UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Van Nguyen, Plaintiff, vs. Patricia Foley, in her individual and official capacity, Jody Alholina, in her individual and official capacity, Nancy Martin in her individual and official capacity, Charles R. Vig in his individual and official capacity, Keith B. Anderson, in his individual and official capacity, Rebecca Crooks-Stratton, in her individual and official capacity, and Cole W. Miller, in his individual and official capacity, Defendants.	Civil No. 0:21-cv-00991 (ECT-TNL) **MEMORANDUM IN OPPOSITION TO COMMUNITY DEFENDANTS' MOTION FOR ATTORNEYS' FEES**

INTRODUCTION

COMES NOW Plaintiff James Van Nguyen with his response in opposition to the Community Defendants' motion for attorney's fees (ECF No. 44). As the Community Defendants admit, they cannot collect attorneys' fees unless the Court finds Mr. Nguyen's § 1983 claims are legally frivolous. At this stage, they were merely invited to "file an appropriate motion." (ECF No. 42 at 17, n. 7). Mr. Nguyen validly pled his two Section 1983 claims in his Amended Complaint, and although the Court found Mr. Nguyen's arguments regarding the "color of law" prong to be "not persuasive," there has been no determination that those claims were "frivolous," rising to the level of sanctions under Section 1988. To the contrary, if those 1983 claims were indeed so "frivolous" as

to warrant sanctions of over $21,000, egregiously beyond the point of reasonable to deter future similar filings, it begs the question why a team of four attorneys with the experience cited in the Duncan Declaration would require nearly 50 hours of legal work to craft such an argument. Should the Court truly find Mr. Nguyen's 1983 claims to be "frivolous," it can and should find non-monetary sanctions to be more than appropriate. Anything more only highlights the degree of abusive tribal power that a non-member single father, like Mr. Nguyen, must face when seeking relief in such a situation as before the Court: where tribal authorities improperly take a daughter away from a loving and qualified father, claim wardship of the child for themselves, and grant custody rights to a violent and drug abusing mother, simply because she is a member of that tribe.

The Community Defendants' motion is flawed for two other reasons. First, because the Community Defendants never incurred any attorney's fees. Footnote 3 of the Court's Order invited the Community Defendants to "file an appropriate motion," which would clearly require them to carry the evidentiary burdens under a lodestar analysis. The Community Defendants provided no fee agreements, no invoices, and no proofs of payment. There is, flatly, no evidence that the *Defendants*, as opposed to a third party, incurred any of the claimed attorneys' fees. To the contrary, if the Community's insurer or any third party bore the costs of the defense then the proper monetary fee is $0. Anything more deviates from the Court's Order.

Second, the fees sought are wildly unreasonable and otherwise barred by clear law. The Community Defendants' attorneys have a duty to mitigate harm. Instead, they ask this Court for fees related to tasks and fees that would objectively have been incurred regardless

of the presence of 1983 claims, clearly bringing them outside the scope of *Fox v. Vice*, 563 U.S. 826 (2011). The only debatably appropriate estimation presented by the Community Defendants, that of Exhibit A: Time Entries Directly Attributable to Section 1983, clearly contains tasks explicitly unrelated to defending 1983 claims. In addition, the collective hourly rate of $2,340 for the Community Defendants' four attorneys is completely unreasonable, and many of the work hours are duplicative and overlapping. Even more, the estimated work hours are astronomical, and given the experience of counsel it is entirely unclear why a team of four attorneys was required to research and prepare arguments that were supposedly pled so frivolously as to warrant a sanction of almost $22,000.

Finally, to the extent the Community Defendants' attorneys seek fees for addressing the merits of the litigation as a whole, the request is clearly improper. Where there is a mix between frivolous and non-frivolous claims in a Section 1983 case, *Fox v. Vice* clearly prohibits the granting of attorneys' fees for work required if the 1983 claims were not present. 563 U.S. 826 (2011). Because the Community Defendants' attorneys bear the burden of proof, their failure to clearly delineate time preparing the Section 1983 argument from the time preparing the others precludes a legal basis for awarding fees on the motion to dismiss. Relatedly, monetary fees appear to be proper only if it is the least restrictive fee to justify deterrence and, only then, in the least amount. The Community Defendants offer no memorandum to justify either finding.

Accordingly, the Community Defendants' motion must be denied.

