

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Robert Christopher and Janet Stratton-Christopher,

Plaintiff,

v.

Spectra Electrical Services Incorporated,

Defendant.

No. CV-12-00345-PHX-DGC
ORDER

Defendant Spectra Electrical Services, Inc. has filed a “motion for judgment for costs” pursuant to Rule 68 of the Federal Rules of Civil Procedure. Doc. 134. Plaintiffs Robert and Janet Stratton-Christopher have filed a motion for attorney’s fees. Doc. 137. For the reasons that follow, the Court will grant the motion for costs and deny the motion for attorney’s fees.¹

I. Motion for Costs.

Rule 68 of the Federal Rules of Civil Procedure provides that a party defending against a claim “may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued,” at least 14 days before the date set for trial. Fed. R. Civ. P. 68(a). In the event such an offer is not accepted, Rule 68 further provides that “[i]f the judgment that the offeree finally obtains is not more favorable than the

¹ The request for oral argument is denied because the issues have been fully briefed and oral argument will not aid the Court’s decision. See Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 unaccepted offer, the offeree must pay the costs incurred after the offer was made.” Fed.
2 R. Civ. P. 68(d).

3 Defendant made an offer to Plaintiffs on August 28, 2012, (the “August 2012
4 Offer”), providing that judgment would be entered for Plaintiffs in the amount of
5 “\$13,424.40 and costs then accrued, including a reasonable attorney’s fee[.]” Doc. 134
6 at 1. Plaintiffs do not dispute the contents of this offer. The judgment entered for the
7 Plaintiffs in this matter was for \$3,400 in lost wages and \$1,600 in other expenses, for a
8 total of \$5,000. Doc. 130. Plaintiffs argue that the August 2012 Offer was not more
9 favorable than the judgment entered because the August 2012 Offer “expressly excluded
10 an admission or declaration of ‘wrongdoing or liability’ – and the jury’s Verdict of
11 January 21, 2014 expressly found that Defendant unlawfully subjected [Plaintiff] to a
12 ‘racially hostile work environment[.]’” Doc. 144 at 1.

13 Rule 68 “requires a court to compare the offer to the judgment and decide which is
14 more favorable.” *Reiter v. MTA New York City Transit Auth.*, 457 F.3d 224, 229 (2d Cir.
15 2006). “[A] court necessarily must evaluate the terms of the rejected offer in order to
16 compare it against the value of any ‘judgment finally obtained by the offeree[.]’” *Fafel v.*
17 *Dipaola*, 399 F.3d 403,414 (1st Cir. 2005). With regard to non-monetary relief, some
18 courts have concluded that equitable relief can be considered “more favorable” than
19 monetary relief. *Reiter*, 457 F.3d at 231; *Hobbs v. Alcoa, Inc.*, 501 F.3d 395, 398 (5th
20 Cir. 2007) (rejecting the argument that equitable relief be given no value per se).
21 Plaintiffs, however, did not obtain any equitable or other non-monetary relief and offer
22 no authority to support their assertion that the jury’s determination that Mr. Christopher
23 was subjected to a hostile work environment makes the judgment more favorable than the
24 August 2012 Offer.

25 The terms of the August 2012 Offer provided for judgment to be entered in favor
26 of Plaintiffs in this case, and in an amount substantially larger than the \$5,000 ultimately
27 awarded by the jury. Doc. 134 at 1. Given that the Offer included the entry of judgment
28 in favor of Plaintiffs and against Defendant in this employment discrimination case, the

1 Court cannot conclude that the jury’s finding that Mr. Christopher was subjected to a
2 racially hostile work environment, without more, was more favorable than the August
3 2012 Offer. Defendant has filed a Bill of Costs detailing its post-offer costs. Doc. 135-1.
4 Plaintiffs do not dispute the amount of the costs, and the Court finds them reasonable.
5 The Court will therefore grant Defendant’s motion for costs pursuant to Rule 68 in the
6 amount of \$5,644.20.

7 **II. Motion for Attorney’s Fees.**

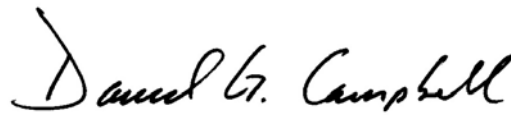
8 Plaintiffs have moved for an award of attorney’s fees pursuant to Rule
9 “54(d)(2)(B) and Local Rule of Practice 54.2.” Doc. 137. Plaintiffs’ motion states that
10 they will “file a Memorandum of Points and Authorities and the required documentation
11 in support thereof within sixty days of the entry of the final Judgment.” *Id.* at 2. Local
12 Rule 54.2(b)(2) requires a party seeking an award of attorneys’ fees to “file and serve a
13 motion for an award of attorneys’ fees and related non-taxable expenses (along with a
14 supporting memorandum of points and authorities) within fourteen (14) days of the entry
15 of judgment[.]” LRCiv 54.2(b)(2). Judgment was entered in this matter on January 22,
16 2014. Doc. 130. Because Plaintiffs had not complied with Local Rule 54.2(b)(2), the
17 Court ordered Plaintiffs to file the required memorandum and necessary documentation
18 in support of their motion by March 28, 2014. Doc. 146.

19 Plaintiffs did not comply with the Court’s order. Instead, they filed a “notice” in
20 which they stated that “it is not necessary to comply” with the Local Rules because they
21 have appealed the Court’s grant of summary judgment on their punitive damages claim.
22 Doc. 147 at 2 (emphasis in original). Although Plaintiffs did file a notice of appeal after
23 filing their motion for attorney’s fees, the Court retains jurisdiction to decide the motion
24 for attorney’s fees. *League of Women Voters of Cal. v. F.C.C.*, 751 F.2d 986, 990 (9th
25 Cir. 1985) (“[A] district court in this circuit retains jurisdiction to rule upon a request for
26 attorney fees.”) (citing *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 956-57 (9th Cir.
27 1983)); *see also Catz v. Chalker*, No. CIV 03-91-TUC-FRZ, 2007 WL 3171383, at *1 n.2
28 (D. Ariz. Oct. 26, 2007).

1 Plaintiffs have not filed the memorandum of points and authorities or supporting
2 documentation required by the Local Rules and ordered by the Court. Their motion for
3 attorneys' fees will therefore be denied.

4 **IT IS ORDERED** that Defendant's motion for costs (Doc. 134) is **granted**.
5 Plaintiffs' motion for attorney's fees (Doc. 137) is **denied**. The Clerk is directed to enter
6 judgment in favor of Defendant and against Plaintiffs in the amount of **\$5,644.20**.

7 Dated this 2nd day of April, 2014.

8
9
10 

11 _____
12 David G. Campbell
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28