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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ashley Thompson,

10 Plaintiff,

11 v.

12 Arizona Movers and Storage Incorporated,
13 et al.,

14 Defendants.

No. CV-17-03819-PHX-DGC

ORDER

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16 Plaintiff has filed a motion for attorneys' fees pursuant to 29 U.S.C. § 216(b) and
17 the parties' settlement agreement. Doc. 32. The motion is fully briefed, and the parties
18 do not request oral argument. The Court will grant the motion in part.

19 **I. Legal Standards.**

20 A party requesting an award of attorneys' fees must show that it is (a) eligible for
21 an award, (b) entitled to an award, and (c) requesting a reasonable amount. *See*
22 LRCiv 54.2(c). Defendants concede that Plaintiff is eligible for and entitled to fees
23 pursuant to the parties' settlement agreement and as the prevailing party under the Fair
24 Labor Standards Act ("FLSA"). Doc. 33 at 1; *see* 29 U.S.C. § 216(b).

25 To determine the reasonableness of requested attorneys' fees, federal courts
26 generally use the "lodestar" method. *See Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989);
27 *United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 755 (9th Cir. 2011). The
28 Court must first determine the initial lodestar figure by taking a reasonable hourly rate

1 and multiplying it by the number of hours reasonably expended on the litigation.
2 *Blanchard*, 489 U.S. at 94 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The
3 Court next “determines whether to modify the lodestar figure, upward or downward,
4 based on factors not subsumed in the lodestar figure.” *Kelly v. Wengler*, 822
5 F.3d 1085, 1099 (9th Cir. 2016). “These factors are known as the *Kerr* factors.” *Stetson*
6 *v. Grissom*, 821 F.3d 1157, 1166-67 (9th Cir. 2016) (citing *Kerr v. Screen Extras Guild,*
7 *Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)). Such an adjustment is appropriate “only in rare or
8 exceptional circumstances.” *Cunningham v. City of L.A.*, 879 F.2d 481, 488 (9th
9 Cir. 1988).

10 **II. Discussion.**

11 Plaintiff was represented by the Bendau Law Firm, PLLC in this matter, and she
12 requests \$15,057.50 in attorneys’ fees. Doc. 32. This amount represents \$12,447.50 for
13 38.3 hours of work by attorney Clifford P. Bendau at the hourly rate of \$325, and
14 \$2,610.00 for 8.7 hours of work by attorney Christopher J. Bendau at the hourly rate of
15 \$300. *Id.* at 8-9. Counsel began working on the case in September 2017, filed the
16 complaint in October 2017, and accepted a settlement offer in January 2018. *See* Doc. 32
17 at 3-4. The settlement agreement awards Plaintiff her unpaid wages trebled (\$1,503.57),
18 costs incurred (\$797.59), and reasonable attorneys’ fees to be determined by the Court.
19 Doc. 30-1. The agreement states that “there is no good faith dispute that . . . [Plaintiff] is
20 receiving all wages and damages that could possibly be due and owing to her were [she]
21 to succeed at trial, and that a reasonable amount of attorneys’ fees are due and owing[.]”
22 Doc. 30-1 at 3-4.

23 Defendants argue that the fees Plaintiff requests are unreasonable given the simple
24 nature of Plaintiff’s claims, the fact that the case took only four months, and the fact that
25 Plaintiff only recovered \$1,503.57. Doc. 33. Defendants assert that a reasonable award
26 in this case is \$2,500, representing 10 hours of work at \$250 per hour. Doc. 33.

27 **A. Hourly Rates.**

28 Reasonable hourly rates are not determined by the rates actually charged in a case,

1 but “by the rate prevailing in the community for similar work performed by attorneys of
2 comparable skill, experience, and reputation.” *Schwarz v. Sec’y of Health & Human*
3 *Servs.*, 73 F.3d 895, 908 (9th Cir. 1995). Clifford Bendau is the managing partner of the
4 Bendau Law Firm, and both Clifford and Christopher Bendau practice almost exclusively
5 in the area of FLSA wage and hour litigation. Doc. 32-6 ¶¶ 1, 12-13; Doc. 32-7 ¶¶ 2, 13.
6 Clifford Bendau has litigated over 100 employment lawsuits, and Christopher Bendau has
7 litigated about 40. *Id.* Each submits a declaration averring that their rates of \$325 and
8 \$300 are reasonable and comparable to rates of attorneys with similar qualifications,
9 expertise, and experience in the Phoenix area. Doc. 32-6 ¶¶ 10-11; Doc. 32-7 ¶¶ 10-11.
10 These averments are based on their personal knowledge of hourly rates charged by other
11 attorneys. *Id.*

12 Although Defendants request a reduction to \$250, they present no evidence or
13 explanation as to why the rates of \$325 and \$300 are unreasonable under the applicable
14 standard. Because Plaintiff has met her initial burden of showing the rates are
15 reasonable, and Defendants have offered no contrary evidence, the Court will not reduce
16 counsel’s hourly rates. *See Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110-11 (9th
17 Cir. 2014) (explaining that affidavits of plaintiff’s attorney and other attorneys can serve
18 as evidence of the prevailing rate, and once a fee applicant presents such evidence, the
19 opponent must rebut it by submitting contrary evidence).