ARGUMENT

I. LEGAL STANDARD

"When a plaintiff's civil rights lawsuit involves both frivolous and non-frivolous claims, § 1988 allows a defendant to recover ***reasonable*** attorney fees incurred because of, ***but only because of,*** a ***frivolous claim***; that is, § 1988 permits the defendant to receive only the portion of his fees that he ***would not have paid "but for" the frivolous claim***." 42 U.S.C.A. § 1988. (emphasis added).

In a suit involving, "both frivolous and non-frivolous claims, a defendant may recover the reasonable attorney's fees he expended solely because of the frivolous allegations. And that is all. Consistent with the policy underlying § 1988, the defendant may not receive compensation for any fees that he would have paid in the absence of the frivolous claims." *Fox* at 841.

II. THE COURT HAS NOT FOUND MR. NGUYEN'S 1983 CLAIMS TO BE FRIVOLOUS SIMPLY BY INVITING BRIEFING, AND MR. NGUYEN'S COMPLAINT PROPERLY ALLEGED ACTION "UNDER COLOR OF LAW."

Although the Court found Mr. Nguyen's color of law arguments to be "not persuasive," this is hardly the standard for a sanction of over $21,000 for a Plaintiff who validly alleged a constitutional deprivation of his right to be a father to his daughter.

Mr. Nguyen has not, and does not argue now, that his 1983 claims were based solely on a deprivation of rights "under color of tribal law." He agrees with the Court and the Community Defendants that the law there is settled. To prove his understanding, and pursuant to Judge Susan Nelson's Order in another of Mr. Nguyen's long fights to regain

his constitutional rights as a father[1], Mr. Nguyen has exhausted all potential tribal remedies already. Unsurprisingly, and as alleged extensively in his Amended Complaint and briefing opposing the motion to dismiss, he faced only repeated abuses, bias, harassment, and offensive admonishments on the record in SMSC courts. Further, through Judge Nelson's Order inviting Mr. Nguyen to return to this Court after exhausting his tribal remedies, he had a legitimate basis upon which to return to federal court to find his remedy. To that end, there was nothing frivolous or illegitimate in bringing forth his constitutional claims, notwithstanding the fact that this court found his 1983 claims were not meritorious.

According to the Community Defendants' briefing, the sole issue warranting the outrageous demand of over $21,000 is Mr. Nguyen's pleading of the "state actor" requirement of Section 1983. As alleged in his Amended Complaint, Mr. Nguyen has stated a plausible claim that the Community Defendants were acting under state law when they deprived Mr. Nguyen of his constitutional rights. This very case is about actors, under the guise of acting as tribal authorities, abuse the authority, trust, and full faith and credit conferred upon them through state statutes. The two cannot be uncoupled in a case where tribal authorities attempt to shield themselves under both state and tribal legal structures and statutes. The Community Defendants themselves highlight the interplay between tribal and state authorities in its reference to the Minnesota Department

[1] Nguyen v. Gustafson, Case No. 0:18-cv-00522 (SRN/KMM), Doc. 47.

of Human Services Indian Child Welfare Manual. And further, Mr. Nguyen adequately pled that the actions of the Community Business Council were not at all "independent of a custody case," as alleged by the Community Defendants in their briefing (Comm. Def. Br. at 4). In fact, almost 3 pages and an entire section of Mr. Nguyen's complaint relate directly to these retaliation efforts. The sole reason for the Business Council's no-trespass orders was to deprive Mr. Nguyen of his constitutional rights. There has been no argument that could possibly justify that action otherwise.[2]

To be clear, Mr. Nguyen alleged that the Community Defendants abused powers granted by state and federal law, to secure wardship of Mr. Nguyen's daughter for the tribe itself, and further, granted custody to Mr. Nguyen's violent criminal ex-wife, solely because she is a member of the tribe. Again, Mr. Nguyen has alleged that these actions were in direct retaliation for Mr. Nguyen asserting his valid rights against tribal abuses through legal actions in state and federal venues.

As Mr. Nguyen has properly alleged his 1983 claims, they cannot be viewed as "frivolous," nor has the Court found them to be. Accordingly, the Community Defendants' motion must fail.

[2] Several other constitutional allegations in Mr. Nguyen's complaint also rest solidly on federal civil rights law and Section 1983, predicated on the fact that Mr. Nguyen is a Vietnamese American, non-SMSC member. His claims include the fact that he was discriminated against by the SMSC community and its Tribal Court, a valid factual and legal basis for his claim.

