

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ORGANIC MATERIALS REVIEW.
INSTITUTE, an Oregon nonprofit
corporation

Plaintiff,

v.

FLEA AWAY, INC., a California
Corporation; SIMON BOWLES and
LILIAN BOWLES,

Defendants.

Case No. 6:16-cv-01931-MC

OPINION AND ORDER
RE: ATTORNEY FEES

MCSHANE, Judge:

Plaintiffs filed this motion for attorneys' fees, ECF No. 16, in the amount of \$7,591.60 pursuant to 15, U.S.C. § 1125(a); Fed. R. Civ. P. 54(d)(2); and LR 54-3; and Bill of Costs, ECF No. 18, in the amount of \$1,372.58.. This Court previously granted plaintiff's motion for entry of default, ECF No. 12, and plaintiff's motion for default judgment, ECF No. 14. Upon review, plaintiffs' motion for attorneys' fees, ECF No. 16, is GRANTED.

DISCUSSION

To determine the amount of a reasonable fee, this Court proceeds in two steps. First, this Court applies the lodestar method to determine what constitutes a reasonable attorney fee. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Second, this Court may "then adjust [the

lodestar] upward or downward based on a variety of factors.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013) (citations omitted) (internal quotation marks omitted). This Court addresses each step in sequence.

I. Lodestar Computation

“Under the lodestar method, [this Court] multiplies the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Id.* (citations and internal quotation marks omitted). “The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). To determine the “reasonable hourly rate to use for attorneys and paralegals in computing the lodestar amount[,]” this Court looks to the “prevailing market rates in the relevant community.” *Gonzalez*, 729 F.3d at 1205 (citations and internal quotation marks omitted). Plaintiffs worked 38.20 hours and seek rates as follows:

Name	Position	Hourly Rate
Frank C. Gibson	Partner	\$280
Megan I. Livermore	Associate	\$240
Cindy Vance	Legal ass’t / legal secretary	\$110.00 / \$58
Gail Cross	Legal secretary	\$58

See Aff. of Frank C. Gibson, ECF No. 17. Upon review, this Court is satisfied that defendants’ sought number of attorney hours is reasonable under the circumstances. Likewise, defendants’ sought attorney hourly rates are consistent with the Oregon State Bar 2012 Economic Survey¹ in

¹ Oregon State Bar Association, *Oregon State Bar 2012 Economic Survey* 29–30 (2012), <http://www.osbar.org/docs/resources/Econsurveys/12EconomicSurvey.pdf>.

light of each attorneys' "experience, skill, and reputation." *Gonzalez*, 729 F.3d at 1205–206 (citations and internal quotation marks omitted).

II. Lodestar Adjustment

"After making that computation, [this Court] then assess[es] whether it is necessary to adjust the presumptively reasonable lodestar figure on the basis of [the *Kerr*] factors." *Ballen v. City of Portland*, 466 F.3d 736, 746 (9th Cir. 2006) (citations omitted).² This Court, having reviewed the *Kerr* factors, declines to further adjust the lodestar computation. *See id.* ("[O]nly in rare circumstances should a court adjust the lodestar figure, as this figure is the presumptively accurate measure of reasonable fees." (citations omitted)).

CONCLUSION

For these reasons, defendants' motion for attorney fees and bill of costs, ECF No. 16 and 18, are GRANTED. Defendants are awarded attorney fees in the amount of \$7,591.60 and costs in the amount of \$1,372.58.

IT IS SO ORDERED.

DATED this 26th day of July, 2017.

/s/ Michael J. McShane

Michael McShane
United States District Judge

² In *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), the Ninth Circuit identified the "appropriate factors to be considered in the balancing process required in a determination of reasonable attorney's fees." The *Kerr* factors include:

(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skills requisite to perform the legal service properly, (4) the preclusion of other 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.

Id. (citations and internal quotation marks omitted).