UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS, JOSE F. SANCHEZ, RICARDO BETANCOURT, and all other similarly situated persons,

Plaintiffs,

v.

GLOBAL HORIZONS, INC., *et al.*,

Defendants.

NO. CV-05-3061-RHW

ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEY FEES

Before the Court is Plaintiffs' Motion for Attorney Fees (Ct. Rec. 1098). A hearing on the motion was held on November 16, 2009. Plaintiffs were represented by Lori Isley, Joe Morrison, and Richard Kuhling. The Global Defendants were represented by Matthew Gibbs. The Grower Defendants were represented by Ryan Edgley and Brendan Monahan.

Plaintiffs initially sought $2,265,147.60 in attorneys' fees and $16,860 in costs (Ct. Rec. 1099, p. 15). In response to objections by Defendants, Plaintiffs adjusted their request to $2,143,666.20 for attorneys' fees with respect to the Farm Labor Contractor Act claims and $47,505.60 for attorneys' fees with respect to the Discrimination Claims for a total of $2,191.171.80 (Ct. Rec. 1197, Ex. H).

1. Statutory Provisions Authorizing Attorneys' Fees

Under the "American rule" for an award of attorneys' fees, a prevailing party does not generally recover its attorney fees unless expressly authorized by statute, by agreement of the parties, or upon a recognized equitable ground. *City of*

Riverside v. Rivera, 477 U.S. 561, 567 (1986); *Guillen v. Contreras*, 147 Wash. App. 326, 333 (2008).

In cases brought under 42 U.S.C. § 1981, "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(b). "The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorneys' fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal quotation marks and citations omitted).

Similarly, the Washington Law Against Discrimination entitles prevailing plaintiffs to "reasonable attorneys' fees." Wash. Rev. Code § § 49.60.030(2). Finally, Plaintiffs obtained statutory damages under the Washington Farm Labor Contractors Act ("FLCA"), which provides reasonable attorneys' fees to the prevailing party. Wash. Rev. Code § 19.30.170(1).

The parties disagree as to which law the Court should rely upon for determining reasonable fees–federal or state law. Both jurisdictions rely on the lodestar method in determining the amount of reasonable fees. *Hensley*, 461 U.S. at 437; *Mahler v. Szucs*, 135 Wash.2d 398, 433 (1998). Under this methodology, the party seeking fees bears the burden of proving the reasonableness of the fees. *Id.*

The lodestar method begins by determining the amount of a reasonable fee, which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Id.* After this figure is reached, the court then assesses whether it is necessary to adjust the presumptively reasonable lodestar figure on the basis of twelve factors. *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir.

2006); *Bowers v. Transamerica Title Ins. Co.*, 100 Wash.2d 581, 596 (1983).[1] The twelve factors are: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the 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 the professional relationship with the client, and (12) awards in similar cases. *Ballen*, 466 F.3d at 746 (citations omitted).

The court should exclude from the initial fee calculation hours that were not reasonably expended. *Hensley*, 461 U.S. at 434 (internal quotation marks omitted). In other words, the court should exclude "hours that [were excessive, redundant, or otherwise unnecessary." *Id.* "[P]laintiffs are to be compensated for attorney's fees incurred for services that contribute to the ultimate victory in the lawsuit. Thus, even if a specific claim fails, the time spent on that claim may be compensable, in full or in part, if it contributes to the success of other claims." *Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1052 (9th Cir. 1991). Ultimately, the court must determine whether the fees requested by this particular legal team are justified for the particular work performed and the results achieved in this particular case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008).

In *McCown v. City of Fontana,* the Circuit succinctly set forth the analysis the Court must undertake in determining attorneys' fees under 42 U.S.C. § 1988. 565 F.3d 1097, 1103 (9th Cir. 2009). There, the Circuit stated that the reasonableness of a fee award is determined by answering two questions: "First,

[1]The *Bowers* court relied on the Third Circuit Court of Appeals approach set forth in *Lindy Bros. Bldrs., Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973).

did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" *Id.* (*quoting Hensley*, 461 U.S. at 434). Even if the answer to the first question is no, it is still necessary to analyze the award in light of the second question. *Id.* With respect to the first question, the Circuit instructed:

> A plaintiff is not eligible to receive attorney's fees for time spent on unsuccessful claims that are unrelated to a plaintiff's successful § 1983 claim. Such unrelated claims must be treated as if they had been raised in a separate lawsuit to realize "congressional intent to limit awards to prevailing parties." However, in a lawsuit where the plaintiff presents different claims for relief that "involve a common core of facts" or are based on "related legal theories," the district court should not attempt to divide the request for attorneys fees on a claim-by-claim basis. Instead, the court must proceed to the second part of the analysis and "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation."

Id. (citations omitted).