III. THE WORK PERFORMED BY THE COMMUNITY DEFENDANTS' ATTORNEYS WOULD HAVE BEEN PEFORMED ANYWAY, PRECLUDING ANY AWARD OF FEES

Even if the Community Defendants were to prove that the 1983 claims were frivolous, the very crux of the *Fox* case is that a court may only award those fees that would ***not have been incurred but for the frivolous claims***. *Fox v. Vice*, 563 U.S. 826 (2011). (Emphasis added).

> In a suit of this kind, involving both frivolous and non-frivolous claims, a defendant may recover the reasonable attorney's fees he expended solely because of the frivolous allegations. And that is all. Consistent with the policy underlying § 1988, the defendant may not receive compensation for any fees that he would have paid in the absence of the frivolous claims. Id. at 841.

The attorneys for the Community Defendants' have not met this burden. To begin, the fees associated with Exhibit A, the only fees arguably appropriate should the Court find the claims are frivolous, contain many tasks that would have been performed anyway or relate to other claims. For instance, the very first and largest entry on Exhibit A, by work hours, was entered by Joshua T. Peterson for 4.2 hours on May 5, 2021. This description explicitly includes, "Research and analyze issues related to plaintiff's claims for abuse of process, the Indian Civil Rights Act, intentional infliction of emotional distress…analyze outline for motion to dismiss with R. Duncan and S. Vandelist; draft outline for motion to dismiss; analyze confidentiality issues." (Ex. A). Despite a brief reference to 1983, this entry clearly involves an overwhelming majority of non-1983 work. The other major entry on Exhibit A is that of Sarah Vandelist on May 17, 2021, for $1,348.50 (no adjusted amount). Explicitly the research and drafting of that entry centered on the "persons" prong of the 1983 analysis, Mr. Nguyen's pleading of which is

not challenged by the Community Defendants on this motion. Simply, counsel for the Community Defendants have not shown how these fees were incurred "solely in connection with defending the Section 1983 claim." (Comm. Def. Br. at 6), as required under *Fox.*

Those fees referenced in relation to Exhibit B are even more egregious, as by Defendants' counsel's own explanation, "those general tasks" included, "drafting the motion to dismiss, reviewing background materials related to the case, analyzing the amended complaint, and preparing for and attending oral argument," all tasks that clearly would have been conducted whether there were 1983 claims present in this case or not. This is not at all the type of generalized and outrageous penalty anticipated by the Court in *Fox.*

Finally, the fees associated with Exhibit C were only incurred due to the Community Defendants' own actions. Mr. Nguyen is not in any way responsible for unnecessary and costly legal work brought forth solely through defendants' own choices. Importantly for the present motion, in the months leading to the filing of Mr. Nguyen's complaint, his attorneys had several meetings with representatives and counsel for the Community Defendants, and even allowed the Community Defendants' lead counsel to review the Complaint so that the parties could narrow the issues, as well as to preserve the parties' finances and judicial economy. Neither the Community nor its attorneys ever brought up an opposition regarding the "color of state law" element of Mr. Nguyen's 1983 claims, despite the involvement of tribal actors, which it now claims is so supported by "long precedent" as to warrant a punitive sanction of over $21,000. Query why a team

of four experienced attorneys (who demand a collective $2,340 per hour of work), would have not attempted a meet and confer or a sanctions motion at the outset, or would have required almost ***50 hours of legal work*** to later address the issue in costly motion practice. Their own client may also desire that answer, although past litigation against Nguyen and many others shows that the SMSC is no stranger to using its financial riches[3] to quiet opposing litigants.

To now come forward and demand this outrageous amount from a single father after having years of chances to negotiate with Mr. Nguyen (all of which required him to expend massive amounts of his own money to litigate) is predatory at best, and truly only highlights the lengths to which the tribe will use its own courts and financial advantage to squash non-members' rights. Moreover, many of the entries are duplicative, such as Ms. Davidson and Mr. Peterson's discussion on November 3, 2021, multiple entries where one attorney is simply reviewing another's work, and a large bulk of hourly work spent on what appears to be recreating (or creating for the first time) time entries which

