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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Antonio Arce-Mendez, et al.,

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No. CV 05-3857-PHX-JAT

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Plaintiffs,

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ORDER

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vs.

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Eagle Produce Partnership, Inc.; Phoenix) Agro Inc.; SAM Management, Inc.; Arthur) Martori; Susan Lois Martori; Ricardo) Reyna,

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Defendants.

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Pursuant to Fed. R. Civ. P. 54(d)(1) and (2), Defendants Eagle Produce Partnership, Inc., Phoenix Agro Inc., SAM Management, Inc., Arthur Martori and Susan Lois Martori (“Defendants”) seek attorneys’ fees and costs incurred in the defense of the above-captioned action. (Doc. #182 and 187.) Defendants maintain that they are entitled to their fees and costs as the prevailing party on several of the claims brought by Plaintiffs. Plaintiffs oppose both the Motion for Attorneys’ Fees as well as Defendants’ Request for the Court to Order the Taxation of Costs. (Doc. # 184 and 188.) Plaintiffs have also moved for Rule 11 sanctions against Defendants in connection with their application for costs which Plaintiffs maintain is “frivolous.” The Court now rules on those Motions.

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1 **I. FACTUAL BACKGROUND**

2 Plaintiffs Antonio Arce-Mendez, Manual Canez-Santana, Porfirio Duran, Tiburcio
3 Espinoza-Urias, Carlos Negrete-Guerrero, Everardo Piminenta-Benitez, Everardo Pimienta-
4 Inzunza, and Ramon Salazar-Lopez (“Plaintiffs”) are eight migrant farm workers who filed
5 the present action. Plaintiffs alleged various claims related to their employment as
6 watermelon cutters during the 2002, 2003, 2004, and 2005 watermelon seasons.

7 On March 6, 2008, this Court granted in part and denied in part Defendant’s Motion
8 for Summary Judgment. (Doc. #160.) The Court granted summary judgment on all of
9 Plaintiffs’ claims against SAM Management; all of Plaintiffs’ claims against Phoenix Agro,
10 Arthur Martori, and Susan Lois Martori with the exception of claims alleging housing
11 violations under the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”);
12 Plaintiffs’ claims for fraudulent misrepresentation, intentional infliction of emotional distress,
13 and negligence against Eagle Produce; Plaintiff’s MSPA claims for failure to license,
14 register, and insure certain vehicles pursuant to 29 U.S.C. § 1841(b)(1) and (10); and
15 Plaintiffs’ ARLTA, AWPL, and breach of contract claims against Eagle Produce for the
16 2002-2004 watermelon seasons. (Id.)

17 On May 5, 2008, the parties filed a Notice of Settlement of Remaining Claims and
18 Request to Vacate Trial Date. (Doc. #175.) Plaintiffs and Eagle Produce Partnership, Inc.,
19 Phoenix Agro Inc., Arthur Martori and Susan Lois Martori entered into a settlement
20 agreement and release of the claims that remained after the Court granted partial summary
21 judgment. On May 9, 2008, the parties submitted a Stipulation to Dismiss Plaintiffs’
22 Remaining Claims With Prejudice. (Doc. #178.)

23 Defendants thereafter filed a Motion for Attorneys’ Fees and Costs on May 16, 2008
24 (Doc. #182) and submitted a Bill of Costs to the Clerk on May, 19, 2008 (Doc. #183). The
25 Clerk denied all costs citing LR Civ 54.1(d). (Doc. #185.) Defendants subsequently
26 requested that this Court order the Clerk to withdraw its June 13, 2008 Taxation of Costs
27 Order denying costs and reissue an order “properly taxing costs in favor of Defendants.”
28 (Doc. #187.) Plaintiffs oppose that Motion as well as Defendants’ Motion for Attorneys’

1 Fees and have moved for sanctions against Defendants’ attorneys’ for the “frivolous and
2 repeated Motions made requesting costs.” (Doc. # 184, 188, and 190.)

