

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**

Mayra Rodriguez,  
Plaintiff,  
  
v.  
Pride Dealer Services Inc., a Florida  
corporation,  
Defendant.

No. CV-23-01955-PHX-ROS

**ORDER**

Pending before the Court is Plaintiff’s Motion for Attorneys’ Fees and Costs (“Motion”) (Doc. 18) seeking \$22,832.09 in fees and costs. For the reasons that follow, the Court will grant Plaintiff’s award of fees and costs in a reduced amount of \$12,100.11.

**BACKGROUND**

Plaintiff filed this suit for unpaid wages, overtime, and minimum wages under the Fair Labor Standards Act (“FLSA”), the Arizona Minimum Wage Act (“AMWA”), and the Arizona Wage Act (“AWA”). (Doc. 1). Defendant Pride Dealer Services, Inc. was properly served (Doc. 9) but failed to answer or otherwise participate in the action. The Court granted default judgment against Defendant in the amount of \$47,639.00. (Doc. 16).

**ATTORNEYS’ FEES**

**I. ENTITLEMENT AND ELIGIBILITY TO FEES**

Plaintiff requests \$22,270.00 in attorneys’ fees and \$562.09 in costs in accordance with Federal Rule of Civil Procedure 54, Local Rule of Civil Procedure 54.2, and

1 29 U.S.C. § 216(b)—the FLSA’s fee-shifting provision that “provides for attorney fees and  
2 costs to a successful plaintiff.” *Haworth v. State of Nev.*, 56 F.3d 1048, 1050 n.1 (9th Cir.  
3 1995). The Court finds Plaintiff is eligible for, and entitled to, attorneys’ fees.

4 The FLSA requires courts to award reasonable attorneys’ fees to successful  
5 plaintiffs. 29 U.S.C. § 216(b); *see also Houser v. Matson*, 447 F.2d 860, 863 (9th Cir.  
6 1971) (“[The statute] provides that an award of attorney’s fee ‘shall’ be made to the  
7 successful plaintiff. The award of an attorney’s fee is mandatory.”). As the prevailing  
8 party in the present FLSA action, (Doc. 16), Plaintiff is entitled to attorneys’ fees.

9 Although Plaintiff has demonstrated entitlement to an award of fees, Plaintiff is not  
10 entitled to payment for time spent in preparing the instant Motion. The Ninth Circuit  
11 generally permits an award of fees for time expended in preparing a motion for attorneys’  
12 fees. *See In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-60 (9th Cir. 1985) (“In statutory  
13 fee cases, federal courts, including our own, have uniformly held that time spent in  
14 establishing the entitlement to and amount of the fee is compensable.”); *Gary v. Carbon*  
15 *Cycle Ariz. LLC*, 398 F. Supp. 3d 468, 479 (D. Ariz. 2019) (citing *In re Nucorp*, 764 F.2d  
16 at 660) (“[I]t would be inconsistent to dilute a fees award by refusing to compensate  
17 attorneys for the time they reasonably spent in establishing their rightful claim to the fee.”).  
18 However, to receive an award for fees associated with preparing an attorneys’ fees motion,  
19 strict compliance with this Court’s Local Rules is required.

20 Local Rule of Civil Procedure 54.2(c)(2) provides: “If the moving party claims  
21 entitlement to fees for preparing the motion and memorandum for award of attorneys’ fees  
22 and related non-taxable expenses, *such party also must cite the applicable legal authority*  
23 *supporting such specific request.*” (emphasis added). Here, Plaintiff requests fees for 7.4  
24 hours billed in preparing the instant Motion and its supporting documents.<sup>1</sup> Plaintiff does  
25 not, however, cite to any applicable legal authority supporting this request. The Court finds  
26 Plaintiff is not entitled to payment for the 7.4 hours spent in preparing this Motion. Thus,  
27

28 <sup>1</sup> The Court is referring to four specific time entries between May 13 and May 17, 2024.  
(See Doc. 18-1, Ex. A at 8-9). These time entries include drafting the Motion, revising it,  
drafting supporting documents such as declarations, and preparing exhibits.

1 preliminarily, the Court will reduce the fee award by \$2,120.00. *See Moshir v. Automobili*  
2 *Lamborghini Am. LLC*, 927 F. Supp. 2d 789, 803–04 (D. Ariz. 2013) (“[Plaintiff] has failed  
3 to specifically cite any applicable legal authority supporting his claim of entitlement to fees  
4 for preparing the motion and memorandum for award of attorneys’ fees, as required by  
5 LRCiv 54.2(c)(2) .... Accordingly, [Plaintiff] has not shown that he is entitled to recovery  
6 for the 22.6 hours of attorney time spent in preparing his motion for fees and costs. The  
7 court will reduce the reasonable hours component of the lodestar calculation  
8 accordingly.”); *see also Croomes v. Stream Glob. Servs.-AZ, Inc.*, No. CV11-0141-PHX-  
9 JAT, 2012 WL 1247021, at \*4 (D. Ariz. Apr. 13, 2012) (denying defendant’s request for  
10 fees incurred in preparing motion for fees and costs because defendant failed to cite any  
11 legal authority supporting request); *see also J & J Sports Prods., Inc. v. Margailan*, No.  
12 CIV 13-312-TUC-CKJ, 2014 WL 169801, at \*2 (D. Ariz. Jan. 15, 2014) (“No authority  
13 having been provided for an award for the preparation of the pending motion, the Court  
14 will reduce the requested award by \$450.00 (2.75 hours), the amount requested for the  
15 preparation of the pending motion.”).

