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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN BONNER,

Plaintiff,

v.

NORMANDY PARK, and DETECTIVE
JOHN LIEVERO

Defendants.

CASE NO. C07-962RSM

ORDER GRANTING IN PART
PLAINTIFF’S MOTION FOR FEES AND
EXPENSES

I. INTRODUCTION

This matter comes before the Court on “Plaintiff’s Motion for Fees and Expenses.” (Dkt. #112). Plaintiff’s counsel requests a grand total of \$187,981.08, which includes \$180,780 in attorney’s fees pursuant to 42 U.S.C. § 1988, and \$7,201.08 in related costs. Defendants respond that the Court has the discretion to reduce Plaintiff’s counsel’s hourly rate, and to reduce hours spent on non-meritorious claims.

For the reasons set forth below, the Court GRANTS IN PART Plaintiff’s motion.

II. DISCUSSION

A. Background

The instant motion arises from a six-day jury trial that concluded on November 13, 2008 wherein the jury returned a verdict against Defendant Officer John Lievero. Specifically, the jury found that Officer Lievero used excessive force when he tased Plaintiff

1 Kevin Bonner at the Normandy Park Police Department on April 25, 2005 in violation of
2 Plaintiff's Fourth Amendment rights. (See Dkt. #104). The jury awarded \$35,000 in
3 compensatory damages and \$25,000 in punitive damages to Plaintiff. The jury did not find in
4 favor of Plaintiff on his state law assault and battery claims. Shortly after the Court entered
5 the final judgment, Plaintiff filed the instant motion for attorney's fees and costs.

6 **B. Attorney's Fees**

7 Reasonable attorney's fees are generally available to the prevailing party in a civil
8 rights litigation. See 42 U.S.C. § 1988(b). "Section 1988 was enacted to attract competent
9 counsel to represent citizens deprived of their civil rights . . . and to encourage compliance
10 with and enforcement of the civil rights laws." *Bernhardt v. Los Angeles County*, 339 F.3d
11 920, 930 (9th Cir. 2003) (internal quotations and citations omitted). "[A] prevailing plaintiff
12 'should ordinarily recover an attorney's fee unless special circumstances would render such
13 an award unjust.'" *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quoting H.R.Rep. No.
14 94-1558, p. 1 (1976)). Here, there is no dispute that attorney's fees should be awarded under
15 § 1988. The only issue for the Court to resolve is the appropriate amount.

16 The customary method of determining reasonable attorney's fees under § 1988 is the
17 "lodestar" method. See *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996).
18 Under this method, district courts must multiply the number of hours the prevailing party
19 reasonably expended on the litigation by a reasonable hourly rate. *McGrath v. County of*
20 *Nevada*, 67 F.3d 248, 252 (9th Cir. 1995). The number of hours include not only the amount
21 of time that an attorney expended on a case, but also the work of support staff such as
22 paralegals, "whose labor contributes to the work product[.]" *Missouri v. Jenkins by Agyei*,
23 491 U.S. 274, 285 (1989). "After making that computation, courts then assess whether it is
24 necessary to adjust the presumptively reasonable lodestar figure on the basis of twelve
25 factors." *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006) (citations omitted).
26 These non-exhaustive factors include:

- 27 (1) the time and labor required, (2) the novelty and difficulty of the questions
28 involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion

1 of other employment by the attorney due to acceptance of the case, (5) the customary
2 fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the
3 client or the circumstances, (8) the amount involved and the results obtained, (9) the
4 experience, reputation, and ability of the attorneys, (10) the “undesirability” of the
5 case, (11) the nature and length of the professional relationship with the client, and
6 (12) awards in similar cases.

7 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

8 The prevailing party bears the burden of establishing the appropriateness of its fee
9 request. *Hensley*, 461 U.S. at 433. District courts should “exclude from [the] initial fee
10 calculation hours that were not reasonably expended,” and “[c]ounsel for the prevailing party
11 should make a good faith effort to exclude from a fee request hours that are excessive,
12 redundant, or otherwise unnecessary.” *Id.* (internal quotations and citation omitted).
13 Importantly, the time spent in preparing a fee application under 42 U.S.C. § 1988 is
14 compensable. *See Anderson v. Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir. 1996).