3 **II. LEGAL STANDARD AND ANALYSIS**

4 **A. COSTS**

5 In addition to seeking attorneys’ fees, Defendants seek costs as to those claims on
6 which this Court granted summary judgment. Defendants maintain that they are entitled to
7 such costs as the prevailing party on those claims . Defendants cite LR Civ 54.1(d) which
8 provides:

9 (d) Prevailing Party Entitlement to Costs. The party entitled to
10 costs shall be the prevailing party. Generally, a party in whose
11 favor judgment is rendered is the prevailing party. *The*
12 *prevailing party need not succeed on every issue to be entitled*
13 *to costs. Upon entry of judgment on a motion for summary*
judgment, the party requesting the summary judgment is the
prevailing party. The Court will not determine the party entitled
to costs in *actions* terminated by settlement; parties must reach
agreement on taxation of costs, or bear own costs.

14 (Doc. #187, emphasis added.) In support of their position, Defendants point specifically to
15 the portion of the rule stating, “The prevailing party need not succeed on every issue to be
16 entitled to costs. Upon entry of judgment on a motion for summary judgment, the party
17 requesting the summary judgment is the prevailing party.” Arguing that they were successful
18 on numerous causes of action for which they requested summary judgment, Defendants
19 maintain that they are entitled to the costs they incurred in defending those causes of action.

20 Opposing Defendants’ request for costs, Plaintiffs assert that the Defendants’ request
21 for costs is expressly prohibited by the local rules. Specifically, Plaintiffs cite to the portion
22 of LR Civ 54.1(d) which states: “[t]he Court will not determine the party entitled to costs in
23 actions terminated by settlement; parties must reach agreement on taxation of costs, or bear
24 own costs.” Plaintiffs argue that, although some claims were terminated by summary
25 judgment, Defendants did not obtain a judgment on those claims.

26 The Court agrees with Plaintiffs and the Clerk that Defendants are not entitled to costs
27 in this matter. In order to recover costs, a party must have a final judgment. LR Civ 54.1(d)
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1 states specifically that the party requesting summary judgment will be considered the
2 prevailing party “upon entry of judgment on a motion for summary judgment.” No such
3 judgment, however, has been entered here. Indeed, this Court actually denied Defendants’
4 May 9, 2008 Motion for Judgment (Doc. #177) on the claims dismissed by the Court in its
5 March 6, 2008 Order ruling on Defendants’ Motion for Summary Judgment. As Plaintiffs
6 correctly note, the only final judgment entered in this case was on May 12, 2008, dismissing
7 the remaining claims pursuant to the parties’ settlement and stipulation. Because this action
8 was, therefore, terminated by settlement, the Court cannot award costs to Defendants.

9 **B. ATTORNEYS’ FEES**

10 The same analysis essentially applies to Defendants’ request for fees. In its Motion
11 for fees, Defendants assert that they are entitled, as the prevailing party in an action arising
12 out of contract and under the Arizona Residential Landlord and Tenant Act, to two-fifths of
13 the entire fees they incurred. Defendants arrive at this two-fifths figure by calculating
14 themselves as the prevailing party on a majority of claims in two of the five categories of
15 claims at issue in this case. (Motion, Doc. # 182, p. 7-8.)

16 LR Civ 54.2(b)(1)(A) requires a party moving for attorney’s fees to identify the
17 “applicable judgment and the statutory or contractual authority entitling the party to the
18 award.” Here, Defendants identify A.R.S. §§ 12-341 and 12-341.01 and the Arizona
19 Residential Landlord and Tenant Act, A.R.S. § 33-1301, as the statutory bases for the fee
20 award. Defendants identify the applicable judgment as the Court’s May 11, 2008 Order.
21 Defendants assert that, in that Order, “the Clerk entered Judgment consistent with the Court’s
22 prior Order dated March 6, 2008, granting partial summary judgment in favor of Defendants,
23 as well as dismissing Plaintiffs’ claims set for trial.” (Motion, Doc. #182, p. 3.)