With respect to the second question, the Circuit instructed that attorneys' fees awarded under 42 U.S.C. § 1988 must be adjusted downward where the plaintiff has obtained limited success on his pleaded claims, and the result does not confer a meaningful public benefit. *Id.* "A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." *Id.* (*quoting Hensley*, 461 U.S. at 440). The district court should "give primary consideration to the amount of damages awarded as compared to the amount sought." *Id.* at 1104.

Under Washington law, the size of the attorneys' fees in relation to the amount of the award is not in itself decisive in fixing the amount of fees. *Travis v. Wash. Horse Breeders*, 111 Wash.2d 396, 410 (1988). However, it is a significant factor. *Bowers*, 100 Wash.2d at 596. Moreover, under Washington law, courts are expected "to take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." *Deep Water Brewing,*

LLC v. Fairway Resources, Ltd., 152 Wash. App. 229, 282 (2009)(*quoting Nordstrom, Inc. v. Tampourlos*, 107 Wash.2d 735, 744 (1987).

2. Review of the Proceedings

In a previous Order, the Court rejected Plaintiffs' theory that both Defendants–the Global Defendants and the Grower Defendants–were responsible for the entire amount of attorneys' fees. Rather, it held that the claim for attorneys' fees must be apportioned based on the claims asserted against the Defendants. The Court concluded that it would be fundamentally unfair to require the Grower Defendants to be responsible for Plaintiffs' attorneys' fees attributable to their discrimination claim where the Court specifically found that the Grower Defendants did not discriminate. In order to properly determine the reasonable attorneys' fees and costs and the proper apportionment of these fees to the Grower Defendants, it is necessary to review the course of these proceedings. As described below, the case experienced many twists and turns that necessarily complicated and protracted the proceedings.

Global Horizons operated as a farm labor contractor in violation of the Washington Farm Labor Contractor Act. The Washington Department of Labor investigated Global Horizons, held administrative hearings, and made findings of fact and conclusions of law outlining the violations. The administrative record supporting the findings was substantial and comprehensive. Global was fined by the State for the violations.

This case followed the Department of Labor proceedings and was filed on July 12, 2005. The claims for discrimination were joined with the federal AWPA[2] and Washington FLCA claims, relying largely on the same evidence. The complaint sought declaratory and injunctive relief as well as damages, and was filed as a class action. The case was assigned to Judge Van Sickle, but the parties consented to proceed before a Magistrate Judge. The case was then assigned to

[2]Migrant and Seasonal Agricultural Workers Protection Act.

Judge Leavitt on October 12, 2005. There were a number of pretrial and discovery orders issued by Judge Leavitt and the case was set for trial for August 28, 2007. Judge Leavitt died in May, 2007. Plaintiffs filed Motions for Partial Summary Judgment on May, 25, 2007. The case was reassigned to Judge McDonald. The motions were unopposed and granted by Judge McDonald. Judge McDonald found the Global Defendants violated the Farm Labor Contractor Act in the following ways:

1. Failed to provide adequate disclosures;

2. Provided false and misleading information about the terms of employment–specifically regarding the availability of transportation and with respect to the existence of production standards;

3. Violated the working arrangements and violated legal and valid agreements and contracts;

4. Failed to pay Plaintiffs wages owed when due;

5. Failed to provide adequate written pay statements;

Judge McDonald found questions of fact regarding the willfulness of the withholding of wages. He found that the Grower Defendants were joint employers with Global for purposes of Plaintiffs' AWPA claims and that Global served as the agent for the Grower Defendants for recruitment purposes during the relevant time periods. For purposes of FLCA, Judge McDonald held that the Global Defendants were jointly and severally liable with Global, the farm labor contractor, for all violations of FLCA. Judge McDonald did not rule on Plaintiffs' claims of racial discrimination and failure to provide work. Judge McDonald died shortly after issuing his Order, and the case was reassigned to this Court.

After the entry of the judgment in the amount of $1,857,000 for statutory damages, both the Global and the Grower Defendants filed Motions for Reconsideration. This Court vacated the judgment with respect to the amount of statutory damages, but did not disrupt Judge McDonald's finding of liability on the

part of the Global and Grower Defendants.

Trial commenced on September 11, 2007 and concluded on September 27, 2007. Plaintiffs' claims of racial discrimination and failure to provide work asserted against the Global Defendants were presented to the jury, while the claims asserted against the Grower Defendants were heard by the Court. Plaintiffs abandoned their claim for wrongful withholding of wages. The jury found that the Global Defendants violated the Farm Labor Contractors Act by failing to employ Plaintiffs and discriminated against Plaintiffs because of their race in violation of 42 U.S.C. § 1981 and the Washington Law Against Discrimination. The jury awarded Plaintiff Betancourt $5,099.50 in lost wages and $2,500.00 for emotional distress; Plaintiff Jose Sanchez $492.20 in lost wages and $5,000 for emotional distress; and Plaintiff Jose Guadalupe Perez-Farias $4,000.00 for emotional distress. The jury also awarded each subclass $100,000 in punitive damages for a total award of $300,000 in punitive damages.

