IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GLORIA FAULK, et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 96-A-1384-N
)
HOME OIL COMPANY, INC.,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

I. FACTS AND PROCEDURAL HISTORY

This cause is before the court on the Plaintiffs' Motion for Attorneys' Fees and Expenses (Doc. #100) filed on April 13, 2000.

This action was brought under 42 U.S.C. §1981 by African-American and white employees of the Defendant who alleged that they had been subject to discrimination on the basis of race. The Plaintiffs filed a Motion for Class Certification which was denied by this court on June 28, 1999.

The Plaintiffs then proceeded on their individual discrimination claims. Two of the Plaintiffs, Pamela Humphries and Harvette Culver, were dismissed from the action by this court for failure to appear at their depositions. The remaining Plaintiffs asserted numerous discrimination claims. On February 16, 2000, this court granted in part the Defendant's Motion for Summary Judgment and entered summary judgment on all claims brought by Mary Grover, Esther West, Kimberly Whitehurst, and Virginia Tatum. The court also granted summary judgment as to the hostile environment claim of Sherrie Cunningham, Ella Evans, Emma McCleod, and Gloria Faulk and as to the outrageous conduct claims brought by Gloria Faulk,

Kent Grubb, Sherrie Cunningham, and Ella Evans. The court also granted summary judgment on the promotion claim brought by Sherrie Cunningham. The case was allowed to proceed on Robert Condrey's termination claim, Cassandra Hodo's termination claim, Ella Evans' termination and equal pay claims, Kent Grubbs' termination and hostile environment claims, Gloria Faulk's promotion claim, Emma McCleod's promotion and equal pay claim, Tommy Grubbs' failure to hire claim, Frances Myles failure to hire claim, and Norma Kinsman's claims brought by white plaintiffs.

The parties mediated the remaining claims. The mediation resulted in a settlement in which the Defendant agreed to pay a total of $200,000 to the nine remaining Plaintiffs. Plaintiffs' attorneys now seek $390,000.00 in attorneys' fees and costs.

II. DISCUSSION

"In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988. "[A] prevailing plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' " Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (quoting S.Rep. No. 94-1011, p. 4 (1976)). In determining whether a party is entitled to attorney's fees pursuant to § 1988, a district court must first determine whether the party is a "prevailing party." Id. at 433, 103 S.Ct. 1933. If the party meets this threshold determination, the court must then "determine what[, if any,] fee is 'reasonable.' " Id.

The first issue before this court, therefore, is whether the parties for whom attorneys' fees are sought are prevailing parties.

A. Prevailing Parties

Many of the Defendants' objections to the hours claimed by the Plaintiffs' attorneys stem from their contention that the Plaintiffs have claimed hours attributed to claims of persons who were not prevailing parties. To qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. Farrar v. Hobby, 506 U.S. 103 (1992).

The Defendant disputes that the Plaintiffs should be able to claim any of the hours expended in connection with their motion for class certification since that motion was denied by the court. The Defendant contends that 606.304 hours should be attributed to the class certification motion. The Defendant has relied on Cullens v. Georgia Department of Transportation, 29 F.3d 1489 (11th Cir. 1994). In Cullens, the Eleventh Circuit affirmed the district court's refusal to award fees to plaintiffs who sought and were denied class certification because the plaintiffs were not prevailing parties. Id. at 1495.

The Plaintiffs respond that the Defendant is simply wrong to state that plaintiff's counsel is not entitled to fees and expenses for time spent on the class issues in this case. The Plaintiffs cite to a non-binding case outside of the Eleventh Circuit, O'Neal v. City of Seattle, 66 F.3d 1064 (9th Cir. 1995), in which fees were awarded where the motion for class certification was not a separate claim, but was a method of pursuing the plaintiff's ultimately successful claims. The Plaintiffs also argue that even if the Defendant is right, the Defendant has grossly exaggerated the time and expense attributed to the class issues and that much of the time spent on class certification issues was also expended on issues relative to the merits of the claim.

