IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Action No. 15-cv-00236-REB-MEH

CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER, on behalf of its members, and
MARGARET DENNY, on behalf of herself and a proposed class of similarly situated persons,

Plaintiffs,

v.

SAGE HOSPITALITY RESOURCES, LLC, and
SAGE OXFORD, INC.,

Defendants.

ORDER CONCERNING SETTLEMENT, AWARDING ATTORNEY FEES AND COSTS, AND DISMISSING CASE

Blackburn, J.

This matter is before me on the following: (1) the **Settlement Agreement and Release In Full** [#156-12] of the parties; and (2) the **Plaintiffs' Motion for an Award of Reasonable Attorneys' Fees and Costs** [#156 - restriction level 1][#173 - public entry][1] filed November 15, 2017. The defendants filed a response [#162 - restriction level 1][#175 - public entry], and the plaintiffs filed a reply [#167 - restriction level 1][#175 - public entry]. I grant the motion in part and deny it in part.

---

[1] "[#156]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

I. BACKGROUND

This case involves claims under Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12102 - 12213. The plaintiffs allege that the defendants are responsible for the operation of numerous hotels. According to the plaintiffs, those hotels provide transportation services to their guests, but do not provide equivalent wheelchair accessible transportation services to their guests, as required by Title III of the ADA. In its initial stages, this case involved many disputes about which, if any, of the parties were proper defendants. A thorough discussion of many of those issues can be found in the **Recommendation of United States Magistrate Judge** [#115] addressing motions filed by the defendants.

Ultimately, the parties entered into a settlement agreement [#156-12]. Defendant Sage Hospitality Resources, LLC (Sage) agrees that it owns subsidiaries which operate hotels. In essence, Sage has agreed to direct its subsidiaries to comply with the requirements of Title III of the ADA concerning transportation services provided at any hotel operated by a subsidiary of Sage. The settlement agreement, which is confidential, provides details for execution and administration of the agreement. Based on the settlement, I will direct that this case be dismissed, but will retain jurisdiction to enforce the settlement agreement.

The settlement agreement resolves all issues in this case except one – an award of attorney fees and costs to the plaintiffs. The parties agree the plaintiffs are entitled to an award of reasonable attorney fees and costs, but have not been able to agree fully on a specific amount to be awarded. In this circumstance, the settlement agreement provides that the court shall make the determination.

II. STANDARD OF REVIEW

The generally applicable "American Rule" provides that "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." ***Alyeska Pipeline Service Co. v. Wilderness Society***, 421 U.S. 240, 247 (1975); ***see also Federal Trade Commission v. Kuykendall***, 466 F.3d 1149, 1152 (10th Cir. 2006). However, when the parties agree to a provision for attorney fees, such as the provision of the License Agreement quoted above, the prevailing party may recover attorney fees from its opponent.

The starting point for any calculation of reasonable attorney fees is the "lodestar," that is, the number of hours reasonably expended multiplied by a reasonable hourly rate. ***Hensley v. Eckerhart***, 461 U.S. 424, 433 (1983); ***Malloy v. Monahan***, 73 F.3d 1012, 1017-18 (10th Cir. 1996). In determining the reasonable number of hours spent on the litigation, the applicant must exercise the same "billing judgment" as would be proper in setting fees for a paying client. ***Hensley***, 461 U.S. at 434; ***Malloy***, 73 F.3d at 1018. "'Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.'" ***Id***. (quoting ***Copeland v. Marshall***, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc)) (emphases in ***Copeland***). Counsel, therefore, must make a good faith effort to exclude hours that are "excessive, redundant or otherwise unnecessary." ***Id***. at 1939-40. A "reasonable rate" is defined as the prevailing market rate in the community in question for an attorney of similar experience. ***Blum v. Stenson***, 465 U.S. 886, 895 (1984); ***Gudenkauf***, 158 F.3d at 1082; ***Metz,*** 39 F.3d at 1493. The United States Court of Appeals for the Tenth Circuit has recognized the lodestar amount as a presumptively reasonable fee. ***Homeward Bound,*** 963 F.2d at 1355. Other factors are also relevant, including the

reasonableness of the fees in light of the success obtained, which requires the district court to consider the significance of the overall relief obtained in relation to the hours reasonably expended on the litigation. ***Hensley***, 461 U.S. at 435.