24 Defendants’ characterization of that Judgment for purposes of its fee motion, however,
25 is simply not accurate. First, this Court did not issue any orders in this matter on May 11,
26 2008. Furthermore and more importantly, however, the May 12, 2008 Order to which
27 Defendants presumably refer, is not a judgment on the claims dismissed by the Court
28 pursuant to Defendants’ Motion for Summary Judgment. Rather, it is a judgment based on

1 the parties' settlement and stipulation to dismiss with prejudice. Defendants attempt to
2 sidestep this issue by quoting language from the Court's electronic filing docket in its Reply.
3 (Reply, Doc. #186, p. 2.) That docket entry states:

4 Clerk's Judgment in favor of Eagle Produce Partnership, Inc.,
5 Phoenix Agro Invest, Inc., SAM Management Inc., Arthur
6 Martori, Ricardo Reyna, Susan Lois Martori against Antonio
7 Arce-Mendez, Carlos Negrette-Guerrero, Everardo Piminenta-
8 Benitez, Everardo Pimienta-Inzunza, Manual Canez-Santana,
9 Porfirio Duran, Ramon Salazar-Lopez, and Tiburcio Espinoza-
10 Urias; that pursuant to the Court's order filed May 12, 2008, the
11 Plaintiffs' remaining claims for alleged violations of the Migrant
12 and Seasonal Agricultural Worker Protection Act, the Arizona
13 Wage Payment Act, the Arizona Residential Landlord Tenant
14 Act, and claims for breach of contract are hereby dismissed with
15 prejudice. This case is terminated.

16 Such language, however, is not the actual Judgment but merely a summary of the
17 Judgment that appears in the electronic filing docket, and an inaccurate summary at that. The
18 substance of the Clerk's Judgment does not find in favor of Defendants but states merely:

19 **IT IS ORDERED AND ADJUDGED** that pursuant to the
20 Court's order filed May 12, 2008, the Plaintiffs [sic] remaining
21 claims for alleged violations of the Migrant and Seasonal
22 Agricultural Worker Protection Act, the Arizona Wage Payment
23 Act, the Arizona Residential Landlord Tenant Act, and claims
24 for Breach of Contract are hereby dismissed with prejudice.
25 This case is terminated.

26 (Doc. #181.) This is equally true of the Court's May 12, 2008 Order that directed the Clerk
27 to enter Judgment and which states, "Pursuant to the stipulation of the parties, **IT IS**
28 **ORDERED** that Plaintiffs' remaining claims for alleged violations of the Migrant and
29 Seasonal Agricultural Worker Protection Act, that Arizona Wage Payment Act, the Arizona
30 Residential Landlord Tenant Act, and claims for breach of contract are hereby dismissed with
31 prejudice. The Clerk of the Court shall enter judgment accordingly and close this case."

32 (Doc. # 180, footnote omitted.) Moreover, in that same May 12, 2008 Order, and as
33 Defendants are certainly aware, this Court denied Defendants' Motion for Entry of Judgment
34 as to the claims resolved by the Court's March 6, 2008 Summary Judgment Order. Given
35 the above, this Court concludes that there is no judgment on the breach of contract or
36 ARLTA claims that would entitle Defendants to attorneys' fees.

1 Additionally, the Court declines to award Defendants attorneys' fees for a separate
2 and independent reason. Even assuming that Defendants could demonstrate that they were
3 the successful party eligible for attorneys' fees under A.R.S. § 12-341.01(a) and ARLTA,
4 A.R.S. § 33-1301, the Court must still determine whether an award of attorneys' fees would
5 be appropriate in this case. The Court concludes that it is not.

6 The trial court has discretion when determining whether to award attorney's fees and
7 must determine whether such an award would be appropriate. *See Associated Indem. Corp.*
8 *v. Warner*, 694 P.2d 1181, 1183 (Ariz. 1985). The court in *Warner* provides six factors that
9 courts should consider when determining whether it is appropriate to award attorney's fees.
10 *See id.* at 1184. The factors to be considered include: (1) the merits of the unsuccessful
11 party's claim or defense; (2) whether the case could have been settled and whether the
12 unsuccessful party's efforts were superfluous in that effort; (3) whether assessing fees against
13 the unsuccessful party would create extreme hardship; (4) whether the successful party
14 obtained all the relief sought; (5) the novelty of the legal question presented and whether the
15 claim or defense has previously been adjudicated; (6) and whether the award of attorney's
16 fees in this case would discourage other parties with valid claims or defenses from litigating
17 legitimate contract issues because those parties would be afraid of incurring liability for a
18 large amount of attorney's fees. *Id.* No single factor is determinative, and the Court must
19 weigh all factors when determining whether to award attorney's fees. *Wilcox v. Waldman*,
20 744 P.2d 444, 450 (Ariz. Ct. App. 1987).

