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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-
FARIAS, JOSE F. SANCHEZ,
RICARDO BETANCOURT, and all
other similarly situated persons,

Plaintiffs,

v.

GLOBAL HORIZONS, INC., *et al.*,

Defendants.

NO. CV-05-3061-RHW

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS FEES**

Before the Court is Plaintiffs' Motion for Attorneys Fees, ECF No. 1328. A hearing on the motion was held on June 4, 2013, in Yakima, Washington. Plaintiffs were represented by Richard Kuhling and Lori Isley. Defendants were represented by Brendan Monahan and Matthew Harrington.

In a prior ruling, the Court preliminarily found that Plaintiffs are the prevailing party with respect to the FLCA claims. The Court adopts that finding as a final ruling.

The Court also preliminarily found that the amount of attorneys fees awarded against the Grower Defendants must be reduced for time spent on unsuccessful claims and theories and for claims for which fees may not be recovered. Plaintiffs disagree with this finding, and argue that under *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983), the Court should award attorneys fees in the amount of \$1,358,982. Defendants argue the Court should segregate the FLCA fees from the fees for the discrimination claims and other unsuccessful claims.

1 Defendants assert that 25% of the attorneys fees awarded against Global would be
2 reasonable.

3 Under Washington law¹, a court may award attorneys fees only when based
4 upon a contract, statute, or recognized ground in equity. *Loeffelholz v. Citizens for*
5 *Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wash. App. 695,
6 690 (2004). As set forth in its prior order, FLCA authorizes attorneys fees against
7 the Grower Defendants for FLCA violations. Wash. Rev. Code §§ 19.30.170(1);
8 19.30.200.

9 When a party can recover attorneys fees for only some of its claims, the
10 award should reflect a segregation of the time spent on issues for which fees are
11 authorized.² The trial court must separate the time spent on those theories essential
12 to the fee-authorized claims from the time spent on other theories and claims.
13 *Hume v. Am. Disposal Co.*, 124 Wash.2d 656, 673 (1994). Segregation of fees is
14 required even where claims overlap or are interrelated. *Loeffelholz*, 119 Wash.
15 App. at 690; *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wash. 2d 826,
16 850 (1986); *Smith v. Behr Process Corp.*, 113 Wash. App. 306, 344-45 (2002); *but*
17 *see Ethridge v. Hwang*, 105 Wash. App. 447, 461 (2001) (noting the court is not
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19 ¹A federal court sitting in diversity applies the law of the forum state
20 regarding an award of attorneys fees. *Kona Enterprises, Inc. v. Estate of Bishop*,
21 229 F.3d 877, 883 (9th Cir. 2000).

22 ²*Hume v. Am. Disposal Co.*, 124 Wash.2d 656, 672 (1994) (*citing Gaglidari*
23 *v. Denny's Restaurants, Inc.*, 117 Wash.2d 426, 450 (1991)); *Travis v. Wash.*
24 *Horse Breeders Ass'n*, 111 Wash.2d 396, 410-11 (1988); *Boeing Co. v. Sierracin*
25 *Corp.*, 108 Wash.2d 38, 66 (1987); *Nordstrom, Inc. v. Tampourlos*, 107 Wash.2d
26 735, 744 (1987); *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wash.2d 826,
27 849-50 (1986); *Kastanis v. Educ. Employees Credit Union*, 122 Wash.2d 483
28 (1993).

1 required to artificially segregate time where the claims all relate to the same fact
2 pattern, but allege different bases for recovery.) Where the trial court finds the
3 claims to be so related that no reasonable segregation of successful and
4 unsuccessful claim can be made, it need not segregate the fees. *Hume*, 124 Wn.2d
5 at 673. “Ultimately, the fee award must be reasonable in relation to the results
6 obtained.” *Brand v. Department of Labor & Industries*, 91 Wash. App. 280, 294
7 (1998), *rev'd on other grounds*, 139 Wash.2d 659 (1999).

8 The above-cited cases addressed attorneys fees under the Consumer
9 Protection Act. Given the broad remedial purpose of the Consumer Protection Act,
10 the Court finds these cases provide the analysis the Court must undertake when
11 awarding fees under FLCA. *Compare Perez-Farias v. Global Horizons, Inc.*, 175
12 Wash.2d 518, 530 (2012) (recognizing remedial nature of FLCA) *with Bowers v.*
13 *Transamerica Title Insur. Co.*, 100 Wash.2d 581, 594-95 (1983) (recognizing
14 beneficial purpose of the CPA).

15 Here, it would be unfair to assess attorneys fees against the Grower
16 Defendants for the total amount of the attorneys fees assessed against the Global
17 Defendants. There is no statutory basis for awarding fees for the Global
18 Defendants’ discrimination claims, and the Grower Defendants were successful in
19 defending the claims of discrimination and the claims based on vicarious liability
20 and joint employer liability for the Global Defendant’s discrimination.

