

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

SAMUEL RORIE, JUSTIN BAKER,
LESLIE NOLL, BLAKE MASTERSON
And BRADFORD KEYS

PLAINTIFFS

v.

CIVIL NO. 20-5106

WSP2, LLC and JOSEPH CLAYTON SUTTLE

DEFENDANTS

ORDER

Plaintiffs filed a Complaint pursuant to the Fair Labor Standards Act (“FSLA”), 29 U.S.C. § 201, *et seq.*, and the Arkansas Minimum Wage Act (“AMWA”), Ark. Code Ann. § 11-4-201, *et seq.* On October 15, 2021, the parties executed a written settlement agreement after participating in a successful settlement conference with the undersigned and consenting to this Court’s jurisdiction (ECF No. 53). The settlement agreement resolved all the Plaintiffs’ claims and was approved by this Court on October 20, 2021. (ECF No. 59).

Plaintiffs’ Motion for Costs and Attorneys’ Fees (ECF No. 54) was filed by the Sanford Law Firm (SLF) on September 20, 2021. According to the Motion, Plaintiffs incurred \$31,019.00 in attorneys’ fees between June 12, 2020, and September 19, 2021, but voluntarily reduced their attorneys’ fees request to \$23,768.00. Plaintiffs additionally seek to recover \$936.50 in costs. Defendants filed their response and objections (ECF No. 56) on October 5, 2021, arguing that the requested fees are unreasonable, and Plaintiffs replied on October 11, 2021. (ECF No. 58). For reasons stated below, the Court grants Plaintiff’s Motion for Costs and Attorney’s Fees, and awards costs in the amount of \$845.00 and attorneys’ fees in the amount of \$12,367.50.

I. The Law

The FLSA provides that the court “shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendant, and the costs of the action.” 29 U.S.C. § 216(b) (2008). Congress included fee-shifting language so citizens would have access to the courts to enforce their federally protected rights. *Morales v. Farmland Foods, Inc.*, 2013 WL 1704722, at *5 (D. Neb, April 18, 2013). “The purpose of the FLSA attorney fees provision is to insure effective access to the judicial process by providing attorney fees for prevailing plaintiffs with wage and hour grievances.” *Id.* Reasonable fees are “adequate to attract competent counsel but [do] not produce windfalls to attorneys.” *Vines v. Welspun Pipes, Inc.*, 2020 WL 3062384 (E. D. Ark. June 9, 2020) (cleaned up); *see also Henrickson v. Branstad*, 934 F.2d 158, 162 (8th Cir. 1991). An award of attorneys’ fees “under a fee-shifting statute should be comparable to what is traditionally paid to attorneys who are compensated by a fee-paying client.” *Morales*, 2013 WL 1704722, at *7 (citations omitted). “Cases may be overstaffed, and the skill and experience of lawyers vary widely” and thus, “[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee requested hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.” *Hensley v. Eckhart*, 461 U.S. 424, 434 (1983). The lodestar method is the “most useful starting point for determining the amount of a reasonable fee.” *Fish v. St. Cloud State Univ.*, 295 F.3d 849, 851 (8th Cir. 2002) (citing *Hensley*, 461 U.S. at 433. It requires consideration of “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate” and hours not “reasonably expended” must be excluded. *Hensley*, 461 U.S. at 434. After determining the lodestar, the court should then “adjust the fee upward or downward on the basis of the results obtained.” *Wheeler v. Missouri Highway & Transp. Comm’n*,

348 F.3d 744, 754 (8th Cir. 2003). The court may also consider other factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). See *Bonds v. Langston Companies, Inc.*, 2021 WL 4130508, *2 (E. D. Ark., Sept. 9, 2021).

II. Analysis

The parties here do not dispute that Plaintiffs prevailed in this case pursuant to their negotiated settlement and are therefore entitled to reasonable attorneys' fees and costs; the only question is whether the amounts claimed by SLF are reasonable. The Court first turns to a calculation of the lodestar by determining a reasonable hourly rate for counsel and identifying a reasonable number of hours expended on Plaintiffs' behalf.

A. Reasonable Hourly Rates

SLF requests various hourly rates for the multiple (9 of the 16) timekeepers who worked on Plaintiffs' matters: \$383 an hour (Josh Sanford); \$300 (Anna Stiritz, Vanessa Kinney); \$285 (Josh West, Lydia Hamlet, Steve Rauls); \$250 (Rebecca Matlock, Sean Short, Stacy Gibson); \$230 (April Rheaume); \$210 (Courtney Lowery); \$200 (Daniel Ford); \$175 (Blake Hoyt) and \$100, \$75, and \$60, respectively, for paralegals, law clerks and staff. SLF says these hourly rates (reflecting, after reduction, a "blended rate of \$212.21") "are reasonable and below the national average for complex litigation" and that SLF's "attorneys' focus on labor and employment law justifies an upward deviation from the average rate charged...." (ECF No. 55, pp.11-12). SLF then says that because both Mr. Sanford and Mr. Ford voluntarily reduced their billable hours, "this Court should not entertain reducing the hourly rates." Although multiple timekeepers performed work, Plaintiffs' Motion seeks fees for only Sanford, Lowery, Ford, Matlock, Rauls, Kinney, (1) paralegal, (1) law clerk and "staff." (ECF No. 55, p. 11). Defendant objects to these

rates as unreasonable, pointing to numerous Eastern and Western District of Arkansas court decisions addressing SLF rates, and observing that SLF's requested rates continue to inflate.

