IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Renae Castillo & Rhonda Sanchez, on behalf of themselves and all others similarly situated,	:	
Plaintiffs	:	Case No. 2:12-cv-00650
v.	:	Judge Marbley
Morales, Inc., *et al.*,	:	Magistrate Judge Abel
Defendants	:	

ORDER

This matter is before the Magistrate Judge on defendants' June 19, 2013 motion to contest the reasonableness of the attorney fees sought by plaintiff pursuant to the Magistrate Judge's May 22, 2013 Order (doc. 38).

Plaintiffs seek $6,036.55 in fees and expenses incurred in bringing their motion to compel. Defendants argue that the plaintiffs' fees include entries not related to the filing and briefing of the motion to compel and are far in excess of what fees should reasonably be incurred in filing and briefing the motion. Defendants maintain that the entries beginning December 5, 2012 through January 31, 2013 should not be included because those fees were not related to the filing and briefing of the motion to compel.

Plaintiffs argue that defendants' position that plaintiffs should not be compensated for their extrajudicial efforts in resolving this discovery dispute is not supported by case law. Rule 37(a)(1) of the Federal Rules of Civil Procedure requires the

moving party to certify that "the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Plaintiffs argue that because they are required to incur expenses related to resolving the issue extrajudicially prior to filing any motion, they are entitled to an award of their fees. Plaintiffs maintain but for defendants' recalcitrance, plaintiffs would not have had to expend $1,690 in their efforts to resolve the matter without Court intervention.

In determining the amount of reasonable attorney fees to award, the usual method is the "lodestar" approach. Under this approach, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *U.S. Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d 1185, 1193 (6th Cir. 1997). The reasonable hourly rates "are to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). *See also Northcross v. Board of Education*, 611 F.2d 624, 638 (6th Cir.) ("[T]he court should look to the fair market value of the services provided. In most communities, the marketplace has set a value for the services of attorneys, and the hourly rate charged by an attorney for his or her services will normally reflect the training, background, experience and skill of the individual attorney. "). Generally, the relevant community is "the jurisdiction where the case was tried." *Horace v. City of Pontiac*, 624 F.2d 765, 770 (6th Ci. 1980). However, "district courts are free to look to a national market, an area of

specialization market or any other market they believe appropriate to fairly compensate particular attorneys in individual cases." *Louisville Black Police Officers Organization, Inc. v. City of Louisville*, 700 F.2d 268, 278 (6th Cir. 1983).

Variance from the general rule of applying the hourly rates of the forum community should be made "only in the rare case where the 'special expertise" of non-local counsel was essential to the case, it was clearly shown that local counsel was unwilling to take the case, or other special circumstances existed." *In re "Agent Orange" Product Liability Litigation*, 818 F.2d 226, 232 (2d Cir. 1987). *See also Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140-41 (8th Cir. 1982).

> If a high priced, out of town attorney renders services which local attorneys could do as well, and there is no other reason to have them performed by the former, then the judge, in his discretion, might allow only an hourly rate which local attorneys would have charged for the same service. On the other hand, there are undoubtedly services which a local attorney may not be willing or able to perform. The complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally.

Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 768 (7th Cir. 1982). As the Sixth Circuit has explained, it is the function of the district court to calculate the number of hours reasonably expended on the litigation and to establish a reasonable hourly rate. *Wayne v. Village of Sebring*, 36 F.3d 517, 531 (6th Cir. 1994).

> [A] district court must "provide a concise but clear explanation of its reasons" for the award. *Hensley,* 461 U.S. at 437, 103 S.Ct. at 1941. "[The] district court should state with some particularity which of the claimed hours the court is rejecting, which it is accepting, and why." *Wooldridge v. Marlene Indus. Corp.,* 898 F.2d 1169, 1176 (6th Cir.1990).

U.S. Structures, Inc. v. J.P. Structures, Inc., 130 F.3d 1185, 1193 (6th. Cir. 1997). With these principles in mind, the Court will consider plaintiff's request for attorney fees.

Here the hourly rate for plaintiffs' attorneys ranged from $150 to $400. The majority of the work was billed at a rate of $275 per hour. Given the prevailing market rates in Columbus, I conclude that these rates are reasonable. Although counsel billed 6.20 hours for drafting the motion to compel; this was billed at an hourly rate of only $150. I conclude that the overall number of hours expended on the litigation are reasonable.

Plaintiffs is entitled to be compensated for their extrajudicial efforts to resolve the discovery dispute. Plaintiff's efforts to obtain discovery prior to filing to their motion to compel were reasonable expenses incurred in making the motion. *See J4 Promotions, Inc. v. Splash Dogs, LLC,* 2:09-cv-00136, 2010 WL 2162901 at *3 (S.D. Ohio May 25, 2010).

Conclusion. Defendants' June 19, 2013 motion to contest the reasonableness of the attorney fees sought by plaintiff pursuant to the Magistrate Judge's May 22, 2013 Order (doc. 38) is DENIED.

Under the provisions of 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P., and Eastern Division Order No. 91-3, pt. F, 5, either party may, within fourteen (14) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by the District Judge. The motion must specifically designate the Order, or part thereof, in question and the basis for any objection thereto. The District

Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

s/Mark R. Abel
United States Magistrate Judge