

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EAGLE SYSTEMS AND SERVICES,
INC.,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE
725,

Defendant.

No. 2:16-cv-02077 JAM-EFB

**ORDER GRANTING INTERNATIONAL
ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 725'S MOTION FOR
ATTORNEYS' FEES**

The fight between Eagle and Union continues. Plaintiff Eagle Systems and Services, Inc. ("Eagle") punched first when it allegedly violated the Collective Bargaining Agreement ("CBA"). Defendant International Association of Machinists, District Lodge 725 ("Union") hit back by prevailing in arbitration. Eagle, unshaken, filed a complaint in this Court to vacate that award. ECF No. 1. Feeling sucker punched, Union moved to dismiss and counter moved to confirm the award. ECF No. 7. This Court declared Union the winner by a TKO and awarded attorneys' fees. Order, ECF No. 25. Having reviewed the parties' briefs, see

1 Mot., ECF No. 27; Opp'n, ECF No. 28; Reply, ECF No. 29, the Court
2 now sets the amount of the attorneys' fees awarded to Union at
3 \$17,584.50.¹

4
5 I. OPINION

6 Because this Court's previous Order details the underlying
7 dispute that generated this litigation, the Court will not
8 repeat the facts. See generally Order. Equally important,
9 although Eagle "did not challenge the Court's [bad faith]
10 ruling," see Opp'n at 1, Eagle still disputes whether its
11 conduct constituted an unjustified refusal to abide by an
12 arbitration award. This Court already concluded it did. See
13 Order at 18-20 (explaining Eagle sought to frustrate the award
14 by unjustifiably refusing to abide by the arbitrator's
15 decision). Eagle does not get a second bite at the apple.

16 A. Lodestar Method

17 When evaluating requests for attorneys' fees, the court
18 always begins by calculating the lodestar amount, which involves
19 multiplying the number of hours reasonably expended by a
20 reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424,
21 433 (1983). A court should exclude from this initial
22 calculation any "excessive, redundant, or otherwise unnecessary"
23 hours expended. See id. at 434.

24 But the inquiry does not end there. There remain other
25 factors that may compel a court to "adjust the fee upward or

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for February 21, 2017.

1 downward." See id. These include:

2 (1) the time and labor required; (2) the novelty and
3 the difficulty of the questions involved; (3) the
4 skill requisite to perform the legal service properly;
5 (4) the preclusion of other employment by the attorney
6 due to acceptance of the case; (5) the customary fee;
7 (6) whether the fee is fixed or contingent; (7) time
8 limitations imposed by the client or the
circumstances; (8) the amount involved and the results
obtained; (9) the experience, reputation, and ability
of the attorneys; (10) the "undesirability" of the
case; (11) the nature and length of the professional
relationship with the client; and (12) awards in
similar cases.

9 Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir.
10 1975), abrogated on other grounds by City of Burlington v.
11 Dague, 505 U.S. 557 (1992). These Kerr factors, however, are
12 often subsumed within the lodestar amount, so courts must ensure
13 they account for any potential overlap. See Cunningham v. Cty.
14 of Los Angeles, 879 F.2d 481, 487 (9th Cir. 1989). And,
15 finally, this district's Local Rule 293(c)(13) adds one more
16 factor: "[S]uch other matters as the Court may deem appropriate
17 under the circumstances."

18 The party seeking fees should provide documentary evidence
19 showing "the number of hours spent, and how it determined the
20 hourly rate(s) requested." McCown v. City of Fontana, 565 F.3d
21 1097, 1102 (9th Cir. 2008). Then the opposing party must submit
22 specific rebuttal evidence "challenging the accuracy and
23 reasonableness of the hours charged or the facts asserted by"
24 the moving party. Gates v. Gomez, 60 F.3d 525, 534-35 (9th Cir.
25 1995).

26 B. Analysis

27 Union requests \$32,968.75 in attorneys' fees, arguing that
28 these were reasonably and necessarily incurred, especially given

1 labor arbitration's compensation and deterrence goals. See
2 generally Mot. Union contends that the Court need not make a
3 lodestar adjustment. See id. at 8. As further explained below,
4 the Court disagrees.

