2003 WL 23845045 (C.A.11) (Appellate Brief)
United States Court of Appeals,
Eleventh Circuit.

JOHN/Jane does 1-13, Plaintiff/Appellees,
v.
Jeb BUSH, et al., Defendants/Appellants.

No. 03-12117.
September 29, 2003.

On Appeal from the United States District Court for the District of the United States District Court for the Southern District of Florida Civil Action No. 92-589-Civ-Gold

Plaintiffs/Appellees' Answer Brief

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***iv STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to Eleventh Circuit Rule 28-1(c), Plaintiffs/Appellees request oral argument. This appeal arises from a case of significant public importance. Oral Argument would benefit this Court by providing it with the opportunity to hear from the parties on issues deemed to be significant by the Court upon review of the parties' briefs.

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2. Whether the District Court's finding that the records and other evidence submitted in support of the fee application were sufficient was clearly erroneous.

3. Whether the District Court's finding that the case was exceptional and warranted a multiplier was clearly erroneous.

4. Whether the District Court's finding that the costs and expenses in Plaintiffs' Sworn Bill of Costs were taxable when no contrary evidence was presented was clearly erroneous.

*2 STATEMENT OF THE CASE AND OF THE FACTS

I. Statement of the Case

On March 13, 1992, Plaintiffs filed their Class Action Complaint. Rl. Final Judgment was entered on August 28, 1996. R449.

Plaintiffs/Appellees timely filed a Motion for Attorneys' Fees and Costs and accompanying Memorandum, Bill of Costs, Affidavits, Certificate of Good Faith, and other appropriate documentation on September 11, 1996. R451, 452, 453, 454, and 455.

Upon entry of the Final Judgment, Defendants/Appellees appealed, unsuccessfully sought an emergency stay in the District Court and successfully obtained an expedited briefing schedule in this Court. *Doe v. Chiles*, 136 F.3d 709, (11th Cir. 1998). R450, 461, 481. This Court affirmed the Final Judgment and remanded the case with instructions to the District Court to assess attorney's fees against Defendants. *Id*.; R488 (Mandate).

After entry of the Final Judgment, Defendants took the position that they were merely required to place language in the Medicaid Plan setting a reasonable waiting period but not required to actually provide services with reasonable promptness. *Doe v. Bush*, 261 F.3d 1037, 1047 (11th Cir. 1998). This Court found Defendants' position "untenable". *Id*. at 1047.

***3** After this Court affirmed the Final Judgment, Defendants failed to provide services in a timely manner and were held in contempt of court. R587. Defendants/Appellants again appealed the District Court's rulings. R593. This Court ruled that the lack of a formal class certification order did not prevent the District Court from basing a contempt finding on the Defendants' failure to provide system-wide relief as an implied class existed and as "the Defendants themselves have always understand that the relief granted in the Final Judgment was intended to be system-wide, and not just limited to the named Plaintiffs," *Doe v. Bush*, 261 F.3d 1037, 1051-53 (11th Cir. 2001). This Court reversed the contempt fine imposed by the District Court and remanded the case with instructions that the Final Judgment should be modified to clarify the certification of the class and specify what conduct was required of Defendants before compliance was "enforced, if necessary through a contempt proceeding." *Doe v. Bush, supra* at 1064. In this second appeal, this Court directly awarded attorneys' fees to Plaintiffs/Appellants. Appendix to Defendants' Brief at 7.

The District Court heard argument on the Plaintiffs/Appellees Motion for Attorneys' Fees but entered an Order denying the Attorneys' Fees Motion until all post-judgment proceedings were completed. R541, 612.

Ultimately the District Court entered its Order awarding attorneys fees (R 616) and, after consideration of motions for clarification and/or rehearing by all ***4** parties (R617, 620), vacated the previous attorneys fee order and entered its award of attorney's fees in a final, appealable Order. R627.

The Order awarding Attorneys' Fees and Costs that is the subject of this appeal (R627) was entered on March 25, 2003, over eleven years after the lawsuit was commenced.

II. Statement of the Facts

Plaintiffs are a class of several thousand developmentally disabled individuals who were eligible for and in need of specialized Medicaid services in the Intermediate Care Facility for the Mentally Retarded Developmentally Disabled (ICF/MR) program.

The ICF/DD program and the traumas suffered by the severely disabled class members who were deprived of life preserving services for decades are documented by this Court in its Opinion affirming the Final Judgment. *Doe v. Chiles*, 136 F. 3d 709 (11th Cir. 1998). "The record 'reveals a plethora of facts showing the harm caused to developmentally disabled persons by the State of Florida's current procedure which allows eligible Medicaid recipients who have been determined to be in need of ICF/DD Services to be placed on indefinite waiting lists." *Doe v. Chiles, supra* at 713, n. 7. Indeed, two of the thirteen named plaintiffs died as the result of lack of essential services between the time the ***5** Complaint was filed and the entry of the Final Judgment. R627; 499, Tab 8 (1996 Whitaker Affidavit at ¶3).

Even after entry of the Final Judgment, Defendants repeatedly sought to avoid compliance. Upon remand, Defendants took the position that relief had only been afforded to the one dozen named class representatives and that Defendants were not required to provide any services to the other 2,000 individuals on the State of Florida waiting list who were eligible and awaiting services for many years. R579, at 1-9.

Prior to relief in this case, Florida ranked 49th among the states in providing for individuals with developmental disabilities and approximately 45th in providing ICF/DD beds per capita. R453, deposition of Donna Alien at 132; R453, Ex. 5, letter of Governor Lawton Chiles to the President of The Florida Senate at 1.

A. The District Court's Order Awarding Fees and Costs is Amply Supported by Competent Evidence

Every single complaint raised by the Defendants in opposition to the award of fees and costs was addressed by the District Court in its Order awarding Attorney's fees and costs entered on March 25, 2003. R.627. Defendants do not dispute the legal standard applied by the District Court. Instead, Defendants ask this Court to reach different factual conclusions from the evidence reviewed by the District Court.

***6** Each and every finding of the District Court was supported by competent, sworn testimony, including numerous affidavits. Defendants did not submit any affidavits or other evidence in opposition to the affidavits and other competent evidence submitted by Plaintiffs in support of their fee and cost applications. Thus, the evidence relied upon by the District Court was uncontroverted.

1. Hourly Rates

The District Court expressly reviewed the hourly rate and adopted an hourly rate for Plaintiff's lead counsel which was $100.00 less per hour than the rate at which the attorney was paid by his for-profit clients and $100.00 less per hour than the amount proposed by experts in the same field as a reasonable hourly rate. R454, 499, Tab 3, Margulies Declaration: "Based on the factors that must be and should be considered in evaluating a fee application of this kind and based upon my knowledge of the attorneys that performed the bulk of the work in this case, I have determined that the reasonable hourly rate for Steven M. Weinger, Esquire, is $350.00 per hour, the reasonable hourly rate for Helena Tetzeli, Esquire, is $195.00 an hour...") at ¶2. As the District Court wrote, based on a letter from Defendants' outside counsel written eleven years before the fee award (R624, Tab 7), "in 1992 Defendant's counsel stated that they had 'little doubt that a court would award Mr. Weinger, based on his experience, his usual fee of $250.00 if this matter is litigated."'Order, R627 at 3

***7** The rates awarded for junior partner and associates, $175.00 and 125.00 per hour respectively, were also well below their normal billing rates and less than they had been awarded by other Courts. See, for example, the associate work performed by Peter Hofer, Esq. who had been a lawyer for nine years before working on this case, who had six years of prior experience as a Senior Staff Attorney for an organization litigating complex civil rights and constitutional impact litigation and who was awarded an hourly rate of $175.00 an hour by the Fifth Circuit. Mr. Hofer was granted only $125.00 by the District Court. R624, Tab3,R537.

2. Hours Reasonably Expended

The evidence as to the reasonableness of the hours expended was uncontroverted. The District Court had before it the sworn affidavits of lead counsel Steven M. Weinger, Esquire, junior partner Helena Tetzeli, Esquire and associate Peter Hofer, Esquire. R453, 499, 537, 618. In addition, the affidavits of Jonathan Rossman and Peter Margulies, two leading attorneys in relevant fields of practice, were submitted. R454, 499, Tab 3; Tab 4; R624, Tab 4. Aside from glowing evaluations of the quality of the work, the witnesses made clear that the hours expended were less than expected considering the breadth of the work performed. R454, T¶3, Margulies Declaration: "I find the hours requested... to be reasonable. In fact, I find that the case was handled extremely efficiently."

***8** Significantly, the witnesses took the time to review the files and the work performed before determining the reasonableness of the hours claimed. R453, Ex. 4, Rossman Affidavit at ¶4.

In response, Defendants failed to submit even a single affidavit or any competent evidence contradicting the sworn testimony. The Defendants took no discovery whatsoever and presented nothing which would justify the Court in rejecting

the unanimous opinions of the qualified experts. Indeed, Defendants do not dispute the number of hours spent or suggest any lesser number of hours which would be reasonable.

The District Court did not simply accept the uncontroverted affidavits as the basis for its opinion. Instead, the Judge specifically considered each of the Defendants' objections and the items in their charts, reviewed the file and reached his own conclusion as to the reasonable number of hours to accomplish the work. Order, R627 at 4. In fact the District Court specifically recited each of the objections raised by the Defendants (insufficient detail, lumping, duplicative, excessive time for the particular task) and determined as a factual matter that the positions were unpersuasive when weighed against the other evidence presented. Order, R627 at 4.

