

1
2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 JEREMIAH WILLIAM BALIK

6 Plaintiff,

Case No. 2:22-cv-00679-CDS-VCF

7 v.

8 COUNTY OF VENTURA, 99TH SECURITY
9 FORCES/NELLIS AFB, BMO HARRIS
BANK, NA,Order Granting Defendant County of
Ventura's Motion for Attorneys' Fees10 Defendants.
11

12 Presently before the court is the matter of *Balik v. County of Ventura et al.*, No. 2:22-cv-
13 00679-CDS-VCF. Defendant County of Ventura moves for a grant of attorneys' fees incurred in
14 their defense from Plaintiff Jeremiah William Balik's civil rights lawsuit. ECF No. 22. For the
15 reasons explained below, County of Ventura's Motion for Attorneys' Fees is GRANTED.

16 **I. Relevant Background Information**

17 On February 24, 2020, United States District Court Judge Richard F. Boulware, II,
18 entered an order (hereinafter "the Pre-Filing Order") deeming Plaintiff a vexatious litigant. *Balik*
19 *v. City of Torrence*, No. 2:18-CV-2174-RFB-EJY, 2020 WL 907559 (D. Nev. Feb. 25, 2020), *aff'd sub*
20 *nom. Balik v. City of Torrance*, 841 F. App'x 21 (9th Cir. 2021). The Pre-Filing Order stated that
21 Plaintiff could not file certain lawsuits in the District of Nevada without first obtaining
22 permission from the Magistrate Judge assigned to his case. *Id.* at *5-8. Despite that mandate,
23 Plaintiff filed in state court and removed to federal court the instant action, possibly to
24 contravene the Pre-Filing Order. *See* ECF No. 17. I found Judge Boulware's Pre-Filing Order to be

1 applicable to this case and dismissed Plaintiff's lawsuit. *Id.* at 5. I further found that Plaintiff's
2 action was "a violation of the Pre-Filing Order and [was] both harassing and vexatious." *Id.*
3 Defendant County of Ventura then moved for attorneys' fees on June 13, 2022. ECF No. 22. Balik
4 responded the same day. ECF No. 23.

5 II. Discussion

6 i. Defendant's Motion Conforms to the Legal Standard for Attorneys' Fees

7 A prevailing civil rights defendant is entitled to a fee award "only where the action
8 brought is found to be unreasonable, frivolous, meritless, or vexatious." *Edgerly v. City & Cnty. of*
9 *San Francisco*, 599 F.3d 946, 962 (9th Cir. 2010) (internal quotations omitted). Where a court
10 finds "no legal or factual basis" for a civil rights plaintiff's claims, a court may grant fees to the
11 prevailing defendant. *See Christiansburg Garment Co. v. E. E. O. C.*, 434 U.S. 412, 420 (1978). This
12 Court's findings in its Order granting Defendant's motion to dismiss found that Balik had no
13 legal basis for his claims and that Balik's action was frivolous, meritless, or vexatious. *See Order*,
14 ECF No. 17 at 4-5 (Balik has violated the pre-filing order imposed due to his status as a
15 vexatious litigant, Balik's filing of the present action was "both harassing and vexatious", and
16 Balik had filed in state court to "thwart the clear intent" of the pre-filing order).

17 Consequently, Balik's conduct rises to a level of vexatiousness warranting imposition of
18 reasonable attorneys' fees. The court should only award attorneys' fees that it deems reasonable.
19 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Reasonableness is generally
20 determined using the "lodestar" method, where a court considers the work completed by the
21 attorneys and multiplies the number of hours reasonably expended on the litigation by the
22 reasonable hourly rate. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). After making
23 that computation, the court then assesses whether it is necessary to adjust the presumptively
24

1 reasonable lodestar figure based on the factors¹ that are not already subsumed in the initial
2 lodestar calculation. *Id.* Among the subsumed factors presumably considered in either the
3 reasonable hours component or the reasonable rate component of the lodestar calculation is: “(1)
4 the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3) the
5 quality of representation, (4) the results obtained, and (5) the contingent nature of the fee
6 agreement.” *Morales*, 96 F.3d at 364, n.9 (internal quotations and citations omitted).