20 **B. Compensable Hours.**

21 Defendants argue that the hours expended on this matter were excessive because
22 the case involved simple issues in Plaintiff’s counsel’s area of expertise, took less than
23 four months from filing to settlement, and involved a small amount in controversy.
24 Doc. 33 at 3-4. Specifically, Defendants assert that certain hours spent discussing the
25 case were duplicative, and other billing entries were excessive or unnecessary. *Id.*

26 This case involves issues that should be relatively routine for two experienced
27 FLSA attorneys. *See* Doc. 1 (alleging failure to pay minimum wage and overtime).
28 Counsel was able to calculate an estimate of Plaintiff’s overdue wages in 0.3 hours, draft

1 a demand letter in 0.8 hours, and draft the 16-page complaint in 3.1 hours. *See* Doc. 32-5
2 at 2. The remaining 42.8 hours were spent communicating with Plaintiff, communicating
3 with opposing counsel regarding settlement negotiations, drafting applications for
4 default, preparing a joint case management report and MIDP response, and drafting the
5 parties' settlement agreement and the fee application. *See* Doc. 32-5 at 2-7. The Court
6 finds that many of these hours were reasonably expended. Defendants could have
7 avoided the need for litigation by responding to Plaintiff's demand letter, and could have
8 avoided the need for additional hours by timely responding to Plaintiff's complaint.

9 But the Court agrees that certain hours were excessive or duplicative. Clifford
10 Bendau billed 4.1 hours for discussions with Christopher, and Christopher also billed for
11 3.6 hours of that time. *Id.* The Court will reduce the compensable discussion time to 2
12 hours (1 per attorney).

13 Counsel spent 8.4 hours attempting to settle an attorneys' fee amount with
14 Defendants and drafting the fee application. *Id.* The Court will reduce the compensable
15 hours for these tasks to 4 (2 per attorney), because it appears that the negotiations could
16 have been shorter and more effective had Plaintiff's counsel disclosed their unredacted
17 billing records earlier.

18 The Court also agrees with Defendants that it was unreasonable for Christopher
19 Bendau to spend 1.0 hour to "[r]eceive fee agreement, sign, set up file" and 0.6 hours to
20 "[c]omplete summonses and cover sheet, finalize lawsuit, and file." *See* Doc. 33 at 3;
21 Doc. 32-5 at 2. These are clerical tasks.

22 After considering Defendants' arguments, the itemized billing entries, and the four
23 subsumed *Kerr* factors, the Court concludes that a lodestar amount of \$11,362.50 for 35.3
24 hours of Plaintiffs' counsel's time is reasonable.¹

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27 ¹ This is based on 30.9 hours for Clifford (instead of 38.3) and 4.4 hours for
28 Christopher (instead of 8.7) – a reduction of 11.7 hours (\$3,695). The Court will deny
Plaintiff's request for an additional \$1,787.50 for 5.5 hours spent by Christopher drafting
Plaintiff's reply for the same reasons the Court reduced counsel's time spent negotiating
the fees and drafting the initial application. *See* Doc. 34 at 7.

1 **C. Adjustment.**

2 Plaintiff requests an upward modification of the lodestar amount based on the
3 “excellent results” her counsel obtained and the fact that counsel litigated the case on a
4 purely contingent basis and fronted all expenses on Plaintiff’s behalf. Doc. 32 at 12
5 (citing *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006)). Defendants
6 counter that the relevant factors support a downward modification because Plaintiff
7 ultimately obtained only a third of the damages she originally demanded, and although
8 Plaintiff’s counsel took this case on a contingency basis, there was little risk involved
9 because of the minimal costs and effort required to litigate it. Doc. 33 at 3-4.

10 The Court recognizes that Plaintiff’s counsel successfully litigated this case to
11 obtain Plaintiff’s full compensatory and statutory damages, but finds that the lodestar
12 amount is more than adequate to compensate them for their efforts and the risk they bore
13 in undertaking this case. Plaintiff has not identified “rare or exceptional circumstances”
14 warranting an adjustment. *Cunningham*, 879 F.2d at 488.

15 Nor have Defendants. Defendants stress the discrepancy between the amount
16 recovered by Plaintiff (about \$1,500) and the amount of fees requested (about \$15,000).
17 *Id.* The Supreme Court has noted that “the extent of a plaintiff’s success is a crucial
18 factor in determining the proper amount of an award of attorney’s fees[.]” *Hensley*, 461
19 U.S. at 440; *see also McGinnis v. Ky. Fried Chicken of Cal.*, 51 F.3d 805, 810 (9th
20 Cir. 1994). But the Ninth Circuit has also made clear that attorneys’ fee awards should
21 not be made strictly proportional to the amount recovered, and that successful litigation,
22 even with modest recoveries, can vindicate rights protected by statute. *Evon v. Law*
23 *Offices of Sidney Mickell*, 688 F.3d 1015, 1033 (9th Cir. 2012).

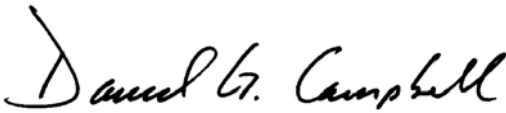
24 Although the lodestar amount is considerably higher than the financial benefit to
25 Plaintiff, the Court cannot conclude that it is excessive. Counsel successfully recovered
26 Plaintiff’s full compensatory and statutory damages, and much of counsel’s efforts could
27 have been avoided had Defendants responded to the initial demand letter or accepted
28 Plaintiff’s offer to settle the fees for a significantly lower amount. The Court has already

1 adjusted the lodestar amount to reflect only reasonable hours expended. The Court has
2 considered the relevant *Kerr* factors as well as Defendants' arguments. Doc. 33 at 3-5.
3 The cursory arguments are simply insufficient in this case to overcome the strong
4 presumption that the lodestar represents a reasonable amount of fees.

5 **IT IS ORDERED** that Plaintiff's motion for attorneys' fees (Doc. 32) is **granted**
6 **in part**. Plaintiff is awarded \$11,362.50 in attorneys' fees.

7 Dated this 29th day of May, 2018.

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David G. Campbell
United States District Judge