

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>NORTHEAST OHIO COALITION</b>	:	
<b>FOR THE HOMELESS, <i>et al.</i>,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>JENNIFER BRUNNER, in her official</b>	:	
<b>capacity as Secretary of State of Ohio,</b>	:	
	:	
<b>Defendant.</b>	:	<b>Case No. C2-06-896</b>
	:	
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<b>NORTHEAST OHIO COALITION</b>	:	<b>JUDGE ALGENON L. MARBLEY</b>
<b>FOR THE HOMELESS, <i>et al.</i>,</b>	:	<b>Magistrate Judge Terence P. Kemp</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>THE STATE OF OHIO,</b>	:	
	:	
<b>Intervenor-Defendant.</b>	:	

**ORDER**

This matter is before the Court on Plaintiffs Northeast Ohio Coalition for the Homeless’ (“NEOCH”) and Service Employees International Union, Local 1199’s (“SEIU”) (collectively “Plaintiffs”) unopposed Motion for Reconsideration of the July 28, 2009 Opinion and Order awarding attorneys’ fees and costs. (Doc. No. 204.) In that Motion, Plaintiffs request that the fees and costs awarded in the Court’s July 28, 2009 Order be increased to include fees and costs generated by Attorney Subodh Chandra for his work on this case during the 2006 election season. For the reasons set forth below, this Court **GRANTS** Plaintiffs’ Motion to Reconsider and revises it previous fees and costs award as explained below.

On January 4, 2008, Plaintiffs filed their First Motion for Attorneys' Fees and Costs, seeking fees and costs for work performed in this case during the 2006 election season. (Doc. No. 96.) That motion was supported by the Declarations of Caroline Gentry, Subodh Chandra, and H. Ritchey Hollenbaugh setting forth the fees and costs requested. In an Opinion and Order dated September 30, 2008. *Ne. Ohio Coal. for the Homeless v. Brunner*, No. 2-06-896, 2008 WL 4449514, at \*5-8 (S.D. Ohio Sept. 30, 2008), this Court held that Plaintiffs were entitled to attorneys' fees and costs, but reserved the issue of what constituted reasonable fees and costs for a subsequent hearing. *Id.* at \* 9-10. The Court requested supplemental briefing on the reasonableness of fees and costs relating to the 2006 work.

On January 20, 2009, Plaintiffs filed a Supplemental Brief on what constituted a reasonable fee and costs award for the 2006 work, accompanied by two new affidavits—one from Caroline Gentry and one from H. Ritchey Hollenbaugh—setting forth the fees and costs requested. (Doc. Nos. 176, 177, and 178.) The Plaintiffs failed a new affidavit from Subodh Chandra to their supplemental fee brief. On that same day Plaintiffs filed a Second Motion for attorneys fees and costs relating to work performed to secure two Consent Orders during the 2008 election season. The Second Motion for Attorneys' Fees and Costs was accompanied by three affidavits—one from Caroline Gentry, one from H. Ritchey Hollenbaugh, and one from Subodh Chandra—setting forth the fees and costs requested for the 2008 work.

On July 28, 2009, the Court granted Plaintiffs' motions for fees and costs relating to both the Supplemental Brief on what constituted a reasonable fee award for work performed in 2006 and the Second Motion for fees and costs relating to the 2008 election season. The Court awarded a combined fee and costs award for the 2006 and 2008 work of \$401,905.50 in attorneys' fees and \$29,468.55 in costs and expenses, for a total of \$431,374.05.

The July 28, 2009 award did not include fees or costs generated by Attorney Subodh Chandra during the 2006 election season because the Plaintiffs' Supplemental Brief did not include a declaration by Mr. Chandra setting forth his 2006 fees and costs. The Court considered the supplemental briefing controlling and, therefore, did not refer back to Mr. Chandra's previous declaration. Moreover, because the Supplemental Brief failed to state the actual amount of fees and costs requested by Plaintiffs' counsel and instead only requested "that this Court grant them a full lodestar fee award at the rates and hours set forth in the declarations of counsel" the Court relied on the two accompanying affidavits, those of Ms. Gentry and Mr. Hollenbaugh and had no notice that the Plaintiffs were requesting additional fees related to Mr. Chandra's 2006 work.