Although the Class Representatives had been successful in obtaining verdicts for actual and general damages from the jury, Plaintiffs elected to not seek such damages for the class members. Rather, Plaintiffs opted to seek statutory damages for the FLCA violations. The Court heard closing arguments from the parties regarding the claims asserted against the Grower Defendants and the Global Defendants' post-trial motions. The Court found that Plaintiffs failed to establish that the Grower Defendants discriminated against them, but found that there was sufficient evidence for the jury to find that the Global Defendants discriminated against Plaintiffs.

On March 3, 2009, the Court conducted a bench trial on the amount of statutory damages and issued its Findings of Fact and Conclusions of Law on April 15, 2009. The Court awarded approximately $237,000 in statutory damages and denied Plaintiffs' request for injunctive relief.

3. Prevailing Party

The initial question the Court must determine is which parties prevailed on what claims. This question requires a close look because Plaintiffs were not successful on most of their FLCA claims and because Plaintiffs abandoned their claims for actual damages and for wrongful withholding of wages.

A. FLCA Claims

FLCA permits actual damages to be awarded to each class member. The individual class representatives were awarded lost wages for denied work. Based on the award to the class representatives at trial, the possible award to the rest of the class for lost wages could have exceeded $2,000,000 for the denied work sub-class alone. There was no award for lost work for the classes. Separate from the statutory claims on which Judge McDonald entered summary judgement in favor of the Plaintiffs, the heart of the FLCA case was that the local workers were denied work or laid off in order to hire Thai workers. At the outset of the case and after the verdict, it was predictable that each class member would use the jury finding and submit individual claims for lost wages for either being laid off or not being hired. Having proven liability, the only issue for each class member was damages. None were awarded. Only the three class representatives recovered such damages. On the actual damages component of the FLCA claims, Defendants prevailed.

The second part of the FLCA claim was the claim for statutory damages for the violations found by Judge McDonald tried to this Court. The Court has previously entered its order on these damages (Ct. Rec. 1083). As recited in the order, many of these violations were technical and there was no proof of actual damages. Plaintiffs contended that each plaintiff was entitled to $500 per violation regardless of actual injury. If $500 were awarded for each violation, the award would exceed $2,000,000 based on Judge McDonald's findings and this Court's findings after trial. The award was $237,000. Considering the award and the prior judgements entered by the Department of Labor, Plaintiffs prevailed but to a limited extent.

The third claim under the FLCA was for injunctive relief. This claim was central to the entire case because it was the mechanism used to have the class certified. It was evident that the individual damage claims of each class member may dominate the proceedings requiring a finding that there was not commonality of claims justifying a class action. The request for injunctive relief provided the commonality justifying the class treatment. The abandonment of individual damages by Plaintiffs may reflect this fact. The Plaintiffs were not successful in their claim for an injunction. On the injunction issue, Defendants were the prevailing party.

The final component of the FLCA claims were the claims against the three individual Defendants and their marital communities. The individual Defendants were the prevailing party on all FLCA claims.

The FLCA provides for prevailing party attorneys' fees unlike many fee shifting statutes that only grant fees to the Plaintiff.[3] The statute says that the Court "may" award fees to the prevailing party. The Court construes this language to mean that the Court may or may not award fees depending on the case and that the Court may award fees to prevailing defendants. The Court has twice had to construe whether FLCA provides the Court with discretion–first with respect to statutory damages, and second with respect to attorneys fees. If fees are mandatory, it logically follows that the Court would be required to award fees to Defendants on the claims for which they prevailed, i.e. injunctive relief, individual liability, actual

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[3]Wash. Rev. Code § 19.30.170(1) provides:

After filing a notice of a claim with the director, in addition to any other penalty provided by law, any person aggrieved by a violation of this chapter or any rule adopted under this chapter may bring suit in any court of competent jurisdiction of the county in which the claim arose, or in which either the plaintiff or respondent resides, without regard to the amount in controversy and without regard to exhaustion of any alternative administrative remedies provided in this chapter. No such action may be commenced later than three years after the date of the violation giving rise to the right of action. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

damages. In this case, the Global Defendants have asked for attorneys fees. In like manner, the Grower Defendants and individual Defendants would be entitled to attorneys fees. The plain language of the statute does not permit construing the statute as providing for mandatory attorneys fees only to the prevailing plaintiff.

We know that the class did not receive any actual damages for the loss of work or being wrongfully laid off. For statutory damages, the class received around ten percent to fifteen percent of the amount claimed. On the injunctive relief, which was the central common claim justifying class treatment, Defendants prevailed.[4] Based on this rough score, the corporate Defendants prevailed on more components of the FLCA claims than Plaintiffs, and the individual Defendants were the prevailing party on all FLCA claims.