Finally, the District Court reviewed the hours as a whole, 1376.5 hours, and found the hours to be "a relatively low number considering that plaintiffs' ***9** attorneys accrued these hours pursuing complex litigation over a ten (10) year period." Order, R627 at 4. Indeed, Defendants' attorney spent perhaps 10 times as many hours in defending the case. See pages 14-15, infra.

3. Adjustment of the Lodestar

After determining the lodestar, the District Court determined that the lodestar should be adjusted as to hours expended in the District Court in accordance with established legal precedent. Order, R627 at 4-5. No adjustment of the lodestar was made for the fee award for work performed in the appeal to this Court. Order, R627 at 7 awarding $85,304.50 for Plaintiffs' appellate fees and costs, the amount supported by the witnesses' affidavits based on the witnesses' views as to the reasonable hourly rate multiplied by the reasonable number of hours.

In adjusting the lodestar, the District Court made very specific factual findings. Order, R627 at 4-5. All of the factual findings are based upon uncontroverted, competent evidence and the District Court's personal observations during the course of the proceedings. *Id*. Defendants fail to present any conflicting evidence as to any of the factual findings of the District Court used to upwardly adjust, or enhance, the lodestar.

*10 B. Uncontroverted Evidence Supporting the Fee Award

Through uncontroverted evidence, Plaintiffs have established all the facts necessary to support the fee awarded by the District Court. The District Court credited this evidence, addressed and rejected the defendant's objections, independently evaluated the file, and awarded the fee justified by the evidence. R.627. Some of the evidence omitted from Defendants' Statement of Facts is presented below.

1 Margulies Declaration

Professor Margulies, a respected lawyer experienced in federal court litigation provided evidence on the factors which the District Court was required to consider in setting a fee. Professor Margulies explained that the hours requested in the charts attached to the Motion for attorneys' fees were "reasonable and necessary", that the case was "handled extremely efficiently"; that the "results obtained were exceptional", that he knew "from personal knowledge that the individuals who benefit from this ruling had been unsuccessful in finding any advocacy group or attorney... willing to perform the task of representing these individuals but for the agreement of Steven M. Weinger, Esquire, to represent them in this case."; "that the case was extremely complex and required a thorough knowledge of highly specialized areas of law such as Federal Medicaid Statutes and Regulations, the inner workings of the Florida Medicaid Plan, and a ***11** comprehensive knowledge of general civil rights law", that "at the time the claim was brought the claim was unique and novel", and that "without Steven M. Weinger, Esq's creativity and broad legal knowledge, I do not believe this case would have been brought to a successful conclusion." R454, 499 at Tab 3, paragraphs 4-8, R624, Tab 4¶4-8.

Finally, Plaintiffs' counsel's acceptance of this case adversely affected his reputation and/or that of his law firm. Margulies attested, "as a result of the litigation, Steven M. Weinger, Esquire's reputation among elected officials and state executive

branch officials has been severely hurt. Although I know that Steven M. Weinger, Esquire, has engaged in the highest form of advocacy for the individuals he served, the hard fought battle to win benefits for these individuals has due to the unpopularity of this cause, and the unpopularity of providing additional funds for individuals with developmental disabilities, made the balance of his practice more difficult." R454, 499 at Tab 3, R624, Tab 4, Margulies Declaration at ¶9.

2. Rossman Affidavit

Jonathan Rossman, Esq. represented individuals with disabilities in private practice after serving as the Executive Director of the Medicaid funded Florida Advocacy Center for Persons with Disabilities for 15 years. R.499, Tab 4,1J2.

***12** Mr. Rossman explained that Plaintiff's counsel has an exceptional range of skills all of which are needed in this case, including significant healthcare experience, significant personal experience with developmentally disabled individuals and direct personal experience in successfully litigated a massive, multi-party case against the Department of Health & Rehabilitative Services to obtain a preliminary injunction under the very same statute which is the basis for *Doe v. Chiles*. 42 USC 1396a(a). *Id*. at¶9.

Mr. Rossman testified that he was professionally familiar with Mr. Weinger, and met with him on numerous occasions from "1990 through the present in regard to matters affecting developmentally disabled individuals. I have personal knowledge of Mr. Weinger's work and I have reviewed portions of some of the filings prepared by Mr. Weinger in the lawsuit entitled *John/Jane Does No. 's 1-13. et al., v. Lawton Chiles, et al.,"* R453, Rossman Affidavit at ¶4. Mr. Rossman further attested in his Affidavit that both Mr. Weinger and his law firm have established extremely positive reputations for their legal talents and public service, particularly for their work in complex Federal Court litigation. Rossman Affidavit at¶8.

3. Plaintiffs'Counsel's Affidavit

Plaintiffs' lead counsel was uniquely qualified to represent these Plaintiffs. Plaintiff is a 1978 graduate of the University of Chicago Law School, who was ***13** also an instructor at the University of Miami School of Law and who taught courses in Section 1983 litigation. Mr. Weinger was also involved in preparation of a case book on Section 1983 litigation. R453, 499, Ex. 2 Affidavit of Steven M. Weinger, Tab 2, ¶¶ 1, 3 and 4.

In addition to his educational background, membership in relevant professional associations and national recognition (R453), he has substantial relevant legal experience. For over 20 years, his practice has been devoted almost exclusively to litigation, largely in Federal Court and more often then not involving complex litigation. R453. Plaintiffs' lead counsel has a significant experience in class actions and was first recognized as having substantial experience in representing Plaintiffs in class actions by former Chief Judge for the Southern District of Florida, The Honorable James Lawrence King in 1982. R453, Ex. 2. R499 Tab 2 ¶ll(a). Thus, Mr. Weinger had substantial experience in litigating complex class action cases in federal court prior to filing the instant case in 1992. R499 Tab 2 at¶ll(b).

In addition to experience in complex class actions in litigation, Mr. Weinger was uniquely well-suited to represent the Plaintiffs in the instant case due to his expertise in the area of health law. See R453, Ex. 2, 499 ¶11 documenting his experience in federal litigation against state officials who were Defendants in this case, or their predecessors, for violation of the Medicaid Act, and experience in ***14** administrative litigation against the State and Department of Health and Rehabilitative Services.

Mr. Weinger's law firm "was the only firm, sole practitioner or legal advocacy group willing to undertake legal representation of the Plaintiffs against the State of Florida in the instant matter." R453, Ex. 2, R499, Tab 3 Affidavit 2.

"As a result of this litigation, Plaintiffs' counsel has been criticized by Florida officials and has, as a result lost potential clientele who have determined that their interests would be better served by engaging an attorney who is not actively litigating such a controversial case against state officials." R499 Tab 3 at ¶6. "Numerous facets of this lawsuit constituted priority work which required substantial expenditures of time and effort within a relatively short period of time. This summer

in particular, I was precluded from accepting other employment due to my commitment to this case." Weinger also verified that "all of the factual assertions in the Memorandum of Law are true and correct to the best of my knowledge," and that "our law firm expended 1,193 hours as described in detail in time records attached hereto. We also incurred costs as entailed in the attachment. I have reviewed the attached bill of costs and the items are correct that were necessarily incurred in the case and the services for which fees have been charged were actually and necessarily performed." R453, Ex. 2, R499 Tab 3 ¶8 and 9.

*15 C. Evaluation of Hours, Billing Detail and Hourly Rates Based on Defendants' Own Lawyers Practices and Opinions

1. Reasonableness of the Hours Expended

The Defendants claimed that the hours were unreasonable even though the hours claimed were minuscule compared to the hours expended by the Defendants' lawyers. One minor defense lawyer (Colodny, Pass and Talenfeld, P.A.) alone was paid for 400% more hours than the hours claimed by Plaintiffs' counsel. R 462, 464, 465. In addition, Defendants utilized the services of Hinshaw and Culbertson, P.A. and Ferrell Schultz Carter Zumpano & Fertel, P.A. Most significantly, a large team of lawyers from the Office of the Attorney General were lead attorneys for the Defendants.

The Colodny firm was employed as private counsel for the Secretary of the Department of Children and Families and was paid by the Defendant State of Florida officials for its work. Colodny represented the Secretary in these proceedings up until the entry of the Final Judgment. R462, 464, 465. As can be seen from the record, this attorney did virtually no original work as the Office of the Attorney General took the lead as counsel for all Defendants.

Colodny billed and was paid for over 4,000 hours of work for its minor role in this case.[1] During that same time, Plaintiffs counsel logged and was awarded ***16** only],193.5 hours by the District Court. Remarkably, the Defendants/Appellants approved payment for these minor attorneys for over 4,000 hours while objecting to the Plaintiffs' counsel who spent only 25% as many hours actually litigating the entire case and prevailing in obtaining relief. R464 at 7, n. 10.

2. Billing Detail

The bills actually paid by Defe ndants to their lawyers are instructive as the aggregate level of billing detail required a fee application. Review of the Colodny bills submitted by Defendants with their fee application and actually paid by Defendants indicates that Defendants found far less detailed billing records from their own lawyers acceptable but at the same time they criticized Plaintiffs billing records as lacking specificity. R496 and exhibits thereto.

3. Hourly Rates

Just as Defendants frivolously and litigiously challenged the reasonable number of hours expended, Defendants challenged the hourly rate without a good faith basis. The hourly rate claimed was based on uncontroverted affidavits, proof of the lawyers' hourly rate paid by paying clients, and references to awards both to these particular lawyers and to other attorneys in similar cases. R453, 454, 624, Tab 4. Defendants presented no affidavits or other competent evidence supporting a lower rate or controverting the affidavits.