15 In the instant case, Plaintiff’s counsel indicates that he is entitled to \$180,780 in
16 attorney’s fees. This amount includes 470 total hours of work performed by Plaintiff’s
17 counsel in this litigation at a rate of \$350 per hour, for a total of \$164,500. (Dkts. #113, Ex.
18 A, and 127, Ex. A). Plaintiff’s counsel indicates that his rate is both reasonable and the
19 prevailing rate for civil rights attorneys in the area with similar expertise. Defendants respond
20 that a more appropriate rate is \$225 to \$275 per hour. Significantly, the \$180,780 amount
21 also includes 148 hours spent by Plaintiff’s counsel’s paralegal at a rate of \$110 per hour, for
22 a total of \$16,280. (Dkt. # 113, Ex. B). Defendants do not dispute this amount.

23 Notwithstanding Defendants’ arguments to the contrary, the Court agrees with
24 Plaintiff’s counsel and finds that his \$350 per hour rate is the appropriate rate to impose in
25 this case. Plaintiff’s counsel has attached the declarations of two comparable civil rights
26 attorneys within this jurisdiction to establish that his rate is on par with those attorneys. For
27 example, Lem Howell, an experienced and well-known civil rights litigator in this
28 jurisdiction, submitted a declaration indicating that he charges \$485 per hour. (Dkt. #113,
Decl. of Howell, ¶ 8(i)). Fred Diamondstone, another attorney who specializes in personal
injury and civil rights litigation in this jurisdiction, submitted a declaration indicating the he

1 charges \$350 per hour. (Dkt. #113, Decl. of Diamondstone, ¶ 7(b)). In addition, the Court is
2 aware of similar § 1983 cases brought in this district involving an award of attorney’s fees,
3 and has gleaned that the hourly rate in this jurisdiction varies between \$300 and \$650 per
4 hour, thereby making Plaintiff’s counsel’s hourly rate justifiable. *See Bradford v. City of*
5 *Seattle*, 2008 WL 2856647, *10 (W.D. Wash. 2008); *Thomas v. City of Tacoma*, 2005 WL
6 2254005, *7 (W.D. Wash. 2005). Nevertheless, the Court finds it appropriate to reduce
7 Plaintiff’s counsel’s fees for the following five reasons.

8 First, and from a global perspective, the Court finds that a significant reduction from
9 the original amount requested is warranted because it is consistent with the Supreme Court’s
10 mandate that an attorney “should maintain billing records in a manner that will enable a
11 reviewing court to identify distinct claims.” *Hensley*, 461 U.S. at 437. Without detailed and
12 comprehensive records, district courts are left to make a decision on the reasonableness of the
13 requested fees based on a general accounting of the hours spent. Here, Plaintiff’s counsel
14 failed to detail his hours with specificity, particularly with respect to the time he indicates he
15 spent working on several different motions. This lack of specificity justifies a downward
16 departure, and underlies many of the reasons set forth in further detail below.

17 Second, the Court finds that Plaintiff’s counsel should not be credited for the 50 hours
18 he indicates he spent working on three different motions to compel.¹ These motions are
19 Plaintiff’s motion to compel the testimony of Officer Lievero (Dkt. #13), Defendants’ motion
20 to compel Plaintiff to submit to a Rule 35(a) examination (Dkt. #16), and Defendants’ motion
21 to compel Plaintiff to respond to certain information (Dkt. #17). With respect to Plaintiff’s
22 motion to compel, and Defendants’ motion to compel Plaintiff’s response to certain
23 information, the Court noted in its Orders addressing these motions that attorney’s fees were
24 not justified. Specifically, one Order indicated that Plaintiff’s counsel did not fulfill his meet-
25 and-confer obligations under the Court’s Local Rules. (Dkt. #35 at 3). The other Order found
26 that Plaintiff’s counsel contributed to the exceedingly adversarial nature between counsel, and

27 ¹ This includes all entries on Plaintiff’s counsel fee petition from 12/27/07 through 1/10/08, the task
28 titled “research Rule 35” entered on 12/1/07, and the task titled “Motion to Compel Testimony”
entered on 12/12/07. (Dkt. #113, Ex. A at 7-8).