Faced with this score card, the Court could have awarded attorneys' fees to only Defendants or only Plaintiffs, or to both, or it could have apportioned the fees awarded based on the success of the parties with respect to the asserted claims. The Court declines to do so. Instead, the record supports a finding by the Court that neither party prevailed to an extent that justifies the award of attorneys' fees under FLCA.

B. Discrimination Claims

On the discrimination claims, the classes shared $300,000 in punitive damages. Like the class representative FLCA claims, the jury awarded the class representatives general damages for emotional distress suffered because of race discrimination. $2,500, $4,000, and $5,000 in emotional distress damages were awarded respectively. Based on the class representative recoveries, had these damages been recovered by the class members individually, the amount of damages for the discrimination claims would have exceeded $2,000,000. No general damages were awarded to the class. Only the class representatives recovered

[4]We also know that the individual Defendants were dismissed and prevailed.

general damages.

The actual amount recovered on the discrimination claims is obviously substantially less than the reasonably potential claims originally sought by the class.

Under § 1988, Plaintiffs are considered the "prevailing party" for attorneys' fees purposes "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley*, 461 U.S. at 433. Under Washington law, the party that receives the money judgment is the prevailing party when the question is one of money damages. *Blair v. Wash. St. Univ.*, 108 Wash.2d 558, 571 (1987).

Here, the Court finds that Plaintiffs are the prevailing party with respect to the discrimination claims asserted against the Global Defendants. However, this merely permits Plaintiffs to cross the statutory threshold to receive attorneys' fees. *Hensley*, 461 U.S. at 433. The Court must still determine what is a reasonable fee.

4. Apportionment

Defendants argue that the Court should reduce the amount of fees by subtracting the hours spent on unsuccessful claims, such as the claim for injunctive relief, the claims against the individual Defendants, and the claim for mandatory statutory damages in the amount of $500. If the Court had found that the Plaintiffs had prevailed on the FLCA claims and awarded attorneys' fees against the Grower Defendants, the Court would have done a further analysis of the apportionment issue because the Grower Defendants were successful in defending the discrimination claims.[5] For the claims against Global, the Court finds that the

[5]The Court considered finding that the Plaintiffs prevailed on the FLCA claims and considered apportioning the fees between the Defendants in accordance with the amount of damages awarded for the separate claims. It ultimately concluded that neither party prevailed on the FLCA claims and has not done any

underlying discrimination, FLCA, AWPA, and claims for injunctive relief involve a common core of facts and were based on related legal theories. As such, the Court accepts the premise that much of counsel's time was "devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Hensley*, 461 U.S. at 435. "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not sufficient reason for reducing a fee. The result is what matters." *Id.* The Court recognizes that Plaintiffs were unsuccessful in their claim for injunctive relief. Accordingly, Plaintiffs reduced their hours by 38.7 hours.[6] Nevertheless, Plaintiffs achieved a level of success that makes it appropriate to award attorneys' fees for hours reasonably expended on the unsuccessful claim for injunctive relief.

Thus, the Court must determine the amount of reasonable attorneys' fees for which the Global Defendants are liable.

5. Lodestar Calculations

a. Number of Hours Reasonably Expended on the Litigation

Each Judge comes to a case with a history. This Court practiced in the private practice of law for twenty years and spent four years working as a lawyer for the Government. It kept hours to bill clients and kept hours to reflect time spent on behalf of the Government. The Court, as a lawyer, sought fees for representing prevailing plaintiffs and opposed fee petitions submitted by others. The Court lived through the transition from billing practices based on a lawyer's assessment of a 'reasonable fee' to those based on billable hours. The number of hours spent in

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further apportionment between Defendants. The apportionment is considered further in the multiplier analysis.

[6]The Court questions whether this is a realistic number given that Plaintiffs relied on their claim for injunctive relief to obtain class certification.

representing a client should be only one of the factors considered by a lawyer in private practice. Many times the hours are reduced because of inefficiencies. All experienced lawyers have seen associates that will complete a brief within hours, others within days. The responsible attorney must judge whether the hours spent on a matter justify multiplying the hour by a figure and submitting it to the client for payment. Sometimes lawyers will bill more than an hourly rate would suggest because of extraordinary results. The ultimate fee to be paid depends on the fee agreement with the client and the lawyer's assessment of the reasonableness of the amount of time spent. The *Hensley* and *McCown* factors try to quantify the factors that lawyers historically used to determine a reasonable fee.

In this case, Plaintiffs are requesting approximately 7,800 hours in attorneys' fees. In determining the lodestar calculation, the Court must determine the number of hours reasonably expended on the litigation. In doing so, the Court makes a number of observations.

First, the Court believes that this case was over-staffed by Plaintiffs.[7] *See Hensley*, 461 U.S. at 434 (instructing that courts should exclude from the initial fee calculation hours that were not "reasonably expended" and noting that cases may be overstaffed). Two firms and nine attorneys worked on this case for Plaintiffs. At any particular time, Global was represented by one lawyer (local counsel participated in name only). The two Grower Defendants were represented by two attorneys. Because of the number of Plaintiffs' attorneys involved, and based on the Court's review of the billing records, many hours were spent by the nine attorneys to get up to speed and obtain background information regarding the case.

[7]The Court is aware that some of the excess or duplicative time spent on this case may have been the result of the problems created by Defendant throughout the discovery process. The Court has considered this factor in its assessment of the reasonable hours.

Some entries show multiple reviews of a document beyond which could be justified to a client. Others show multiple attorneys at meetings that would normally exceed the number that a paying client would find acceptable. Notably, Plaintiffs have not presented to the Court any justification for the number of attorneys that worked on this case. From the Court's recollection, Plaintiffs had at least two, if not more, counsel participate in all of the hearings before this Court. At least four were present at the trial. It is the Court's practice to only have one counsel speak to an issue at a hearing. Thus, it was generally duplicative and unnecessary to have more than two counsel appear at the hearings. The records suggest that the same duplication occurred outside the court proceedings as well.

Second, the two lead attorneys were Lori Isley and Joe Morrison. Ms. Isley is requesting reimbursement for 2,992 hours, while Mr. Morrison is requesting reimbursement for 2,305.2 hours. There are significant differences between the two attorneys in the level of detail and accountability with respect to the requested fees. In many cases, on any given day, Ms. Isley has multiple entries for different tasks with the corresponding time, while Mr. Morrison has one entry with a significant amount of time, with very little detail given regarding the tasks completed. Mr. Morrison routinely billed large blocks of time without providing sufficient detail for the parties and the Court to determine the extent and scope of his activities. Notably, during the trial, Mr. Morrison billed for 14 hours, while Ms. Isley billed for 7-8 hours. It is the Court's experience that in the practice of law in order to bill certain hours of work, one would have to put in more hours than actually billed. Attorneys face interruptions, lunch hours, bathroom breaks, demands of other work, etc. that should not be billed to one's client. Finally, it is not insignificant that Mr. Morrison is seeking over 2,000 hours. Thus, for at least a quarter of the hours requested, the Court does not have adequate billing records to justify the amount requested. For these reasons, it is appropriate to reduce the number of hours requested by Plaintiffs. *See Hensley*, 461 U.S. at 434 ("Hours that are not properly

billed to one's client are not properly billed to one's adversary pursuant to one's adversary.").

Third, the Court recognizes that generally lawyers are not likely to spend unnecessary time on contingency fees cases in the hope of inflating their fees. *See Moreno*, 534 F.3d at 1112. This case, however, was not a typical contingency fee case. Rather, in this case, with the Department of Labor findings, Plaintiffs were virtually assured success. In his Declaration, Mr. Kuhling indicated that a significant fact in his firm's acceptance of the representation was the fee-generating causes of action (Ct. Rec. 1100, ¶ 6). The only private attorney who participated throughout the entire proceedings was Mr. Kuhling. Two other Paine Hamblen attorneys also participated at various stages of the proceedings for a total of 1,039 hours for the Paine Hamblen attorneys. The other attorneys were employed by Columbia Legal Services. These hours reflect roughly eighty-seven percent of the requested hours. Columbia Legal Services is a non-profit public interest firm and does not normally depend on fees from private clients for funding. Thus, its experience with record-keeping and work for fee-paying clients is limited.[8] Columbia Legal Services does not operate with the constraints of having to actually bill paying clients for their services, which provides an incentive to provide cost-effective service and a critical eye on the actual hours billed.

Four, in response to Defendants' objections, Plaintiffs attempted to segregate

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[8]The Court has great respect for the work performed by Columbia Legal Services. It has had interns employed by Columbia Legal Services and is acutely aware of the great contribution it makes in representing the poor and underserved populations. The Court's comments are not a criticism of Columbia Legal Services; rather they represent an acknowledgment of the difference in the operation of a private law practice in billing clients compared to a public interest firm.

their hours between the FLCA claims and the discrimination claims. Plaintiffs state that approximately 155 of the 7,500 hours should be attributable to the discrimination claims. The Court does not find this to be a credible or realistic apportionment. For instance, according to Plaintiffs, no attorney from the Paine Hamblen law firm worked on the discrimination claims. However, a review of the billing records for Paine Hamblen reveals that there was work performed by the attorneys on the discrimination claims, including entries by Attorney Greg Johnson regarding punitive damages. Moreover, many of the Paine Hamblen records do not contain sufficient detail to determine what claims were being addressed. However, there were numerous entries which describe strategy sessions in which it is highly likely that the discrimination claims were being discussed. Finally, attorneys from Paine Hamblen actively participated in the deposition of Mordechai Orian, which was crucial in developing the intentional discrimination claims. Additionally, Plaintiffs sought punitive damages at trial, which required Plaintiffs to establish intentional conduct on the part of the Defendants. The jury awarded $300,000 in punitive damages. Attributing a mere 155 hours out of a total of approximately 7,500 hours is not a realistic apportionment between the two claims.