When an attorney has failed to exercise sound billing judgment, the court may do so for the attorney by striking problematic entries or reducing the hours requested by a percentage intended to substitute for the exercise of sound billing judgment. ***See Harper v. City of Chicago Heights***, 223 F.3d 593, 605 (7th Cir. 2000), ***cert. denied***, 121 S.Ct. 883 (2001), ***and cert. denied***, 121 S.Ct. 1092 (2001); ***Walker v. United States Department of Housing and Urban Development***, 99 F.3d 761, 770 (5th Cir. 1996). A court assessing a motion for reasonable attorney fees need not parse and evaluate every individual billing entry and determine the amount of a reasonable award down to the last penny. ***See Fox v. Vice***, – U.S. –, 131 S.Ct. 2205, 2216, 180 L.Ed.2d 45 (2011) ("[T]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time."); ***Malloy***, 73 F.3d at 1018 ("[T]he district court need not identify and justify every hour allowed or disallowed, as doing so would run counter to the Supreme Court's warning that a request for attorney's fees should not result in a second major litigation.") (citation and internal quotation marks omitted).

III. ANALYSIS

In their response [#162], the defendants dispute the reasonableness of several specific items of attorney fees and two items of costs. In their reply [#167], the plaintiffs concede, fully or partially, some of the issues raised by the defendants. As to those

issues, the plaintiffs have reduced the amount of attorney fees requested. With the issues thus narrowed, I address only the issues which remain contested between the parties. To resolve the few remaining issues, I have reviewed carefully the applicable law, the billing records and other exhibits submitted by the parties, and the arguments of the parties.

1. Reasonable Hourly Rates - The defendants contend the hourly rates charged by counsel for the plaintiffs and the hourly rates charged by paralegals in the office of counsel for the plaintiff are unreasonable. Having reviewed the record, including the declarations [#156-15, #162-22, & #167-2] of the experts on attorney fees submitted by the parties, I find that the hourly rates sought for the work of attorneys, Julia Campins, Lauren Fontana, and Sarah Morris, are reasonable.

However, I find that an hourly rate of 510 dollars per hour for the work of attorney, Kevin Williams, exceeds a reasonable hourly rate. In the context of this case, I find that an hourly rate of 475 dollars per hour for Mr. Williams is reasonable. Mr. Williams seeks to recover for just over 200 hours billed to this case, although that number of hours was reduced in the reply [#167]. As a reasonable measure of justice, I reduce the amount of my award, as compared to the amount sought by the plaintiffs, by 6,000 dollars.

In addition, I find that an hourly rate of 160 dollars per hour for the work of paralegals to be excessive. In the context of this case, I find that an hourly rate of 135 dollars is reasonable. The plaintiffs seek to recover for 100 hours billed to this case by paralegals, although that number of hours was reduced in the reply [#167]. As a reasonable measure of justice, I reduce the amount of my award, as compared to the amount sought by the plaintiffs, by 1,800 dollars.

2. Response To Moot Motion - On March 24, 2015, the defendants filed a motion to dismiss [#23]. On April 14, 2015, the plaintiffs filed an amended complaint [#29]. On April 16, 2015, the plaintiffs filed a response to the motion to dismiss [#23]. The defendants claim it is unreasonable to seek attorney fees for time spent preparing and filing a response to the motion to dismiss because the motion to dismiss was mooted by the filing of the amended complaint [#29]. Notably, billing entries of the plaintiffs show the plaintiffs started preparing the amended complaint on March 19, 2015.

I agree it was not reasonable to file a response to the motion to dismiss [#23] after that motion was mooted by the filing of the amended complaint [#29]. However, as the plaintiffs note, many similar issues were presented by the amended complaint [#29] and addressed in later motions to dismiss the amended complaint [#43 & #58]. The plaintiffs seek fees of 36,571 dollars for preparation of the response to the initial motion to dismiss. However, I find that 26,571 dollars constitute a more reasonable fee for this discreet task.

3. Discovery Requests & Opposition To Motion To Quash - On April 7, 2015, the court issued a partial stay of discovery [#28], pending resolution of jurisdictional issues. Despite the stay, the plaintiffs issued six subpoenas and a set of requests for production. The defendants argue that these discovery requests were effectively stricken by the court in its ruling on the motion to quash [#47] filed by the defendants. The plaintiffs did not respond to this issue in their reply [#167]. On this point, the ruling of the court [#64] is less than pellucid. As to billing for preparation of these requests for discovery, in spite of the stay, I find that 2,005 dollars of the attorney fees requested by the plaintiffs is unreasonable; thus, I reduce the award by that amount.