21 When weighing the above factors, the party requesting fees has the burden of proving
22 entitlement. *Woerth v. City of Flagstaff*, 808 P.2d 297, 305 (Ariz. Ct. App. 1991). However,
23 "the party asserting financial hardship has the burden of coming forward with *prima facie*
24 evidence of financial hardship." *Id.* In order for the Court to consider hardship when
25 determining whether to award fees, the party opposing fees must present specific evidence
26 of hardship by affidavit or testimony. *Id.*

27 When weighing the *Warner* factors enumerated above, the Court finds that factors
28 one, three and four of *Warner* analysis tip the balance against awarding attorneys' fees in this

1 matter. First, Plaintiffs have presented specific evidence of extreme hardship. Plaintiffs
2 Espinoza and Arce-Mendez have provided sworn affidavits regarding their dire financial
3 situation. Mr. Espinoza has a yearly income of approximately \$10,000 which he uses to
4 support himself as well as his wife and disabled son both of whom are unemployed. (Doc.
5 #184, Attach 1, Ex. 9.) Mr. Arce-Mendez has a yearly income of approximately \$8,000
6 which he uses to support himself and his wife and four children all of whom are unemployed.
7 (Id., Ex. 10.) Both individuals attest to the fact that the remaining Plaintiffs with whom they
8 have worked as migrant farm workers for many years share the same financial hardship.
9 Indeed, another Plaintiff, Mr. Salazar, testified in his deposition that his two room home does
10 not have a roof, indoor toilet, or reliable electricity. (Id., Ex. 11.) Even dividing up fees and
11 costs as Defendants suggest amongst the eight Plaintiffs would force those individuals to pay
12 an amount more than they are likely to earn in a year. This is certainly a case where the
13 recovery of fees and costs would pose a severe and unwarranted economic hardship.

14 Furthermore, Defendants have not prevailed with respect to all of the relief sought in
15 this case. Several claims survived summary judgment, and Plaintiffs were able to secure a
16 settlement – a settlement which this Court will not allow to be swallowed by an award of
17 costs and fees. These factors when viewed in conjunction with Plaintiffs’ economic situation
18 mitigate against awarding fees in this case. If the parties had intended otherwise, the onus
19 was upon them to provide for such as part of the settlement..

20 Conversely, the remaining three factors do not strongly favor awarding attorney’s
21 fees. This Court sees no real reason that the lack of novelty of the legal question presented
22 here or the fact that a fees award would not discourage future contract litigation should
23 support Defendants’ request for damages in this case. The Court finds such factors to be of
24 little import here where the other factors are so compelling. Furthermore, this Court finds
25 little evidence, given the exchange of correspondence between the parties on the issue of
26 settlement, Plaintiffs’ purported difficulty in identifying the real actors in interest, and the
27 fact that several claims survived summary judgment, that the litigation could have been
28 avoided had Plaintiffs acted differently. Based on the above, the Court concludes that any

1 fee award is inappropriate and the consideration of the appropriateness of specific fees is
2 therefore moot.

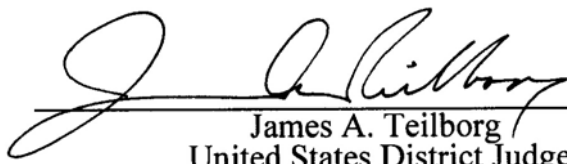
3 Accordingly,

4 **IT IS HEREBY ORDERED** denying Defendants' Motion for Attorneys' Fees and
5 Costs (Doc. #182);

6 **IT IS FURTHER ORDERED** denying Defendants' Request for the Court to Order
7 the Taxation of Costs (Doc. #187); and

8 **IT IS FURTHER ORDERED** denying Plaintiffs' Motion for Rule 11 Sanctions
9 (Doc. #190).

10 DATED this 27th day of March, 2009.

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16 James A. Teilborg
United States District Judge