16 The Court finds Plaintiff is entitled to recover fees, excluding those incurred in  
17 preparing the instant Motion.

## 18 **II. REASONABLENESS OF REQUESTED AWARD**

19 While the FLSA mandates an award of attorneys’ fees to a successful plaintiff,  
20 29 U.S.C. § 216(b), “the amount of the award is within the discretion of the court,” *Houser*  
21 *v. Matson*, 447 F.2d 860, 863 (9th Cir. 1971). Courts “employ the ‘lodestar’ method to  
22 determine a reasonable attorney’s fees award.” *Kelly v. Wengler*, 822 F.3d 1085, 1099  
23 (9th Cir. 2016) (citing *Fischer v. SJB–P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)).  
24 Courts calculate the lodestar figure by “multiplying the number of hours reasonably  
25 expended on a case by a reasonable hourly rate.” *Id.*

26 After calculating the lodestar figure, a Court may reduce or increase the award based  
27 on a variety of factors. Those factors include: (1) the time and labor required, (2) the  
28 novelty and difficulty of the legal questions involved, (3) the skill required to perform the

1 legal service properly, (4) other employment precluded due to acceptance of the case, (5)  
2 the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed  
3 by the client or the circumstances, (8) the amount involved and the results obtained, (9) the  
4 experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case,  
5 (11) the nature and length of the professional relationship with the client, and (12) awards  
6 in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (“*Kerr*  
7 factors”).<sup>2</sup> The lodestar calculation normally subsumes some of these factors such that the  
8 Court need not consider them again after determining the lodestar. *See Gonzalez v. City of*  
9 *Maywood*, 729 F.3d 1196, 1209 (9th Cir. 2013) (identifying factors often considered when  
10 calculating lodestar).

### 11 **A. Hourly Rates**

12 The first question is whether Plaintiff’s asserted rate is reasonable. “A reasonable  
13 hourly rate is ordinarily the prevailing market rate in the relevant community.” *Sw. Fair*  
14 *Hous. Council v. WG Scottsdale LLC*, No. 19-00180, 2022 WL 16715613 at \*3 (D. Ariz.  
15 Nov. 4, 2022) (citing *Kelly*, 822 F.3d at 1099). And “the burden is on the fee applicant to  
16 produce satisfactory evidence—in addition to the attorney’s own affidavits—that the  
17 requested rates are in line with those prevailing in the community for similar services by  
18 lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465  
19 U.S. 886, 895 n.11 (1984).

20 Plaintiff’s Counsel, Ty Frankel and Patti Syverson, are partners at Frankel Syverson  
21 PLLC with decades of experience in wage and hour law litigation. (Doc. 18-1 at 2-3).  
22 According to Mr. Frankel’s declaration, he and Ms. Syverson have practiced law in  
23 Arizona since 2009 and 2000, respectively. (Doc. 18-1 at 2-3). Plaintiff asserts a \$400 per  
24 hour billing rate for both Mr. Frankel and Ms. Syverson (Doc. 18 at 4), supported by Mr.  
25 Frankel’s declaration outlining the extent of their experience and stating the \$400 rate is  
26 reasonable (Doc. 18-1). Additionally, Plaintiff asserts a \$190 hourly billing rate for the  
27

---

28 <sup>2</sup> LRCiv. 54.2 also lists factors the Court must address when determining the reasonableness of the requested award. These factors are largely duplicative of the *Kerr* factors.

1 firm’s paralegal, David Streyle, who has allegedly been working as a paralegal for over 20  
2 years. (Doc. 18-1 at 4, 8).

3 According to Mr. Frankel, his and Ms. Syverson’s \$400 hourly rate, along with Mr.  
4 Streyle’s \$190 hourly rate, “are generally in accordance with the rates charged by other  
5 lawyers and paralegals in this community with similar experience and education.”  
6 (Doc. 18-1 at 9). In 2020, the District of Arizona twice awarded fees to Plaintiff’s Counsel  
7 in FLSA cases at hourly rates of \$350-\$400 for attorneys Frankel and Syverson and \$190  
8 for paralegal Streyle. *See Alvarez v. Direct Energy Bus. Mktg. LLC*, No. CV-16-03657-  
9 PHX-SPL, Doc. 272-1; *see also Shoults v. G4S Secure Sols. (USA) Inc.*, No. CV-19-02408-  
10 PHX-GMS, Docs. 327-2, 330. The prevailing rates for FLSA cases in the District of  
11 Arizona and Counsel’s experience support their requested hourly rates. Thus, the Court  
12 finds the \$400 hourly attorney rate and the \$190 hourly paralegal rate to be reasonable.

### 13 **B. Hours Expended**

14 Under the lodestar method, the prevailing party is generally entitled to recover fees  
15 for “every item of service which, at the time rendered, would have been undertaken by a  
16 reasonable and prudent lawyer to advance or protect his client’s interest.” *Gary v. Carbon*  
17 *Cycle Ariz. LLC*, 398 F. Supp. 3d 468, 486 (D. Ariz. 2019) (quoting *Twin City Sportservice*  
18 *v. Charles O. Finley & Co.*, 676 F.2d 1291, 1313 (9th Cir. 1982)). Courts may “exclude  
19 from this initial fee calculation hours that were not reasonably expended.” *Hensley v.*  
20 *Eckerhart*, 461 U.S. 424, 433-34 (1983) (internal quotations omitted); *see also McKown v.*  
21 *City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (“In determining the appropriate  
22 number of hours to be included in a lodestar calculation, the district court should exclude  
23 hours that are excessive, redundant, or otherwise unnecessary.”).

