

United States District Court
For the Northern District of California

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E-FILED 2/24/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VERNON DOWER, et al.,
Plaintiffs and Counterdefendants,
v.
BRIDGESTONE FIRESTONE NORTH
AMERICAN TIRE, LLC, et al,
Defendants, Counterclaimants, and
Third-Party Plaintiffs,
v.
WALDO SIMONS, et al.,
Third-Party Defendants

NO. C 06-6837 JW (RS)

**ORDER FOR SUPPLEMENTAL
DECLARATIONS RE:
DETERMINATION OF
ATTORNEY'S FEES AND COSTS**

On March 10, 2008, third party defendants (collectively "the Simons") moved the presiding judge for an award of attorney's fees and costs. On October 17, 2008, the presiding judge issued an order granting such an award from defendant Bridgestone Firestone North American Tire, LLC ("Firestone"). That order also referred this matter to the undersigned for a report and recommendation for a determination of the amount of the attorney's fees and costs. The attorneys for the Simons, Sharon Glenn Pratt and Rosalia Burgueno Tapia, represent that they are entitled to \$174,103.18 in fees and costs. Firestone contends that the amount Pratt and Tapia seek is unreasonable. Before the Court can make any recommendation to the presiding judge on the amount to be awarded to Pratt and Tapia, the Court needs additional information from the parties.

1 A. Reasonable Attorney's Fees and Lodestar

2 If a party is entitled to fees, the court must then determine what fees are reasonable. *Hensley*
3 *v. Eckerhart*, 461 U.S. 424, 433 (1983). Both parties acknowledge that the lodestar approach should
4 be used to determine the reasonable attorney's fees. This approach requires the court to determine
5 first the number of hours reasonably expended and a reasonable hourly rate, considering the
6 attorney's experience, reputation, and skill. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 (9th
7 Cir. 2007). "The party seeking fees bears the burden of documenting the hours expended in the
8 litigation and must submit evidence supporting those hours and rates claimed." *Id.* "Where the
9 documentation of hours is inadequate, the district court may reduce the award accordingly."
10 *Hensley*, 461 U.S. at 433.

11 B. Lodestar Hourly Rate

12 In applying the lodestar, the rates of attorneys practicing in the forum district are used to
13 determine the prevailing market rate. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992).
14 Here, Pratt was admitted to the California State Bar in 1985, while Tapia was admitted in 1994.
15 Both attorneys submitted declarations that \$350 is the reasonable hourly rate for an attorney with
16 their experience levels practicing environmental law in the Bay Area. Firestone contends that Pratt
17 and Tapia arbitrarily raised their rate by over \$100 per hour, but submitted no evidence to that effect.

18 That said, neither attorney submitted anything other than their own declarations stating that
19 \$350 per hour is a reasonable hourly rate for attorneys of comparable skill in the area. Interestingly,
20 Tapia previously filed a declaration in support of a motion for attorney's fees quoting two attorneys
21 in the area who practice environmental law. One attorney from Los Gatos, California, William
22 Burns, who was admitted to the California State Bar in 1969, has an hourly rate ranging from \$250
23 to \$300. The second attorney from San Jose, California, Jeffery Lawson, was admitted to the
24 California State Bar in 1981, and has an hourly rate of \$450 (\$400 in 2006 and \$425 in 2007). *See*
25 Docket No. 156.

26 Without similar declarations here, the Court is unable to determine a reasonable hourly rate.
27 Pratt and Tapia, therefore, shall submit supplemental declarations demonstrating why their \$350 per
28 hour is a reasonable hourly rate for attorneys of comparable skill practicing environmental law in the

1 Bay Area. Firestone also may file: (1) a supplemental declaration in response; and (2) evidence
2 indicating when Pratt and Tapia raised their hourly rates by \$100 per hour.

3 C. Lodestar Hours Reasonably Expended

4 Pratt and Tapia submit that they spent 34.30 hours researching, preparing, and arguing the
5 motion to strike the amended third party complaint. According to Pratt and Tapia, the fair market
6 value of those services was \$12,005 billed at \$350 per hour. Pratt and Tapia further submit that
7 since November 2, 2007, they spent 442.8 hours working on the case. According to Pratt and Tapia,
8 the fair market value of those services was \$154,980 at \$350 per hour. This includes sixteen hours,
9 or \$5,600, in drafting the motion for determination of the actual amount of attorney's fees.

10 The Pratt and Tapia declarations make it impossible to conduct the preliminary lodestar hour
11 assessment as the billing records submitted are not detailed. The billing records submitted with the
12 Pratt declaration, for example, merely identifies the date of the entry, Pratt's or Tapia's initials, and
13 the hours spent. There is no description of the tasks performed (i.e. researching the motion to strike
14 or preparing the opposition to the motion for clarification). In short, there is no way to know what
15 hours were spent on what portion of the litigation. Pratt and Tapia shall submit records that are
16 more detailed to permit a lodestar hour assessment. These records shall also be submitted as a
17 supplemental declaration. There is no need for *in camera* review as billing records typically do not
18 contain proprietary information that warrants such a measure.

19 Accordingly, Pratt and Tapia shall submit their supplemental declarations within seven days
20 of the date of this order. Firestone may submit its response to this declaration as detailed above
21 within seven days of its filing. Once these records are reviewed, this matter will be deemed
22 submitted on the papers without the need for oral argument pursuant to Civil Local Rule 7-1(b), and
23 the Court will make its recommendation for actual attorney's fees and costs.

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IT IS SO ORDERED.

Dated: February 23, 2009



RICHARD SEEBORG
United States Magistrate Judge

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1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

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21 Counsel are responsible for distributing copies of this document to co-counsel who have not
22 registered for e-filing under the Court's CM/ECF program.

23 **Dated: 2/24/09**

Richard W. Wieking, Clerk

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By: _____ Chambers

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