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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODERICK F. PAUL,
Plaintiff,

v.

JOHN CUBIBURU, et al.,
Defendants.

Case No. 1:13-cv-00765-AWI-SAB

ORDER RE ATTORNEY’S FEES AND COSTS

On September 11, 2013, the Court remanded this action to state court but retained jurisdiction for the limited purposes of determining whether the parties that moved for remand are entitled to recover costs and fees associated with removal. (ECF No. 36.) Defendants Matt Brown, Excel Livestock, LLC and Ryan Sweeney (the “Excel Defendants”) submitted a brief regarding their entitlement to costs and fees on September 12, 2013. (ECF No. 37.) Plaintiff Roderick F. Paul (“Plaintiff”) submitted a brief regarding their entitlement to costs and fees on September 16, 2013. (ECF No. 38.) No party has submitted an opposition to the request for costs and fees.

For the reasons set forth below, the Court finds that Plaintiff and the Excel Defendants are entitled to the reimbursement of costs associated with removal under 28 U.S.C. § 1447(c).

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1 I.

2 **PROCEDURAL BACKGROUND**

3 This action was originally filed in the Superior Court of California for the County of San
4 Benito. On May 16, 2013, Defendants John Cubiburu and Cubiburu Livestock, Inc. (the
5 “Cubiburu Defendants”) removed the action to this Court on the basis of diversity jurisdiction.

6 All other parties opposed the Cubiburu Defendants’ removal of this action to this Court.
7 Plaintiff filed a motion to remand on June 5, 2013. (ECF No. 8.) The Excel Defendants filed a
8 motion to remand on June 21, 2013. (ECF No. 19.) Defendant Parker Ranch, Inc. (“Parker
9 Ranch”) filed a joinder to the motions to remand on July 9, 2013. (ECF No. 23.)

10 On July 23, 2013, the undersigned magistrate judge issued a Findings and
11 Recommendations recommending that this action be remanded to state court. (ECF No. 26.)
12 However, the Findings and Recommendations recommended that only Plaintiff should be
13 entitled to costs because the Excel Defendants’ motion to remand and the Parker Ranch joinder
14 appeared to be untimely, as they were filed more than thirty days after the notice of removal was
15 served and filed.

16 After the Findings and Recommendations were issued, the Excel Defendants filed
17 objections with respecting to the denial of their request for costs. (ECF No. 31.) The Excel
18 Defendants argued that their motion to remand was timely because the Cubiburu Defendants
19 never properly served the Excel Defendants with their notice of removal. The Excel Defendants
20 further stated that they were unaware of the removal until June 11, 2013, which was four days
21 before the thirty day deadline to file a motion to remand.

22 On September 11, 2013, the Findings and Recommendations were partially adopted.
23 (ECF No. 36.) The Court remanded the action to state court but retained jurisdiction for the
24 limited purpose of determining whether the Excel Defendants were entitled to costs in light of
25 the Cubiburu Defendants’ failure to serve the notice of removal on them and to determine the
26 amount of costs to award Plaintiff.

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1 **II.**

2 **DISCUSSION**

3 The two remaining issues in this action are A) the amount of costs Plaintiff is entitled to
4 recover as a result of the Cubiburu Defendants' improper removal and B) whether the Excel
5 Defendants are entitled to recover costs as a result of the Cubiburu Defendants' improper
6 removal.

7 **A. Plaintiff's Costs Incurred As A Result Of The Removal**

8 Under 28 U.S.C. § 1447(c), "[a]n order remanding the case may require payment of just
9 costs and any actual expenses, including attorney fees, incurred as a result of the removal." The
10 Court has already determined that Plaintiff's are entitled to costs and expenses incurred as a
11 result of removal. The Court need only determine the appropriate amount of costs and expenses.

12 The Ninth Circuit utilizes the "lodestar" approach for assessing reasonable attorneys'
13 fees, where the number of hours reasonably expended is multiplied by a reasonable hourly rate.
14 Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008). The Ninth Circuit has
15 approved the use of the lodestar method to calculate the award associated with improper
16 removal. John B. Schlaerth MD v. Spirtos, 308 Fed. Appx. 196, 198 (9th Cir. 2009); see also
17 Albion Pacific Property Resources, LLC v. Seligman, 329 F. Supp. 2d 1163, 1166 (N.D. Cal.
18 2004).

19 In determining a reasonable fee, the Court takes into account the factors set forth in Kerr
20 v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975): (1) the time and labor required,
21 (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal
22 service properly, (4) the preclusion of other employment by the attorney due to acceptance of the
23 case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations
24 imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9)
25 the experience, reputation and ability of the attorneys, (10) the "undesirability" of the case, (11)
26 the nature and length of the professional relationship with the client and (12) awards in similar
27 cases (hereinafter referred to as the "Kerr factors"). McGrath v. County of Nevada, 67 F.3d 248,
28 252 (9th Cir. 1995)

1 Plaintiff submitted briefing identifying \$4,911.50 in total expenses associated with
2 preparing their motion to remand. These expenses consist of 4.0 hours of attorney time from
3 James W. Sullivan (\$300/hour), 14 hours of attorney time from Paul A. Rovella (\$240.00/hour)
4 and 3.7 hours of paralegal time from Anne Wells and Danielle Quebec (\$95.00/hour). The tasks
5 performed included legal research on the issue of remand, review of the pleadings and
6 preparation of the moving papers, meeting and conferring with opposing counsel and preparing
7 for hearings (though the hearings were eventually vacated).