[3] "The Shakopee Mdewakanton are the wealthiest Native American tribe, going by the individual personal wealth. They are 480 members, and each member gets around $84,000 per month, as disclosed by a tribe member going through a divorce. The tribe is so rich that no one has to work; in 2012, the tribe's President then, Stanley R. Crooks, bragged that they enjoy 99.2% of voluntary unemployment. According to Daily Mail, the main sources of income for the Shakopee Mdewakanton tribe are two casinos that attract tens of thousands of gamblers from all across the state. The Mystic Lake Casino boasts an 18-hole golf course, 2,100 seat concert venue, 600-room hotel, five restaurants, and an 8,350-seat outdoor amphitheater. The reservation also has Little Six Casino, and together, they account for $1.4 billion of Minnesota's gambling profits." https://moneyinc.com/richest-native-american-tribes/

presumably should have been entered in long ago, at the time any work was initially conducted.

As all the Community Defendants' costs and fees would have been incurred regardless of the presence of the 1983 claims or were only incurred simply by their own choosing to run up the bill on Mr. Nguyen, the fees are entirely unwarranted.

IV. THE COMMUNITY DEFENDANTS INCURRED NO ACTUAL ATTORNEY'S FEES.

Assuming without conceding that the Court will find a monetary fee is appropriate in the amount of attorneys' fees the Community Defendants incurred responding to the complaint and seeking attorneys' fees, the Community Defendants' motion fails because it does not show that the *Community Defendants* incurred any attorney's fees. (ECF Doc. 46). Evidence that the undersigned expected included a fee agreement, invoices, or at least proofs of payment. None of this is to be found. Instead, the Community Defendants' attorneys provided a statement of attorney hours which, ostensibly, has been pared down to remove "arguably unnecessary, excessive, or duplicative." At § V, below, Mr. Nguyen disagrees that this survives a traditional attorney's fees analysis. This section more narrowly addresses the point that the statement of hours has no tendency to prove that the *Community Defendants*, as opposed to a third party, incurred any attorney's fees expense.

To "incur" has precisely one definition: "To suffer or bring on *oneself*." INCUR, Black's Law Dictionary (11th ed. 2019) (emphasis added); see also *Hall v. United States*, 566 U.S. 506, 511–12, 132 S. Ct. 1882, 1887, 182 L. Ed. 2d 840 (2012) (adopting the definition to hold that the definition is limited to an expense "incurred by" the subject of

the statute there). Thus, the Community Defendants did not "incur" attorney's fees if a third party paid for them. Because the Community Defendants motion omits any evidence that suggests the *Community Defendants*–as opposed to, say, the Shakopee Mdewakanton Sioux Community or its insurer[4]–paid the attorneys' fees, the motion fails to adduce any evidence which is responsive to the Court's Order.[5]

As the Community Defendants themselves have not shown that they themselves incurred any legal fees related to the litigation, the correct quantum of attorneys' fees is $0.

V. THE FEES SOUGHT ARE UNREASONABLE.

Even despite the fact that the *Community Defendants* actually incurred no attorneys' fees, defeating the entire motion, the Community Defendants' motion fails to survive a basic lodestar review.[6] A lodestar review entails considering the reasonableness of the proffered number of hours spent on the matter and as well as the proffered hourly rate. See Wright & Miller, 10 Fed. Prac. & Proc. Civ. § 2675.2 (4th ed.); *Hensley v. Eckerhart,* 461 U.S. 424, 432, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983) (Hours that are excessive, redundant, or otherwise unnecessary should be excluded from the fee request); *Orduno v.*

[4] If the Shakopee Mdewakanton Sioux Community did not pay the legal fees in this matter, then no doubt its insurer, through obligations of indemnification and provision of counsel have incurred the costs, not the Community Defendants themselves.

[5] For instance, the Court, in its application determining reasonableness, could issue a declaratory order requiring the SMSC's insurer to turn over to the Court (under seal or even in camera, if necessary) its insurer panel rates for all counsel who defend such similar actions. Mr. Nguyen would, of course, urge the Court not to accept such fees presented at face value with no other proof attached.

[6] Indeed, neither the Shakopee Mdewakanton Sioux Community nor its insurer(s) are defendants in this matter.

Pietrzak, 932 F.3d 710, 719–20 (8th Cir. 2019) (the party seeking fees bears the burden of establishing entitlement to an award and documenting the appropriate hours and hourly rates). District courts must be mindful of both redundant and excessive hours. *Id.*, 932 F.3d at 720. For the reasons stated below, any attorneys' fees actually found to be appropriate must be severely reduced as redundant and excessive.

