount is important so that attorneys are not discouraged from taking on such risks. The inherent risk in contingency fee cases has been identified as a very important factor for determining whether an enhancement of the lodestar figure is appropriate:

Based on our review of the decisions of other jurisdictions and commentaries on the subject, we conclude that in contingent fee cases, the lodestar figure calculated by the court is entitled to enhancement by an appropriate contingency risk multiplier in the range from 1.5 to 3. When the trial court determines that success was more likely than not at the outset, the multiplier should be 1.5; when the likelihood of success was approximately even at the outset, the multiplier should be 2; and, when success was unlikely at the time the case was initiated, the multiplier should be in the range of 2.5 and 3.

*Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1151 (Fl. 1985).<sup>13</sup> As discussed above, success in this case was by no means guaranteed.

The enhancement puts the taking of contingent cases on parity with the taking of non-contingent cases. Importantly, due to Defendants' defamation and tortious conduct, as well as the extraordinary attorney time and litigation costs required, Plaintiffs would not have been able to prosecute their claims absent a contingency fee agreement. The risk assumed by Plaintiffs' counsel allowed Plaintiffs to successfully litigate their claims to a jury of their peers and receive vindication from the smear campaign initiated against them.

The contingency fee agreement provides that Plaintiffs' counsel shall receive 40% of the gross amounts awarded from the jury. After application of the noneconomic and punitive damages caps, the Court entered judgment in Plaintiffs' favor for in excess of \$25 million, which results in a contingency fee amount of approximately \$10 million. The contingent fee amount is in excess of two-times the lodestar amount, thereby weighing heavily in favor of enhancement.

Therefore, based on the factors identified Ohio R. Prof. Cond. 1.5(a), Plaintiffs are entitled to an attorneys' fees enhancement of two to three times the lodestar amount.

***D. Plaintiffs' claims are intertwined and thus all hours expended by Plaintiffs' counsel must be included in the lodestar amount.***

Plaintiffs originally filed their complaint alleging eight (8) counts against Defendants: libel, slander, tortious interference with business relationships, tortious interference with contracts, deceptive trade practices, intentional infliction of emotional distress, negligent hiring, retention, supervision, and trespass. Following motions for summary judgment and directed verdict by Defendants, and voluntary dismissals by Plaintiffs, the counts that proceeded before the jury

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<sup>13</sup> In reaching this decision, the Florida Supreme Court was utilizing factors nearly identical to those found in Ohio R. Prof. Cond. 1.5(a).

included: libel, tortious interference with business relationships, and intentional infliction of emotional distress. While the Ohio Supreme Court has held that, where “the claims can be *separated* into a claim for which fees are recoverable and a claim for which no fees are recoverable,” then only the time spent pursuing the recoverable claims may be compensated, the inverse is also true. *Bittner*, 58 Ohio St.3d at 145, 569 N.E.2d 464 [emphasis added].

As Ohio courts have noted, “it is not always possible to divide attorney fees for distinct claims.” *Edlong Corp. v. Nadathur*, 1st Dist. Hamilton No. C-120369, 2013-Ohio-1283, ¶ 16. Instead, if the claims “involve a common core of facts or will be based on related legal theories,” then it would be “difficult to divide the hours expended on a claim-by-claim basis.” *Id.* quoting *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *see also New Concept Hous., Inc. v. United Dept. Stores Co., No. 1, Inc.*, 1st Dist. No. C-080504, 2009-Ohio-2259, ¶ 41. This can be seen where the claims are “rooted in the same allegations, facts, discovery, and legal arguments” as those that are successful. *Id.*

Each of Plaintiffs’ claims are rooted in the same allegations, facts, discovery, and legal arguments. In fact, with regard to some of the claims, Defendants’ counsel, Attorney Rachelle Zidar, in closing argument of the punitive phase, stated:

22           The tortious interference claim and the  
23           intentional infliction of emotional distress claim,  
24           these two claims are inextricably intertwined with the  
25           defamation, right? Do you think these would stand alone

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1           if the protests had never happened, if the flyer was  
2           never distributed, if the Student Senate Resolution was  
3           never passed? I don't think so.