24 Unreasonable hours may be excluded in one of two ways. *Gonzalez v. City of*  
25 *Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013). First, courts may exclude unreasonable  
26 hours after “conduct[ing] an hour-by-hour analysis of the fee request[.]” *Id.* (internal  
27 quotation marks omitted). Second, courts “faced with a massive fee application” may  
28 “make across-the-board percentage cuts either in the number of hours claimed or in the

1 final lodestar figure as a practical means of excluding non-compensable hours from a fee  
2 application.” *Id.* (internal quotation marks and brackets omitted); *see also Fox v. Vice*, 563  
3 U.S. 826, 838 (2011) (“[T]rial courts need not, and indeed should not, become green-  
4 eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough  
5 justice, not to achieve auditing perfection. So trial courts may take into account their overall  
6 sense of a suit, and may use estimates in calculating and allocating an attorney’s time.”).  
7 When a district court excludes hours, it must explain how it came up with the amount of  
8 an attorneys’ fees award. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111  
9 (9th Cir. 2008) (“The explanation need not be elaborate, but it must be comprehensible ...  
10 Where the difference between the lawyer’s request and the court’s award is relatively  
11 small, a somewhat cursory explanation will suffice. But where the disparity is larger, a  
12 more specific articulation of the court’s reasoning is expected.” (citations omitted).

13 Plaintiff submits a task-based itemized statement of time Plaintiff’s Counsel  
14 expended on this case. (Doc. 18-1, Ex. A). The itemized statement lists Counsel’s total  
15 number of hours expended as 68.8 hours. (*Id.*). Having carefully considered the time and  
16 labor reasonably required for each task in Plaintiff’s itemized statement, the Court finds  
17 the hours expended proffered by Plaintiff are not reasonable. Accordingly, the Court will  
18 decrease the lodestar amount by reducing the number of hours the Court deems  
19 unreasonable as set forth in the table attached to this Order, *infra* (the “Table”). The  
20 reduction of the lodestar amount is supported by consideration of the relevant *Kerr* factors  
21 discussed below.

22 **1. Factors (1), (2), and (3): Time, Difficulty, and Skill**

23 The first three *Kerr* factors courts consider are (1) the time and labor required, (2)  
24 the novelty and difficulty of the legal questions involved, and (3) the skill required to  
25 perform the legal service properly.

26 As an initial matter, parties may not recover fees for tasks performed by attorneys  
27 and paralegals which are clerical or administrative in nature. *Gary v. Carbon Cycle*  
28 *Arizona LLC*, 398 F. Supp. 3d 468, 487 (D. Ariz. 2019); *see Neil v. Comm’r of Soc. Sec.*,

1 495 Fed.Appx. 845, 847 (9th Cir. 2012) (holding that “the district court did not abuse its  
2 discretion in declining to award [ ] attorney’s fees for purely clerical tasks such as filing  
3 documents and preparing and serving summons”); *see also Nadarajah v. Holder*, 569 F.3d  
4 906, 921 (9th Cir. 2009) (holding that clerical tasks such as filing and document  
5 organization “should have been subsumed in firm overhead rather than billed at paralegal  
6 rates”); *see also Pearson v. Nat’l Credit Sys., Inc.*, No. 2: CV-10-0526-PHX-MHM, 2010  
7 WL 5146805, at \*3 (D. Ariz. Dec. 13. 2010) (“[T]asks which are clerical in nature are not  
8 recoverable.”).

9 Non-compensable clerical or administrative tasks include, but are not limited to: (1)  
10 reviewing Court-generated notices; (2) scheduling dates and deadlines; (3) calendaring  
11 dates and deadlines; (4) notifying a client of dates and deadlines; (5) preparing documents  
12 for filing with the Court; (6) filing documents with the Court; (7) informing a client that a  
13 document has been filed; (8) personally delivering documents; (9) bates stamping and other  
14 labeling of documents; (10) maintaining and pulling files; (11) copying, printing, and  
15 scanning documents; receiving, downloading, and emailing documents; and (12)  
16 communicating with Court staff. *I.T. ex rel. Renee T. v. Dep’t of Educ., Hawaii*, 18 F.  
17 Supp. 3d 1047, 1062 (D. Haw. 2014), *aff’d sub nom. I. T. by & through Renee & Floyd T.*  
18 *v. Dep’t of Educ., Hawaii*, 700 F. App’x 596 (9th Cir. 2017) (internal citations omitted).

19 Here, Counsel seeks compensation for 8.4 hours of clerical and administrative tasks  
20 including “prepar[ing] civil cover sheet and summons,” “complet[ing] electronic filing,”  
21 submitting documents to process server, reviewing orders from the Court, requesting  
22 records, mailing documents, tracking mail, and preparing documents for filing with the  
23 Court. Consequently, Counsel may not recover for these tasks because they “should have  
24 been subsumed in firm overhead.” *Nadarajah*, 569 F.3d at 921. The Table attached  
25 denotes all submitted time entries containing clerical and administrative tasks in green  
26 coloring and accordingly lists a reduction in the amount billed. Thus, the Court will reduce  
27 the number of hours expended by an additional 8.4 hours to account for non-compensable  
28 clerical and administrative tasks.