Clearly, at least some of the individual plaintiffs in this case were prevailing parties. The putative class itself, however, was not a prevailing party and, therefore, is not entitled to attorneys' fees. See Cullens, 29 F.3d at 1495. In addition, the individual Plaintiffs have not

demonstrated that any of them benefitted by seeking class certification. The only benefit to the individual Plantiffs came to the extent that class certification issues were related to merits issues. For instance, the Plaintiffs have stated that the Plaintiffs' expert's statistical analysis and affidavit was used to support the successful claims of Emma McLeod and Gloria Faulk. The Plaintiffs also state that the Federal Rule of Civil Procedure 30 (b)(6) depositions taken were used in the summary judgment and mediation stages of the case.

The Defendant concedes that the depositions taken of the Plaintiffs which included both class certification and merits issues should not be regarded as part of the Plaintiffs' unsuccessful efforts to obtain class certification. Accordingly, while the court finds that the class itself was not a prevailing party, to the extent that the prevailing individuals relied on evidence and other materials relevant to class certification in supporting their claims on the merits, the attorneys' fees attributable to class certification are recoverable.

As will be discussed below, the fact that not all of the time expended in moving for class certification is properly recoverable is a factor that the court will consider in determining the reasonable number of hours to be applied in calculating the lodestar figure. The court also concludes, however, that the time spent actually researching class certification-specific issues, writing, discussing, reviewing, and editing the brief in support of class certification, the reply brief, the motion for reconsideration, and the renewed motion for class certification is time which is not attributable to any of the prevailing Plaintiffs. Accordingly, the court finds that those hours should be deducted. Upon review of the time sheets submitted to the court, the following hours will be deducted:[1]

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[1] In so deducting, the court has not deducted all of the time entries highlighted by the Defendant. Instead, the court has limited these deductions to entries involving research, review,

Ann Robertson	6.0
Robert Childs	67.3
Joe H. Calvin	3.25
Maury Weiner	58.5
Laura Hitt	146.6
Bobbie Crook	5.8

The Defendant also argues that the time expended by attorneys on behalf of the individual Plaintiffs who prevailed on none of their claims should not be a part of the reasonable hours portion of the loadstar calculation since they were not prevailing parties.

The Defendant has pointed to 18.966 hours attributable to the claims of two Plaintiffs who were dismissed from the case because of their failure to appear at their depositions. The Plaintiffs have not responded to this specific argument. Although the Plaintiffs have argued that all of the claims in this case arose out of common conduct and common operative facts so that all evidence and testimony adduced in discovery would be relevant, with regard to these two Plaintiffs who failed to appear to be deposed, this argument is unavailing. Accordingly, the court concludes that the hours claimed by the Plaintiffs must be reduced by the number of hours attributable to those two Plaintiffs' claims. The reductions are as follows:

Ann Robertson	.10
Maury Weiner	12.6
Bobbie Crook	6.2

The Defendant also points out that the Defendant was granted summary judgment on five

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discussions, and writing of class certification briefs and motions and the preparation of affidavits in support of such motions. The court has applied the Defendant's method of calculation where a single time entry includes multiple tasks and has divided the time by the number of tasks because the Plaintiff has not demonstrated how much time is attributable to each individual task. This method of calculation has been accepted by the Eleventh Circuit where the imprecision of billing records makes it difficult to calculate the number of hours an attorney devoted to a particular task and where the plaintiff proposed no better solution for the problem. See American Civil Liberties Union of Georgia v. Barnes, 168 F.3d 423 (1999).

Plaintiffs' claims. Four of these Plaintiffs were white Plaintiffs. The Plaintiffs argue that even though four of the white Plaintiffs' claims did not survive summary judgment, Plaintiffs' counsel is to be compensated for the time worked on these claims as they all arose out of a common course of conduct and had a common core of operative facts. With respect to these Plaintiffs, however, this is not a question of whether the number of hours should be reduced based on their overall success. These particular Plaintiffs are not prevailing parties. Therefore, they are not entitled to seek attorneys' fees. The court finds some merit to the Plaintiffs' argument, however, that time expended in pursuing these Plaintiffs' claims might also be considered to be time expended on behalf of prevailing Plaintiffs to the extent that hours expended on behalf of the white Plaintiffs against whom summary judgment was granted also benefitted the one white Plaintiff or the African-American Plaintiffs who ultimately did prevail on some claims. Because the Plaintiffs have not, however, pointed to any specific hours which can be attributed in this manner, this court cannot determine which, if any, hours attributable to claims of the non-prevailing white Plaintiffs are also attributable to claims of the remaining white Plaintiff and the African-American Plaintiffs. Rather than deduct specific hours, therefore, as will be discussed below, the court will make a determination as to the total number of reasonable hours, considering these claims as a factor in that calculation.