Before addressing the hourly rates, and after careful study of Plaintiffs' counsels' itemized billing, the Court makes the following observations about the "voluntary reductions" counsel made to the submitted billing records: First, the majority of reductions are to (a) Mr. Sanford's entries and (b) time billed by "staff." In the Court's opinion, none of these reduced entries should have been included in the first place. Almost without exception, Mr. Sanford's reduced entries are for "examination" of others' preparations and/or emails, interoffice conferencing with multiple SLF lawyers, micromanaging SLF lawyers who are doing the actual work, reading pleadings before and after they are filed, and receiving and reviewing various bits of case information such as contracts, consents, opt-ins, memos, etc. This is precisely the kind of inefficient, duplicative, and unnecessary billing practices which have earned SLF continuing criticism from the multiple Arkansas federal courts reviewing their fee petitions. Second, while the total voluntary reductions for Mr. Ford are *de minimis* (2.6 hours), the omitted hours again relate to time filing pleadings, emailing, and conferencing with co-workers, and "examining" documents and communications – the cost of which cannot be properly shifted to Defendants. And one can hardly conclude that deducted time spent by Anna Stiritz (.7); April Rheume (.1); Blake Hoyt (.3); Josh West (1.8, primarily spent "conferencing"); Lydia Hamlet (.1); Sean Short (.2); and Stacy Gibson (.5) had any collectively meaningful impact on Plaintiffs' claims – counsel was wise when omitting it. Finally, with respect to "staff" billing, SLF knows (or should know) better than to try to shift overhead costs to its opponents. Staff work is clerical rather than legal and not compensable. *See Smith v. OM Purshantam, LLC*, 2021 WL 1230468, at *5 (E. D. Ark. March 31, 2021) (cleaned up) ("Secretaries' salaries come within a firm's overhead. Secretarial work on a case should not

be billed to a client nor to an opposing party in a fee-shifting case.”). The Court’s distinct impression is that despite continued public judicial criticism, SLF remains blithely oblivious to the need practice ethical billing. This has been observed on multiple occasions and most recently by U.S. District Judge Bill Wilson in *Vines v. Welspun Pipes, Inc., et al*, 4:18-CV-00509 (ECF No. 103-1) (September 8, 2021).

SLF’s boldly says that because it “voluntarily reduced [] billable hours, this Court should not entertain reducing the hourly rates” when calculating the lodestar. The Court is unmoved – lawyers are not entitled to grace or extra credit for exercising professional ethics. The “voluntarily reduced” time entries should have never been included in the first place, and whomever was charged with reducing entries identified far too few. Under these circumstances, arguing that SLF’s “voluntary reductions” should preclude this Court’s required examination of SLF’s requested hourly rates is absurd.

Familiar with both the prevailing market rates in the Western District and the precedent of judges in both the Western and Eastern Districts, the Court adopts the recent, thorough analysis of Judge Wilson in *Vines* with respect to reasonable hourly rates for SLF in FLSA cases, noting that Judge Lee Rudofsky also adopted Judge Wilson’s reasoning in *Bonds, supra*. Defendants herein have identified and objected to SLF’s rate inflation, and the Court is particularly persuaded by Judge Wilson’s historical examination and critique of SLF’s varying rate structures and inexplicable hourly rate inflation. The Court notes Mr. Sanford’s claimed hourly rate has now increased to \$383, a 17.8% increase in the rate he claimed in *Vines*, a 27.6% increase over the rate Mr. Sandford sought from U.S. Magistrate Judge Bryant in *Rodriguez v. George’s, Inc.*, 2021 WL 1115530 (W.D. Ark. March 23, 2021), and a 34.7% increase in the rate approved as reasonable by

Judge Wilson only 12 days prior to SLF filing the instant Motion. Inexplicably, SLF seems undeterred by the *Vines* decision.

Consistent with courts recently addressing hourly rates for FLSA actions, the Court finds the reasonable hourly rates for FLSA work performed herein are \$250 for senior attorneys (Sanford), \$175 for the senior associates (Kinney, Rauls, and Ford), \$150 for the junior associates (Lowery), \$125 for Ms. Matlock, \$100 for paralegals and \$25 for law clerks. *See also Bryan v. Mississippi Cty.*, 2020 WL 9048650, at *2 (E.D. Ark. May 12, 2020) (reducing the hourly rate for law clerks to \$25).

