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MAY 15 2014

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE GUADALUPE PEREZ-FARIAS; JOSE F. SANCHEZ; RICARDO BETANCOURT, and all other similarly situated persons, Plaintiffs - Appellants, v. GLOBAL HORIZONS, INC.; JANE DOE ORIAN; PLATTE RIVER INSURANCE COMPANY; VALLEY FRUIT ORCHARDS, LLC; GREEN ACRE FARMS, INC.; MORDECHAI ORIAN, Defendants - Appellees.	No. 10-35397 D.C. No. 2:05-cv-03061-RHW Eastern District of Washington, Spokane ORDER

Before: Peter L. Shaw, Appellate Commissioner.

I
Background

Jose Guadalupe Perez-Farias, Jose F. Sanchez, and Ricardo Betancourt, class representatives (collectively, "Workers"), brought this employment law class action under 42 U.S.C. § 1981, 29 U.S.C. §§ 1801-1872, and Washington state law against Global Horizons, Inc. ("Global"); Valley Fruit Orchards, LLC, and Green Acre Farms, Inc. (collectively, "Growers"); Platte River Insurance Company;

Mordechai Orian; and Jane Doe Orian. The district court held that Global violated the Washington Farm Labor Contractors Act ("FLCA"), Washington Revised Code Annotated §§ 19.30.010 -.30.902, and that Growers were jointly and severally liable for the violations. The court awarded statutory damages to Workers. After a jury trial, the district court found that Global had discriminated against Workers on the basis of race and national origin and awarded punitive and other damages. The district court found, however, that Growers were not liable for Global's illegal discrimination or for punitive damages. The district court awarded attorneys' fees to Workers as to Global, but found that Workers were not prevailing parties under the FLCA as to Growers and not entitled to an award of attorneys' fees against Growers.

Workers appealed. They contended that the district court erred by finding that it had the discretion to award statutory damages of less than $500 per plaintifff per violation under the FLCA. Workers also contended that the district court abused its discretion by determining that they were not prevailing parties, and thus not entitled to attorneys' fees against Growers under the FLCA. Finally, Workers contended that the district court erred by finding that Growers were not liable as principals for the illegal discrimination Growers' agent, Global.

During the appeal, this court certified state law questions to the Washington Supreme Court. After the Washington Supreme Court submitted its certificate of finality addressing the state law issues, this court reversed the district court's determination of the statutory damages, and remanded for an award of $500 per plaintiff per violation under the FLCA. The court also reversed the prevailing party and attorneys' fees issue under the FLCA and remanded the matter to the district court for further proceedings. Finally, the court affirmed the district court's finding that Growers were not liable for Global's illegal discrimination against Workers.

Workers filed a motion for attorneys' fees pursuant to the FLCA, Revised Code of Washington section 19.30.170(1), and Growers opposed the motion. The court granted the fee motion "in principle," and referred the matter to the Appellate Commissioner.

II
Analysis

A. Applicable Law

If the substantive issues raised in a federal court proceeding involve state law, state law governs the award of attorneys' fees. *See In re Baroff*, 105 F.3d 439,

441 (9th Cir. 1997); *see also Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 260 n.31 (1975).

Here, Workers were prevailing parties and were awarded attorneys' fees pursuant to the FLCA. Accordingly, Washington state law governs the substantive law concerning the award of fees to Workers.

Like the analysis under federal law, Washington applies the lodestar analysis to a determination of the fee award. *See Brand v. Dep't of Labor & Indus.*, 989 P.2d 1111, 1114 (Wash. 1999); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983). The lodestar is calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended. *Brand*, 989 P.2d at 1114; *see Hensley*, 461 U.S. at 433-34 ("The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.").

B. Fee Request

Workers request $143,033.50 in attorneys' fees for 510.75 hours of work by their attorneys at the following hourly rates: $275 for Lori Jordan Isley, Esq., $270 for Joachim Morrison, Esq., $300 and $325 for Matthew Geyman, Esq., and $320 for Richard W. Kuhling, Esq.