8 No party filed an opposition to Plaintiff's briefing within the time period set by the Court
9 in its September 12, 2013 order. However, the Cubiburu Defendants objected to Plaintiff's costs
10 in their objections to the Court's Findings and Recommendations, filed on August 5, 2013. (ECF
11 No. 33.) The only specific objection raised by the Cubiburu Defendants is that Plaintiff's
12 incurred \$4,911.50 in expenses when the Excel Defendants only expended \$1,100.00 in
13 "preparing essentially the same Motion to Remand." (Obj. to Award of Costs and Attorney's
14 Fees Claimed By Roderick Paul 2:20-23.)

15 Although Plaintiff's reported substantially higher costs when compared to the Excel
16 Defendants, this appears to be the result of the Excel Defendants claiming unusually low costs
17 rather than Plaintiff claiming unusually high costs. Prior cases involving the award of costs
18 associated with remand involved costs even higher than those claimed by Plaintiff. See John B.
19 Schlaerth MD, 308 Fed. Appx. at 198 (affirming \$9,248 attorney fee award and \$212.50 cost
20 award for improper removal); Gotro v. R & B Realty Group, 69 F.3d 1485, 1487-89 (9th Cir.
21 1995) (affirming \$13,564.05 award under Section 1447(c)); Harvard Real Estate-Allston, Inc. v.
22 KMART Corp., 407 F. Supp. 2d 317, 323 (D. Mass. 2005) (awarding \$10,000 in costs associated
23 with remand).

24 Given the time, novelty, results and other circumstances of this case, the Court finds that
25 Plaintiff's requested costs are not excessive. Accordingly, the Court will order the Cubiburu
26 Defendants to reimburse Plaintiff for the \$4,911.50 in costs associated with improvident
27 removal.

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1 **B. The Excel Defendants’ Request for Costs**

2 The Excel Defendants request reimbursement of their costs associated with removal.
3 Initially, the Court recommended that the Excel Defendants’ request for costs be denied because
4 their motion to remand was filed more than thirty days after the notice of removal was filed.
5 Under 28 U.S.C. § 1447(c), a motion to remand must be filed within thirty days after the filing of
6 the notice of removal. The Court further concluded that the costs and expenses incurred by the
7 Excel Defendants was not reasonable because it was spent preparing a motion that was not
8 timely filed.

9 The Excel Defendants argue that the time spent preparing their motion to remand was
10 reasonable because they had a reasonable excuse for their failure to file their motion on time.
11 The Cubiburu Defendants never served the Excel Defendants with their notice of removal and
12 the Excel Defendants were not aware that the action had been removed until the Cubiburu
13 Defendants served an Order Setting Mandatory Scheduling Conference on the Excel Defendants
14 four days prior to the expiration of the thirty day time limit to file a motion to remand.

15 The Court finds the Excel Defendants’ explanation reasonable. However, the Excel
16 Defendants do not cite any authority which suggests that their explanation has the legal effect of
17 making their motion timely. The Supreme Court’s holding in Bowles v. Russell, 551 U.S. 205,
18 211-215 (2007), would suggest that this Court lacks authority to extend the statutory deadline for
19 filing a motion to remand irrespective of whether equitable principles would call for such an
20 extension. In Bowles, the Supreme Court held that courts have no authority to create equitable
21 exceptions to jurisdictional requirements and that time limits created by statute are jurisdictional.
22 Id.

23 Nonetheless, the Court need not decide whether the Excel Defendants’ motion to remand
24 would have been timely. Section 1447(c) authorizes the Court to award “just” costs whenever a
25 remand order is entered, and based upon the statutory text, such an award is not necessarily
26 contingent upon the filing of a motion to remand, much less the timely filing of such a motion.
27 Under Section 1447(c), costs may be awarded whenever the Court enters an order remanding the
28 case, and such an order was entered by the Court on September 11, 2013. (ECF No. 36.) Given

1 the unique circumstances of this case, the Court finds that “just costs” under Section 1447(c)
2 includes the costs incurred by the Excel Defendants in seeking remand, particularly in light of
3 the relatively modest costs incurred by the Excel Defendants incurred as a result of the removal.

4 The Court finds that the \$1,100.00 in costs incurred by the Excel Defendants was
5 reasonable. Based upon the foregoing, the Court will order the Cubiburu Defendants to pay the
6 Excel Defendants \$1,100.00 in costs incurred as a result of removal in this action.

7 **III.**

8 **CONCLUSION AND ORDER**

9 Based upon the foregoing, it is HEREBY ORDERED that:

- 10 1. Defendants John Cubiburu and Cubiburu Livestock, Inc. shall pay Plaintiff
11 Roderick F. Paul d/b/a Roderick F. Paul Cattle Company \$4,911.50 in costs
12 associated with removal under 28 U.S.C. § 1447(c);
13 2. Defendants John Cubiburu and Cubiburu Livestock, Inc. shall pay Defendants
14 Matt Brown, Excel Livestock, LLC and Ryan Sweeney \$1,100.00 in costs
15 associated with removal under 28 U.S.C. § 1447(c); and
16 3. The Clerk of the Court is directed to CLOSE this action.

17
18 IT IS SO ORDERED.

19 Dated: October 3, 2013


UNITED STATES MAGISTRATE JUDGE