1           Additionally, the Court finds that a further reduction of hours is warranted based on  
2 the relatively low complexity of the case and the correspondingly diminished demands  
3 required of Counsel who have substantial expertise in the law. Plaintiff contends the time  
4 and labor expended was reasonable “given the course of the litigation” as related to matters  
5 such as performing preliminary legal research, filing a Complaint, dealing with an evasive  
6 defendant, and preparing a motion for default judgment. (Doc. 18 at 5-6). This case is a  
7 relatively straightforward one dealing simply with a plaintiff who was not paid her wages  
8 by her employer, as evidenced by the 10-page Complaint. Counsel billed over 10 hours  
9 for tasks performed regarding relatively simple service issues, such as a 3-page motion for  
10 alternative service. Defendant never appeared, and Plaintiff needed not litigate the case.  
11 Indeed, Plaintiff applied for default (another straightforward procedure) and was  
12 subsequently required to show cause for failing to timely file a motion for default judgment.  
13 Eventually, Plaintiff moved for default judgment, and the case ended.

14           In other words, Counsel performed the bare minimum in order to receive a  
15 judgment, yet claims compensation for an enormous number of hours typical only in  
16 complex FLSA cases. Consequently, the Court will further reduce the fee award by  
17 adjusting the unreasonable entries as denoted in purple coloring in the Table, marking a 34  
18 percent reduction in compensable hours (after subtracting the non-compensable fees  
19 motion and clerical tasks). *See Sclafani v. Allianceone Receivables Mgmt.*, No. 09-61675-  
20 CIV, 2011 U.S. Dist. LEXIS 142771, at \*6 (S.D. Fla. Sep. 28, 2011) (reducing Plaintiff’s  
21 compensable hours by 30 percent because it “was not a particularly novel or complicated  
22 case,” “it should not have required the claimed degree of time and labor,” and Counsel “has  
23 extensive experience with FDCPA cases”).

24           **2. Factor (9): Experience, Reputation, and Ability of the Attorneys**

25           The Court’s reduction of hours is further supported by Counsel’s exceptional  
26 experience, reputation, and ability. Mr. Frankel’s states Counsel has decades of experience  
27 in wage and hour law. Indeed, the Court finds that Counsel’s extensive experience and  
28 competency in matters at bar is commensurate with Counsel’s ability to handle routine



1 wage cases in an efficient manner. Counsel’s experience and reputation—while entitling  
2 them to charge higher rates—enables Counsel to perform tasks quicker than their less-  
3 seasoned counterparts. *See Grey v. Chater*, No. 95 CIV. 8847 (JFK), 1997 WL 12806, at  
4 \*2 (S.D.N.Y. Jan. 14, 1997) (finding the number of hours spent by counsel who was  
5 experienced in Social Security benefits law was excessive in light of the diminished  
6 complexity of the case and reducing the hours from 65.03 to 30).

### 7 **3. Factor (12): Awards in Similar Cases**

8 Fee orders in similar cases support a reduction of hours. The District of Arizona  
9 has considered numerous motions for attorneys’ fees involving routine FLSA cases where  
10 a defendant has defaulted and the court has granted plaintiff a default judgment; counsel in  
11 these cases, experienced and inexperienced alike, have never come close to expending and  
12 requesting the 68.8 hours Counsel claims here. *See Romero v. Steel Roots LLC*, No. CV-  
13 23-01033-PHX-ROS, 2024 WL 2389353, at \*3 (D. Ariz. May 23, 2024) (**19.1 hours**);  
14 *Mumphrey v. Good Neighbor Cmty. Servs. LLC*, No. CV-23-00923-PHX-ROS, 2023 WL  
15 8702103, at \*3 (D. Ariz. Dec. 15, 2023) (**11.1 hours**); *Aguirre v. Custom Image Pros LLC*,  
16 No. CV-23-00334-PHX-MTL, 2023 WL 5932805, at \*3 (D. Ariz. Sept. 12, 2023) (**22.3**  
17 **hours**); *Aguirre v. Custom Image Pros LLC*, No. CV-23-00419-PHX-ROS, Doc. 20, (D.  
18 Ariz. Nov. 16, 2023) (**12.7 hours**); *Ramos v. Probuilds LLC*, No. CV-23-01111-PHX-  
19 SMM, 2024 WL 1078078, at \*5 (D. Ariz. Feb. 26, 2024), *report and recommendation*  
20 *adopted*, No. CV-23-01111-PHX-SMM, 2024 WL 1071204 (D. Ariz. Mar. 12, 2024) (**15.3**  
21 **hours**) ; *Xalamihua v. GGC Legacy Janitorial Servs. LLC*, No. CV-23-00009-TUC-BGM,  
22 2024 WL 942101 at \*3 (D. Ariz. Mar. 5, 2024) (**14.7 hours**); *Johnson v. Colvin*, No. CV-  
23 23-00623-PHX-JZB, 2024 WL 3488405 (D. Ariz. June 13, 2024), *report and*  
24 *recommendation adopted*, No. CV-23-00623-PHX-SMM (JZB), 2024 WL 3471317 at \*2  
25 (D. Ariz. July 19, 2024) (**32.3 hours**); *Coe v. Hirsch*, No. CV-21-00478-PHX-SMM-  
26 MTM, 2022 WL 508841, at \*1 (D. Ariz. Jan. 21, 2022) (**14.6 hours**); *Peralta v. Custom*  
27 *Image Pros LLC*, No. CV-23-00358-PHX-JAT, 2024 WL 620901 at \*2 (D. Ariz. Feb. 14,  
28 2024) (**10.9 hours**); *Rodriguez v. D’Auto Boys LLC*, No. CV2201420PHXSMMJZB, 2024

1 WL 1861247, at \*2 (D. Ariz. Apr. 5, 2024), *report and recommendation adopted*, No.  
2 CV2201420PHXSMMJZB, 2024 WL 1856557 (D. Ariz. Apr. 29, 2024) (**14 hours**);  
3 *Castro v. C&C Verde LLC*, No. CV-18-04715-PHX-JZB, 2019 WL 13244383, at \*2 (D.  
4 Ariz. Oct. 9, 2019) (**14.2 hours**).