B. Reasonable Number of Hours Worked

Plaintiffs provided itemized billing records for 144.60 hours but after SLF's voluntary reductions, seek compensation for 112 hours expended by the SLF legal team. Defendants object to these hours as unreasonable on several grounds. A court has discretion to determine the number of hours to be awarded when conducting the "lodestar" calculation. *See Fires v. Heber Springs Sch. Dist.*, 565 F. Appx. 573, 576 (8th Cir. 2014). In exercising this discretion, the court "should weigh the hours claimed against [the court's] own knowledge, experience, and expertise of the time required to complete similar activities." *Gilbert v. City of Little Rock*, 867 F.2d 1063, 1066 (8th Cir. 1989) (quotations omitted).

Before delving into the itemizations, this Court is guided by an admonition made to SLF in this matter on October 19, 2021, by U.S. District Judge Tim Brooks. When ruling on Plaintiffs' Motion for Conditional Certification of Collective Action (ECF No. 33), Judge Brooks predicted, based on the circumstances alleged, it "likely that the number of op-in plaintiffs . . . will be very few" and warned that Plaintiffs' counsel "would be well advised to carefully consider how this case is staffed and how attorney time is billed," noting that "a small class action will reasonably

require less attorney time and resources than a larger class action.” (ECF No. 33, p. 9, n.4). The action was later de-certified without objection from Plaintiffs; a total of five (5) Plaintiffs proceeded with an Amended Complaint which was filed on August 2, 2021 (ECF No. 51) and all of Plaintiffs’ claims were settled 28 days later during a settlement conference with the undersigned on August 30, 2021, with Plaintiffs obtaining total relief in the amount of \$8,475.

Redacted Billing Records

SLF seeks fees in the amount of \$566.30 for tasks performed by various timekeepers whose billing descriptions are entirely redacted. As observed by Judge Wilson, the Court is unable to “discern (or divine)” whether these redacted activities are meaningful or even related to the litigation, and thus, these amounts have been reduced in their entirety from the timekeepers’ entries.

Overstaffing, Micromanagement & Interoffice Conferences

Defendants contend SLF ignored Judge Brooks’ advice and over-staffed this relatively simple case. Defendants describe the matter as neither novel nor complex but simple and straightforward, requiring a single hearing and no depositions, a handful of routine motions, and two sets of discovery. Defendants argue that overstaffing created multiple unnecessary reviews, extra mentoring, intra-firm conferences, and duplication for which Defendants are now asked to pay. The Court agrees this matter was overstaffed, observing that Mr. Ford – with aid of Courtney Lowery, Vaness McKinney and Rebecca Matlock and a paralegal – primarily performed most of the meaningful work on Plaintiffs’ behalf (including Mr. Ford’s sole handling of the settlement conference wherein all the parties’ settlement negotiations occurred). Having scrutinized the voluminous itemizations, it is clear Mr. Sanford continues his effort to recover fees for “examining” the work of these other lawyers in his firm; for intra-firm conferencing and repeatedly

discussing matters with lawyers and staff; and for reading the emails and filings of these lawyers, including the ECF notifications generated by the Court and pleadings filed by his lawyers. The Court cannot differentiate Mr. Sanford's vague "examining" entries from the widely disfavored "receipt and review" billing practice for which no fee-paying client reasonably would compensate SLF and thus, these "examining" entries are excluded as unreasonable. Despite multiple admonitions, SLF continues its practice of including these objectionable entries in their itemized billing; nevertheless, SLF should not expect any court to pass these fees on to Defendants. *See e.g., Huffman v. Associated Management Ltd.*, 2021 WL 3122338 (E.D. Ark. July 22, 2021) (outlining multiple Arkansas federal courts' examination and criticism of SLF billing practices). Ironically, Mr. Sanford simultaneously asks this Court to recognize SLF lawyers as "experts" in the FLSA field for whom higher than average hourly rates are appropriate but then asks the Court to award fees for his micromanagement of these lawyers. Generally, experienced subject matter lawyers can handle litigation with minimal supervision and oversight, and where they cannot, time spent in management is borne by the firm – neither by the client nor the opposing party in fee-shifting matters. Here, there is no suggestion that Mr. Sanford's near daily reviews of the work of Mr. Ford and others advanced Plaintiffs' claims in any meaningful way, and 10.20 hours of his time will be excluded as unreasonable, leaving 3.8 hours of Mr. Sanford's time at the rate of \$250.