***17** Perhaps most telling in evaluating the position of the Defendants was a letter received from Defendants' own counsel regarding the reasonable hourly rate for Plaintiffs' counsel. Near the inception of the lawsuit, in 1992, Defendants' lawyers at Hinshaw and Culbertson advised Defendants that:

> We have little doubt that a court would award Mr. Weinger, based upon his experience his usual fee of $250.00 per hour. Second, since this case was filed before Wilder was decided, Mr. Weinger may also be

entitled to a multiplier. R453, Ex. 1.

Remarkably, ten years later, Defendants argued to the District Court that the hourly rate of $125.00 per hour was the reasonable hourly rate for Plaintiffs' lead counsel, Mr. Weinger. R492 at 14, R627 at 3. Needless to say, the District Court's determination that the reasonable hourly rate of lead counsel was $250.00 per hour is amply justified by the evidence in the record. R627 at 3.

D. Evidence Supporting the Fee Award which the Defendants Misrepresented and Ignored

As part of the Defendants' strategy to confuse and delay, they repeatedly misrepresented facts to the District Court. For example, on the issue of attorneys' fees alone, Defendants misrepresented to the Court that Plaintiffs had failed to present any affidavits supporting their fees and that Plaintiffs had failed to provide an accounting of the hours of work performed. Nothing could be further from the truth.

***18** To the District Court, Defendant's wrote, "Plaintiffs were not prevailing parties on some of their claims" (R492 at 2) and misrepresented that Plaintiffs had "presented no other affidavit testimony (i.e. other than Mr. Weinger's Affidavit) regarding appropriate reasonable market rates..." and that "Plaintiffs were not the prevailing party on some of their claims". R492 at 2,13. As shown below Plaintiffs submitted substantial evidence supporting the fee application including affidavits of other attorneys, and this evidence was uncontroverted. Moreover, Plaintiffs obtained all the relief that they requested on behalf of the named plaintiffs and the thousands of class members. *Doe v. Chiles*, 136 F.3d 709 (11th Cir. 1998).

Defendants continue to misrepresent the facts, arguing for example that "the trial court accepted the Plaintiffs' accounting of the number of hours each billing lawyer worked... despite the lack of any factual basis in the supporting documents for the accounting." Defendants' Brief at 8. In fact, Plaintiffs' fee application includes verified, specific records detailing the exact number of hours worked, the date of each task and description of tasks performed. R452, 453, 454, 455, 499, 537,539,545.

*19 E. Plaintiffs Obtained Exceptional Results

Aside from the evidence presented by Margulies, Rossman and Weinger, the District Court had ample evidence from which to conclude that the Plaintiffs had obtained exceptional results and that the case itself was exceptional.

1. Defendants' Admissions as to the Magnitude of the Case

In support of their Motion for Stay of the Final Judgment, Defendants argued that compliance with the Judgment would cost hundreds of millions of dollars and take years to accomplish. R461. Defendants took the same position before this Court in their Emergency Motion for Stay, arguing that compliance would require expenditure of an "astronomical amount."[2] Defendants asserted that the cost of providing prompt treatment to class members would be between $750,000,000 to one billion dollars. R490-491, R599, Transcript of November 4, 1998 hearing at 49 where Defendants' counsel stated "Moreover, I think despite the fact that Mr. Weinger was accurate, not only I, but my clients have made public in record statements that in order to comply with this Court's final judgment would cost the state between somewhere between 750 (sic) to a billion dollars annually. 1 think the accurate number is now the one that is being discussed currently, which is possibly two thousand people total, but six hundred here who are in immediate need."

***20** It should be noted that after losing the appeal on the merits, Defendants refused to comply with the Judgment, claiming that the offer of an ICF/DD placement to the surviving 12 named Plaintiffs at minimal cost was complete compliance. R579 at 5-9. As this Court explained in the second appeal, "the defendants themselves have always understood that the relief granted in the final judgment was intended to be system-wide, and not just limited to the named Plaintiffs." *Doe v. Bush*, 261

F.3d 1037, 1050 (11th Cir. 2001). As a result the litigation has benefited the 2000 eligible individuals as well as the hundreds or thousands of newly eligible individuals who have entered the system since the Plaintiffs prevailed.

2. 2001 Status Report of National Association of State Directors of Developmental Disabilities Services, Inc.

Plaintiff also filed the 2001 Status Report of the National Association of State Directors of Developmental Disability Services, Inc., a "trade" association of State Directors administering Medicaid programs in the 50 states. That report specifically referred to the instant case as follows:

> In March of 1998, the Eleventh U.S. [Court] of Appeals handed down a watershed decision in the Florida *Does v. Chiles*, (now *Doe v. Bush)* litigation that.made it clear that federal Medicaid law does not permit a state to 'wait list' individuals for ICF/MR services indefinitely. The Court ruled that ICF/MR services were no different than any other non-waiver Medicaid service, namely such services must be furnished with reasonable promptness to eligible applicants. *Most waiting list lawsuits elsewhere* ***21** *have been filed on the heels of this decision.* While the decision applies to states in the Eleventh Circuit, *it has been frequently cited as the basis of lawsuits filed in other Federal circuits.* Status Report at 5, (emphasis added)

The Status Report went on to note that "as of March 2001, waiting list lawsuits have been filed in 15 states." Status Report at 6.

Moreover, and as result, Florida's "funding for developmental services has increased by approximately $360,000,000 over the past two years." Status Report at 7. Thus, in the opinion of the association for State Developmental Disability directors, i.e., counter-parts of the Defendants in the other 49 states, this was "a watershed" decision with a significant and far reaching impact on the lives of developmentally disabled individuals throughout the country.

The remarkable impact of this case is also seen in the remarkable increase in funding for services for individuals with developmental disabilities in Florida and the repeated citations to *Doe v. Chiles* throughout the country in support of successful litigation to expand available healthcare services.[3]

In terms of making services available to individuals with developmental disabilities, no other case in the country has had as significant an impact as *Doe v. Chiles* Defendants in this case valued the impact at hundreds of millions of

***22** dollars in additional services annually. Nationally, the impact is in the billions of dollars in new services for eligible individuals.

3. Defendants' Proposal of a Fee Award of $47.00 Per Hour is Just One of The Exceptional Challenges Presented by this Litigation

Against all odds, without legal precedent, ignoring the Defendants' threats, without help from lawyers who receive federal and state funds to advocate and litigate for individuals with disabilities, Plaintiffs' counsel successfully litigated this case for over a decade. Rl -628. Today, after 628 docket entries in the District Court and several lengthy appeals to this Court, Defendants contend that the maximum total allowable fee is $91,896.75. This proposed figure includes over $27,000 in costs and all legal work in the trial Court and in this Court on the appeal on the merits. Appellant's Brief at 44. Defendants' proposed figure works out to $47.00 (Forty-Seven Dollars) per hour for the hours found reasonable and necessary by the District Court and by all of the experts. Defendants' position on attorneys' fees is a powerful reminder of their litigation strategy from the inception of this case.

As a consequence of this case, Florida increased funding of services to its Medicaid eligible and developmentally disabled citizens by Three Hundred Sixty Million Dollars ($360,000,000.00) annually. See R624, Tab 6, at 7. Since entry of ***23** the Final Judgment literally billons of dollars in additional services have been provided.

Preparing and litigating this lawsuit was particularly challenging because:
1. The Defendants promised that they would litigate every possible issue and appeal every single Order (R453, Affidavit 2 of Weinger at ¶3) and they kept their promise as reflected in the docket sheet showing over 600 entries to date.

2. The stakes could not be higher. Prompt placement was a matter of life and death for many of the class members.[4] The cost of the services ordered by the District Court and affirmed by this Court was determined by the Defendants to be Seven Hundred Million Dollars ($700,000,000) to $1,000,000,000 (One Billion Dollars), e.g. 453, St. Petersburg Times Article; R599 at 49 (transcript of 11/4/98 hearing at which Defendants' counsel specifically admitted that Defendants and their counsel had made public statements that compliance with the Final Judgment would cost the state somewhere "between $750 million to a billion dollars annually.") Research discloses that State of Florida Officials have never been sued in a case that the State determined would have this significant a financial impact other than the litigation to clean up the Everglades.

***24** 3. The clients could not be more difficult to represent These individuals are the lowest functioning developmentally disabled individuals. Many are non-verbal. Many are non-ambulatory. Many are fragile with severe medical problems. Many have extraordinarily difficult behaviors. R453, Tab 8. The Plaintiffs were unable to be gainfully employed because of their severe disabilities and were therefore indigent and Medicaid eligible.
4. The Defendants promised retribution against the Plaintiffs counsel, caused the loss of business from paying healthcare clients seeking to resolve differences with the Defendant's offices (Defendants were the heads of the Agency for Health Care Administration, which operates the entire Florida Medicaid Program and all health care licensing, and the Department of Children and Families) R453, Ex. 3, Affidavit 2 of Weinger at 1¶3; R454, 499 Margulies Declaration at¶9.

5 No Advocacy Groups or public interest lawyers were willing or competent to gather the facts, learn the law, and take on the tremendous burden of this litigation. R454, 499, Margulies Declaration at¶6.

Defendants repeatedly misrepresented the facts in the record and took frivolous positions. Defendants denied many of the allegations of the Complaint and then failed to present any evidence supporting the denial of these allegations during the course of the litigation and raised numerous affirmative defenses, none of which had a legal or factual basis. Indeed, on the appeal on the merits, this Court described Defendants' factual argument that class members were not being harmed by the Defendants' delay in providing services as "meritless" and ***25** "frivolous" and described Defendants' argument on the alleged lack of standing based on the lack of harm as "unworthy of further discourse." *Doe v. Chiles, supra* at 713, n.7.

