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2 NOT FOR PUBLICATION

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

8
9 Robert Chapman,

10 Plaintiff,

11 v.

12 Prescott Station Incorporated, et al.,

13 Defendants.

No. CV-19-08208-PCT-DJH

ORDER

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15 Pending before the Court is the parties' Second Joint Motion to Approve the FLSA
16 Settlement ("Second Motion") (Doc. 18) and Plaintiff's Unopposed Motion for Approval
17 of Attorney's Fees and Costs ("Fee Motion") (Doc. 19). In a prior Order the Court found
18 that a bona fide FLSA dispute existed and that Plaintiff's total recovery of \$669.78¹ was
19 fair, reasonable, and adequate and in the best interest of Plaintiff in light of all known facts
20 and circumstances. (Doc. 17 at 3). However, the Court denied the parties' First Joint
21 Motion to Approve the FLSA Settlement ("First Motion"), because the requested
22 attorney's fee award appeared to be unreasonable and Plaintiff failed to provide any billing
23 records, a contingency fee agreement, or any other evidence to suggest that the requested
24 attorney's fee award was reasonable. (*Id.* at 3-5).

25 Having already found the Settlement Agreement to be fair and reasonable, the Court
26 will now address the requested attorney's fee award. A party requesting an award of

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28 ¹ The Settlement Agreement provides that in addition to the \$238.48 Defendants already paid Plaintiff for his unpaid wages, Defendants will pay Plaintiff an additional \$431.30 to settle his claim for liquidated damages. Thus, the total settlement amount is \$669.78.

1 attorney's fees must show that it is (a) eligible for an award, (b) entitled to an award, and
2 (c) requesting a reasonable amount. *See* LRCiv 54.2(c). Plaintiff argues, and the Court
3 agrees, that pursuant to FLSA, Plaintiff is entitled to reasonable attorney's fees and costs.
4 29 U.S.C. § 216(b). Plaintiff's attorney began working on this case on July 5, 2019, filed
5 the Complaint on July 16, 2019, and accepted a settlement offer by August 28, 2019. The
6 Settlement Agreement awards Plaintiff his unpaid wages (\$238.48), liquidated damages
7 (\$431.30), and attorney's fees and costs (\$4,568.70). (Doc. 18-1 at 2-3). Plaintiff contends
8 that his requested award of attorney's fees and costs of \$4,568.70 is reasonable, and further
9 provides that the requested award is comprised of \$568.70 in costs and 12.8 hours of work
10 by Plaintiff's attorney, Mr. Clifford P. Bendau, II.

11 To determine the reasonableness of requested attorney's fees, federal courts
12 generally use the "lodestar" method. *See Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989);
13 *United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 755 (9th Cir. 2011). The
14 Court must first determine the initial lodestar figure by taking a reasonable hourly rate and
15 multiplying it by the number of hours reasonably expended on the litigation. *Blanchard*,
16 489 U.S. at 94 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The Court next
17 "determines whether to modify the lodestar figure, upward or downward, based on factors
18 not subsumed in the lodestar figure." *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir.
19 2016). "These factors are known as the *Kerr* factors." *Stetson v. Grissom*, 821 F.3d 1157,
20 1166-67 (9th Cir. 2016) (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.
21 1975)). Such an adjustment is appropriate "only in rare or exceptional circumstances."
22 *Cunningham v. City of L.A.*, 879 F.2d 481, 488 (9th Cir. 1988).

23 Plaintiff's attorney, Mr. Bendau, II, was hired on a contingency basis with a fee
24 agreement that included a flat rate of \$395.00 per hour. (Doc. 19-4). Plaintiff argues that
25 his attorney's billing rate is reasonable and provides that a court in this district recently
26 determined as much. (Doc. 19 at 5) (citing Order, *Knapp v. Invictus Protective Services*
27 *LLC, et al.*, No. 2:19-cv-00878 (D. Ariz. June 7, 2019), ECF No. 21 (finding that an hourly
28 rate of \$395.00 was a reasonable for Mr. Bendau, II.)). However, Plaintiff fails to mention

1 that another court in this district recently found that \$395.00 was an unreasonable billing
2 rate for Mr. Bendau, II. *See Outland v. Arizona Movers & Storage*, 2019 WL 2269423, at
3 *1 (D. Ariz. May 28, 2019) (finding that although \$395.00 per hour was an unreasonable
4 billing rate, the plaintiff had demonstrated that a billing rate of \$325.00 per hour was
5 reasonable for Mr. Bendau, II). Although, it appears from the requested award that
6 Plaintiff's counsel has already reduced his billing rate for this matter from \$395.00 per
7 hour to \$312.50 per hour.² The Court finds that Plaintiff has sufficiently shown that
8 \$312.50 per hour is a reasonable rate for Mr. Bendau, II, and therefore, the Court need not
9 decide the reasonableness of \$395.00 per hour.

10 After considering Plaintiff's arguments and reviewing the itemized billing entries,
11 the Court concludes that an attorney's fee award of \$4,000.00 for 12.8 hours of Plaintiff's
12 counsel's time is reasonable. Adding counsels' out of pocket costs of \$568.70, results in
13 an award of attorney's fees and costs in the amount of \$4,568.70. Additionally, Plaintiff
14 does not seek, nor does the Court find reason for an upward modification of the requested
15 fee award. Accordingly,

16 **IT IS ORDERED** that the parties' Second Joint Motion to Approve the FLSA
17 Settlement (Doc. 18) is **GRANTED**. The parties' Settlement Agreement is approved as
18 fair, reasonable, and just in all respects, and the parties shall perform the Settlement
19 Agreement in accordance with its terms.

20 **IT IS FURTHER ORDERED** that the Plaintiff's Unopposed Motion for Approval
21 of Attorney's Fees and Costs (Doc. 19) is **GRANTED**. The Court approves an attorney's
22 fees and costs award in the amount of \$4,568.70, which shall be distributed in accordance
23 with the terms of the Settlement Agreement.

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28 ² Plaintiff's attorney is requesting an attorney's fee award of \$4,000.00 for 12.8 hours
billed, which equals a billing rate of \$312.50.

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IT IS FINALLY ORDERED that this case is hereby dismissed with prejudice and the Clerk of the Court is respectfully directed to enter judgment accordingly.

Dated this 9th day of October, 2019.



Honorable Diane J. Humetewa
United States District Judge