5 Counsel’s proffer of 68.8 hours substantially exceeds hours expended in similar  
6 FLSA cases within this District where default judgment swiftly disposes of the case  
7 following a defendant’s failure to litigate the case. Thus, the Court’s reduction in the  
8 number of hours to 34.9 hours is fair, reasonable, and consistent with (and comparatively  
9 generous to) other similar cases. The Court finds the lodestar figure is \$11,538.02 (34.9  
10 hours at rates of \$400 and \$190).

### 11 **C. Remaining Applicable *Kerr* Factors**

12 Despite a “strong assumption that the ‘lodestar’ method represents a reasonable  
13 fee,” *Corrales-Gonzalez v. Speed Auto Wholesalers LLC*, 2023 WL 3981139, at \*7 (D.  
14 Ariz. June 13, 2023), the Court “has discretion to adjust the lodestar upward or downward”  
15 based on the *Kerr* factors not subsumed in the lodestar calculation, *Stetson v. Grissom*, 821  
16 F.3d 1157, 1166-67 (9th Cir. 2016). Courts must assess these factors and must articulate  
17 “with sufficient clarity the manner in which it makes its determination.” *Carter v. Caleb*  
18 *Brett LLC*, 757 F.3d 866, 869 (9th Cir. 2014). The above lodestar analysis subsumes many  
19 of the *Kerr* factors. The Court considers the remaining applicable factors here and finds  
20 none justify adjusting the lodestar figure.

21 Plaintiff argues Counsel should be awarded its full fees based on their contingency  
22 fee agreement,<sup>3</sup> the favorable result obtained, and the “undesirability” of the case based on  
23 the “relatively small” amount involved in the dispute. The Court acknowledges Counsel’s  
24 efforts in obtaining a favorable result for Plaintiff; however, “the quality of an attorney’s  
25

---

26 <sup>3</sup> Plaintiff’s fee agreement with Counsel (Doc. 18-1, Ex. B) states “[i]f client recovers  
27 monies in the case, the Firm shall be entitled to the greater of 33-1/3% of the amount  
28 ultimately recovered or the actual amount of fees incurred (based on the attorney’s  
customary hourly rate(s) and hours expended).” Although the Court is not asked to  
determine the amount owed to Counsel by Plaintiff, it notes that the amount of Counsel’s  
reasonable fees is less than 33-1/3% of the amount of the judgment.

1 performance generally should not be used to adjust the lodestar figure ... because  
2 considerations concerning the quality of a prevailing party’s counsel’s representation  
3 normally are reflected in the reasonable hourly rate. *Perdue v. Kenny A. ex rel. Winn*, 559  
4 U.S. 542, 553 (2010) (internal quotation omitted). Additionally, based on the allegations,  
5 Plaintiff’s judgment of \$47,639.00 is not an “undesirable” sum. Therefore, the Court finds  
6 no adjustment to the lodestar amount is necessary.

7 **D. Conclusion**

8 The Court finds Counsel is not entitled to recover (1) tasks related to preparing the  
9 instant motion and (2) clerical/administrative tasks. Additionally, the Court finds Counsel  
10 expended an unreasonable number of hours based on the simplicity of the case, Counsel’s  
11 extensive knowledge and experience in handling wage cases, and awards in similar cases  
12 previously granted by this District. Accordingly, a reduction in the number of hours from  
13 68.8 to 34.9 is justified. Having found the \$400 hourly attorney rate and the \$190 hourly  
14 paralegal rate reasonable, the Court will award attorney’ fees in the amount of **\$11,538.02**.

15 **COSTS**

16 In addition to attorneys’ fees, Plaintiff requests \$562.09 in out-of-pocket costs, Mot.  
17 at 7, detailed in Mr. Frankel’s Declaration (Doc. 18-1 at 12). Reasonable out-of-pocket  
18 expenses are awardable as “costs of the action” under the FLSA. *See Van Dyke v. BTS*  
19 *Container Serv., Inc.*, 2009 WL 2997105, at \*2 (D. Or. Sept. 15, 2009). The Court finds  
20 Plaintiff’s requested out-of-pocket costs—consisting of filing fees, service of process costs,  
21 and postage costs—reasonable and will award Plaintiff **\$562.09** in costs.

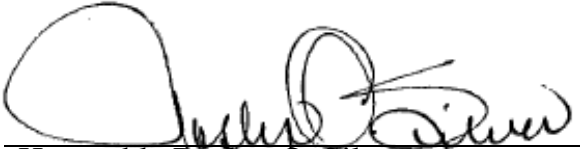
22 Accordingly,

23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
28 ...

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

**IT IS ORDERED** Plaintiff's Motion for an Award of Attorneys' Fees and Costs (Doc. 18) is **GRANTED IN PART** and **DENIED IN PART**. The Court awards Plaintiff \$11,538.02 in attorneys' fees and \$562.09 in costs.

Dated this 24th day of September, 2024.