F. Costs and Expenses

Plaintiffs timely filed a sworn Bill of Costs with extensive detail (in their billing statements) of the nature of each cost and the date incurred. R451, 452-455, 499, 537, 539, 545. The Bill of Costs included a declaration under penalty of perjury that the costs were correct and were necessarily incurred and performed. *Id.* Once again, Defendants objected even though the costs contained detail equivalent to the detail provided by Defendants' own counsel in its billings to the State officials which were paid from State funds during the course of the litigation. Even if the objections were deemed timely, the objections were not well-founded.

The District Court awarded a total of $27,091,61 in litigation costs. Order, R627 at page 7. The District Court specifically addressed the Defendants' objections and charts, in which Defendants' primarily claimed without affidavits or other evidence, that there was "no showing of necessity." The District Court ruled that, "[h]aving reviewed the application, the cost objection chart and memoranda of law, the objections are overruled." Order, R627 at page 7.

*26 G. The Total Award for Fees and Costs

In 2003, based on the foregoing analysis, the District Court awarded Plaintiffs the sum of $676,961.11. Order, R627 at 7. This sum includes fees for all the work performed and costs incurred in the District Court since the inception of the case which was filed in 1992, through March 2003 together with the fees for the successful appellate work before this Court.

*27 SUMMARY OF THE ARGUMENT

Plaintiffs/Appellees are a class of over 2,000 developmental!)/ disabled individuals eligible for Medicaid services from the State of Florida and denied services, often for over a decade. Instead of providing the services mandated by the State Medicaid Plan, the Defendant/Appellee State officials placed these individuals on a formal waiting list until an opening occurred due to the death or removal of an existing beneficiary.

The District Court entered a Final Judgment in 1996. This Court affirmed the Judgment in 1998. Years of litigation preceded the entry of the Final Judgment and it took years of post-judgment legal work to obtain compliance with the Judgment. Even after entry of the Judgment, Defendants took the position that they were required only to modify the State Medicaid Plan to provide a reasonable waiting period of no more than 90 days for services, not actually provide services within 90 days. In affirming the Judgment, this Court squarely rejected Defendants' position.

Even after this Court affirmed the Final Judgment, Defendants refused to comply, arguing that they only had an obligation to provide services to the twelve named class plaintiffs. Again, on a second appeal by the Defendants, this Court squarely rejected Defendants' prior position, a position entirely inconsistent with ***28** Defendants' position that the cost of compliance with the Judgment would exceed one billion dollars.

In fact, compliance with the Final Judgment has exceeded one billion dollars, resulting in vastly improved services to Florida's most vulnerable citizens. Further, the exceptional judgment has been lauded as a "watershed" decision, resulting in litigation in at least 15 other states and vast increases in services to mentally retarded individuals. This evaluation of the case was made by the National Association of State Directors of Developmental Disability Services, the organization of state directors including the Defendant state officials.

This case, the third appeal by Defendants, challenges the award of attorneys fees and costs by the District Court. The District Court awarded a total of $676, 961.11 for all attorneys' fees, costs and expenses incurred over the first eleven years this case was pending. The fee award is amply supported by uncontroverted facts provided in sworn evidence. The fee award is significantly less than the amount sought by Plaintiffs. In particular, the District Court rejected Plaintiffs request for a fee award based on a percentage of the hundreds of millions of dollars in additional services provided each year as a consequence of the Judgment. The District Court also awarded a significantly lower hourly rate than the rate Plaintiffs' counsel charge their paying clients and significantly less than the rate supported by the expert affidavits. No consideration was given to the one decade ***29** delay in the award of fees or inflation. Instead, the District Court awarded fees at the hourly rate that Defendants' own lawyer had written would be the likely minimum fee award for plaintiffs' counsel in 1992.

Finally, the District Court found exceptional circumstances which warranted a multiplier, again, the District Court's decision was amply supported by the record, the District Court made detailed factual findings, and the District Court accurately set forth the applicable law.

In this appeal, Defendants suggest that an award of $91,000.00 is proper. Calculated as an hourly rate, this would result in a fee award of $47.00 per hour. Suffice it to say, Defendants' position is neither supported by the facts or the law.

Plaintiffs did not file a cross-appeal of the fee award because the award was within the District Court's discretion. However, if the Court determines that it may lawfully accept Defendants' suggestion and independently determine the appropriate fee, Plaintiffs request that this Court either (1) order a fee award as a percentage of the benefit to the class or (2) increase the fee award by allowing the full hourly billing rates supported by the record and maintaining the multiplier and make an allowance for the extended delay in receiving fees for work performed over 10 years ago.

***30 ARGUMENT**

I. THE DISTRICT COURT PROPERLY DETERMINED THE LODESTAR BASED ON DETAILED TIME RECORDS, AFFIDAVITS AND REVIEW OF THE FILE

The District Court's lodestar calculation, although substantially lower than the amount requested by Plaintiffs, was fully supported by the record.

A. The Fee Application and Supplements

On September 11, 1996 Plaintiffs filed their application for costs and fees specifically identifying the number of hours performed by lawyers for the Plaintiffs, the date the work was performed, the nature of the task, and the time spent. R451, R455, R459. Plaintiffs' filings included the Affidavit of Steven Weinger, Plaintiffs' lead counsel attesting to the accuracy of the assertions in the Memorandum of Law and Motion. R453 at 6; affidavits of Margulies and Rossman, two other attorneys with experience in complex federal litigation and the rights of the developmentally disabled, attesting to Plaintiffs' counsel's skill and reputation; a newspaper article from the St. Petersburg Times, (one of many reporting the District Court's 1996 decision); detailed billing statements; correspondence from a law firm hired by the Defendants opining in 1992 that Mr. Weinger would likely be awarded his "usual fee of $250.00 per hour"; affidavits documenting the condition of the *Doe* Plaintiffs and their dire need for ***31** representation to obtain ICF/DD placements, and other relevant documentation. R.453-55, 499.

Plaintiffs' supplemental fee application submitted in March of 1999 was similarly detailed and included billing statements detailing the work performed R537.

Plaintiffs also filed an application for fees relating to the Defendants' appeal of the Final Judgment. R618. Again, Plaintiffs documented the application with billing statements, affidavits, memoranda of law and other materials. R618.

Thereafter, Plaintiffs submitted additional documentation in support of the fee petitions, including awards of attorneys' fees to Plaintiffs' counsel in other cases, and documentation supporting the hourly rate for Plaintiffs' counsel's associate Peter Hofer. R624, 537.

The additional documentation also included substantial evidence attesting to the significant and broad impact of this case. E.g. R624 at Tab 6, Status Report by National Association of State Directors of Developmental Disability Services, Inc. describing *Doe v. Chiles* as a "watershed" case.

B. The District Court Properly Determined the Number of Hours Reasonably Expended

1 Plaintiffs' Fee Applications Provided A More Than Adequate Factual Basis for the District Court's Fee Award

***32** The Supreme Court has explained that counsel for prevailing Plaintiffs seeking reimbursement of fees *is not required to record in great detail how each minute of his time was expended.* But at least counsel should identify the general subject matter of its time expenditures." *Hensley v. Eckerhart*, 461 U.S. 424, 437 at n. 12, 103 S. Ct. 1933, 1941 (1983) (emphasis added). An attorneys' fee application is adequate if it supplies "the court with specific and detailed from which evidence the court can determine the reasonable hourly rate," and records submitted should "show the time spent on the different claims, and the general subject matter of the time expenditures to be set out with sufficient particularity so that the District Court can assess the time claim for each activity." *American Civil Liberties Union of Georgia v. Barries*, 168 F.3d 423, 427 (1 1th Cir. 1999).

A list of hours with a short explanation for each entry explaining how the time is spent is sufficient. *West Virginians For Life, Inc. v Spaikla*, 952 F. Supp. 343, 345 (S.D. W. Va. 1998). See also *Alexander By and Through Bowers v. Boyd*, 929 F. Supp.

925, 939, (D. SC. 1995), *aff'd* 89 F.3d 827 (4th Cir. 1996); *Deary v. City of Gloucester, 9* F.3d 191, 198 (1st Cir. 1993); *Helbrans v. Coombe*, 890 F. Supp. 227, 239 (S.D. N.Y. 1995); *Littlefield v. Mack*, 789 F. Supp. 914, 917 (N.D. 111. 1992).

All of the time records submitted by Plaintiffs set forth the date the work was performed, the nature of the work, and the time spent each day by Plaintiffs' ***33** counsel on this case and identified the hours of lead counsel Weinger, junior partner Tetzeli and associates such as Hofer. E.g. R499, 618. The accuracy of the information was established by uncontroverted affidavits. E.g. R499, Tab 3. E.g. R452, R 453, R618. Plaintiffs' time records clearly meet the relevant standard.

This Court has held that the District Court in determining an award of attorneys' fees is entitled to rely on affidavits. *Gray v. Lockheed Aeronautical Systems Company*, 125 F.3d 1387 (11th Cir. 1997) [In determining hourly rates District Court is entitled to rely on affidavits and credible news reports.] Further, the trial court is entitled to rely on "its own knowledge and expertise concerning reasonable and proper fees and may form an independent judgment with or without the aid of witnesses as to value." *Norman v. Housing Authority of the City of Montgomery*, 836 F.3d 1292 (1 lth Cir. 1988).

2. The Time Records Included Sufficient Detail

The "amount of itemization detail required [by an attorneys' fee applicant] is a question for the market. If counsel submit bills with the level of detail that paying clients find satisfactory, a federal court should not require more." *In the Matter of Synthroid Marketing Litigation*, 264 F.3d 712 (7th Cir. 2001). In this case Plaintiffs provided the Court and Defendants with copies of their actual billing statements. Plaintiffs' billing statements submitted with the fee application specified the hours, dates and nature of the work performed by Plaintiffs' counsel, ***34** and therefore provide a more than ample foundation for determining the reasonableness of the fee awarded by the District Court in this case.