A. The attorney rates and hours are unreasonable per se.

The Community Defendants demand hourly rates of $885 (Duncan), $560 (Peterson), $460 (Davidson), and $435 (Vandelist), for a combined rate of an outrageous $2,340 per hour. While the Community Defendants claim that the hours represented in Exhibits A-C were in some way reduced, the claim that all amounts in those exhibits could in some way be relevant to the 1983 claims is inconceivable. When combined, the exhibits total over 245 hours of legal work at a total bill of over $156,500. Counsel in good faith cannot imagine how a team of four attorneys (and many other consultants listed in the description columns of the exhibits) could be required to put in almost 250 hours of legal work to respond to a complaint, argue a half hour motion[7], and then bring the present 11-page memorandum, composed mostly of the presentation of work hours, rates and degree of experience. Had this case been allowed to proceed to discovery, the Community Defendants and whoever was fronting the bill for this litigation could have accrued $1,000,000 in the first year of litigation. This keeps single fathers like Mr. Nguyen from ever getting to their day in Court against such gross financial power. But even more

[7] Counsel for all parties stipulated to 30 minutes for the Plaintiff and 30 minutes for all Defendants at the Motion to Dismiss hearing.

disturbing, it allows a firm that charges such rates to overstaff a case and run up an outrageous bill, then in turn, collect from two sources: whoever is fronting the bill for the seven individuals named in Mr. Nguyen's complaint, and Mr. Nguyen himself.

Many entries were expressly duplicative. Others included work that could easily have been performed by an associate or paralegal at a cheaper rate or involved research into knowledge that clearly should have already been known to such seasoned practitioners of Indian and federal law. (E.g., "analyze whether the tribal court documents need to be filed under seal", Peterson entry on May 4, 2021). All of this is impermissible under *Hensley*; see also *Orduno* (fees cut due to excessive billing and overstaffing). Accordingly, the Community Defendants' rates and hours as presented are unreasonable per se.

B. The number of hours reviewing the complaint and researching "only" Plaintiff's 1983 claims is redundant and excessive.

Additionally, the time purportedly spent reviewing the Complaint and researching the 1983 claims is redundant and excessive. There are two problems. First, the time spent reviewing the complaint is distinct from the time researching the 1983 claims. Hours sheets must be sufficiently detailed to permit review of the award. *Karl's, Inc. v. Sunrise Computers, Inc.,* 21 F.3d 230, 232 (8th Cir. 1994). Time spent reviewing the complaint must be distinguished from the time researching because it reasonably should have taken 0.1 hours to form the conclusion that Plaintiff's 1983 claims were so frivolous as to warrant over $21,000 in sanctions to Mr. Nguyen. No more time than that was reasonable for four attorneys practiced and experienced in Indian and federal law before proceeding on the

understanding that the 1983 claims could be defeated based on the "color of law" determination.

Second, the complexity of the legal theory at issue commands a finding that this much research time was unreasonable. See *Orduno*, above (substantial cuts to the attorney's fees request was proper because the legal issues involved "are not particularly novel or difficult.") If the issue is so simple, then it was patently unreasonable for four attorneys on the case and multiple other consultants and attorneys to take over 245 hours to craft the arguments necessary to show the purported frivolity of Mr. Nguyen's constitutional claims.

C. The time "reviewing" and "analyzing" the motions and law the Community Defendants claim was required for the 1983 claims and this motion is redundant and excessive.

Likewise, the time spent "reviewing" and analyzing this motion and work that was supposedly related to only 1983 claims is redundant and excessive. Indeed, the words "review" and "analyze" appear a combined 90 times in just Exhibit B alone. To the extent that some of the time spent "reviewing" and "analyzing" was distinct from the time spent editing the answer and motions, combining the two runs afoul of the requirement that the hours logs be sufficiently detailed to permit judicial review. *See Karl's,* above.

Further, the time responding to the merits of Plaintiff's Complaint is not a permissible ground for attorneys' fees. *E.g., Spectra Commc'ns Grp., LLC v. City of Cameron, Mo.,* 806 F.3d 1113, 1123 (8th Cir. 2015). None of the time spent on the motion to dismiss, or its reply, is delineated between 1983 and the application of law to the facts asserted in the Complaint. All of the motion to dismiss time is therefore legally excessive.

In any event, the 1983 "color of law" issue in the motion to dismiss was identical to the "color of law" issue in the motion for fees. Thus, all of this time is duplicative and excessive.