The defendants argue also it was unreasonable for the plaintiffs to spend

attorney time preparing a response to the motion to quash, essentially because it was clear the discovery requests violated the stay and a motion to quash would be granted. As the plaintiffs note, the motion to quash involved other issues as well, and the plaintiffs prevailed on some of those issues. *Minutes* [#64]. The plaintiffs seek 25,815 dollars for preparation of this response. Given the circumstances of the motion, the response, and the ruling of the court, I conclude that 18,000 dollars is a more reasonable fee for this discreet task.

4. Claims Asserted Against Walter Isenberg - The plaintiffs named Walter Isenberg as an individual defendant in their amended complaint [#29]. Ultimately, the claims against Mr. Isenberg were dismissed by the court in response to a motion to dismiss filed by Mr. Isenberg. *Recommendation* [#115], *order* [#121]. The defendants claim it is not reasonable to seek attorney fees for any time spent to include Mr. Isenberg as a defendant.

The recommendation [#115] of the magistrate judge includes a detailed discussion of the issues relevant to Mr. Isenberg. That discussion shows that the question of whether or not Mr. Isenberg was a proper defendant was complex and somewhat close. Ultimately, the position of the plaintiffs on this issue was not sustained. That does not mean, however, that the efforts of the plaintiffs to include Mr. Isenberg as a defendant were inherently unreasonable. I conclude that the time billed on this issue is reasonable.

5. Clerical Tasks, Travel Time, Incomplete Entries - In their response [#167], the plaintiffs eliminate their requests for fees based on several billing entries that are arguably clerical. However, the plaintiffs do not fully concede the point. As revised and reduced by the plaintiffs, I find that the entries at issue constitute reasonable fees for the

tasks billed. The plaintiffs have reduced the hourly rates charged for travel time. With that reduction, fees charged for travel time are reasonable. Finally, the plaintiffs have eliminated their request for fees for entries which appear to be for the wrong case or appear to be incomplete. That moots the related dispute.

6. Over-Staffing - The plaintiffs have eliminated all billing entries for the time of Kevin Williams. Otherwise, the plaintiffs assert that their billing does not show that counsel for the plaintiffs over-staffed work on this case. I agree.

7. Costs - The defendants challenge two items of costs: tester training ($375) and hotel database consultant ($1,020). The plaintiffs did not respond to this challenge. Absent some showing that these costs are reasonable, I decline to award them as part of an award of reasonable attorney fees and costs.

8. Adjustment for Limited Success - The defendants contend the lodestar amount should be reduced because the plaintiffs achieved only limited success. The defendants note that the plaintiffs did not achieve the class action injunctive relief they sought initially. However, the plaintiffs did obtain significant, substantive relief which requires Sage to take a variety of actions which should be effective to require hotels operated by subsidiaries of Sage to comply with Title III of the ADA concerning services for transportation. Thus, I decline to adjust the lodestar amount based on only limited success.

In their reply [#167], the plaintiffs request ultimately a total award of attorney fees and costs of 271,064.37 dollars – 264,309.50 for attorney fees and 6,754.87 for costs. The deductions detailed in this order reduce the award of attorney fees by 27,620 dollars and costs by 1,395 dollars. Thus, I find and conclude that an award of 236,689.50 dollars for attorney fees and 5,359.87 dollars for costs – for a total of

242,049.37 dollars – is reasonable.

IV. CONCLUSION

The settlement agreement between the parties resolves all of the issues in this case, except for an award of attorney fees and costs. This order provides for an award of reasonable attorney fees and costs. Thus, all issues in this case now are resolved. Thus, I will order that this case be dismissed. However, I shall retain jurisdiction to enforce the settlement agreement.

THEREFORE, IT IS ORDERED as follows:

1. That the **Plaintiffs' Motion for an Award of Reasonable Attorneys' Fees and Costs** [#156][#173 - public entry] is granted in part and denied in part;

2. That the plaintiffs are awarded reasonable attorney fees in the amount of 236,689.50 dollars and reasonable costs in the amount of 5,359.87 dollars, for a total award of 242,049.37 dollars;

3. That otherwise, the **Plaintiffs' Motion for an Award of Reasonable Attorneys' Fees and Costs** [#156][#173 - public entry] is denied;

4. That based on the settlement agreement of the parties and the award of attorney fees and costs, this case is dismissed;

5. That the court retains jurisdiction to enforce the settlement agreement; and

6. That this case is closed.

Dated March 26, 2018, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge