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 RE: PLAINTIFFS' MOTION FOR ATTORNEY FEES

A hearing is set for June 4, 2013, on Plaintiffs' Motion for Attorney Fees, ECF No. 1328, in Yakima, Washington.

Plaintiff is seeking to recover attorneys fees under the Farm Labor Contractors Act (FLCA) against the Grower Defendants. The basis for awarding the fees against the Grower Defendants is Wash. Rev. Code § 19.30.200, which provides:

> Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter.

FLCA authorizes attorneys fees and costs to successful litigants:

> 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.

Wash. Rev. Code § 19.30.170(1).

Plaintiffs ask the Court to award the full amount of attorney fees and costs against the Grower Defendants that the Court previously awarded against the

Global Defendants, less the multiplier fee. The Grower Defendants assert because there was no prevailing party, the Court should decline to award fees, and also, that an award of fees would be inequitable. Additionally, the Grower Defendants argue that should the Court award fees, the amount of fees should be reduced for any hours expended on the unsuccessful discrimination claims, legal research and development of evidence attempting to establish the Grower Defendants' joint liability, efforts to pursue claims for punitive damages, efforts to establish the individual liability of Jim Morford and John Verbrugge, and efforts to obtain injunctive relief.

In order to assist the parties in presenting their arguments at the June 4, 2013 hearing, the Court believes it will be beneficial to provide the parties with the Court's preliminary thoughts regarding Plaintiffs' motion.

In its previous Orders, the Court has made findings that need to be reconciled. Notably, the Court ruled that Section 19.30.200 did not provide joint and several liability on the Grower Defendants for violations other than FLCA violations. The Court specifically found that Section 19.30.200 did not authorize fees for Plaintiffs' Washington Law Against Discrimination claims or the claims under Section 1981. ECF No. 1229 at 5. These findings support requiring segregation of the fees for discrimination claims against the Grower Defendants and the Global Defendants.

The Court also found that the discrimination claims were distinct from the FLCA claims, given that the intent of the Defendants in denying work was not an issue that needed to be decided by the Court or the jury in deciding the FLCA claims. *Id.* The Court ultimately concluded that the crux of Plaintiffs' claims at trial was the discrimination claims. *Id.* at 6. On the other hand, the Court found that with respect to the claims against Global, the underlying discrimination, FLCA, AWPA, and claims for injunctive relief involved a common core of facts and were based on related legal theories.

The Court preliminarily finds that Plaintiffs are the prevailing party with respect to the FLCA claims. Plaintiffs obtained a significant statutory damages award. Under Washington law, "[a] prevailing party is any party that receives some judgment in its favor. If neither party completely prevails, the court must decide which, if either, substantially prevailed. This question depends on the extent of the relief afforded the parties." *Guillen v. Contreras*, 169 Wash.2d 769, 775 (2010) (en banc) (internal quotation marks, alteration, and citations omitted).

The Court preliminarily finds that the amount of attorneys fees awarded against the Grower Defendants must be reduced for time spent on unsuccessful claims and theories and for claims for which fees may not be recovered. *See Pham v. City of Seattle*, 159 Wash. 2d. 527, 538 (2007). In their briefing, Plaintiffs argue that the phrase in section 19.30.200 "to the same extent and in the same manner as provided in this chapter" should be interpreted to mean the Grower Defendants are liable for the same amount of attorneys fees (less the multiplier) as the Global Defendants. Under this interpretation, however, there would be no principled reason to subtract the multiplier because the same extent and same manner would mean just that, the same amount of attorneys fees awarded against the Global Defendants without any other reductions. The subtraction of the multiplier may be a concession that FLCA does not authorize attorneys fees for the discrimination claims against the Global Defendants, but this concession would also indicate that FLCA does not authorize attorneys fees for the discrimination claims against the Grower Defendants.

Based on the Court's earlier findings, it is clear that FLCA does not provide derivative liability on the part of the Grower Defendants for Global's discriminatory conduct. The question is whether Washington case law would impose derivative liability on the Grower Defendants for Global's discriminatory conduct based the Court's earlier finding that the claims against Global were intertwined.

If the Court is correct and segregation is appropriate, the next question is what are the reasonable attorneys fees that should be awarded for the FLCA violations. Under Washington law, in determining reasonable attorney fees, the trial court must first calculate the "lodestar" figure. *Bowers v. Transamerica Title Ins. Co.,* 100 Wash. 2d 581, 597 (1983). This figure represents the number of hours reasonably expended (discounting hours spent on unsuccessful claims, duplicated effort, and otherwise unproductive time) multiplied by the attorney's reasonable hourly rate. *Id.*

Here, the records provided by Plaintiffs do not permit the Court to segregate the time spent on the FLCA and discrimination claims. A similar dilemma was presented to the trial court in *Osborne v. Seymour*, 164 Wash. App. 820 (2011). In that case, the plaintiff filed a § 1983 action and state law claims against a police officer, the plaintiff's estranged husband, and the county for damages arising out of an unlawful entry of a residence. *Id.* at 827-833. In that case, the plaintiff was successful in one of the state law claims against her estranged husband, unsuccessful in her claim against the county, and successful against the police officer.[1] *Id.* at 864. The trial court recognized it was unfair to assess attorneys fees against the police officer for the state law claims of the estranged husband (there being no statutory basis to award the fees). *Id.* at 864-65. It estimated that the state claims constituted approximately one-third of the claims and reduced the lodestar calculations accordingly. *Id.* But the trial court did not similarly reduce the attorney fee award for the plaintiff's unsuccessful claim against the county. *Id.* at 865. The Court of Appeals remanded with instructions to the trial court to consider the similar unfairness in assessing attorneys fees and costs against the police

[1]The trial court had granted the plaintiff's motion for partial summary judgment, and the jury was asked to assess damages. *Id.* at 939.

officer for the plaintiff's unsuccessful claims against the county.[2] *Id.*

In that case, the plaintiff brought different claims against different defendants arising out of the same course and conduct, the unlawful entry of a residence. Yet, the Court of Appeals approved segregation where it was determined to be unfair to assess attorneys fees against a defendant for unsuccessful, but seemingly related claims against the other defendants.

In summary, the Court has preliminarily concluded that Plaintiffs are the prevailing party under FLCA and the Grower Defendants are liable for reasonable attorneys fees associated with the FLCA claims. Also, the Court has preliminarily concluded that in determining the amount of reasonable fees, the amount must be reduced by some manner to take into consideration that Plaintiffs were not successful on the discrimination claims against the Grower Defendants, and possibly by an amount to reflect that the Grower Defendants are not derivatively liable for the Global Defendants' discrimination claims.

At the hearing, the parties are asked to address the apportionment issue and

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[2]The Court of Appeals rejected the plaintiff's contention that the attorney fees award should not be disturbed because the claims involved a common core of facts or were based on related theories. Specifically, the Court of Appeals found "the trial court did not find the purported intertwinement of facts and law in this case to be an obstacle to reducing the attorney fee award by the amount attributable to her claim against Bird: Although the trial court noted that it was "impossible ... to segregate" how much of the attorney fees went to [the plaintiff's] claims against Bird, nevertheless, it proceeded to reduce [the plaintiff's] attorney fee request by one-third." *Id.* at 865 n. 49. The Court also rejected the plaintiff's argument that the § 1983 claims were inseparable for attorney fee award purposes given that the trial court had already determined the police officer was liable and the claims against the defendants rested on different legal theories and required different quantities and types of proof. *Id.*

the application of *Seymour*, *supra*. No further briefing is requested.

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

DATED this 31st day of May, 2013.

s/Robert H. Whaley
ROBERT H. WHALEY
United States District Court

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