5 1. Hourly Rates

6 To determine the reasonableness of the hourly rates
7 requested, a court looks to the prevailing market rates in the
8 relevant community for "similar work performed by attorneys of
9 comparable skill, experience, and reputation." Blum v. Stenson,
10 465 U.S. 886, 895 (1984); Chalmers v. City of Los Angeles, 796
11 F.2d 1205, 1210-11 (9th Cir. 1986). The relevant community is
12 generally the forum in which the district court sits—not where
13 counsel's firm resides. Barjon v. Dalton, 132 F.3d 496, 500
14 (9th Cir. 1997). The "burden is on the fee applicant to produce
15 satisfactory evidence—in addition to the attorney's own
16 affidavits—that the requested [hourly] rates are in line with
17 those prevailing in the community for similar services by
18 lawyers of reasonably comparable skill, experience, and
19 reputation." Blum, 465 U.S. at 895 n.11.

20 Union states the requested rates "reflect the market rates
21 . . . in the Bay Area and Sacramento Valley." Mot. at 4.
22 Although Eagle does not challenge the hourly rates Union seeks,
23 See Opp'n at 2 (disputing only the hours expended), the Court
24 finds it unreasonable to, as Union does, treat the Bay Area and
25 Sacramento Valley as the same "community." Indeed, courts in
26 this district treat the two separately. See Jones v. Cty. of
27 Sacramento, No. 09-1025, 2011 WL 3584332, at *8 (E.D. Cal. Aug.
28 12, 2011); Beecham v. City of West Sacramento, No. 07-1115, 2009

1 WL 3824793, at *4 (E.D. Cal. Nov. 16, 2009).

2 This distinction matters because the parties litigated the
3 case—the case underlying Union’s Motion for Attorneys’ Fees—in
4 Sacramento where this Court sits. See Barjon, 132 F.3d at 500.
5 Because it would be unreasonable to accept rates based on a
6 market different from where the case was litigated, the Court
7 rejects any hourly rates based on Bay Area rates. See Beecham,
8 2009 WL 3824793 at *4. Only the Sacramento market rate is
9 appropriate here.

10 a. Partners

11 Union asks the Court to accept David Rosenfeld’s \$775
12 hourly rate. Mot. at 4-5. Rosenfeld is a named shareholder of
13 the firm Weinberg, Roger & Rosenfeld with “over forty years”
14 experience. Gray Decl. ¶ 8. Union cites two cases to support
15 its argument. The first, Barbosa v. Cargill Meat Sols. Corp.,
16 though instructive, is not binding authority in that this was a
17 more complex case filed in the District’s Fresno division. 297
18 F.R.D. 431, 452 (E.D. Cal. 2013). “Cases litigated in Fresno
19 . . . do not establish the prevailing market rates in the
20 Sacramento community.” Johnson v. Allied Trailer Supply, No.
21 13-1544, 2014 WL 1334006, at *5 (E.D. Cal. Apr. 3, 2014); Jadwin
22 v. Cty. of Kern, 767 F. Supp. 2d 1069, 1124–29 (E.D. Cal. 2011)
23 (holding that Fresno division, not Sacramento division, was
24 relevant legal community to be used in selecting appropriate
25 hourly rates). The second case, although litigated in
26 Sacramento Superior Court, is also unhelpful. See Procter v.
27 Auto Care. Union did not attach this state court case to its
28 supporting declaration and the Court is unable to ascertain why

1 the state court approved Rosenfeld's rate. And, notably, the
2 only declaration submitted here does not state that \$775 is the
3 prevailing rate in Sacramento for a lawyer with Rosenfeld's
4 experience.

5 This makes it difficult for the Court to blindly accept
6 Union's requested rate, especially when a judge in this district
7 recently determined \$530 a reasonable rate for partners with 40
8 years of experience. See Nat'l Grange of the Order of Patrons
9 of Husbandry v. California State Grange, No. 14-676, 2016 WL
10 4765061, at *3 (E.D. Cal. Sept. 12, 2016). Because Union has
11 not met its burden, and because Rosenfeld's rate partially
12 derives from Bay Area rates, see Gray Decl. ¶ 14, the Court will
13 compensate Rosenfeld at a \$530 hourly rate.

14 Union also requests a \$650 hourly rate for Matthew Gauger,
15 another shareholder-partner. Gray Decl. ¶ 9. Gauger heads the
16 firm's Sacramento office and has 27 years of experience
17 representing labor unions. Id.

18 Once again, Union's cited authority does not support this
19 requested rate. For the reasons explained above, the Court will
20 not accept the rates approved in Barbosa or Procter. And,
21 again, Gauger's requested \$650 rate also stems, in part, from
22 Bay Area market rates. Gray Decl. ¶ 14.