1 could have avoided any involvement by the Court had he cooperated with Defense counsel.
2 (Dkt. #37 at 7). And with respect to Defendants' motion to compel Plaintiff to submit to an
3 examination, the Court finds that these amounts were not hours that were "reasonably
4 expended" under the afore-mentioned case law. *See Hensley*, 461 U.S. at 434. As the Court
5 noted in its Order granting Defendants' motion, it was abundantly clear that Plaintiff was
6 compelled to submit to a medical examination involving his mental state given that Plaintiff
7 was asserting emotional distress damages under FRCP 35(a). (Dkt. #36 at 2-5). Plaintiff's
8 counsel should not receive credit for the significant hours spent drafting and arguing meritless
9 positions.

10 Third, the Court finds that Plaintiff's counsel should not be credited for the full 70
11 hours he indicates he spent on responding to Defendants' motion for summary judgment.
12 While it is certainly reasonable for any attorney to spend substantial time responding to a
13 dispositive motion, 70 hours is excessive given the fairly simple set of facts presented by this
14 case and the legal principles involved. It is also excessive when considering that Plaintiff's
15 counsel was responding to arguments already set forth by Defendants, and distinguishing
16 case-law already cited by Defendants. Furthermore, the Court is well aware that Plaintiff's
17 counsel is extremely familiar with the case-law that discusses the legal principles involved in
18 this case, case-law based on well-established Fourth Amendment jurisprudence on excessive
19 force and probable cause. Indeed, Plaintiff's counsel's declaration is contradictory because,
20 on the one hand he strongly justifies his \$350 per hour rate given his expertise in the area of
21 civil rights, but undercuts this rate by the hours he claims to have spent on this motion. (*See*
22 *Decl. of Needle*, ¶ 12). Even the supporting declaration of Mr. Diamondstone acknowledges
23 that "the time spent on the summary judgment response may be a little on the high side[.]"
24 (Dkt. #113, *Decl. of Diamondstone*, ¶ 5). As a result, and after considering the "time and
25 labor required," the "novelty and difficulty of the questions involved," as well as the "skill
26 requisite to perform the legal service properly," the Court finds that the 70 hour amount
27 should be cut to 35 hours. Thirty-five hours is more than sufficient to respond to a motion
28 such as this, especially in light of the fact that Plaintiff's counsel fails to detail how his time

1 was specifically spent. *See, e.g. Taylor v. USF-Red Star Exp., Inc.*, 212 Fed. Appx. 101, 110-
2 111 (3d Cir. 2006) (affirming district court's decision to reduce the hours spent on a summary
3 judgment motion from 241.7 to 41.32 where the attorney failed to detail the separate time
4 spent on individual arguments within the brief).

5 Next, the Court finds that the 28 hours counsel indicates he spent on the motions in
6 limine prior to trial is also excessive for the very same reasons set forth above. (Dkt. #113,
7 Ex. A at 9). This case was not overly complex, and counsel's contention that he spent 21.25
8 hours drafting and replying to his motions in limine is unreasonable, particularly because
9 Plaintiff's counsel submitted only seven motions in limine. Although the number of motions
10 in limine does not provide the only basis for departing downward, it does suggest that nearly
11 three full business days working on evidentiary motions is unnecessary. Plaintiff's counsel
12 could have easily written and replied to his motions in limine in one business day, or eight
13 billable hours. Thus, the Court shall only give Plaintiff's counsel 14.75 hours of credit for
14 working on the motions in limine, which consists of the adjusted eight hours spent working on
15 Plaintiff's motions in limine, and the 6.75 hours Plaintiff's counsel spent responding to
16 Defendants' motions in limine.