Overstaffing inevitably lead to the reflected billing inefficiencies and 6 hours of Mr. Ford's time entries are either duplicative of others, related to the elusive "examining" of items and "conferencing" that occurs frequently within SLF (including law clerk conferencing), or related to preparation of the itemized billing which is a clerical task. *See Emery v. Hunt*, 272 F.3d 1042, 1048 (8th Cir. 2001) (preparing billing entries is part of normal office overhead). Deducting these 6 hours from Mr. Ford's entries leaves 41.30 hours at the rate of \$175. Vanessa Kinney and Steve

Rauls have similar entries relating to preparation of the motion for fees and/or billing records along with entries for examining the work of others which the Court finds should not be shifted to Defendants. After deductions of 3.8 hours and .8 hours respectively, Kinney has 11.2 compensable hours and Rauls has .2 compensable hours, all at \$175 per hour.

Minimal Discovery and Straightforward Pleadings

Defendants also challenge that Plaintiffs' billings for discovery and preparation of pleadings is unreasonable, noting that only (2) sets of discovery were exchanged, that SLF routinely recycles FLSA pleadings, and that the time billed for pleading and discovery preparation was excessive. The Court notes many of its reductions hereinabove relate to duplicative entries surrounding pleading and discovery tasks. While Defendants point out multiple, obvious errors in Plaintiffs' pleadings suggestive that they were carelessly recycled, the Court has not undertaken a comprehensive, time-consuming review of Plaintiffs' pleadings to make such a determination. The Court does agree that 14 hours to prepare a standard motion to certify collection action was excessive and will reduce the recoverable time to 12 hours. The Court will also reduce by 1 hour the time billed for responding to Defendant's Motion to Decertify as Plaintiffs' Response (ECF No. 43) was only 4.5 pages long (including boilerplate legal citations) and did not oppose decertification but merely sought permission for opt-in plaintiffs to be included in an amended complaint. Different lawyers worked on these various tasks but for simplicity, the Court deducts these 3 hours from Mr. Ford's time, leaving 38.3 compensable hours at his rate of \$175.

Staff & Administrative Tasks

As noted above, while SLF "voluntarily" reduced some of the staff billing entries, SLF's submitted itemization still contains billing entries for work completed by staff. To be clear, SLF billing entries differentiate staff from paralegals and law clerks, and the Court again reminds SLF

that staff work is clerical rather than legal work, and therefore not compensable. *See Smith v. OM Purshantam, LLC*, 2021 WL 1230468, at *5 (E. D. Ark. March 31, 2021) (cleaned up) (“Secretaries’ salaries come within a firm’s overhead. Secretarial work on a case should not be billed to a client, nor to an opposing party in a fee-shifting case). The Court will thus exclude all staff billing (\$252). The Court similarly finds that 4.2 hours of the paralegal billing (including time spent communicating and filing pleadings) and 1.4 hours billed by law clerks (related to data entry and emails) were all clerical in nature and are also reduced. The Court will award 17.20 hours of paralegal time and .6 hours of law clerk time at the rates noted.

C. Final Lodestar Amount

The Court will award attorneys’ fees to Plaintiffs in the amount of \$12,367.50 which reflects the following timekeepers, approved hourly rates and hours reasonably expended which can be fairly shifted to Defendants pursuant to 29 U.S.C. §216(b):

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Josh Sanford	3.8 hours	\$250 hour	\$950.00
Daniel Ford	38.3 hours	\$175 hour	\$6,702.50
Vanessa Kinney	11.2 hours	\$175 hour	\$1,960.00
Steve Rauls	.2 hours	\$175 hour	\$35.00
Courtney Lowery	3.9 hours	\$150 hour	\$585.00
Rebecca Matlock	3.2 hours	\$125 hour	\$400.00
Paralegal	17.2 hours	\$100 hour	\$1,720.00
<u>Law Clerk</u>	<u>.6 hours</u>	<u>\$25 hour</u>	<u>\$15.00</u>
TOTAL			\$12,367.50

The Court finds no basis for adjusting the fee upward because of the results Plaintiffs obtained as only one Plaintiff received more than \$950 in settlement funds. *See Wheeler v. Missouri Highway & Transp. Comm'n*, 348 F.3d 744, 754 (8th Cir. 2003).

D. Costs

Plaintiffs seek an award of costs in the amount of \$936.50. The Court will exclude \$91.50 in postage costs as normal business overhead, *see Emery, supra*, but will award costs in the amount of \$845.00.

IT IS THEREFORE ORDERED AND ADJUDGED, for reasons stated herein, that Plaintiff's Motion for Costs and Attorney's Fees (ECF No. 54) should be, and it hereby is, **GRANTED** and Plaintiffs awarded costs in the amount of \$845.00 and attorneys' fees in the amount of \$12,367.50.

IT IS SO ORDERED this 20th day of October 2021.

Christy Comstock
CHRISTY COMSTOCK
UNITED STATES MAGISTRATE JUDGE