C. Documentation

Growers contend that the entries in the fee documentation describing the tasks performed by Growers' attorneys are not sufficiently detailed to evaluate the reasonableness of the fee request.[1] *See* 9th Cir. R. 39-1.6(b) (fee request must contain a "detailed itemization of the tasks performed and the amount of time spent by each lawyer").

This contention lacks merit. Counsel "is not required to record in great detail how each minute of his time was expended." *Hensley*, 461 U.S. at 437 n.12. Counsel can satisfy the burden of submitting evidence supporting the hours claimed by listing the hours and "identify[ing] the general subject matter of [the]

[1] Growers cite to federal case law in analyzing their objections to the fee documentation. Federal case law is applicable and pertinent because the adequacy of the fee documentation is, at least in part, a matter of the procedural requirements for submitting a fee request to federal court. *See In re Larry's Apartment, L.L.C.*, 249 F.3d 832, 837 (9th Cir. 2001) (federal courts apply state substantive law and federal procedural law under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)); *see also Mangold v. Cal. Pub. Util. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995) (method of calculating attorneys' fees is governed by state law, but decisions concerning whether to hold an evidentiary hearing, for example, are matters of court administration). In any event, Washington and federal law on the adequacy of documentation do not differ in any meaningful way. *Compare Mahler v. Scucz*, 957 P.2d 632, 651 (Wash. 1998) (documentation need not be exhaustive or in minute detail), *overruled on other grounds by Matsyuk v. State Farm Fire & Cas. Co.*, 272 P.3d 802 (Wash. 2012) *with Hensley*, 461 U.S. at 437 n.12 (counsel "is not required to record in great detail how each minute of his time was expended").

time expenditures." *Id.*; *see* *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000); *see also Mahler*, 957 P.2d at 651.

Here, each of Workers' attorneys recorded the tasks they performed in separate entries setting forth the time expended and a description of the tasks that ranged from general to very specific. Growers criticize counsel Isley's entries for being overly vague, but the examples of defective descriptions and time expenditures identified by Growers contain sufficient detail to permit the court to evaluate the reasonableness of the fee request. *See Fischer*, 214 F.3d at 1121.

Growers also contend that Workers' attorneys engaged in "block-billing" in the fee documentation, and that this practice prevents the court from assessing the reasonableness of the fee request. "Block billing" is the failure to itemize each task individually in the billing records. The time requested should be reduced if block billing makes it impossible to evaluate the reasonableness of the time. *See Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007) (citing *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004)); *see also Mendez v. County of San Bernardino*, 540 F.3d 1109, 1129 (9th Cir. 2008).

Counsel Isley and Morrison itemized their tasks individually in tenth of an hour increments. These time sheets contain sufficient detail and itemization of the tasks to evaluate the reasonableness of the tasks and time requested.

Counsel Geyman recorded his tasks in half-hour increments, but stated in a declaration that he reduced his requested time to the lower half-hour increment of the time actually expended. Furthermore, each entry lists one or more tasks that are related in subject matter. Accordingly, Geyman's time sheets are also recorded in sufficient detail to allow the court to evaluate the reasonableness of the fee request.

Counsel Kuhling requests compensation for 9.75 hours. Kuhling recorded his tasks in quarter-hour increments, and he states in a declaration that he did not reduce his time. Although the tasks are described in adequate detail in the time sheets, Kuhling's practice of recording his time in quarter-hour blocks without reduction likely resulted in overstating the time expended. The fee award shall be reduced to account for Kuhling's failure to document his time properly. *See Welch*, 480 F.3d at 948.

D. Hours

1. Time Expended in Washington Supreme Court

Growers assert that fees for time expended in the litigating the certified questions before the Washington Supreme Court "are more properly determined by that court" and that Workers' request for fees related to the proceedings in that court is "inappropriate."