(Trial Trans. Vol. XXIII, pp. 40-41).

It is undeniable that the claims upon which Plaintiffs were successful and thus awarded attorneys' fees are intertwined with those that did not go before the jury. All of the claims that were originally asserted in Plaintiffs' complaint were rooted in the same allegations, facts, discovery, and legal arguments such that it would be impossible to divide the hours that were expended by each claim.

**E. Plaintiffs are also entitled to litigation expenses in the amount of \$404,139.22.**

Additionally, Plaintiffs are also entitled to recover the litigation expenses incurred by Plaintiffs and their counsel. As identified by the Ohio Supreme Court in *State ex rel. Montrie Nursing Home, Inc. v. Creasy*, and adopted and utilized by the Ohio Supreme Court and other Ohio courts thereafter, a factor to be considered when awarding attorney fees includes the miscellaneous expenses of the litigation. 5 Ohio St.3d 124, 128, 449 N.E.2d 763 (1983); *Hutchinson v. J.C. Penney Cas. Ins. Co.*, 17 Ohio St.3d 195, 200, 478 N.E.2d 1000 (1985), *overruled on other grounds*; *Villella v. Waikem Motors, Inc.*, 45 Ohio St.3d 36, 41, 543 N.E.2d 464 (1989). Ohio courts have further held that litigation expenses, including expert witness fees, are also permissible in the recovery of attorney fees. *Premier Therapy, LLC v. Childs*, 7th Dist. No. 14 CO 0048, 2016-Ohio-7934, 75 N.E.3d 692, ¶¶ 176-177; *Parrish v. Machlan*, 131 Ohio App.3d 291, 297, 722 N.E.2d 529 (1st Dist.1997); *Nordquist v. Schwartz*, 7th Dist. No. 11 CO 21, 2012-Ohio-4571, 2012 WL 4555843, ¶¶ 25, 50.

As the court in *In re Adoption of Bruner* noted, "Where expenses are clearly and directly traced to the costs associated with a particular matter, those expenses are not properly considered part of an attorney's 'overhead.'" 2006-Ohio-497 at ¶ 34, quoting *Ron Scheiderer & Assoc. v. London*, 12th Dist. No. CA95-08-022 (Aug. 5, 1996) *aff'd* by *Ron Scheiderer & Assoc. v. London*,

81 Ohio St.3d 94, 1998-Ohio-0453.

Plaintiffs have incurred substantial litigation expenses during the litigation, including expert witness fees. As noted in the sections above, this was a complex and extensive case, with forty-nine (49) depositions being conducted, most of which were noticed by Defendants and took multiple days. The complexity of the case necessitated involving expert witnesses and the extensive discovery necessitated other various expenditures, such as travel and deposition transcripts. Indeed, given the amount of electronic discovery and data requested by Defendants, Plaintiffs themselves directly paid the e-discovery vendor, Vestige, \$12,616.76, in addition to substantial amounts advanced by Plaintiffs' counsel to such vendor. (See, Moore Aff., Ex. C)

These litigation expenses, as detailed in **Exhibits 1, 2, and 3** attached to the Notice of Filing, along with their corresponding exhibits, are not properly considered part of TPM, KWGD, or Taylor's overhead as they are clearly and directly traced to the costs associated with this particular matter. As is typical, and as noted in Contingency Fee Agreement, Plaintiffs are responsible for the litigation expenses that are incurred. (See, Moore Aff., Ex. A). It was due to the sheer extent and amount of expenses that TPM, KWGD, and Taylor advanced those expenses on behalf of Plaintiffs. Accordingly, Plaintiffs are now entitled to the recovery of these litigation expenses in the amount of \$404,139.22 as an addition to the enhanced lodestar amount.

### **III. CONCLUSION**

Therefore, in accordance with the jury's verdicts, Plaintiffs submit that they are entitled to attorneys' fees between \$9.5 million and \$14.5 million, which is the lodestar amount with a two to three multiplier enhancement, and litigation expenses of \$404,139.22.



DATED: July 9, 2019

Respectfully submitted,

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# EXHIBIT 4

# LAFFEY MATRIX

[History](#)
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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

\* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

\*\* The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.