23 Judges in this district have regularly approved hourly
24 rates of \$400 or more for partners or experienced attorneys.
25 See, e.g., National Grange, 2016 WL 4765061 at *3 (accepting
26 unopposed \$450 requested rate for party with 35 years of
27 experience); Estrada v. iYogi, Inc., No. 13-1989, 2016 WL
28 310279, at *6 (E.D. Cal. Jan. 26, 2016) (approving \$400

1 requested rate for partners with as much as 19 years of
2 experience); Trulsson v. Cty. of San Joaquin Dist. Attorneys'
3 Office, No. 11-2986, 2014 WL 5472787, at *6 (E.D. Cal. Oct. 28,
4 2014) (accepting \$450 hourly rate for experienced attorney).

5 Once again, Union has not met its burden: It has not
6 offered sufficient evidence showing that \$650 is the prevailing
7 rate in Sacramento for a lawyer with Gauger's experience.
8 Because judges in this district accept rates between \$400 and
9 \$450 for partners with 20 to 35 years of experience, and Gauger
10 has 27 years of experience, this Court finds a \$425 hourly rate
11 reasonable.

12 In sum, the Court will compensate Rosenfeld at a \$530
13 hourly rate and Gauger at a \$425 hourly rate.

14 b. Second-Year Associates

15 Union asks the Court to accept second-year associate
16 Caitlin Gray's \$295 hourly rate. See Gray Decl. ¶ 10. No case
17 cited by Union supports this. See Lodi Mem'l Hosp. Ass'n, Inc.
18 v. Blue Cross of California, No. 12-1071, 2012 WL 3638506, at
19 *9, 11 (E.D. Cal. Aug. 22, 2012) (using Los Angeles and San
20 Francisco market rates, not Sacramento rates, to find \$300
21 hourly rate appropriate for second-year associate); Barbosa, 297
22 F.R.D. at 452 (E.D. Cal. 2013) (applying \$280 hourly rate based
23 on Fresno market).

24 In fact, judges in this district have found \$150-\$170 an
25 appropriate hourly billing rate for second-year associates.
26 See, e.g., Cosby v. Autozone, Inc., No. 08-505, 2016 WL 1626997,
27 at *8 (E.D. Cal. Apr. 25, 2016) (\$150 for new attorney
28 practicing a little over one year); Orr v. California Highway

1 Patrol, No. 14-585, 2015 WL 9305021, at *4 (E.D. Cal. Dec. 22,
2 2015) (market rate for second and third year associates between
3 \$150 and \$170 per hour).

4 The Court will therefore compensate Gray at a \$170 hourly
5 rate. She has been practicing law since only 2015, and Union
6 has not met its burden establishing Gray should receive a rate
7 only \$5 less than those awarded for fifth-year associates also
8 practicing labor and employment law. See Cosby, 2016 WL 1626997
9 at *8 (finding \$300 rate reasonable for fifth-year associate).

10 c. Paralegals

11 There is some disagreement among judges in this district
12 about reasonable Sacramento market rates for work performed by
13 paralegals. Some have found \$75 reasonable. See, e.g., Orr,
14 2015 WL 9305021, at *4; Joe Hand Promotions, Inc. v. Albright,
15 No. 11-2260, 2013 WL 4094403, at *3 (E.D. Cal. Aug. 13, 2013);
16 Friedman v. Cal. State Emps. Ass'n, No. 2-101, 2010 WL 2880148,
17 at *4 (E.D. Cal. July 21, 2010) (citations omitted). Yet others
18 have found \$150 reasonable. Hall v. City of Fairfield, No. 10-
19 0508, 2014 WL 1286001, at *8 (E.D. Cal. Mar. 31, 2014);
20 Endurance Am. Specialty Co. v. Lance-Kashian & Co., No. 10-1284,
21 2011 WL 5417103, at *31 (E.D. Cal. Nov. 8, 2011); Beecham, 2009
22 WL 3824793 at *4. Despite this disagreement, having concluded
23 \$170/hour is the Sacramento market rate for the second-year
24 associate involved in this case, the Court will compensate
25 paralegals at a \$75 hourly rate—a rate judges in this district
26 used recently. See, e.g., Orr, 2015 WL 9305021 at *4.

27 2. Hours Expended

28 Union contends spending 93.15 hours on this litigation was

1 reasonable. See Gray Decl., Exh. C. Eagle raises several
2 objections.