In addition to the Plaintiffs discussed above, there were Plaintiffs who had claims for which summary judgment was denied and who ultimately were paid money pursuant to settlement of their claims. Because they are prevailing parties, the court must award compensation to Plaintiffs' counsel for the reasonable time expended pursuing these prevailing parties' claims.

The beginning point in setting an attorneys' fees award is determining the "loadstar

figure." The loadstar figure is the product of the number of hours reasonably expended to prosecute the lawsuit and the reasonable hourly rate for work performed by similarly-situated attorneys in the community. See Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988). After calculating the loadstar figure, the court should then proceed to determine whether any portion of this fee should be adjusted upwards or downwards. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986).

In making these determinations, the court is guided by the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974).[2] These factors include (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of professional relationship with the client; and (12) awards in similar cases.

B. Reasonable Hours

The Plaintiffs have submitted an Affidavit stating that the following total of hours were expended on the Plaintiffs' behalf:

Ann Robertson	209.95
Robert F. Childs, Jr.	216.70
Maury S. Weiner	701.12
Joe H. Calvin	3.25

[2] In Bonner v. City of Prichard, Ala., 661 F.2d 1206 (11th Cir. 1981)(en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Laura M. Hitt	170.60
Bobbie S. Crook	207.00
Dusti L. Harrell	23.80

Initially, the court points out that the Plaintiffs have conceded that there was an error in the listing of the hours expended by Robert F. Childs, Jr., and that his total hours should be reduced by three hours to 213.70. The Plaintiffs also concede that they have not shown that one hour which was claimed by Maury Weiner is necessary and not redundant. See Plaintiff's Reply, page 10. The court finds these concessions to be significant because the initial representation that the hours submitted to the court were hours expended on behalf of the Plaintiffs, and the subsequent concession that some of these hours were not, in fact, hours expended on their behalf, weakens the credibility of the Plaintiffs' entire fee petition.

In addition to the hours which the Plaintiffs concede should be deducted from their claimed hours, as was explained above, the hours claimed by Plaintiffs' counsel must also be reduced by the hours which were claimed for non-prevailing parties' claims, including time expended on the briefs in support of certification on behalf of the non-prevailing class. With these deductions of hours in mind, the court must determine whether the hours claimed by the attorneys in this case are reasonable.

The Defendant argues that the amount of hours claimed by the prevailing parties is not reasonable because the Plaintiffs' counsel have not used billing judgment and have claimed redundant, excessive or unnecessary time. See ACLU of Georgia v. Barnes, 168 F.3d 423, 428 (11th Cir. 1999).

The Defendant argues that the compensable time must be reduced because multiple attorneys appeared at depositions and performed other tasks. Specifically, the Defendant states that two attorneys attended the depositions of Plaintiffs Kinsman, Faulk, and Tommy Grubbs,

and three attended the depositions of Jim Quintero and Mary Delk. The Defendant seeks to reduce the hours by the less experienced attorney or attorneys.

The Plaintiffs respond that the Defendant also had multiple counsel defending its corporate representatives, and that it is not unusual for multiple lawyers to attend or help conduct a deposition. The Plaintiffs state that since Bobbie Crook defended some of the Plaintiffs' depositions alone, it was reasonable for her to assist Maury Weiner, who had less experience.

Upon consideration of the evidence and arguments, the court concludes that it was reasonable for Bobbie Crook, in addition to another lawyer, to attend the Plaintiffs' depositions, since she was local counsel. For the same reason, the court concludes that it was reasonable for Bobbie Crook to be present in the Rule 30(b)(6) depositions along with Ann Robertson. The court is certain, however, based on the evidence of her experience in this area of law, that Ann Robertson was fully capable of conducting these deposition without the assistance of two additional lawyers. For that reason, the court finds that the time expended by Maury Weiner to take the corporate depositions is unreasonable and that his hours will be reduced by 17.50 hours.

The Defendant also challenges the 17.50 hours charged by Dusti Harrell for the mediation and argues that there is no evidence that her presence at the mediation, in addition to Ms. Robertson and Bobbie Crook, was necessary. The Plaintiffs respond, relying on the Affidavit of Ann Robertson, that Dusti Harrell was continuously consulting with and keeping informed the eight plaintiffs and that she reviewed each Plaintiffs' case and discussed the Plaintiffs' settlement demands and what would be necessary to mediate the case. The court concludes while some hours expended in this manner by Dusti Harrell are reasonable, the full 17.50 hours are excessive, in light of the fact that three attorneys for the Plaintiffs attended the mediation. As will be discussed below, the court will apply an overall reduction to the hours expended by each

attorney which the court finds results in a reasonable amount of hours expended by Dusti Harrell.

The Defendant also states that Plaintiffs' counsel has submitted hours for time spent preparing internal reports and talking to individuals who have no involvement in the case and that these are unnecessary and redundant hours. The court agrees that some of the hours highlighted by the Defendant have not been shown by the Plaintiffs to be necessary. Those hours include the time expended to draft the law firm's "work in process report," time expended "locating depositions to have summarized," and a conference with "McMillian"–an unidentified person. These hours were claimed by Maury Weiner or Bobbie Crook. Accordingly, Maury Weiner's hours will be reduced by 3.25 and Bobbie Crook's hours will be reduced by .30.

The Defendant finally argues that the remaining hours should be reduced by 50 percent to reflect the lack of overall success in pursuing Plaintiffs' claims. The court finds that this argument is appropriately evaluated within the context of determining the reasonable number of hours attributed to the claims of the prevailing parties, rather than as an adjustment to the total loadstar figure. See Dillard v. City of Greensboro, 213 F.3d 1347, 1354 n.9 (11th Cir. 2000)(approving the district court's reduction of the number of hours across the board rather than adjusting the fee itself).

The Defendant's argument is that, under Eleventh Circuit law, this court should reduce the hours claimed because the claims on which the Plaintiffs did not prevail are distinct from the claims on which the Plaintiffs prevailed. The Eleventh Circuit has stated, relying on Supreme Court precedent, that if claims on which the plaintiff did not prevail and claims on which he did prevail were distinctly different and based on different facts and legal theories, then no fee can be awarded on the claims on which he did not prevail. Popham v. City of Kennesaw, 820 F.2d 1570 (11th Cir. 1987). If unsuccessful and successful claims involve a common core of facts, the court

has to compare the overall relief with the number of hours reasonably expended in the litigation. Id. at 1578. If the plaintiff had excellent results, the attorney should be fully compensated. Id. If the plaintiff had partial or limited success, the court can reduce the amount if the court finds it to be excessive. Id. at 1578-79.

The Defendant argues that the claims that survived and the claims upon which the Defendant was granted summary judgment did not arise out of the same core facts, nor did they involve different legal theories arising out of the same facts. The Defendant argues that the claims of the white Plaintiffs against which summary judgment was granted arose from facts occurring at a place other than those where the African-American Plaintiffs worked. The Defendant also states that the harassment and outrage claims for which summary judgment was granted were distinct from discriminatory acts involving pay, promotion, and discharge. The Defendant also argues that the outrage claim was frivolous. Finally, the Defendant states that the settlement amount should be considered to be a nuisance amount.

The Plaintiffs respond that even if there were different stores involved, nearly all of the Plaintiffs' claims involved the racial animus of Jim Quintero who was responsible for the day-to-day operations of all the Defendant's stores. The Plaintiffs also respond that they were highly successful in part because the Plaintiffs were told at the mediation that the Defendant could only pay $200,000 to settle the case. The Plaintiffs also state that the Defendant has now changed its policy handbook and that Jim Quintero is no longer working for the Defendant. In support of their arguments, the Plaintiffs cite this court to several Eleventh Circuit cases, including Morgado v. Birmingham-Jefferson County Civil Defense Corps., 706 F.2d 1184 (1983). The Plaintiffs argue that although the prevailing Plaintiffs were only successful on some of their claims, they were overall very successful, and the attorneys' fees should not be reduced simply

because they were not successful on all of their claims.

The court certainly agrees, based on Morgado and other decisions, that to the extent that the prevailing Plaintiffs established discrimination in a particular facet of their careers, there was reason for the Plaintiffs attorneys to believe that there was discrimination in other facets. The court will not to reduce the amount of hours expended on the prevailing Plaintiffs' claims on the grounds that the prevailing Plaintiffs did not prevail on all of their claims. As discussed above, however, there were hours expended in pursuing claims of Plaintiffs who were not successful on any of their claims. The evidence used to support those claims is still relevant to the claims of Plaintiffs who prevailed, especially since there were claims which prevailed on the strength of the evidence of pretext in the form of evidence of discriminatory animus on the part of Quintero. The court finds, however, that allowing the Plaintiffs' attorneys to be compensated for the full amount of the time they expended on the claims of these claims of Plaintiffs who did not prevail on any claim at the summary judgment stage is unreasonable. The court finds it to be significant that the white Plaintiffs against whom summary judgment was granted in full were determined by this court not to have provided sufficient evidence to show that they had suffered a legally cognizable harm.

Accordingly, the court finds that there must be a reduction of the hours claimed by the Plaintiffs under factor eight of the Johnson factors, that is, the success of the Plaintiffs' claims. Although the court accepts that class certification motion evidence and evidence obtained through Plaintiffs who were ultimately unsuccessful was relevant to the prevailing Plaintiffs' claims, the extent to which such evidence was used to support the claims of the prevailing Plaintiffs has not been established. Therefore, while the time expended in obtaining that evidence and in pursuing the claims of the class and the claims of Plaintiffs against whom

summary judgment was granted should not be discounted in its entirety, to award Plaintiffs' counsel fees based on the entire amount of hours expended in obtaining that evidence would be unreasonable. Accordingly, the court finds that a reasonable amount of hours in relationship to the success by the prevailing Plaintiffs requires a one-third across-the-board reduction in the number of hours claimed by the attorneys in this case.

C. Hourly Rates

The Plaintiffs have requested that the following hourly rates be applied:

Attorney	Requested Rate	Years Licensed to Practice
Ann Robertson	$300.00	26
Robert F. Childs, Jr.	$300.00	28
Joe H. Calvin	$215.00	13
Maury S. Weiner	$160.00	7
Laura M. Hitt	$160.00	5
Bobbie Crook	$200.00	13
Dusti Harrell	$125.00	1[3]

The Plaintiffs have submitted one affidavit to verify that Ann Robertson and Robert F. Childs, Jr. charge a rate of $300.00 per hour. They have also relied on this affidavit and an affidavit from Joe R. Whatley, a Birmingham attorney, to establish that the claimed rates are reasonable. The Plaintiffs have also submitted evidence of rates applied by this district in another case. As the Eleventh Circuit has explained, however, controlling weight should not be given to prior awards because those awards are not direct evidence of the market rate, only indirect evidence. See Dillard v. City of Greensboro, 213 F.3d 1347 (11th Cir. 2000). Finally, the Plaintiffs have submitted an affidavit of Thomas T. Gallion, III, a Montgomery attorney, in

[3] Dusti Harrell was Bobbie Crook's legal assistant for ten years before receiving her license. See Affidavit of Ann Robertson.

which he states the prevailing market rate is $250-$350 per hour, but in this area of the law, is at the top end of the range–between $300 and $350 per hour. He also states that $135 per hour is a reasonable hourly rate for the lawyers listed in Exhibit A. Although the court does not find Exhibit A to this affidavit, the attorneys for the Plaintiffs have represented to the court in their brief that Thomas T. Gallion, III believes the $135 per hour rate is appropriate for Maury S. Weiner and Laura M. Hitt. See Plaintiffs' Reply at page 2. Significantly, therefore, the rate of $160 requested by the Plaintiffs for these two attorneys is unreasonable according to the Plaintiffs' own evidence. Furthermore, the Plaintiffs have provided no direct evidence from this district of a rate for Dusti Harrell. See Dillard, 213 F.3d at 1354.

The Defendant has provided a Declaration from David R. Boyd, a Montgomery attorney, in which he states that the most experienced lawyers in this district charge fees ranging from $125-$250 an hour, and that senior associates may charge $170 and junior partners $180, although the range is more likely to be $135 to $150 an hour. He further states that third year associates' billing rate at his firm is $135.00, fourth year is $145.00, and fifth year is $160.00, although the more likely range is $110.00 to $140.00. Finally, he states that the rate at his firm for first year lawyers is $115.00, but that, in his opinion, the range is more likely to be $90.00 to $105.00. The Defendant also provides a Declaration from R. Eugene Clenney, Jr., a Dothan attorney, who states that the normal rate for attorneys with 25-30 years of experience is $150 to $200 an hour, for attorneys with 6-7 years of experience is $125 an hour, and for attorneys with 3-5 years is $90 to $110. Steadman Shealy, also a Dothan attorney, also declares that the normal rate for Dothan attorneys with 25-30 years of experience is $150 to $200 an hour, for attorneys with 3-7 years is $125 to $150. Relying on this evidence, the Defendant states that the Plaintiffs' claimed $300 rate should be reduced to $200, the $200 rate should be reduced to $150, and the

$160 rate should be reduced to $100 per hour.

In evaluating the reasonableness of the hourly rates claimed, the court has looked to all of Johnson factors, but particularly factors (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (5) the customary fee in the community; (8) the amount involved and the results obtained; and (9) the experience, reputation, and ability of the attorneys. Based on the Johnson factors, and upon the evidence submitted to this court, the court concludes that the reasonable hourly rates to be applied in this case are as follows:

Ann Robertson	$ 200
Robert F. Childs, Jr.	$ 200
Joe H. Calvin	$ 150
Maury S. Weiner	$ 135
Laura M. Hitt	$ 125
Bobbie Crook	$ 150
Dusti Harrell	$ 90

D. Paralegal Hours

A prevailing party must be compensated for work done by law clerks or paralegals only to the extent that such work is traditionally done by an attorney. See Allen v. United States Steel Corp., 665 F.2d 689, 697 (5th Cir. Unit B 1982). The Plaintiffs have requested an hourly rate of $ 65.00 for work by paralegals and have claimed the following as time expended by paralegals:

Mary Lu Blackwelder	8.65
Stephanie Dearman	116.75
Traci Wiggins	139.70

The only objection raised by the Defendant to these figures is the 23.25 hours for Stephanie Dearman which are listed as hours spent typing the Plaintiffs' exhibit list. The Defendant argues that such time is overhead and should be not charged to the Defendant. The Plaintiffs respond that the characterization of Stephanie Dearman's time was inartful in that she

not only typed the list, but compiled the list from the multiple documents.

Even given the Plaintiffs'explanation of Stephanie Dearman's claimed time, the court cannot conclude that 23 hours is a reasonable amount of time to prepare an exhibit list. Assuming an eight hour work day, that would be nearly three days of work devoted to the exhibit list. Because the Plaintiffs bear the burden of demonstrating that they are reasonably entitled to these fees, the court will look to the exact characterization of Stephanie Dearman's time as reflected in the evidence. The time entries by Stephanie Dearman distinguish between "working with documents," "work" on the exhibit list, and "type" the exhibit list. Because there is no other way for this court to determine how much time was actually spent "typing," which is a part of overhead and is not recoverable, other than the evidence submitted to it, the court will exclude the hours attributed to "typing" in Stephanie Dearman's time entries.[4] Accordingly, Stephanie Dearman's hours will be reduced by 20.5 hours to 96.25 hours.

As for the hourly rate for paralegal services, none of the affidavits or declarations provided by the parties speak to the reasonableness of the claimed rate for the paralegals in this case. Based on the court's own experience, the court finds that $50 an hour is a reasonable hourly rate for paralegal services in this case.

E. Expenses

All reasonable expenses incurred in case preparation, during the course of litigation or as an aspect of settlement, except for overhead, may be taxed as costs. The reasonableness of expenses are to be given a liberal interpretation. NAACP v. City of Evergreen, 812 F.2d 1332,

[4] The court has divided in half the time entry attributed to both "working with documents" and typing the exhibit list.

1337 (11th Cir. 1987). The standard involves a case-by-case balancing of relevant factors, keeping in mind that section 1988 may not be "subverted into a ruse for producing 'windfalls' for attorneys." Dowdell v. City of Apopka, Fla., 698 F.2d 1181, 1192 (11th Cir. 1983).

The Defendant contends that the expenses incurred by the Plaintiffs prior to the court's denial of class certification, $53, 767.20, should be reduced to reflect that the Plaintiffs did not prevail on this motion. The Defendant has suggested that the Plaintiffs ought to only recover 59% of these expenses. As was explained above, the court has reduced the hours claimed by the Plaintiffs to a reasonable level by excluding hours attributable to the preparation of briefs and motions in support of their unsuccessful motion to have a class certified. Because the court has concluded that some of the evidence gathered in the effort to have the class certified was, however, relevant to the merits of the prevailing Plaintiffs' claims, the court has not excluded those hours in their entirety. The court declines, therefore, to reduce the expenses to the extent urged by the Defendant. Because any expense incurred in preparing, reviewing, discussing, and writing the briefs and motions in support of class certification are incurred expenses which should not be considered as part of the reasonable expenses incurred in pursuing the prevailing Plaintiffs' claims, the court finds that a reasonable amount of expenses can be determined by deducting 20 percent from the expenses incurred prior to the denial of class certification. The court will not deduct 20 percent from the total identified by the Defendant as being the total amount of expense incurred prior to the denial of class certification, that is, $53, 767. 20, however, because that total includes costs of photocopying and the court will separately deduct expenses for photocopying, as is discussed below. The court will instead subtract out the copying expenses that were incurred prior to the denial of class certification, resulting in a figure of $47,883.34 of expenses incurred prior to the denial of class certification. The 20 percent

reduction will be applied to this figure.

The Defendant also states that the $7,938.61 for photocopying costs is excessive. The Defendant contends that Plaintiffs' counsel does not demonstrate how the copying costs furthered the advancement of any successful claim or which costs related to which claims. The Plaintiffs respond that hundreds of documents which were copied consisted of personnel files and applications of employees and applicants which were essential in conducting a statistical analysis of the effects of the Defendant's employment practices.

Although the court is certainly willing, as is required by law, to award the Plaintiffs their reasonable photocopying expenses, the court cannot simply rubber-stamp the Plaintiffs' listed numbers of copies, but must instead make a reasonableness determination. Because the court cannot tell from the Plaintiffs' submissions why the photocopies were made, and especially because the court cannot tell if copies were made to support claims of the class or other non-prevailing parties, the court concludes that the costs of photocopying should be reduced by 50 percent.

The Plaintiffs' allowed expenses are	$ 45,350.09[5]
Photocopying	+ $ 3,969.30
Total expenses allowed	$ 49,319.40

[5] The court has added in the unreduced expenses incurred after denial of class certification in the amount of $7035.42.

F. Lodestar Figure

Attorneys	Reasonable Hours	x	Reasonable Rate =	Total
Ann C. Robertson	136.6		200	$ 27,320.00
Robert F. Childs, Jr.	98.1		200	$ 19,620.00
Maury S. Weiner	407.5		135	$ 55,012.50
Joe H. Calvin	0		150	$ 0
Laura M. Hitt	16.1		125	$ 2,012.50
Bobbie S. Crook	130		150	$ 19,500.00
Dusti L. Harrell	16		90	$ 1,440.00
Total Attorneys' fees				**$124,905.00**
Paralegals				
Mary Lu Blackwelder	8.65		50	$ 432.50
Stephanie Dearman	96.25		50	$4812.50
Traci Wiggins	139.7		50	$6985.00
Total Paralegal Fees				**$ 12,230.00**
Total Expenses				**$ 49,319.40**
Total				**$186,454.40**

As the court indicated above, although the Defendant has requested a 50% adjustment to the loadstar figure, the court has found that reductions in the amount of time expended by the attorneys is the more appropriate way to determine the reasonable amount of hours. This reduction, in addition to the other reductions discussed above, result in what the court considers to be a reasonable figure.

IV. ORDER AND JUDGMENT

For the reasons discussed above, it is hereby ORDERED that the Plaintiffs have and recover of the Defendant the sum of $124,905.00 in attorneys' fees, $12,230.00 for paralegal

services, and $ 49,319.40 in expenses, for a total of $186,454.40, for all of which execution may issue.

Done this 22nd day of September, 2000.

W. HAROLD ALBRITTON
CHIEF UNITED STATES DISTRICT JUDGE

CIVIL APPEALS CHECKLIST

1. Appealable Orders: Courts of Appeals have jurisdiction conferred and strictly limited by statute:
Appeals from Final Orders Pursuant to 28 U.S.C. § 1291: Only final judgments for orders of district courts (or final orders of bankruptcy courts which have been affirmed by a district court under 28 U.S.C. § 158) usually are appealable. A "final" order is one which ends the litigation on its merits and leaves nothing for the district court to do but execute the judgment. A magistrate's report and recommendation is not usually final until judgment thereon is entered by a district court judge. Compare Fed.R.App.P. 5.1, 28 U.S.C. § 636(c).

   In cases involving multiple parties or multiple claims, a judgment as to fewer than all parties or all claims is not a final, appealable decision. Fed.R.Civ.P. 54(b) does permit the district court to expressly direct entry of the judgment as fewer than all of the claims or parties. See Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1369 (11th Cir. 1983), cert. denied 464 U.S. 893 (1983). Certain matters, such as attorney's fees and costs, are collateral and do not affect the time for appealing from the judgment on the merits. Buchanan v. Stanships, Inc., 495 U.S. 265, 108 S.Ct. 1130, 99 L.Ed 2d 289 (1988); Budinich v. Becton, 485 U.S. 196, 108 S.Ct. 1717, 100 L.Ed 2d 178 (1988).

   Appeals Pursuant to 28 U.S.C. § 1292(b) and FRAP 5: The certificate specified in 28 U.S.C. § 1292(b) must be obtained before an application for leave to appeal is filed in the Court of Appeals. Denial or refusal by the district court to issue the certificate is not itself appealable.

   Appeals Pursuant to 28 U.S.C. § 1929(a): Pursuant to this statute, appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions . . . " This statute does not permit appeals from temporary restraining orders.

   Appeals pursuant to Judicially Created Exceptions to the Finality Rule: These limited exceptions are discussed in many cases, including (but not limited to): Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed 2d 1528 (1949); Forgay v. Conrad, 6 How. (47 U.S.) 201 (1848); Gillespie v. United States Steel Corp., 379 U.S. 148, 152, 85 S.Ct. 308, 311, 13 L.Ed 2d 199 (1964); Atlantic Federal Savings & Loan Assn. Of Ft. Lauderdale v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371 (11th Cir. 1989). Compare Coopers and Lybrand v. Livesay, 437 U.S. 463, 98 S.Ct. 2454, 57 L.Ed 2d 351 (1978); Gulfstream aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 108 S.Ct. 1133, 99 L.Ed 2d 296 (1988)

2. Time for Filing: To be effective a notice of appeal must be timely filed. Timely filing is jurisdictional. In civil cases FRAP 4(a) and 4(c) set the following time limits:

   FRAP 4(a)(1): The notice of appeal required by FRAP 3 "must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry . . . " (Emphasis added) To be effective, the notice of appeal generally must be filed in the district court clerk's office within the time permitted. If a notice of appeal is mailed, it must be timely received and filed by the district court to be effective. FRAP 4(c) establishes special filing provisions for notices of appeal filed by an inmate confined in an institution, as discussed below.

   FRAP 4(a)(3): "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires." (Emphasis added)

   FRAP 4(a)(5) and FRAP 4(a)(6): The district court has power to extend the time to file a notice of appeal. Under FRAP 4(a)(5) the time may be extended if a motion for extension if filed within 30 days after expiration of the time otherwise permitted to file notice of appeal. Under FRAP 4(a)((6) the time may be extended if the district court finds upon motion that a party has not received notice of entry of the judgment or order and that no party would be prejudiced by an extension.

   FRAP 4(c): "If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or be a declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid.

3. Format of Notice of Appeal: Form 1, FRAP Appendix of Forms, is a suitable format. See also FRAP 3(c).
A single notice of appeal may be filed from a (single) judgment or order by two or more persons whose "interests are such as to make joinder practicable . . . " (FRAP 3(b))

4. Effect of Notice of Appeal: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction (see Fed.R.Civ.P. 60) or to rule on a timely motion of the type specified in FRAP 4(a)(4)