Plaintiffs now move the Court to revise its award to include Attorney Subodh Chandra's fee and cost request relating to the 2006 election season work. They explain that they intended to rely on Mr. Chandra's original declaration in support of their first motion for attorney's fees and seek fees for Mr. Chandra's 2006 work but that they inadvertently failed to inform the Court of their intention. Defendants do not oppose a revision of the fee and cost award to include Mr. Chandra's 2006 work.

Under Federal Rule of Civil Procedure 54(b) this Court has the power "to reconsider interlocutory orders and to reopen any part of a case before entry of final judgment." *Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 80 F.App'x 949, 959 (6th Cir. 2004). Generally, a motion for reconsideration is only warranted when there is (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice. *Id.* The Court finds that Plaintiffs' motion to reconsider should be granted because refusing to grant Mr. Chandra fees and costs because of what amounts to a filing

oversight would work a manifest injustice. Accordingly, the Court adopts the reasoning and analysis set forth in its July 28, 2009 Order and finds that, for the reasons set forth in that Order, Mr. Chandra's fees and costs relating to the 2006 Consent Orders are recoverable. Therefore the Court will revise its fees and costs award as set forth below.

In his declaration Mr. Chandra requests \$96,641.25 in attorney's fees and \$527.06 in costs. (Doc. No. 96, Ex. 2.) Based on a review of the billing entries attached to Mr. Chandra's declaration, the Court deducts \$6000 from Mr. Chandra's fee request because that figure represents work relating the 2006 Temporary Restraining Order.<sup>1</sup> According to Plaintiffs' representation to the Court, they do not seek fees based on their work on the 2006 TRO. (Doc. No. 102, Pfs.' Response in Opp'n 12 ("Plaintiffs did not rely on the TRO as a basis for their [First Motion for Attorney's fees].")) Therefore, the Court finds that deducting the hours expended by Mr. Chandra on the 2006 TRO is appropriate.

Accounting for that deduction, Mr. Chandra's revised fee request is \$90,641.25. Adding this sum to the revised combined lodestar figure calculated by the Court in the July 28, 2009 Order, Plaintiffs combined loadstar fee request (accounting for all deductions made by the Court) is \$593,023.12 ( $\$502,381.87 + \$90,641.25 = \$593,023.12$ ). For the reasons detailed in the July 28, 2009 Order, the Court will apply a 20% reduction to the lodestar figure to account for Plaintiffs' meaningful, but less than total, success. This results in a total fee award of \$474,418.50 ( $\$593,023.12 \times 20\% = \$118,604.62$ ;  $\$593,023.12 - \$118,604.62 = \$474,418.50$ ).

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<sup>1</sup> The \$6,000 figure is comprised of \$1800 (6 hours) logged by Chandra on October 23, 2006 and \$4,200 (14 hours) logged on October 26, 2006 that the Court finds were spent preparing for and attending the Temporary Restraining Order proceedings before this Court. See Doc. No. 96 Ex. 2 Chandra Decl. 11, 12.)

Turning to the costs award, adding in Mr. Chandra's 2006 costs, the resulting combined costs and expenses award is \$29,995.61 ( $\$29,468.55 + \$527.06 = \$29,995.61$ ).

#### **IV. CONCLUSION**

For the foregoing reasons Plaintiffs Motion for Reconsideration (Doc. No. 204) is **GRANTED**. The Court hereby REVISES its July 28, 2009 Order awarding fees and costs to include Attorney Subodh Chandra's 2006 fees and costs. The resulting combined revised award for Plaintiffs First and Second Motions for Attorneys' Fees and Costs is as follows: \$474,418.50 in attorneys' fees and \$29,995.61 in costs and expenses, for a total of \$504,414.11.

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**United States District Court Judge**

**DATED: July 30, 2009**