The Court is aware that the apportionment is not necessary under this order. It discusses the issue because it reflects the difficulty in analyzing billing records and deducting items that may not be justified.

Fifth, Plaintiffs are seeking attorneys' fees for time spent on travel to Yakima and back to the out-of-town attorneys' place of employment. A significant amount of travel time has been requested by Mr. Morrison. It is the Court's understanding that Mr. Morrison's office is in Wenatchee, Washington, which is approximately a one and a half to two hour drive. Other examples include Attorney Crewdson traveling to Yakima from her office in Olympia and the Paine Hamblen attorneys traveling to Yakima for strategy sessions. While the Court agrees that travel time should be compensated, the number of attorneys traveling and the purpose of the

travel would not normally be undertaken or billed for a paying client.

Sixth, in response to Defendants' objections, Plaintiffs adjusted their requests for attorneys' fees. The Court does not necessarily find the adjustments to be accurate or credible. On the other hand, it does represent a recognition on the part of Plaintiffs that they initially requested fees that included hours that were not reasonably expended on the litigation.

Finally, the Court gives credence to the Declaration of Philip Talmadge, in which he identified approximately 1,081 hours in categories in which it is not apparent that actual legal services were expended. These categories include: advocacy coordination (75.8 hours); background study (279.5 hours); case planning (383.7 hours); and issue consultation (342.2 hours). The Court finds that the billing records include time entries for unnecessary attorney conferences, unnecessary intra-attorney correspondence and phone calls, duplicate time entries, redundant legal research and redundant review of correspondence, discovery and pleadings.

Based on these observations, the Court believes that it is necessary to reduce the number of hours requested by Plaintiffs.

Plaintiffs submitted over 100 pages of itemized billing records. After reviewing the records the Court observed that it was neither an efficient or productive use of time for the Court to try to make a line-by-line itemized list of deductions it would impose to alleviate its concerns previously discussed. The billing records did not permit such an analysis. The Court has reviewed the entries line by line and concludes that it cannot make the itemizations necessary to reflect its stated concerns. The Court declines to further review each entry line by line. It is Plaintiffs' burden to provide the justification for the reasonableness of their requested fees.

Based on the reasons set forth above, the Court believes that the requested attorneys' hours should be reduced by twenty percent. This reduction is supported by Mr. Talmadge's Declaration, and is also based on the reasons set forth above.

If the reduction of hours is considered inappropriate in arriving at the lodestar amount, the amount should be adjusted downward to reflect the *Hensley* and *McCown* factors. As discussed above, the recovery was limited in comparison to the reasonable potential damages to the class. The Court must consider this factor in determining the overall reasonableness of the fees and believes a reduction by twenty percent is appropriate for this reason as well. *See McCown*, 565 F.3d at 1104. The potential damages for the classes could exceed $4,000,000 had such damages been sought. The actual recovery is unremarkable in this context.

The Court notes that with respect to the discrimination claims, if Plaintiffs' counsel were to be paid on a contingency basis, they would have only received approximately $128,000 (assuming forty percent contingency fee). They would have received approximately $94,800 in fees for the statutory damages claims.

It is also significant that Plaintiffs, late in the proceedings, opted to abandon their claim for actual damages. Given the difference between the actual damages and the statutory damages ultimately awarded, it is likely that if Plaintiffs had chosen to abandon the actual damages early on, the posture of this case and the time spent would be significantly different. If Plaintiffs had elected to pursue actual damages, it is likely that the attorneys' fees award would not be as significantly disproportionate as is the present case.

While the Court believes that Plaintiffs achieved some public benefit with respect to the discrimination claims, this factor is reflected in the application of the multiplier, as set forth below.

For these reasons, the Court will reduce the requested hours by twenty percent (20%). The Court finds that this is the reasonable number of hours expended on this litigation. The reductions represent the number of hours that were not reasonably expended on the litigation.

b. Hourly Rate

Under federal law, the hourly rate for successful civil rights attorneys is to be calculated by considering certain factors, including the novelty and difficulty of the issues, the skill required to try the case, whether or not the fee is contingent, the experience held by counsel and fee awards in similar cases. *Hensley*, 461 U.S. at 430 n.3.

Here, the relevant market is Yakima, Washington. The Court gives credence to the Declaration of J. Jay Carroll, a local Yakima attorney. It is his opinion that the hourly rates sought by Plaintiffs' attorneys in this case are excessive in the Yakima legal market during the time frames sought. Mr. Carroll reports that his established billing rate for the Yakima, Washington area ranged between $200-$225 per hour. Mr. Carroll is an experienced trial lawyer with over twenty years of experience. Mr. Carroll also reported that John Moore, a preeminent trial attorney in Washington state, billed between $240-$290 per hour.