D. The time spent on oral argument is duplicative and excessive.

Between July 12, 2021, and July 26, 2021, the Community Defendants' attorneys purportedly spent an incredible 34.9 hours preparing for an oral argument before a trial court that all parties stipulated would include only 30 minutes for the Community. Mr. Peterson alone billed 12 hours, of which 4.3 hours included attending the hearing, yet he did not have a speaking role. His time is duplicative with Mr. Duncan and should be stricken. As for Mr. Duncan, he billed 3.3 hours on the day of the hearing itself, to "Present argument on motion to dismiss; meet with clients and co-counsel; travel to/from St. Paul courthouse." (Ex. B). The time is not delineated between the time presenting the argument, the meeting with clients and co-counsel, and traveling to the courthouse, much of which would clearly be unrelated to any 1983 claims or any legal defenses at all. Nor does it clearly exclude his time watching the portion of the hearing devoted to issues other than 1983 color of law, or that argued by counsel for Ms. Alholina. And as stated, on the legal issue of the "color of law" standard alone, no more than 0.5 hours of preparation time is reasonable. Anything more requires an acknowledgment that this issue is not so simple, after all, that the 1983 claims were in no way "frivolous," and therefore, no attorneys' fees are appropriate.

E. Sum of reasonable hours

In summary, the rates and hours presented by the Community Defendants are astronomical, given: (1) the scope of the case; (2) the very narrow portion of awardable fees even if this Court were to find Mr. Nguyen's 1983 claims to be frivolous; (3) that fact that only one element of the 1983 claim is alleged to be frivolous; and (4) the purported level of experience and knowledge possessed by the four attorneys that represented the Community Defendants. Some non-monetary sanction would be more than reasonable, particularly given that the Community Defendants did not actually incur any of these attorneys' fees.

VI. THERE IS NO ARGUMENT AS TO WHY NONMONETARY ATTORNEYS' FEES ARE INADEQUATE.

Mr. Nguyen acknowledges that the Court already invited the Community Defendants to file an "appropriate motion," but there has been no justification in any of the present briefing for why nonmonetary attorneys' fees would not deter like pleadings in the future. See FRCP 11(c)(4) ("A fee imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated"); see also Wright & Miller, 5A Fed. Prac. & Proc. Civ. § 1336.3 (4th ed.) ("The current text of Rule 11 contemplates greater use of nonmonetary attorneys' fees for a violation of the signing requirements.")

For example, in *Willhite v. Collins*, monetary attorneys' fees on this issue were appropriate where the attorney "has been fee'd multiple times in the past" for the same type of pleading. 459 F.3d 866, 869 (8th Cir. 2006). Contrast, here, where neither Mr. Nguyen

nor any of the undersigned has been fee'd or otherwise sanctioned for the type of pleading at issue before. Without unnecessarily repeating the objections to attorneys' fees, Mr. Nguyen continues to urge the Court to consider that none of the Community Defendants' cited authority involves the type of case present here. In fact, the Eighth Circuit has a strong tendency to negate the appropriateness of attorneys' fees. Contra. FRCP 11(b)(2) (the defenses fall under "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.") And, therefore, these defenses tend to diminish the appropriate quantum of attorneys' fees.

A simple reprimand is more than sufficient to deter Mr. Nguyen and his Counsel from a similar pleading in the future. Other viable options, short of monetary attorneys' fees, include orders temporarily prohibiting similar pleadings, to undergo continuing legal education, and warnings. See generally Wright & Miller, above. The Court's order disposing of the Community Defendants' motion should revise its fee to one short of a monetary one–particularly one short of the jaw-dropping $21,510.50 sought by the Community Defendants motion or, at least, should justify why no fee short of a monetary fee will deter like pleadings in the future.

CONCLUSION

WHEREFORE, Mr. Nguyen prays this Court deny the Community Defendants' motion for attorney's fees in full; or, failing that, justify why no non-monetary fee would deter like conduct in the future, apply the lowest monetary fee which would deter like conduct in the future.

Respectfully submitted on November 25, 2021,

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CERTIFICATE AND NOTICE OF SERVICE

NOTICE IS GIVEN that I, Jason S. Juran e-filed the foregoing document by uploading it to the Court's CM/ECF system on November 25, 2021 which sends service to registered users, including all other counsel of record in this cause. */s/ Jason S. Juran*