7 Adjustments are proper only in rare and exceptional cases. *Fifty-Six Hope Road Music, Ltd. v.*
8 *A.V.E.L.A., Inc.*, 915 F. Supp. 2d 1179, 1188 (D. Nev. 2013) (citing *Jordan v. Multnomah Cnty.*, 815 F.2d
9 1258, 1262 (9th Cir. 1987)). Adjusting the lodestar because of subsumed reasonableness factors
10 after the lodestar has been calculated, instead of adjusting the reasonable number of hours or
11 reasonable hourly rate at the first step, i.e., when determining the lodestar, is a disfavored
12 procedure. *Corder v. Gates*, 947 F.2d 374, 378 (9th Cir. 1991). However, if the district court only
13 makes one adjustment per factor, either before or after the lodestar calculation, the Ninth
14 Circuit has found such an error to be harmless. *Morales*, 96 F.3d at 364, n.9 (citing *Cabralles v.*
15 *County of Los Angeles*, 864 F.2d 1454, 1465 (9th Cir. 1988), *reinstated*, 886 F.2d 235 (1989), *cert. denied*,
16 494 U.S. 1091 (1990)).

17 ii. *Defendant’s Attorneys Have Demonstrated a Reasonable Hourly Rate*

18 The court determines a reasonable hourly rate by reference to the “prevailing market
19 rates in the relevant community” for an attorney of similar experience, skill, and reputation.
20 *Gonzalez v. City of Maywood*, 729 F.3d 1196 (9th Cir. 2013). The relevant community generally is

21 _____
22 ¹ The *Kerr* factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions
23 involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other
24 employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is
fixed or contingent, (7) time 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. *Kerr v. Screen Extras Guild, Inc.*, 526 F.3d 67, 70 (9th Cir. 1975).

1 “the forum in which the district court sits.” *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454
2 (9th Cir. 2010). “For the Las Vegas market, this court has regularly awarded fees where the
3 hourly rates at issue were between \$250 and \$400.” *Scott v. Smith’s Food and Drug Ctr., Inc.*, No. 2:18-
4 cv-303-JCM-VCF, 2020 WL 343642, at *2 (D. Nev. Jan. 21, 2020) (compiling cases).

5 The relevant community at issue is Las Vegas, Nevada. Defendant’s counsel includes G.
6 Mark Albright, whose hourly rate is \$450, Jorge L. Alvarez, whose hourly rate is \$350, Daniel R.
7 Ormsby, whose hourly rate is \$350, Kegan M. Monks, whose hourly rate is \$350, and unnamed
8 paralegals, whose hourly rate is \$100. ECF No. 22 at 7. While Mr. Albright’s \$450 hourly rate
9 might exceed Las Vegas norms, he has volunteered in his pleading to accept a reduced rate of
10 \$400 as “a reasonable compensation.” See ECF No. 22 at 7 (“Attorney G. Mark Albright’s rate of
11 \$400.00 per hour as lead counsel is a reasonable compensation...”). Given that reduction, these
12 rates are exactly in line with what courts have found reasonable in the Las Vegas market.

13 *iii. Defendant’s Attorneys Expended a Reasonable Amount of Hours*

14 The requesting party “has the burden of submitting billing records to establish that the
15 number of hours it has requested are reasonable.” *Gonzalez*, 729 F.3d at 1202. The court should
16 exclude from the lodestar calculation hours that were not “reasonably expended,” including
17 hours that are “excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424,
18 434 (1983). The court has “a great deal of discretion” in determining the reasonableness of the
19 fee, “including its decision regarding the reasonableness of the hours claimed by the prevailing
20 party.” *Prison Legal News*, 608 F.3d at 453. A district court may reduce the amount of requested
21 fees to reflect a party’s limited degree of success, to account for block billing, or to deduct hours
22 deemed excessive if it provides an adequate explanation for its fee calculation. *Ryan v. Editions Ltd.*
23 *W. Inc.*, 786 F.3d 754, 763 (9th Cir. 2015).