Below is a chart summarizing the experience of the attorneys seeking reimbursement for fees in this case:

Plaintiff's Counsel	**Admitted to Bar**	**Experience**	**Requested Rate**
Richard Kuhling	1977	significant litigation experience	$300
Gregory S. Johnson	[9]	computer forensics and electronic discovery expert	$225
Devra Hermosilla	[10]		$170

[9]The Court was unable to find a Declaration from Mr. Johnson. According to the Declaration of Mr. Annis, Mr. Johnson has an extensive background in computer forensics with over 27 years of experience.

[10]The Court was unable to find a Declaration from Ms. Hermosilla. According to the Declaration of Mr. Annis, Ms. Hermosilla spent a great deal of time on the initial pleadings and procedures and helped create a database. Ms. Hermosilla is fluent in Spanish.

Amy L. Crewdson	1979	class action litigation; administrative advocacy	$300
Daniel G. Ford	1980	farm worker representation	$300
Lori Jordan Isley	1992	one federal class action, 1990	$250
Joachim Morrison	1993	class action; wrongful discharge with multiple AWPA violations	$225
M. Laura Contreras	1992	worked with legal services; one federal court actions	$225
Griseld Vega	2001	worked with legal services	$180

The Court finds that the attorneys that practice in this case, with the exception of Richard Kuhling, had less experience than Mr. Carroll. Therefore, the Court finds that the appropriate rate for attorneys is $200 per hour. This rate accurately reflects the rate of lawyers of comparable skill, experience and reputation within the Yakima community. The Court finds that the appropriate rate for Mr. Kuhling is $300.00. He has similar experience to John Moore. Mr. Kuhling is a highly respected trial lawyer with significant trial experience.

c. Reasonable Attorneys' Fees

The following chart indicates the deductions the Court imposed as set forth above, and indicates the rate the Court used to determine the lodestar.

Plaintiff's Counsel	**Request Hours**	**Reduced Hours**	**Rate**	**Total**
Richard J. Kuhling	625.5	500	$300	$150,000
Gregory S. Johnson	186	149	$200	$29,800
Devra Hermosilla	227.6	182	$170	$30,940
Amy L. Crewdson	428.9	343	$200	$68,600
Daniel G. Ford	56.7	45	$200	$9,000
Lori Jordan Isley	2992	2394	$200	$478,800
Joachim Morrison	2305.5	1844	$200	$368,880
M. Laura Contreras	627.9	502	$200	$100,400
Griseld Vega	365.2	292	$180	$52,560

Clerical[11]	54.5		$75	
Paine Hamblen Legal Staff				
Shari Smith	222.05	222.05	$75	$16,654
Stephanie Happold	2.5	2.5	$90	$225
Total				$1,305,859.00

The Court agrees with Plaintiffs that they had to spend considerable more time litigating the case due to Defendants' repeated failure to timely file pleadings and comply with the Court orders from discovery, through summary judgment, trial, and post-trial. However, Plaintiffs are being compensated for the extra time and it is reflected in the final amount of fees. Indeed, if Defendants had been cooperative through these proceedings, the Court is confident that they would be facing a significantly less legal bill than what is being assessed today.

The Court is aware that it must "strike a balance between granting sufficient fees to attract qualified counsel to civil rights cases and avoiding a windfall to counsel." *Moreno*, 354 F.3d at 1111. This case presents difficulty in striking this balance. One option is to eliminate all block billing; another is to go through the

[11]The Circuit instructed that "[i]f the attorney's hourly rate already incorporates the cost of work performed by non-attorneys, then courts should not compensate for these costs as an additional "reasonable attorney's fees." *Trustees of Const. Indust. and Laborers Health and Welfare Trust v. Redland Insur. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006) (citations omitted). The key is the billing custom in the "relevant market." *Id.* Thus, fees for purely clerical secretarial work is compensable if it is customary to bill such work separately, although such tasks "should not be billed at the paralegal rate, regardless of who performs them." *Id.* Here, it appears that Plaintiffs are seeking to bill for clerical tasks at the paralegal rate and have not provided justification for billing for clerical work. As such, the Court declines to award the requested fees. The Court assumes that the attorney's hourly rate already incorporates the cost of work performed by non-attorneys.

100 pages line by line to try to eliminate times the Court could identify that were not reasonably expended, such as working on press releases. However, doing the line by line analysis does not address the Court's concern that there were more lawyers working on this case than was justified. Moreover, such an exercise is not required under Ninth Circuit precedent. *See Gates v. Deukmejian*, 987 F.2d 1392, 1400 (9th Cir. 1992)(recognizing that percentages are acceptable, and perhaps necessary, tools for district courts to use in fashioning reasonable fee awards). The Court chose to apply a percentage reduction as the most efficient, just, and reasonable method to address its concerns. A percentage reduction is, by its nature, arbitrary. In this case, the Court carefully considered all the elements of the lodestar formula and arrived at a figure that it believes represents the amount of hours reasonably expended on the litigation. The Court did not impose these reductions lightly, but based these reductions on its familiarity and understanding of the case.

6. Multiplier

Plaintiffs ask the Court to impose a twenty-percent multiplier. The Court does not believe that a multiplier should be applied for all the hours in the case. While the Court agrees with Plaintiffs' characterization of this case as risky with respect to the discrimination claims, it was not necessarily risky with respect to the FLCA claims. The underlying basis for the FLCA violations was the Department of Labor findings and the Global Defendants stipulations. From the start, it was probable that these claims would be settled on the basis of summary judgment or a directed verdict and it played out in this case when Plaintiffs moved for summary judgment. Indeed, Plaintiffs relied on the Department of Labor findings and the Global Defendants stipulations at trial and in their summary judgment motions. Moreover, in its Findings of Fact and Conclusions of Law, the Court concluded that the majority of the FLCA violations could be characterized as technical violations, that is, conduct that violated the plain language of the FLCA, but did require proof

of actual or specific harm to the worker. The only substantive question the Court needed to answer was the amount of damages.

In determining whether to apply the multiplier, the Court must consider (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the 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 the professional relationship with the client, and (12) awards in similar cases. *Id.* (citations omitted). *Ballen*, 466 F.3d at 746.

The only factor that Plaintiffs point to justify the multiplier is the contingent nature of the case. Plaintiffs did not address the other factors.

The loadstar calculation is presumptively reasonable. In this case, the Court believes that the number of hours times the reasonable rate provide reasonable attorneys fees with respect to the FLCA claims. The Court believes that applying a contingency multiplier to the FLCA claims would "likely duplicate in substantial part factors already subsumed in the lodestar." *See City of Burlington v. Dague*, 505 U.S. 557, 562 (1992).

On the other hand, the Court believes that Plaintiffs took on the role as a private attorney general to enforce the discrimination statutes. Both Congress and the Washington legislature have passed fee-shifting statutes in an attempt to encourage the enforcement of discrimination claims that was undertaken in this case.

The problem is that Plaintiffs have attributed a mere 155 hours to the discrimination claims. As discussed above, the Court does not believe this to be a realistic number. Rather, the Court believes that a reasonable allocation of the fees between the discrimination claims and the FLCA claims would reflect a ratio based

on the amount of damages awarded for the various claims.

The jury awarded the following amounts in damages:

Lost Wages[12]	$ 5,591.70
Emotional Distress	$ 11,500.00
Punitive Damages	$300,000.00
	$317,091.70

The Court awarded statutory damages for FLCA violations in the amount of $237,283.02. The damages for the discrimination claims represent fifty-seven percent (57%) of the total amount of damages awarded (317,091.70 / 554,374.72)

Thus, the Court will apply a twenty-percent multiplier to fifty-seven percent of the requested attorneys fees.[13]

Plaintiff's Counsel	Reduced Hours	Adjusted Hours	Multiplier Rate	Total
Richard J. Kuhling	500	285	$60	17,100
Gregory S. Johnson	149	85	$40	3,400
Devra Hermosilla	182	104	$34	3,536
Amy L. Crewdson	343	196	$40	7,840
Daniel G. Ford	45	26	$40	1,040
Lori Jordan Isley	2394	1365	$40	54,600
Joachim Morrison	1844	1051	$40	42,040
M. Laura Contreras	502	286	$40	11,440
Griseld Vega	292	166	$36	5,976
Total				$146,972.00

7. Cost Bill Liability

Plaintiffs submitted a cost bill in the amount of $77,243.26. Given that the

[12]This amount was awarded for either the FLCA violation or the discrimination claim. The Court ordered that the Grower Defendants be jointly and severally liable for this amount.

[13]The Grower Defendants will not be jointly and severally liable for the additional fees assessed by application of the multiplier.

Court declined to award attorneys' fees under FLCA, the Court does not assess costs against the Grower Defendants. Nevertheless, the Court awards costs against the Global Defendants based on its finding that Plaintiffs were the prevailing party with respect to the discrimination claims asserted against the Global Defendants.

Accordingly, **IT IS HEREBY ORDERED**:

1. Plaintiffs' Motion for Attorneys Fees (Ct. Rec. 1098) is **GRANTED**.

2. The District Court Executive is directed to enter judgment in favor of Plaintiffs and against Global Horizons, Inc. and Mordechai Orian in the amount of $1,452,831.00 for reasonable attorneys' fees.

3. Global Horizons, Inc. and Mordechai Orian are ordered to pay to the Court $**1,424.58**, which is the costs of the interpretation fees that were provided at trial on a cost-reimbursable basis.

4. The District Court Executive is directed to assess the final cost bill against Global Horizons, Inc. and Mordechai Orian only and not against the other named Defendants.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and to provide copies to counsel.

DATED this 24th day of March, 2010.

s/Robert H. Whaley

ROBERT H. WHALEY
United States District Court

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