Honorable Roslyn O. Silver  
Senior United States District Judge

Date	Atty	Description	Hours	Rate	Amount	Reduction Percentage	Reduced Amount
9/11/2023	TDF	Teleconference with Mayra Rodriguez regarding (Redacted)	0.50	\$400.00	\$200.00	0%	\$200.00
9/12/2023	TDF	Analyze documents regarding potential claims against Pride Dealer Services	1.50	\$400.00	\$600.00	50%	\$300.00
9/12/2023	TDF	Communications with Rodriguez regarding (Redacted)	0.50	\$400.00	\$200.00	0%	\$200.00
9/13/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
9/13/2023	TDF	Analyze documents	1.00	\$400.00	\$400.00	50%	\$200.00
9/14/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
9/14/2023	TDF	Draft complaint	1.00	\$400.00	\$400.00	50%	\$200.00
9/15/2023	TDF	Multiple correspondence with Rodriguez regarding (Redacted)	0.50	\$400.00	\$200.00	0%	\$200.00
9/15/2023	TDF	Draft complaint	2.50	\$400.00	\$1,000.00	50%	\$500.00
9/17/2023	PNS	Review client documents and review draft complaint	1.00	\$400.00	\$400.00	50%	\$200.00
9/18/2023	TDF	Finalize complaint	1.50	\$400.00	\$600.00	50%	\$300.00
9/18/2023	DJS	Proof, revise and finalize complaint (1.2); Prepare civil cover sheet and summons (.2); Complete electronic filing of same (.2); Exchange email with T. Frankel re same (.1)	1.70	\$190.00	\$323.00	24%	\$77.52
9/18/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.50	\$400.00	\$200.00	0%	\$200.00
9/18/2023	PNS	Telephone conference with Mr. Frankel regarding allegations	0.10	\$400.00	\$40.00	0%	\$40.00
9/20/2023	DJS	Submit complaint and related case initiating documents to Liddy Legal Support Services to be served	0.50	\$190.00	\$95.00	100%	\$0.00
9/20/2023	PNS	Review initial orders from court	0.20	\$400.00	\$80.00	100%	\$0.00

9/25/2023	DJS	Exchange email with T. Frankel re status of service of complaint and case initiating documents	0.10	\$190.00	\$19.00	0%	\$19.00
9/29/2023	DJS	Telephone conference with Liddy re status of service of complaint (.1); Exchange email with T. Frankel re same (.1)	0.20	\$190.00	\$38.00	0%	\$38.00
9/29/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
10/2/2023	DJS	Exchange email with Brett Long of Liddy re status of service of complaint and case initiating documents (.1); Exchange email with T. Frankel and P. Syverson re same (.1)	0.20	\$190.00	\$38.00	0%	\$38.00
10/2/2023	PNS	Discuss service of process issues	0.20	\$400.00	\$80.00	0%	\$80.00
10/6/2023	DJS	Prepare email to T. Frankel and P. Syverson re status of service of complaint and case initiating documents	0.10	\$190.00	\$19.00	0%	\$19.00
10/10/2023	DJS	Exchange email with Brett Long of Liddy and re failed service and next steps (.2); Exchange email with T. Frankel re same (.1)	0.30	\$190.00	\$57.00	0%	\$57.00
10/10/2023	TDF	Research regarding alternative service	0.50	\$400.00	\$200.00	0%	\$200.00
10/10/2023	PNS	Review email regarding service of process issues	0.10	\$400.00	\$40.00	50%	\$20.00
10/11/2023	TDF	Research regarding motion for alternative service	2.00	\$400.00	\$800.00	50%	\$400.00
10/12/2023	TDF	Draft motion for alternative service	2.00	\$400.00	\$800.00	50%	\$400.00
10/12/2023	TDF	Correspondence to Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00

10/12/2023	DJS	Exchange email with Brett of Liddy re attempted service and affidavit re same (.1); Prepare email to T. Frankel re same (.1)	0.20	\$190.00	\$38.00	0%	\$38.00
10/12/2023	PNS	Review affidavit regarding attempted service	0.10	\$400.00	\$40.00	0%	\$40.00
10/13/2023	TDF	Draft motion for alternative service	3.00	\$400.00	\$1,200.00	50%	\$600.00
10/13/2023	PNS	Review motion for alternative service	0.20	\$400.00	\$80.00	50%	\$40.00
10/16/2023	TDF	Finalize motion for alternative service	0.50	\$400.00	\$200.00	50%	\$100.00
10/16/2023	PNS	Discuss motion for alternative service with Mr. Frankel	0.10	\$400.00	\$40.00	0%	\$40.00
10/16/2023	DJS	Review and revise draft motion for alternative service, exhibits and proposed order (.7); Communicate with T. Frankel re same (.1); Revise and finalize same (.2); Electronically file same (.1); Prepare email Judge Silver with Word version of proposed order (.1)	1.20	\$190.00	\$228.00	50%	\$114.00
10/17/2023	TDF	Review order regarding alternative service	0.10	\$400.00	\$40.00	100%	\$0.00
10/17/2023	DJS	Begin process to request documentation via FOIA / public records requests from DOL and ICA (.1); Exchange email with T. Frankel re same (.1)	0.20	\$190.00	\$38.00	50%	\$19.00
10/18/2023	DJS	Complete mailing of Complaint and case initiating documents via Certified Mail (.4); Communicate with T. Frankel re same (.2); Travel to and from post office re same (.4)	1.00	\$190.00	\$190.00	100%	\$0.00