24

1 I find no such factors in the present case, as defense counsel enjoyed a complete, rather
2 than limited, success by dismissing the charges brought against their client. Defense counsel
3 further did not submit large, unexplained “blocks” of hours in their billing calculation. *See* ECF
4 No. 22, Ex. C. Mr. Albright submitted 47.10 hours of work; at his discounted rate of \$400 per
5 hour, that calculates to \$18,840.² Mr. Alvarez submitted 0.5 hours of work; at his rate of \$350
6 per hour, that calculates to \$175. Mr. Ormsby submitted 41.70 hours of work; at his rate of \$350
7 per hour, that calculates to \$14,595. Mr. Monks submitted 3.70 hours of work; at his rate of \$350
8 per hour, that calculates to \$1,295. Finally, the paralegals submitted 3.70 hours of work; at their
9 rate of \$100 per hour, that calculates to \$370.

10 As a result, I find that both the hourly rates of the professionals and the total number of
11 hours worked to be reasonable, sum the totals *supra*, and calculate an initial lodestar amount of
12 \$35,275.00 in attorneys’ fees. The departure downward from Defendant’s request of \$37,630.00
13 reflects Defendant’s admission that Mr. Albright’s “rate of \$400.00 per hour...is a reasonable
14 compensation” (ECF No. 22 at 7) in addition to Defendant’s miscalculation of 0.3 of Mr.
15 Albright’s total hours.

16 Plaintiff’s response does not argue that Defendant’s request is unreasonable. Neither
17 Defendant’s motion (ECF No. 22) nor Plaintiff’s response (ECF No. 23) mention specific factors
18 that might be used to justify a modification of the amount.

19 However, after considering the totality of evidence in the record, I find that the sum of
20 \$35,275.00 should be modified in accordance with some of the subsumed *Kerr* factors based on
21

21

22

23 ² Defendant’s Motion for Attorneys’ Fees incorrectly calculates 47.40 hours of Mr. Albright’s time at a
24 rate of \$450.00 to equal \$21,195.00. ECF No. 22 at 7. A calculator verifies that 47.40 hours at a rate of
\$450.00/hour equals \$21,330.00. The difference of \$135.00 reflects a mistaken addition of exactly 0.3 hours.
Given the discrepancy between the stated number of hours and the stated total fee, this Court will presume
that Mr. Albright completed 47.10 hours of work, not 47.40 hours as alleged in Defendant’s motion.

1 the discretion afforded to district courts in determining reasonable attorneys' fees.³ Specifically,
2 my decision is based on the "novelty and difficulty of the questions involved" and the "skill
3 requisite to perform the legal service properly." *Kerr*, 526 F.3d at 70.

4 The underlying lawsuit in the present case was subject to a strict pre-filing order entered
5 by Judge Boulware. ECF No. 17 at 5. The lawsuit was initiated by Plaintiff filing his operative
6 complaint on Mar. 23, 2022, in state court. ECF No. 22 at 6. The lawsuit was dismissed on May
7 27, 2022, because Plaintiff failed to adhere to the pre-filing order. ECF No. 17. The court notes
8 that this case concerned frivolous claims and was adjudicated to completion in less than two
9 months. It did not involve any novel or complicated issues of fact or law. While Defense counsel
10 succeeded in obtaining their client's desired result, the nature of this case did not require
11 significant or specialized skills "to perform the legal service properly." *Kerr*, 526 F.3d at 70. Other
12 courts in this district have cut initial lodestar figures by up to 70% in cases that were not
13 particularly difficult to litigate. *See, e.g., Cervantes v. Emerald Cascade Restaurant Sys., Inc.*, 2013 WL
14 3878692, at *10 (D. Nev. July 25, 2013) (reducing lodestar amount of \$50,875 to \$15,000 based on
15 *Kerr* factors, including lack of novelty and difficulty of questions involved). Here, the lodestar
16 calculation should be reduced by 66% based on my analysis *supra*. I award Defendant County of
17 Ventura \$12,000.00 in attorneys' fees.

18 ...

19 ...

20 ...

21 ...

22
23 ³ Despite reduction of the lodestar amount based on subsumed *Kerr* factors being disfavored, *Corder*, 947
24 F.2d at 378, I make only one post-lodestar adjustment based on two of the *Kerr* factors analyzed in this
case. I adjust the lodestar figure because, even though Defendant's counsel has pled a reasonable number
of hours and reasonable hourly rates, the "subsumed" *Kerr* factors marshal in favor of a reduced award
compared to the output mechanically calculated by the lodestar calculation.