Moreover, Defendants' complaints about the alleged inadequacy of Plaintiffs' fee documentation is ironic in light of the fact that the lawyers representing state Defendants, Gary Clark and Robert Williams, in their individual capacities only, filed a Motion for Attorneys' Fees and Costs in October of 1996 with documentation similar to that of the Plaintiff. R464, 465. For example, in Defendants' fees objections, (Appendix 1 to Defendants' Brief), they complain of insufficient detail regarding Plaintiffs' counsel's time records from May 22, 1990, namely "telephone conference with Jon Rossman, Esquire, after review of letter." However, defense attorney Talenfeld's billing records submitted with his law firms' fee motion for this case shows many similar entries, such as one for June 2, 1992: "telephone conferences with Steve Weinger" as documented in Mr. Talenfeld's Motion for Fees and Affidavit, an attorney whom the State of Florida paid over $300,000 (Three Hundred Thousand Dollars) in attorneys' fees and costs for representing one of the Defendants in this case, presumably based on the same billing statements that he provided to the District Court in support of his claim for attorneys' fees in this case.[5]

***35 3. The Fee Applications Do Not Impermissibly Block Bill or Lump**

Plaintiffs' fee request in this case should not be reduced due to any alleged "lumping" or "block billing". Defendants' objection is simply without merit as the exact proportions the attorney "spent on two or more tasks is not crucial if all of the tasks merit compensation." *Tran v. Dinh Truong Tran*, 166 F. Supp.2d 793 (S.D. N.Y. 2001) affirmed in part revised in part by *Tran v. Alphonse Hotel Corp.* 281 F.3d 23 (2d Cir. 2002).

***36** In the case at bar, except for the 65 hours that Defendants' allege Plaintiffs' worked in connection with their contempt motion, they do not single out any time as being non-compensable. Thus, the Defendants reliance on *Jane L* v. *Bangerter, 828 F. Supp. 1544 (D. Utah 1993)*[6] is misplaced and the *Jane L* case actually undercuts the Defendants' argument in their brief. *Jane L* involved cross-motions for fees in a section 1983 case. The plaintiffs moved for fees based on a partially successfully challenge to portions of an abortion law, and the defendants who successfully refuted the challenge to portions of the Act also moved for fees. Both sides were awarded fees. In *Jane L*, as in the instant case, the plaintiffs attacked the defendants' time records for alleged lumping. The Court specifically found that *even though* there was block billing, "the defendants' time records are clear, concise and specific... those instances when attorney listed multiple activities under one time entry usually involve fully compensable activities." *Jane L supra* at 1554. Thus, in the "lumping" case cited by defendants the Court did not deduct any time for lumping[7]

***37** Defendants cite no apposite cases from this Circuit in support of their position. *Loranger v. Slierheim*, 10 F.3d 776 (1 lth Cir. 1994) is distinguishable. In *Loranger*, this Court disapproved the lumping of expense claims in a case involving federal and state court litigation. The billing statements in *Loranger* did not distinguish between the federal claims and claims for "non-allowable, discrete proceedings." *Loranger, supra* at 782. In the instant case of course, fees are sought solely for litigation before the Federal District Court and this Court, the billing statement applications clearly distinguish between the two, and there is no dispute as to Plaintiffs' entitlement to fees for work at the trial court and appeals level in this case. Plaintiffs have not "lumped" time spent in other lawsuits with the hours spent in this case.

4. Plaintiffs are Entitled to Fees for Time Spent in Enforcing the District Court's Judgment as Affirmed by This Court, up through and including Contempt Proceedings

Plaintiffs are entitled to their attorneys' fees for work performed to enforce the Final Judgment, including their efforts to hold Defendants in contempt for their failure to comply with the Final Judgment as affirmed by this Court. *Doe v. Chiles*, 136 F.3d 709 (11th Cir. 1998). This Court has held that "for purposes of placing value on an attorneys' services in order to award attorneys' fees, measures necessary to enforce a remedy ordered by the trial court cannot be severed from matters upon which the Plaintiff prevailed at trial." ***38** *Adams v. Mathis*, 752 F.2d 553 (llth Cir. 1985). Defendants do not complain that the hours expended by Plaintiffs towards this endeavor were excessive, but assert simply that the work involved "new" relief, not the enforcement of old relief, and [plaintiffs] were not prevailing parties in them." Defendants' Brief at 27. This argument is wrong even though the contempt finding was ultimately reversed on appeal.[8] As Defendants correctly note, Plaintiffs used billing judgment by only seeking a fee award for a portion of their hours expended after entry of the Final Judgment. Defendants' Brief at 27.

In *Turner v. On*; 795 F.2d 1498 (11th Cir. 1986) this Court held that post-judgment efforts of the plaintiffs to protect rights originally vindicated by a consent judgment, and their efforts at monitoring and enforcement qualified the plaintiffs as a prevailing party for purposes of receiving payment for expenses reasonably incurred in the post-judgment efforts, "regardless of the outcome of each individual post-judgment effort involving litigation," and that "efforts to ***39** monitor compliance without a consent judgment 'cannot be severed from the matters upon which the Plaintiff prevailed' by obtaining the consent judgment." *Turner, supra* at 1503, citations to *Adams v. Matins*, 752 F.2d 553 (1 lth Cir. 1985) [Measures to enforce the remedy ordered by the trial court, an injunction, could not be severed from the matters upon which the Plaintiff prevailed at trial.][9]

Plaintiffs are therefore entitled to compensation of their fees for this work. See e.g. *Turner v. On*; 795 F.2d 1498 (11th Cir. 1986); 795 F.2d 1498 (11th Cir. 1986); *Adams v. Matins*, 752 F.2d 553 (11th Cir. 1985).

5. All of the hours allowed by the District Court were properly included in the lodestar calculation of the hours reasonably expended

The District Court properly calculated the hours reasonably expended. Defendants' objections were all addressed by the District Court and properly rejected. No basis exists to reject the District Court's findings.

***40 C. The District Court's Determination of the Reasonable Hourly Rate Was Proper**

Defendants do not seriously challenge the hourly rates awarded by the District Court. If this Court accepts Defendants' suggestion to itself set the fee, the hourly rates supported by the affidavits and other record evidence should be utilized. These rates are $350 per hour for Mr. Weinger, $195 per hour for Ms. Tetzeli, and $175 per hour for Mr. Hofer and other associates. The District Court adopted much lower rates.

II. THE DISTRICT COURT PROPERLY AWARDED PLAINTIFFS AN UPWARD ADJUSTMENT OF THE LODESTAR BASED ON FINDINGS THAT THIS WAS A RARE AND EXCEPTIONAL CASE; "EXCEPTIONAL SUCCESS" AND "GROUND BREAKING RESULTS" ACHIEVED BY PLAINTIFFS

A. Plaintiffs Are Entitled To An Upward Adjustment of the Lodestar Based on the District Court's Finding of "Exceptional Success" and "Ground Breaking Results" Achieved by the Plaintiffs

The District Court's Order explained that it was:

> enhancing the lodestar fees for both the Motions for Attorneys' Fees and the supplemental claim for attorneys' fees by a multiplier of 2.0 because this is a rare and exceptional case where upward adjustment of the lodestar is appropriate due to exceptional success. *Blum v. Stenson*, 465 U.S. 86, 898-99 (1984) (recognizing an enhanced award of attorneys' fees in cases of exceptional success); *Hensley* v. *Eckerhart*, 461 U.S. 424, 435 (1983) in some cases of exceptional success an enhanced award may be justified; *Loranger v. Stierheun*, 10 at 3rd 776, 783 (1994) (declining to decide whether the case was a 'rare and exceptional case' where an award went upward ***41** adjustment of the lodestar is called for because of exceptional success); *Alien v. Freeman*, 694 F. Supp. 1554, 1556 (1988) (court found enhancement of the lodestar amount appropriate because the results of the litigation were exceptional.) R627 at 4-5.

The District Court went on to state it:

> also considered the exceptional success and groundbreaking results achieved by the plaintiffs in this case. In 1996, a judgment was entered for the Plaintiffs ordering state officials to provide institutional care for eligible applicants, some of whom have been waiting for many years without proper care. That judgment was affirmed on appeal by the Eleventh Circuit Court of Appeals in an opinion which painstakingly established the law to govern this case and several related cases which followed. See, *Doe v. Chiles*, 136 F.3d 709 (11th Circuit 1998). Order, R627 at 5.

The District Court's findings were amply supported by the record. As set forth in the Margulies and Weinger Affidavits, this was a complex case presenting novel issues. R624 at Tab 4 and 5 especially Margulies Affidavit at ¶7 noting "the case is extremely complex and will require a thorough knowledge of highly specialized areas of law such as the Federal Medicaid Statutes and Regulations, the inner-workings of the Florida Medicaid Plan and comprehensive knowledge of the Federal Civil Rights Law. At the time the case was brought, the claim was unique and novel." See also 624, Tab 6, Status Report by National Association of State Directors of Developmentally Disability Services, Inc., at 5, describing this case as a "watershed" and seminal decision, noting the decision has "been frequently cited ***42** as the basis of lawsuits filed in other federal circuits", and that "most waiting list lawsuit elsewhere have been filed on the heels of this decision."