10/18/2023	DJS	Confer with T. Frankel re certified mailing, tracking same, filing notice of service and docketing answer date	0.10	\$190.00	\$19.00	50%	\$9.50
10/24/2023	DJS	Track 10/18/23 certified mailing of complaint and case initiating documents; Exchange email with T. Frankel re same	0.10	\$190.00	\$19.00	100%	\$0.00
10/24/2023	DJS	Prepare email to DOL to obtain documents pursuant to Freedom of Information Act - Public Records Request	0.10	\$190.00	\$19.00	50%	\$9.50
10/24/2023	DJS	Review email acknowledgement from Glenn Lewis of DOL re FOIA Public Records Request	0.10	\$190.00	\$19.00	50%	\$9.50
10/24/2023	DJS	Prepare and submit public records request form to Industrial Commission of Arizona	0.30	\$190.00	\$57.00	100%	\$0.00
10/26/2023	DJS	Track 10/18/23 certified mailing of complaint and case initiating documents; Exchange email with T. Frankel re same	0.10	\$190.00	\$19.00	100%	\$0.00
10/26/2023	DJS	Communicate with T. Frankel re Notice of Alternative Service (.1); Prepare same (.1); Electronically file same (.1)	0.30	\$190.00	\$57.00	50%	\$28.50
10/26/2023	TDF	Draft notice of service	0.30	\$400.00	\$120.00	0%	\$120.00
10/26/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
10/26/2023	PNS	Discuss alternative service issues with T. Frankel	0.10	\$400.00	\$40.00	50%	\$20.00



10/30/2023	DJS	Review USPS tracking status of certified mail (.1); Exchange email with T. Frankel re same and docketing response (.2); Review FRCP re same (.2)	0.50	\$190.00	\$95.00	50%	\$47.50
10/30/2023	TDF	Evaluate status of service	0.10	\$400.00	\$40.00	100%	\$0.00
10/30/2023	PNS	Email with Mr. Frankel regarding service issues	0.10	\$400.00	\$40.00	0%	\$40.00
11/8/2023	DJS	Review Acknowledgement letter and Interim Response letters from U.S. DOL re records request and confer with T. Frankel re same	0.10	\$190.00	\$19.00	0%	\$19.00
11/16/2023	DJS	Review USPS tracking re service by mail and exchange email with T. Frankel re same	0.10	\$190.00	\$19.00	100%	\$0.00
11/27/2023	TDF	Research regarding application for default judgment	0.40	\$400.00	\$160.00	0%	\$160.00
11/30/2023	DJS	Draft application for default and supporting affidavit	1.00	\$190.00	\$190.00	0%	\$190.00
11/30/2023	TDF	Analyze issues regarding application for default and timing for submission	0.40	\$400.00	\$160.00	0%	\$160.00
11/30/2023	TDF	Correspondence to Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
11/30/2023	PNS	Discuss timing for filing for default judgment with T. Frankel	0.10	\$400.00	\$40.00	0%	\$40.00
12/1/2023	TDF	Communications with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
12/4/2023	DJS	Review email from Christina Sanchez of AZICA re public records request	0.10	\$190.00	\$19.00	0%	\$19.00
12/6/2023	DJS	Prepare email to Crystal Thompson of DOL re narrowing scope of request to Compliance Action Reports and case narratives	0.10	\$190.00	\$19.00	0%	\$19.00

12/12/2023	TDF	Finalize application for default, supporting exhibits, and obtain notarization regarding same	2.00	\$400.00	\$800.00	50%	\$400.00
12/12/2023	PNS	Review application of default and discuss filing same	0.50	\$400.00	\$200.00	50%	\$100.00
12/12/2023	DJS	Finalize application for default and exhibit (.2); Exchange email with T. Frankel re same (.1); Electronically file same (.1); Complete mailing of hard copy of filing to Defendant (.4)	0.80	\$190.00	\$152.00	63%	\$96.00
12/12/2023	TDF	Correspondence with Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
12/14/2023	TDF	Review order regarding default	0.10	\$400.00	\$40.00	100%	\$0.00
12/14/2023	TDF	Research regarding motion for default judgment	1.00	\$400.00	\$400.00	50%	\$200.00
12/14/2023	DJS	Review email from Crystal Thompson of U.S. DOL re FOIA requests and search DOL Data Enforcement database to identify specific case ID numbers requesting in response to FOIA request (.1); Prepare email to Thompson re same (.1)	0.20	\$190.00	\$38.00	0%	\$38.00
12/14/2023	PNS	Review default entered by clerk and discuss with Mr. Frankel	0.30	\$400.00	\$120.00	100%	\$0.00
1/2/2024	DJS	Review email and attached final response correspondence from Federal Department of Labor re FOIA request	0.10	\$190.00	\$19.00	0%	\$19.00
1/3/2024	DJS	Review complaint and client documents and begin preparing damages estimate	0.50	\$190.00	\$95.00	50%	\$47.50

1/4/2024	DJS	Review complaint and client documents and complete preparation of damages estimate (1.3); Prepare email to T. Frankel re same (.1)	1.40	\$190.00	\$266.00	0%	\$266.00
1/4/2024	DJS	Review email and attachment from Industrial Commission of Arizona re public records request	0.10	\$190.00	\$19.00	0%	\$19.00
1/9/2024	TDF	Analysis regarding damages for motion for default	0.50	\$400.00	\$200.00	0%	\$200.00
1/9/2024	TDF	Correspondence with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
1/9/2024	DJS	Telephone call to Mayra Rodriguez re (Redacted)	0.10	\$190.00	\$19.00	0%	\$19.00
1/10/2024	DJS	Exchange email with T. Frankel re attempt to reach Mayra Rodriguez re (Redacted)	0.10	\$190.00	\$19.00	0%	\$19.00
1/10/2024	TDF	Review order to show cause	0.10	\$400.00	\$40.00	100%	\$0.00
1/10/2024	TDF	Draft notice regarding order to show cause	0.30	\$400.00	\$120.00	0%	\$120.00
1/10/2024	DJS	Follow up telephone call to Mayra Rodriguez re (Redacted); Prepare email to Rodriguez re same	0.10	\$190.00	\$19.00	0%	\$19.00
1/10/2024	DJS	Exchange email with Mayra Rodriguez to (Redacted)	0.10	\$190.00	\$19.00	0%	\$19.00
1/10/2024	PNS	Review order to show cause regarding motion for default (0.1); review draft response notice to same (0.1); discuss with Mr. Frankel (0.1)	0.30	\$400.00	\$120.00	50%	\$60.00
1/11/2024	DJS	Telephone call to and leave voicemail for Mayra Rodriguez re (Redacted)	0.10	\$190.00	\$19.00	0%	\$19.00
1/11/2024	DJS	Follow up telephone call to Rodriguez re (Redacted) and prepare email to T. Frankel re same	0.10	\$190.00	\$19.00	0%	\$19.00

