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6	IN THE UNITED STATES DISTRICT COURT
7	FOR THE DISTRICT OF ARIZONA
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9	Joanne Zuniga, et al., No. CV-15-1978-PHX-DKD
10	Plaintiffs,
11	v. ORDER
12	Fiesta Pediatric Therapy Incorporated, et al.,
13	Defendants.
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15	Plaintiff Joanne Zuniga, the prevailing party at a bench trial, has applied for
16	attorneys fees. (Doc. 193) This matter is now fully briefed. For the reasons explained
17	below, the Court will award the requested fees.
18	Standard of Review
19	The Fair Labor and Standards Act ("FLSA") requires an award of attorneys' fees
20	to a prevailing plaintiff. 29 U.S.C.§ 216(b); Christiansburg Garment Co. v. EEOC, 434
21	U.S. 412, 415 n.5 (1978). To determine an appropriate award, the Court starts with the
22	lodestar calculation-the reasonable number of hours spent times a reasonable hourly
23	rate—and adjusts using any of the following factors that have not already been included
24	in the calculation:
25	1. The time and labor required;
26	2. The novelty and difficulty of the questions;
27	3. The skill requisite to perform the legal services properly;
28	4. The preclusion of other employment due to acceptance of the case;

1	5. The customary fee;
2	6. The contingent or fixed nature of the fee; ¹
3	7. The limitations imposed by the client or the case;
4	8. The amount involved and the results obtained;
5	9. The experience, reputation, and ability of the attorneys;
6	10. The undesirability of the case;
7	11. The nature of the professional relationship with the client; and
8	12. Awards in similar cases.
9	Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975). The fee application
10	was revised to include time incurred after the application was filed and in response to an
11	error noted by Defendants. (Doc. 198)
12	Untimely Motion
13	Defendants argue that Plaintiff is not entitled to any fees because the fee
14	application was untimely. (Doc. 195) Plaintiff filed a Notice of Late filing stating that
15	the motion was untimely because of technological problems and that it had been timely
16	conveyed to Defendants. (Doc. 194) Because it was timely provided to Defendants, the
17	Court cannot perceive any prejudice to Defendants in preparing a response and
18	Defendants have not argued that they were in any way prejudiced by Plaintiff's procedure
19	to work around their technological problems. As a result, the Court will accept the
20	untimely filing.
21	However, the Court will not require Defendants to pay fees related to the untimely
22	filing since that was entirely caused by Plaintiff's counsels' technological problems.
23	Accordingly, the Court will reduce Plaintiff's fee request by \$110.00, the amount billed
24	to "Draft Notice of Late Filing of Motion for Fees and Costs." (Doc. 198 at 310)
25	Analysis of Kerr Factors
26	The time and labor required. Plaintiff's claim was a straightforward one but this
27	matter was anything but straightforward.
28	^{1} Plaintiffs do not use this factor in their fee application and so the Court will not consider it.
	- 2 -

<u>The novelty and difficulty of the questions</u>. FLSA claims are not novel or difficult. However, the Court acknowledges that Defendants veered this matter into other terrain including bankruptcy, community property, HIPPA, and the fluctuating work week. Moreover, this matter was further complicated by the fact that Defendant paid Plaintiff twice a month, not every two weeks.

<u>The skill requisite to perform the legal services properly</u>. Again, this matter was more complicated than other FLSA cases.

8 <u>The preclusion of other employment due to acceptance of the case</u>. The Court
9 understands that Plaintiff's counsel could not accept other work because of the time
10 required to work on this matter.

<u>The customary fee.</u> Counsel for Defendants wrote to counsel for Plaintiff and
stated that they did not object to hourly rates, between \$195 and \$275 for Jeff Silence and
between \$400 and 450 for Kraig Marton. (Doc. 193 at ¶ 21) Because the Court agrees
that these rates are within the customary range for attorneys of their experience in this
market, this agreement will stand.

<u>The limitations imposed by the client or the case</u>. Counsel for Plaintiff stated that
this case was similar to all cases in that there were time limitations. The Court concludes
that this factor is not applicable here.

<u>The amount involved and the results obtained</u>. Plaintiff prevailed on her claim and
testified that the amount at issue was significant for her.

21 <u>The experience, reputation, and ability of the attorneys</u>. Plaintiff's counsel have
 22 submitted unrebutted declarations about their experience in employment law matters.²
 23 (Doc. 193 at 17-49) The Court will accept these in support of this factor.

24 <u>The undesirability of the case</u>. FLSA fees are mandatory because individual cases
25 have, by their nature, a small recovery. Accordingly, this factor is included in the
26 mandatory nature of the fee award.

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²² Wisely, Plaintiffs have not sought fees for detours in this case which, with their experience, they should have known to avoid.

The nature of the professional relationship with the client. Counsel has represented Plaintiff since the initiation of this litigation and avows that they do not expect to represent her in the future.

Awards in similar cases. Binding precedent confirms that, in similar cases, the fee award has dwarfed Plaintiff's recovery. See, e.g., Avila v. L.A. Police Dep't, 758 F.3d 1096, 1105 (9th Cir. 2014) (damages were \$50,000 and fee award was \$579,000); Evon v. 6 Law Offices of Sidney Mickell, 688 F.3d 1015, 1033 (9th Cir. 2012); Bonnette v. California Health & Welfare Agency, 704 F.2d 1465, 1468 & 1473 (9th Cir. 1983) (damages were \$18,455 and fees award was \$100,000).

Reductions

Defendants argue that Plaintiff is not entitled to fees incurred for an injunction 11 12 against harassment. (Doc. 195 at 3) The Court agrees. Even if that skirmish was related 13 to this matter, this Court is awarding fees under jurisdiction conferred by the FLSA. Plaintiffs have not cited to any authority conferring pendant jurisdiction and the Court 14 15 knows of none. Accordingly, the fee award will be reduced by \$5,345.50.

16 Next, the Court notes that Plaintiff filed, and then withdrew, a "Motion for 17 Production of Billing Documents." The Court will not award fees against Defendants for 18 this. Accordingly, the Court will reduce the fee award by \$192.50, the amount incurred 19 by this excursion. (Doc. 198 at 310)

20 Plaintiff has already reduced her fee request because of typographical error noted 21 by Defendants. (Doc. 198 at 16-17) The Court concludes that Defendants other 22 objections are unsupported by case law or citations to the records and are not well taken. 23 (Doc. 195)

Amount Awarded

25 Plaintiff seeks \$328,562.36 in fees and non-taxable costs. (Doc. 198 at 2) As 26 noted above, this will be reduced by a total of \$5,648.00. Therefore, the Court concludes 27 that Plaintiff is entitled to an award of \$322,914.36.

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1	IT IS THEREFORE ORDERED that Plaintiff is awarded \$322,914.36 in fees
2	and non-taxable costs.
3	IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
4	accordingly.
5	Dated this 22nd day of June, 2018.
6	A A
7	Aura
8	David K. Duncan
9	David K. Duncan United States Magistrate Judge
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