Growers do not explain why the request for fees related to the work before the Washington Supreme Court should be decided by that court or why the Workers' request for fees related to that work is inappropriate. This court has awarded fees in other cases for fees incurred in necessary and related state court proceedings. *See Bartholomew v. Watson*, 665 F.2d 910, 913 (9th Cir. 1982). Furthermore, under both federal and Washington state law, fees may be awarded for time reasonably expended. *See, e.g.*, *Fischer*, 214 F.3d at 1119 (fees may be awarded for hours reasonably expended); *Absher Const. Co. v. Kent School Dist.*, 917 P. 2d 1086, 1089 (Wash. App. 1995) (same). Because the time expended was reasonable and related to the federal appeal, the hours shall be awarded.

2. Time Expended on Unsuccessful Claims, Issues, or Matters

Growers next contend that Workers should not be compensated for unsuccessful claims or issues, including work related to the unsuccessful discrimination issue. *See Mahler*, 957 P.2d at 651 (court should exclude wasteful and duplicative hours and any time pertaining to unsuccessful theories or claims).

Counsel Isley, Morrison, and Geyman have all submitted declarations stating that they have not requested fees for time spent on the unsuccessful discrimination issue. Growers have not rebutted this evidence. The fee documentation supports the attorneys' declarations. Accordingly, Growers' argument that Workers should

not be compensated for work on unsuccessful claims or issues is without merit as to the work performed by Isley, Morrison, and Geyman.

Workers have not submitted evidence that counsel Kuhling eliminated from his fee request work performed on the unsuccessful discrimination issue. A review of his time sheets does not show that Kuhling's time was spent only on the successful issues. Accordingly, Workers are awarded 5 hours for Kuhling's work in this appeal, to account both for his practice of block-billing his time entries and his failure to eliminate time spent on unsuccessful issues from the fee request.

3. Total Time Claimed

A review of the remaining hours claimed in the fee application along with a review of the work product filed in the court reveals that the hours claimed were reasonably expended.

E. Hourly Rates

Growers contend that the evidence supporting the $275 and $270 hourly rates requested by Isley and Morrison are inadequate because they are based on a survey that was not provided to the court. Growers also contend that Geyman's requested hourly rates of $300 and $325 are not justified or supported by any evidence. Growers do not challenge Kuhling's requested hourly rate.

Growers' contentions lack merit. In addition to the survey evidence that Workers contend support their requested hourly rates, Workers presented evidence that Isley, Morrison, and Geyman have similar experience. They practice complex civil litigation, and Isley has practiced since 1992, Morrison has practiced since 1993, and Geyman was admitted to practice in 1987. Isley and Morrison represent low income clients for Columbia Legal Services in Washington, while Geyman is an attorney with a law firm. Workers' evidence shows that Geyman charged hourly rates of $300 for his services from 2009 to 2011, and $325 after 2011. Geyman's declaration, submitted with the fee motion, states that courts had previously awarded fees based on Geyman's standard hourly rates. Similarly, Isley stated that a bankruptcy court awarded her requested hourly rate of $250 in 2010. Furthermore, Workers' evidence shows that courts had awarded fees based on hourly rates of $325 to $375 for attorneys with experience similar to that of Geyman.

"That a lawyer charges a particular hourly rate, and gets it is evidence bearing on what the market rate is." *Carson v. Billings Police Dept.*, 470 F.3d 889, 892 (9th Cir. 2006). Evidence that Geyman charged to clients and received the requested hourly rates of $300 to $325 tends to show that those are market rates for attorneys with similar experience with a comparable practice. Furthermore, other

court-ordered attorney's fee awards, including those involving the attorneys here, are relevant to determining the prevailing market rates. *See Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007) (evidence of rate determinations by other courts is relevant to determining the prevailing market rate) Finally, the Appellate Commissioner's evaluation of rates requested in similar appeals suggests that Workers' claimed rates are in line with "the prevailing market rate for attorneys of comparable skill, experience and reputation." *Id.* (citing *Blum v. Stenson*, 465 U.S. 886, 895-97 (1984)). Workers' requested hourly rates are awarded.

III
Conclusion

Attorneys' fees in the amount of $141,513.50 are awarded in favor of Workers and against appellees Valley Fruit Orchards, LLC, and Green Acre Farms, Inc. This order amends the court's mandate.