Moreover, as documented in filings for the District Court, this cause was an unpopular one and adversely affected Plaintiffs' counsel's law firm. No other attorneys, even those working with advocacy groups, were willing to accept this case. R454, Margulies Declaration at ¶6, stating from personal knowledge that Plaintiffs had been unable to find "any advocacy group or attorney" to represent them and would have been without representation had Mr. Weinger not agreed to take on the case. R454 at ¶6. As Margulies recounted: "as a result of litigation" lead counsel's "reputation among elected officials in the state and executive branch has been severely hurt... and the hard fought battle to win benefits for these individuals has, due to the unpopularity of this cause, and the unpopularity of providing additional funds to individuals with developmental disabilities, made the balance of his practice more difficult." R454 Margulies Declaration at ¶9. As a result, Plaintiffs' counsel's practice suffered. **R453, Ex.** 3, Weinger Affidavit, explaining that potential clients determined their interests would be better served by using another attorney without such an adversarial relationship with state officials.

***43 B. The District Court's Award of a Multiplier Is Supported by Relevant Caselaw**

It is well established law that in "rare and exceptional cases" a Court may award an upward adjustment of the lodestar. *Pennsylvania v. Delaware Valley Citizen's Counsel*, 478 U.S. 546, 565 106 S. Ct. 3088, 3098 (1986); *Blum v. Stenson*, 465 U. S. 886, 104 S. Ct. 1041 (1984) ["In view of our recognition that an enhanced award may be justified 'in some cases of exceptional success', we cannot agree with the defendant's argument that an 'upward adjustment' is never permissible"]; *Loranger v. Stierheim*, 356 F.3d (11th Cir. 1993) superseded on other grounds, 10 F.3d 776 (11th Cir. 1994) [remanding attorneys' fees case because District Court failed to consider whether it was a case of "exceptional success" for purposes of ruling upon Plaintiff's application for lodestar upward adjustment]; *Norman v. Housing Authority City of Montgomery*, 836 F.2d 1292 (IIth Cir. 1988) [if results obtained in civil litigation were exceptional, some enhancement of lodestar might be called for]; *Solutia, Inc. v. Forseberg*, 221 F. Supp. 2d 1280, 1288 (N.D. Fla. 2002). [Upward adjustment from base hourly rate was appropriate based on exceptional results]; *Guam Society of Obstetricians & Gynecologists v. ADA*, 100 F.3d 691 (9th Cir. 1996) [affirming 2.0 multiplier where constitutional challenge to abortion statute was "rare and exceptional" due in part to factors including unpopularity of Plaintiffs' cause]; ***44** *Roberts v. Texaco, Inc.*, 979 F. Supp. 185 (S.D. N.J. 1997) [5.5 multiplier in race discrimination case based on similar factors, as well as "relentless" defense.]

Most recently, this Court in *Villano* v. *City of Boynton Beach*, 254 F.3d 1302 (11th Cir. 2001) reiterated that "in some cases of exceptional success an enhanced award may be justified", and that in calculating a § 1988 fee award, the most critical factor in determining a reasonable fee is the "degree of success." 254 F.3d at 1305.[10]

C. This Case is Analogous to Other Rare and Exceptional Cases Where Courts have Awarded Multipliers

A comparison of the instant case with recent decisions of courts awarding such enhancements demonstrate that this is clearly a case meriting an enhancement of the lodestar. *Roberts* v. *Texaco, Inc.*, 979 F. Supp. 185 (S.D. N.J. 1997) another civil rights case, is instructive. *Roberts* was a race discrimination class action case brought on behalf of salaried African American employees of Texaco. The fee ***45** ultimately awarded in that case was $19,154,144.62. In determining the appropriate multiplier the Court in *Roberts* reiterated the Supreme Court's holding that enforcement of the Civil Rights Act to a great extent is entrusted to "private attorney's general" and that Plaintiffs should be encouraged to bring private actions to further the policy of the Act. *Newman v. Piggy Park Enterprises*, 390 U.S. 400, 402 (88 S. Ct., 964, 966 (1968), *Roberts v. Texaco, supra* at 197. The *Roberts* Court further explained "this point applies with equal force to counsel, as it does to the individual Plaintiff. After all, it is the skill, ingenuity, effort and risk of counsel that, in the final analysis, produces a result." *Roberts v. Texaco, supra* at 197.

In explaining the basis for the 5.5 multiplier, the Court in *Roberts* expressly held that it relied on "the skill and effort of Plaintiff's counsel, particularly in view of the relentless effort, vigor and skills employed by the Defendants' [Texaco] experienced and able counsel in pursuing a defensive strategy that maximized, burdened and left no litigation tactic unexplored. The risk of litigation was substantial to say the least and the results achieved captured national attention and focused on the importance of private attorneys' general in the enforcement of the prescriptions against racial discrimination in the work place." *Roberts v. Texaco, supra* at 197.

***46** The rationale for the 5.5 multiplier in *Roberts v. Texaco, supra*, applies equally to the instant case, although Plaintiffs in this case request a multiplier of less than half that applied in *Roberts*. As in *Roberts*, this case has had a broad impact and the results obtained were demonstratively extraordinary. Since the 1996 Final Judgment additional funding by the State increased by over three hundred million dollars annually. R624, Tab 6, 2001 Status Report at 9. Well over one billion dollars in additional services have been provided to developmentally disabled Florida residents already. As in *Roberts*, the case has received national attention and is of considerable public importance. *Id.* at 197, Status Report describing this as a "watershed" case. At the time the suit was filed, Florida ranked approximately 49th in funding for individuals with developmental disabilities, ranked approximately 45th for providing ICF/DD beds per capita; and spent less than half of the national average expenditure for individuals with developmental disabilities. R499, Tab 7, deposition of Donna Alien at 132; Tab 5, June 11, 1992 letter of Governor Lawton Chiles to President of the Florida Senate.

As a result of Plaintiffs' counsel's successful representation of these Plaintiffs, funding by Florida for its developmentally disabled citizens has markedly increased (R624, Tab 6, 2001 Status Report of National Association of State Directors of Developmental Disabilities Services at $360 Million Dollar ***47** increase over the past two years, and the case provided a basis for similar lawsuits nationwide.

In addition, and as recognized by the Court in *Roberts*, the case involved "extraordinary skills and efforts on the part of Plaintiff's counsel, particularly in view of the relentless efforts, vigor and skill employed by the Defendant". *Roberts supra* at 198. Defendants in this case, as in *Roberts*, pursued "a defense strategy that imposed the maximum burden and left no litigation tactic unexplored." Indeed, even before this lawsuit was brought, the state officials announced that they would use all available resources to fight this case, would appeal all adverse rulings and predicting the case would be litigated a dozen years. R453, Ex. 3, Weinger's Affidavit at ¶3.

The Defendants kept their promise. The Court in *Roberts* may as well been writing of the tactics and strategies employed by the Defendants in this case. Even a cursory review of the answer and affirmative defenses of the Defendants, and Defendants' briefs in the appeals arising out of this litigation demonstrate that every possible defense was raised by the Defendants in this case, whether or not the defense had a factual or legal basis. R193, 194. Defendants have appealed every ruling adverse to them and raised every conceivable defense, even if not well founded. During the course of the litigation and in the appeals both the District Court and this Court found that some of the Defendants' arguments were ***48** "frivolous." *Doe v. Chiles*, 136 F.3d 709 (11th Cir.) at 173, n. 7, referring to Defendants' standing argument. See also this Court's finding in *Doe v. Bush*, supra at 1047 that Defendants' interpretation of the scope of the Final Judgment was "untenable."

Similarly, in *Guam Society of Obstetricians and Gynecologist v. ADA*, 100 F.3d 691 (9th Cir. 1996) a § 1983 action against state officials challenging a abortion statute denying healthcare services in violation of federal law, the Court of Appeals affirmed a multiplier of two times the lodestar amount because of the "visible and controversial nature" of the case. *Guam, supra* at 695. As in this case, some of the Plaintiffs in *Guam* sued anonymously because of the fear of retribution. As in the instant case, it was extremely difficult to find counsel willing to take the case. R454, Margulies Declaration at ¶6. As in the instant case, counsel was subjected to professional and personal pressure during the pendency of this suit. R624, Tab 4, R454, Affidavit of Margulies, and R454, Ex. 3, Weinger Affidavit at ¶¶, 6. As the appeal's court found in *Guam*, a multiplier of 2.0 is "reasonable in light of the factors upon which it relied." *Guam, supra* at 700

See also *Schipes v. Trinity Industries*, 987 F.2d 311 (5th Cir. 1993) [In class action race discrimination cases remand of attorneys' fee appeal ordered. Court found that while contingency risk multiplier was not permitted, the District Court may have been warranted in enhancing the lodestar because of the... results ***49** obtained, including "protection against discrimination in the form of injunctive relief". *Rutherford v. Harris County Texas*, 197 F.3d 173, 192 (5th Cir. 1999) [Court reversed 1.5 multiplier in case for failure to promote because of gender because it was based on contingency nature of the case but remanded ordering the District Court to consider whether or not an upward adjustment was warranted based on the circumstances of the case and after addressing the *Johnson* factors.]

Based on the uncontroverted facts, the District Court properly applied a 2.0 multiplier. The District Court's findings should not be disturbed by this Court.