3 a. L-3's Motion to Intervene

4 Eagle argues time spent preparing and responding to L-3's
5 motion to intervene is excessive and unreasonable because L-3 is
6 an entity separate and distinct from Eagle—an entity neither
7 party to this litigation nor signatory to the CBA. Opp'n at 2.
8 In response, Union blames Eagle for having to address L-3's
9 motion, explaining Union had to respond "because Eagle . . .
10 initiated and pursued this action in the first place." Reply at
11 2.

12 The Court agrees with Eagle. Although neither party cites
13 a case supporting its position, some cases are instructive. The
14 Ninth Circuit has recognized that "courts in this circuit [have
15 held] individuals whose motions to intervene have been denied
16 are not 'parties'" United States v. City of Los
17 Angeles, No. 02-57097, 2003 WL 22872520, at *1 (9th Cir. Dec. 3,
18 2003). Here, L-3 was not a party because this Court never
19 granted L-3's motion. See Min. Order, ECF No. 26 (declining to
20 consider L-3's Motion to Intervene as moot). Additionally, in
21 Union's opposition to L-3's motion, Union never requested
22 attorneys' fees. See Donahoe v. Arpaio, No. 10-2756, 2012 WL
23 2675237, at *4 (D. Ariz July 6, 2012) (granting attorneys' fees
24 for opposing another's motion to intervene, in part, because
25 opposing party asked for fees in opposition brief). Simply put,
26 the Court finds it unreasonable to award fees for time spent
27 opposing a motion by an entity not party to this litigation.

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1 b. Matthew Gauger

2 Eagle contends Union is not entitled to fees for Matthew
3 Gauger's time because Union did not need two shareholder-
4 partners to litigate this case and Gauger's tasks "were menial
5 at best." Opp'n at 3. In response, Union maintains Gauger's
6 work was reasonable because his time was minimal (1 hour) and he
7 was uniquely positioned to handle the tasks. Reply at 2
8 (explaining he spent 15 minutes handling service of process and
9 45 minutes preparing Union's fee motion because he had relevant
10 information about prevailing rates for lawyers in Sacramento).
11 Again, neither party cites supporting authority.

12 The Court agrees with Eagle. Union inadequately addresses
13 why it is reasonable to have a shareholder-partner assist with
14 issues concerning service of process and market-rates. The
15 Court is unpersuaded that only Gauger could have handled these
16 issues, especially with Rosenfeld aboard. At the very least,
17 even as leader of the Sacramento office, Gauger could have
18 directed another where to find material about Sacramento market
19 rates, rather than spend 45 minutes "preparing information about
20 attorney's fees awards" Reply at 2. It is unreasonable
21 to bill partner-level fees to complete these menial tasks. The
22 Court will not include Gauger's time in its lodestar
23 calculation.

24 c. Duplicative Time

25 Eagle argues Union includes duplicative time. Two
26 paralegals and associate Gray reviewed the applicable rules and
27 researched case law to determine due dates triggered by Eagle's
28 Complaint. Opp'n at 2. Union maintains this was not

1 unreasonably duplicative: After paralegal Nathan initially
2 determined due dates, Rosenfeld noticed a potential timing
3 issue, so associate Gray researched the issue and then paralegal
4 Castillo double-checked the due dates. Reply at 2-3.

5 The Court finds some of this time duplicative. Researching
6 procedural rules differs from merely identifying due dates, so
7 Gray's time was reasonably expended. But, because paralegal
8 Castillo "double checked" the due dates first determined by
9 paralegal Nathan, their time is duplicative. Had the firm
10 researched the timeliness issue before asking a paralegal to
11 prematurely determine due dates, another paralegal would not have
12 had to "double check" those dates. The Court will discount the
13 time paralegal Nathan spent identifying due dates.

14 d. Union's Motion to Dismiss

15 Next Eagle contends Union should not receive fees for
16 excessive time spent on drafting Union's Motion to Dismiss.
17 Opp'n at 4. Union maintains this time was reasonable. Reply at
18 3-4.

19 The Court agrees with Union. First, in its Complaint, Eagle
20 raised several arguments explaining why this Court should vacate
21 the arbitration award—and each required considerable analysis.
22 Second, to say it is excessive for Union to spend 41 hours
23 drafting a motion to dismiss because it took Eagle only 25 hours
24 to draft an opposition to Union's attorneys' fees motion misses
25 the point: Eagle is comparing apples to oranges. See Opp'n at
26 4. Given Eagle's numerous arguments, it is no surprise Union
27 took considerable time to sufficiently respond. The Court finds
28 the time spent drafting Union's Motion to Dismiss reasonable.

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