1/11/2024	TDF	Finalize notice regarding order to show cause	0.20	\$400.00	\$80.00	50%	\$0.00
1/11/2024	DJS	Finalize Notice re Order to Show Cause (.1); Electronically file same (.1); Complete mailing of hard copy to defendant via US Mail (.1)	0.30	\$190.00	\$57.00	100%	\$0.00
1/11/2024	PNS	Review Court's order granting extension on motion for default	0.10	\$400.00	\$40.00	100%	\$0.00
1/15/2024	TDF	Communication with Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
1/16/2024	TDF	Teleconference with Rodriguez regarding (Redacted)	0.20	\$400.00	\$80.00	0%	\$80.00
1/22/2024	TDF	Draft motion for default judgment and supporting declaration	5.20	\$400.00	\$2,080.00	50%	\$1,040.00
1/23/2024	DJS	Review and revise damages estimates, draft motion for default and declaration in support of same (2.0); Confer with T. Frankel re same (.3)	2.30	\$190.00	\$437.00	50%	\$218.50
1/23/2024	TDF	Revise damages analysis for motion to default	0.70	\$400.00	\$280.00	50%	\$140.00
1/24/2024	DJS	Compile and redact pay statements for attachment to declaration in support of motion for default (.4); Prepare and insert tables detailing damages calculations into motion and declaration (1.5); Further revise motion and declaration (1.2); Prepare email to T. Frankel re same (.1)	3.20	\$190.00	\$608.00	50%	\$304.00
1/25/2024	TDF	Revise motion for default judgment	3.00	\$400.00	\$1,200.00	50%	\$600.00

1/25/2024	PNS	Review and revise motion for default, supporting declaration and proposed order (0.5); telephone conferences with Mr. Frankel and Mr. Streyle regarding same (0.3)	0.80	\$400.00	\$320.00	50%	\$160.00
1/25/2024	TDF	Communications to Rodriguez regarding (Redacted)	0.30	\$400.00	\$120.00	0%	\$120.00
1/25/2024	DJS	Review and revise final draft motion for default and supporting declaration (.7); Communicate with T. Frankel and P. Syverson re same (.2)	0.90	\$190.00	\$171.00	50%	\$85.50
1/25/2024	DJS	Prepare email to Mayra Rodriguez re (Redacted) (.1); Transmit same via Dropbox Sign for e-signature (.1)	0.20	\$190.00	\$38.00	50%	\$19.00
1/25/2024	DJS	Review executed declaration in support of motion for default back from Mayra Rodriguez (.1); Exchange email with T. Frankel re same (.1)	0.20	\$190.00	\$38.00	0%	\$38.00
1/26/2024	DJS	Review and finalize Motion for Default Judgment and related documents (.9); Communicate with T. Frankel re same; Electronically file same (.1); Prepare email to Judge attaching proposed order in Word (.1); Complete mailing of same to defendant (.4)	1.50	\$190.00	\$285.00	50%	\$142.50
1/26/2024	TDF	Finalize motion for default judgment	1.00	\$400.00	\$400.00	50%	\$200.00
1/26/2024	TDF	Correspondence with Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
1/26/2024	PNS	Telephone conference with Mr. Frankel regarding motion for default	0.20	\$400.00	\$80.00	0%	\$80.00
3/11/2024	TDF	Correspondence with Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00

5/6/2024	TDF	Review order and judgment regarding wage claims	0.20	\$400.00	\$80.00	100%	\$20.00
5/6/2024	TDF	Correspondence to Rodriguez regarding (Redacted)	0.10	\$400.00	\$40.00	0%	\$40.00
5/6/2024	PNS	Review order granting default judgment (0.2); telephone conference with Mr. Frankel regarding collectability issues (0.1)	0.30	\$400.00	\$120.00	66.6%	\$40.00
5/7/2024	TDF	Research regarding collecting judgment	0.20	\$400.00	\$80.00	0%	\$80.00
5/13/2024	TDF	Draft application for attorneys' fees and supporting declaration	2.70	\$400.00	\$1,080.00	100%	\$0.00
5/14/2024	TDF	Revise motion for attorneys' fees and costs	0.70	\$400.00	\$280.00	100%	\$0.00
5/16/2024	DJS	Review and revise draft application for attorneys' fees and expenses and supporting declaration (.8); Begin preparing exhibits to each (.4)	1.20	\$190.00	\$228.00	100%	\$0.00
5/17/2024	DJS	Continue preparing exhibits to application for attorneys' fees and expenses and supporting declaration (1.7); Review and revise fee application and declaration in support of same (1.1)	2.80	\$190.00	\$532.00	100%	\$0.00

**Submitted Totals:      68.80 hrs.      \$22,270.00**

**Reduced Totals:      34.90 hrs.      \$11,538.02**

**Color Key**

	<b>Tasks reduced based on reasonable time/labor/skill</b>
	<b>Clerical/administrative tasks</b>
	<b>Tasks related to preparing the Instant Motion</b>