III. PLAINTIFFS ARE ALSO ENTITLED TO AN UPWARD ADJUSTMENT OF THE LODESTAR BECAUSE OF THE SUBSTANTIAL DELAY IN PAYMENT

Apart from an enhancement because of the rare and exceptional nature of this case, Plaintiffs in this eleven year old case are entitled to an upward adjustment of the fee based upon the seven year delay in the receipt of payment since entry of the Final Judgment in 1996. In *Missouri v. Jenkins*, 491 U.S. 274, 282, 109 S. Ct. 2463, 2468 (1989) the Supreme Court approved the enhancement of fees to compensate attorneys for delay in payment. As the Court explained:

> Cases have repeatedly stressed that attorneys' fees awarded under this statute [§ 1988) are to be based on market rates for services rendered. Clearly, compensation received several years after the services were

> rendered - as they frequently are in complex civil rights litigation-is not equivalent to the same dollar amount received reasonably and promptly as legal services are performed, as is normally the case with private billings. We agree, ***50** therefore, that an appropriate adjustment for delay in payment - whether by the application of current rather than historic hourly rates ***or otherwise*** is within the contemplation of the statute. *Id. at* 283-284 (citations omitted) (emphasis added).

See also, *Norman v. Housing Authority of City Montgomery*, 836 F. 2d 1292, 1300 (11th Cir. 1988) ["In this Circuit, where there is a delay the court should take into account the time value of money and the effects of inflation and generally award compensation at current rates rather than at historic rates"]; *Davis v. Locke*, 936 F.2d 1208 (11th Cir. 1991), (multiplier for delay and difficulty obtaining counsel and risk]; *Formby v. Farmers and Merchants Bank*, 904 F. 2d 627, 633-34 (1 lth Cir. 1990) (1.33 multiplier for delay); *Tufaro v. Willie*, 756 F. Supp. 556, 563 (S.D. Fla. 1991); *Amico v. Newcastle County*, 654 F. Supp. 982, 1008 (D. Del. 1987); *Weiss v. York Hospital*, 628 F. Supp. 1392, 1414-15 (N.D. Pa. 1986); *Institutionalized Juveniles v. Secretary of Public Welfare*, 568 F. Supp. 1020, 1033. (E.D. Pa. 1983); *In re Baldwin-United Corp.*, 79 BR 321, 346-350 (Bkrtcy. S.D. Ohio 1987); *Cerva v. EBR Enterprises*, 740 F. Supp. 1099, 1106-109 (E.D. Pa. 1990); *Williams v. Marriott Corp.*, 669 F. Supp. 2, 6 (D.C. 1987); *U.S. v. Aisenberg*, 247 F. Supp. 2d 1272 (N.D. Fla. 2003) (1.5 multiplier based on five year delay.

***51 IV. THE DISTRICT COURT PROPERLY AWARDED PLAINTIFFS THE ATTORNEYS FEES THEY SOUGHT FOR SUCCESSFUL REPRESENTATION IN DEFENDANTS APPEAL OF THE DISTRICT COURT'S 1996 FINAL JUDGMENT**

The District Court's decision was fully justified. In support of the Motion for appellate fees, Plaintiffs provided actual billing statements identifying the attorney who performed the work, the amount of time spent, the date of the task, and the nature of the task. The fee application also included a Memorandum of Law, affidavits of other attorneys, affidavits of Steven Weinger, a letter from former Governor Lawton Chiles, a front page headline article in the St. Petersburg Times and the Whitaker Declaration including her original evaluation of the Plaintiffs filed with this Court, all of which could assist the Court in applying the proper factors to establish the fee. R618.

This Court found Plaintiffs were entitled to an award of fees for their work in the appeal of the Final Judgment and remanded the fee application to this court to determine the amount. The District Court awarded the Plaintiffs' appellate fees and costs of $85,304.50 but rejected Plaintiffs' request for multiplier. R627 at 7.

A. The Proper Fee Was Awarded

As this Court has held, "if the result in the case was excellent, then the Court should compensate in the lodestar for all hours reasonably expended." *Solutia, Inc., supra* at 1288, citations to *Norman v. Housing Authority, the City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988) Defendants grudgingly state in their ***52** brief that Plaintiffs "got good relief," (Defendants' Brief at 38). This is clearly a significant understatement. As the District Court found, this case was one of "exceptional success." (R627 at 4). State Developmental Disabilities Directors called the decision a "watershed" case (R624, Tab 6 at 5; Tab 4); "the results obtained were exceptional." Margulies Affidavit at ¶4. Funding for services to Florida's needy, developmentally disabled citizens significantly increased and important rights were established and vindicated to the benefit of a class of individuals who historically have had no power or voice. (R624, tab 6).

It is undisputed that Plaintiffs prevailed completely in defending the attack on the Final Judgment. Thus, the District Court was not only justified, but obligated to award Plaintiffs their fees based on each minute of time they spent defending Defendants' appeal.

Defendants fail to point to a single entry that they believe is unreasonable. Defendants instead argue that Plaintiffs' work in the appeal of the Final Judgment in this landmark, "watershed" case by two attorneys was unjustified.

The cases relied upon by Defendants provide no support for their position. For example, in *Ackerly Communications of Massachusetts, Inc. v. City of Somerville*, 901 F.2d 170 (1st Cir, 1990) the Court found that $115,000 and nearly 600 hours for an appeal was not justified in view of the fact that the plaintiff was not "a typical civil rights claimant for whom a potential award of attorneys' fees ***53** might have been a determining factor in the decision to seek judicial relief, but. that this case was instead a "major litigation" by a "private corporate client" conducted by an "large and prominent law firm." *Ackerly, supra* at 170. The Court in *Ackerly* also reduced the amounts sought by the corporate Plaintiff because while the Plaintiff prevailed in the appeal, it did not prevail in a case that was "unduly complex", and did not prevail because of an argument asserted in its brief. *Ackerly, supra* at 171. In the case at bar, of course, this litigation was brought by a class of indigent and developmentally disabled Plaintiffs represented by a small law firm; was a case of first impression; and resulted in a final judgment that was affirmed on appeal in its entirety by this Court based on arguments presented by Plaintiffs. *Doe v. Chiles*, 136 F.3d 709 (11th Cir. 1998).

Defendants' reliance on *Spell v. McDaniels*, 852 F.2d 762 (4th Cir. 1988) is also misplaced. *Spell* in fact supports the relatively conservative claim of 311 hours by the Plaintiffs in this case. The Court in *Spell* determined that 420 hours of work by Plaintiffs' counsel was reasonable for an appeal. As in *Ackerly*, one reason for the reduction in *Spell* of the (1,400) hours claimed was the fact that "the arguments presented were not of outstanding quality and contributed little to the court's resolution of the appeal", *Spell supra* at 767, in contrast with this Court's affirmance of the Final Judgment in this case agreeing with every argument and position asserted by the Plaintiffs. Thus the court in *Spell* found that "competent ***54** counsel representing a successful Plaintiff on appeal such as that in the present case could have easily accomplished their task in no more than 420 hours and that this sum is a reasonable number of hours assignable to counsel's appeal-related endeavors." *Spell, supra* at 767. In contrast, Plaintiffs' counsel in the instant case logged 100 hours less than the time found to be reasonable by the Court in *Spell* by a party who prevailed as a matter of luck, not because of stellar work.

B. Plaintiffs' Were Not Awarded Attorneys' Fees for Unexplained Duplicative Time in Drafting the Answer Brief and Preparing for Oral Argument

Both Steven Weinger and Helena Tetzeli worked many hours on researching and drafting the Answer Brief. Plaintiffs' counsel did not work longer than what was necessary, but worked in proportion to the number of issues and legal theories raised in Defendants/Appellees' Brief, and in proportion to the importance of the litigation and the high stakes involved in this case of life or death for the Plaintiffs. While Weinger and Tetzeli often worked in tandem, the work was not duplicative.

As this Court noted in *Johnson v. University College*, 706 F.2d 1205 (11th Cir. 1983) the use in involved litigation of a team of attorneys who divide up the work is common today for both Plaintiff and defense work... a reduction is warranted only if the attorneys are *unreasonably* doing the *same* work. In the case at bar the record amply reflected the distinct contribution of the two lawyers involved in this appeal working together to research and prepare the brief, dissect ***55** and analyze opposing briefs in preparation for oral argument, update research in anticipation of oral argument, and confer and strategize regarding the briefs and oral argument. See *City of Riverside v. Rivera*, 477 U.S. 561, 573 n. 6, 106 S. Ct. 2686 (1986) [allowing compensation for productive attorney discussions and strategy conferences.]; *Mallory v. Harkness*, 923 F. Supp. 1546 (S.D. Fla. 1996) [fact that law clerk and attorney reviewed some of the same materials or worked on the same materials did not require a reduction in the lodestar amount for purposes of § 1988.]

Defendants' complain in particular about work related to oral argument. As documented in the records, preparation for oral argument continued until the actual date of the oral argument. Moreover, both attorneys are entitled to be compensated for their time incurred traveling to and attending oral arguments. *University College*, 706 F.2d at 1208. Plaintiffs' counsel in this case was require to travel from Miami to Atlanta for oral argument, thus logging hours for travel related to oral argument.

V. PLAINTIFFS ARE ENTITLED TO A FULL AWARD OF THEIR COSTS

a. Defendants' Opposition to Plaintiffs' Bill of Costs was Untimely *56 Plaintiffs filed their Motion for Fees and Costs,

including their itemized bill of costs on September 11,1996. R452-453. Plaintiffs filed their opposition over a year and half later on June 23, 1998. R496.

An award of costs is governed by Federal Rule of Civil Procedure 54. Rule 54(b)(l) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the Court otherwise directs...". The rule further provides that a Motion opposing an award of costs and fee must be filed within five days. Because the Defendants' Response to the bill of costs is untimely by nearly two years, they have waived their right to review of this issue. *Sayers v. Stewart Sleep Center, Inc.*, 140 F.3d 1351 (11th Cir. 1998) [Local Rule providing 10 day period for responding to written motion on their application did not modify five day limit imposed by Federal Civil Procedure Rules for filing Memorandum in Opposition to prevailing party's bill of costs.]