17 Lastly, the Court finds no justification in Plaintiff's counsel's charge of 4.25 hours for
18 time spent awaiting the verdict at the courthouse. (Dkt. #113, Ex. A at 10). Once both parties
19 concluded their closing arguments, Plaintiff's counsel's work was done with the exception of
20 responding to any potential jury questions. Nevertheless, Plaintiff's counsel billed 4.25 hours
21 for waiting, or \$1,487.50 when factoring Plaintiff's counsel's \$350 per hour rate, in which no
22 legal work was done because there was obviously no legal skill to be provided. The Court did
23 not require Plaintiff's counsel to remain at the courthouse, only requesting that both parties
24 and their attorneys remain within 15 minutes from the courthouse. Moreover, Plaintiff's
25 counsel's law office is located in downtown Seattle, approximately 1.1 miles from the
26 courthouse, and therefore within the 15 minute time-distance requested by Court. Under such
27 circumstances, there is no justification for charging \$1,487.50 for awaiting a verdict.
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1 Therefore the Court finds that the 470 total hours spent by Plaintiff's counsel on the
2 instant litigation should be reduced to 370.5 total hours. The following table specifies the
3 arithmetic and describes the reductions mentioned above:

4 470 total hours
5 - 50 hours (motions to compel)
6 - 35 hours (response to Defendants' summary judgment motion)
7 - 13.25 hours (motions in limine)
8 - 4.25 hours (awaiting jury verdict)
9 = 367.5 total hours

10 The remaining hours set forth by Plaintiff's counsel are reasonable and justified, with
11 the exception of two tasks listed by Plaintiff's counsel's paralegal. While it is certainly not
12 the intention of the Court to nickel and dime Plaintiff's counsel, it cannot reconcile the task
13 entitled "motion in limine – file" entered on October 6, 2008 for a total of two hours, or the
14 task entitled "electronic copy jury instructions" entered on November 2, 2008 for a total of
15 five hours. (Dkt. #113, Ex. B at 11). With respect to the motions in limine, it is unimaginable
16 that it would take two hours to file a motion with the Court, especially given this Court's
17 electronic filing procedures which make it relatively easy to efficiently file pleadings with the
18 Court. And with respect to the jury instructions entry, it is equally incomprehensible that it
19 would take five hours to file and submit jury instructions to the Court, particularly in light of
20 the fact that both Plaintiff's counsel and his paralegal include separate entries for time spent
21 working the actual jury instructions themselves. Thus, the 148 hours claimed by Plaintiff's
22 counsel's paralegal shall be reduced to 141 hours.

23 As a result, Plaintiff's counsel is entitled to a total of \$144,135 in attorney's fees. This
24 amount is the sum of: \$128,625, the product of 367.5 hours of Plaintiff's counsel's own work
25 multiplied by his \$350 hourly rate; plus \$15,510, the product of 141 hours of Plaintiff's
26 counsel's paralegal work multiplied by her \$110 hourly rate.

27 **C. Costs**

28 Plaintiff's counsel also submitted an accounting of the costs associated with the instant
litigation. Plaintiff's counsel indicates that this amount totals \$7,201.08. Defendants do not

1 dispute this request. The Court further finds that this amount is justified, and therefore awards
2 Plaintiff's counsel this full amount.

3 **III. CONCLUSION**

4 Having reviewed the relevant pleadings, and the remainder of the record, the Court
5 hereby finds and ORDERS:

6 (1) "Plaintiff's Motion for Fees and Expenses" (Dkt. #112) is GRANTED IN PART.

7 Plaintiff's counsel is entitled to a total of \$151,336.08, the sum of \$144,135 in
8 attorney's fees, and \$7,201.08 in costs.

9 (2) The Clerk is directed to forward a copy of this Order to all counsel of record.

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11 DATED this 5th day of February, 2009.

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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE
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