B. The District Court Properly Awarded Plaintiffs' Their Costs Incurred in this Litigation

Plaintiffs are prevailing parties and are therefore entitled to recover their reasonable and necessary expenses normally billed in addition to their hourly rate. *Dowdell v. City of Apopka*, 638 F.2d 1181,1191-1192 (11th Cir. 1983) ["with the exception of routine office overhead, all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under § 1988."]

***57** Moreover, a fee applicant should generally be compensated for reasonable expenses such as telephone charges and photocopies as well as reasonable costs of computer research. *O'Farrell v. Twin Brothers Meats, Inc.*, 889 F.2d 189, 192 (E.D. Pa. 1995). Plaintiffs' fee application in this case more than adequately documented and justified the costs incurred. Moreover, District Courts enjoy wide discretion in determining and awarding reasonable costs. See *Weihaupt v. American Medical Association*, 874 F.2d 419, 430 (7th Cir. 1989). See also *Northbrook Access and Surplus Insurance Company v. Proctor & Gamble*, 924 F.2d 633 (7th Cir. 1991) [copying bill of more than $50,000 was not excessive "in the context of a 6 year paper war." Plaintiffs were not required to submit a bill of costs continuing a description so detailed as to make it impossible economically to recover photocopying costs.]

In the case at bar, Defendants used the same double standard for expense records as they did with time records, complaining of Plaintiffs' documentation, although it is virtually identical if not more detailed to that used by the State's outstanding attorneys in their application for fees and costs. See for example, Plaintiffs' "telephone charge" for March 2000, cited as objectionable for "insufficient detail" (Defendants' Appendix to Brief Cost Expense Objection, p. 4), and Talenfeld's April 1, 1994 "long distance telephone charge", deemed adequate by Defendants. Similarly, Defendants challenged Plaintiffs' June 2000 "courier ***58** service" charge for "insufficient detail or showing of necessity", but do not object to Talenfeld's "messenger" charge of April 7, 1994.

Defendants could have taken discovery if they truly doubted that any of these costs were necessarily incurred in the litigation but they chose not to. The District Court expressly reviewed "the application, the costs objection chart and memoranda of law" and acted well within its authority in ruling in Plaintiffs' favor and awarding their costs. R627 at 7; *Mallory supra* at 1557, approving prevailing civil rights, Plaintiffs' telephone changes, postage, photocopies as compensable, noting Plaintiffs' pledge that these charges were connected to the prosecution of the case when evidenced in light of the liberal principles annexed in *Dowdell.]*

VI. DEFENDANTS' SUGGESTED "RESOLUTION" OF THIS CASE IS MERITLESS

Plaintiffs' unqualified victory in this case benefited thousands of developmentally disabled class members. Plaintiffs have fought Defendants' unrelenting, aggressive and "scorched earth" litigation strategy for over 12 years. Plaintiffs' fee application meets all relevant legal requirements and fully and specifically documents not only the reasonable hourly rate and the nature of the work performed, but also is supported by documentation establishing Plaintiffs' counsel's skill, the complex nature of this litigation, its novelty, and the far reaching and beneficial impact of the District Court's decision and this Court's 1998 affirmance.

***59** There is no basis for the Defendants' suggestion that the District Court's award of fees and costs be gutted by this Court to a total of $91,000 (including fees and costs) for a "watershed" case spanning a 12 year period. Indeed, this Court has held that such wholesale and arbitrary reductions of fee awards are disfavored. *Norman v. Homing Authority the City of Montgomery*, 836 F.2d 1292; *Loranger v. Stierheim*, 10 F.3d 776 (1 lth Cir. 1994) [noting that *Norman* is "one of a long line of decisions in the Circuit applying the rule that when hours are disallowed the court should identify the hours disallowed and explain why they are disallowed."][11]

CONCLUSION

Plaintiffs/Appellants respectfully submit that the District Court's Order is amply supported by competent and substantial evidence and legal precedent the Order does not constitute an abuse of discretion and is not clearly erroneous. The Order should be affirmed. If this Court follows Defendants' suggestion to recompute the fee, the fee should be increased to the full hourly rates of counsel and compensation for the 10 year delay in payment should be added.

Footnotes

1 Colodny Fass and Talenfeld represented a single, individual capacity Defendant and were paid $328,789.50 by the Defendant State officials. R464 at 7, n. 10.

2 See Appellants' Emergency Motion for Stay of January 17, 1997 at 3.

3 In addition a recent Westlaw search indicates the decision has been cited in dozens of law review articles, treatises and cases.

4 In her Affidavit filed in 1996 in the case, federally recognized Qualified Mental Retarded Professional ("QMRP") Kathryn Whitaker advised that John Doe 3 died in an non-ICF/DD group home in the summer of 1993 during a "seizure- status-eplileticis." Ms. Whitaker noted that "the group home did not have any nurses on staff or staff trained in the manner which meets the requirements of the training of staff at an ICF/DD facility and by the time the home finally dialed 911 John Doe 3 was deceased." R453 Whitaker Affidavit, Ex. 8.

5 Defendants, it seems, advocate a double standard: the identical supporting documentation for a defense lawyer is adequate for the Defendant State Officials to actually pay their own lawyers, but if offered by prevailing Plaintiffs somehow becomes objectionable for "insufficient detail". In fact, as calculated from an affidavit filed with the District Court, the State actually paid for over 4,000 hours of work by Talenfeld as counsel for a single Defendant in his personal capacity. Payment by the State of Florida was based on time records that were less detailed than the time records supporting Plaintiffs' fee petition. Other examples of this double standard are countless. Defendants complain as to Plaintiffs' record for October 10, 1992, which states "review of reply memorandum", yet Talenfeld's July 2, 1992 entry states simply "reviewed documents." Even a cursory review of Talenfeld's records reveal that they routinely read only "telephone conference with [name]," or "review of [documents]." These records were adequate for Defendants' to file in their claim for attorneys' fees and adequate for the State to actually make payment. For example, Defendants find Plaintiffs' February 2, 1993, "researched law and edited reply to Motion to Compel" objectionable, but apparently not Talenfeld's May 7, 1993 entry "research check cases."
The same double standard applies in the case of alleged "lumping." Thus, Defendants have no objection to Talenfeld's entry of July 2, 1992 which reads "review of revisions to Motion to Strike and legal research relating thereto, review documents relating to the Motion to Strike transcripts including transcripts of bid protest, including letters between John Slye and Steve Weinger" while Plaintiffs' May 26, 1992 record for "continued research re: class certification memorandum; reviewed and revised draft of same" was deemed objectionable for lumping and insufficient details.

6 Defendants' citation to this case fails to note its subsequent reversal by *Jane L Bangerter*,61 F.3d 1505 (10th Cir. 1995).

7 Defendants made much of the deduction of "over $5,000 for lumped entries." *Fuddruckers, Inc. v. BR Others, Inc.*, 623 F. Supp. 21 (D.C. Ariz. 1985) reversed on other grounds 826 F.2d 837 (9th Cir. 1985) Defendants' brief at 25. Defendants fail to note that $5,000 represented only 5% of the total amount awarded of approximately $ 100,000 to the prevailing Plaintiffs in that case.

8 Although this Court reversed the District Court's contempt finding, it found in Plaintiffs' favor on the related issue of Defendants' obligations to provide system-wide relief to comply with the 1996 Final Judgment, holding that an implied class existed and remanding the case to the District Court for entry of a class certification order. *Doe v. Bush, supra* at 1051. This Court also found

in Plaintiffs' favor on Defendants' argument that the Final Judgment did not obligate them to "actually admit those on the waiting list to an ICF/DD and that the District Court should not have concerned itself with whether the required waiting list time period was actually making any difference in the provision of services."This Court found Defendants' contention to be "untenable."*Doe v. Bush, supra* at 1037.

[9] Defendants' reliance on *Reynolds v. Roberts*, 207 F.3d 1288 (11th Cir. 2000) (Defendants' Brief at 27) is misplaced. In *Reynolds*, this Court held that to enforce an injunction or consent decree if the plaintiff believes that the defendant is failing to comply with the decree or mandate, the plaintiff should not move for another injunction (as the plaintiff did in that case), but should move the court to issue an order to show cause why the defendant should not be adjudged in civil contempt and sanctioned. That is of course exactly what the Plaintiffs did in this case to obtain and coerce Defendants' compliance with the Court's injunction in this case.

[10] In *Villano* this Court found that in making this determination the District Court is bound to consider the benefit to the public interest by vindication of constitutional rights by a civil rights Plaintiff. *Villano, supra* at 1306. In *Villano*, this Court remanded to the District Court a civil rights attorneys' fee appeal, holding that the Court erred in ignoring the public benefit that was realized by the Plaintiff's vindication of a constitutional right in a false arrest case against City of Boynton Beach and its police officer; in failing to determine whether the plaintiff obtained excellent results; and in reducing the lodestar. *Villano supra* at 1307. While affirming already established constitutional rights, *Villano*, unlike the instant case provided direct relief to only one individual, the Plaintiff in that case. It was not a class action like this case that addressed the rights and improved the lives of hundreds if not thousands of developmentally disabled individuals throughout the State of Florida.

[11] Indeed, even in cases where fee awards are reduced, reductions are conservative or nominal in amount. See, e.g., *Fuddruckers, Inc. v. B.R. Others, Inc.*, 623 F. Supp. 21 (D.C. Ariz. 1985), reversed on other grounds 826 F.2d (9th Cir. 1985) [5% overall reduction]; *Johnson v. Georgia Highway Express Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) [10% reduction].

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