21 This case is similar to *Fisher, Travis, and Loeffelholz* in that the facts
22 pertaining to the FLCA violations were not so interrelated to the discrimination
23 claims as to excuse segregation. If Plaintiffs had brought only the FLCA claims,
24 their attorneys would have spent considerable less time establishing the facts,
25 given that summary judgment was granted on all relevant FLCA claims except the
26 failure to provide work in violation of the Clearance Order, and the bulk of the
27 evidence submitted in support of the summary judgment motion was derived from
28 the Department of Labor investigation. Moreover, with respect to the failure to

1 provide work, the intent of the Defendants in denying work was not an issue.

2 As stated in its prior order, the records provided by Plaintiffs do not permit
3 the Court to segregate the time spent on the FLCA and discrimination claims. The
4 question then is what is the appropriate method to segregate the claims.

5 In Plaintiffs' Third Amended Complaint, Plaintiffs alleged class action violations
6 of AWPAs,³ FLCA, Wash. Rev. Code § 49.52.050 for willful withholding of
7 wages,⁴ and violations of 42 U.S.C. § 1981 and the Washington Law Against
8 Discrimination. ECF No. 133. Liability for most of the AWPAs and FLCA claims
9 were decided on summary judgment.

10 To assist in answering this question, the Court created a timeline of the
11 proceedings in this case, which provided some perspective as to the time spent on
12 the various claims. Plaintiffs filed their complaint in July, 2005. In the first two
13 years, the parties litigated a motion to bifurcate, class certification, and numerous
14 motions to compel caused by Defendants' unwillingness to engage in discovery.

15 A jury trial was held in September, 2007. Trial lasted approximately three
16 weeks. The Court has reviewed the Joint Pre-Trial Order, ECF No. 599, Plaintiffs'
17 Trial Brief, ECF No. 630, Plaintiffs' Proposed Findings and Conclusions on
18 Grower Defendants' Liability, ECF No. 782, and other pre-trial and post-trial
19 briefing, including the requested jury instructions. These documents reflect that
20 the focus of the issues presented at trial was the discrimination claims and the
21 various theories seeking to establish the Grower Defendants' liability for the acts
22 of the Global Defendants. Significant testimony was presented to the jury to prove
23 the discrimination claims on the part of the Global Defendants, although some
24 evidence was heard regarding the failure to provide work. Notably, Plaintiffs

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26 ³Plaintiffs abandoned their AWPAs claims prior to trial.

27 ⁴Plaintiffs abandoned their claim for wrongful withholding of wages at the
28 September, 2007 trial. *See* ECF No. 1239 at 7.

1 chose not to present evidence of actual damages for class members, except for the
2 three individually-named Plaintiffs. The Court heard closing arguments on the
3 Grower's liability in December 2007, and entered Findings of Fact and
4 Conclusions of Law in March 2008. The Court concluded the Grower Defendants
5 did not discriminate against the Plaintiff sub-classes and were not joint employers
6 and therefore were not liable for the Global Defendant's discrimination. The focus
7 of the proceedings from August, 2007 to March, 2008 was the Global and the
8 Grower Defendants' liability for the discrimination claims.

9 A year later, a bench trial on statutory damages was held in March, 2009. In
10 addition to awarding statutory damages, the Court declined to hold the
11 individually-named Defendants liable for the statutory damages under FLCA, and
12 denied Plaintiffs' request for injunctive relief. In March, 2010, the Court granted
13 Plaintiffs' Motion for Attorneys Fees.

14 This brief summary does not provide the complete picture of the necessary
15 work expended by Plaintiffs' counsel on behalf of their clients, particularly the
16 amount of work that was caused by the dilatory conduct of Defendants. The Court
17 is very familiar with the entire record and has considered all aspects of it in
18 resolving how to fairly segregate the attorneys fees.

19 Although rudimentary, the timeline proved helpful in devising a realistic
20 formula with which to segregate the fees. In reviewing the timeline, it became
21 apparent that the majority of the proceedings involved or included the FLCA
22 claims, and because of this the Grower Defendants should be jointly and severally
23 liable for the majority of the Global Defendants' attorneys fees.

24 On the other hand, the September, 2007 jury trial represents that portion of
25 the proceedings that focused mostly on the discrimination claims and the liability
26 of the Grower Defendants for which the Grower Defendants should not be held
27 jointly and severally liable for the Global Defendants' attorneys fees. This
28 involved a time period between August, 2007 and March 2008, which the Court

1 estimates to be 20% of the duration of the proceedings. During trial, Plaintiffs'
2 counsel was billing significant hours. Attorneys billed in excess of 10 hours a day.
3 *See* ECF No. 1101, Ex. A. Also, certain aspects of discovery in the matter
4 pertained only to the discrimination claims, especially given that the intent of the
5 Defendants was not an issue with respect to the FCLA violations. As such, the
6 Court concludes the discrimination claims and claims for individual liability make
7 up roughly 25% of Plaintiffs' attorneys' time and energy.

8 Based on these observations, the Court concludes that 75% of the work
9 performed was on the successful claims and that the Grower Defendants should be
10 jointly and severally liable for 75% of the attorneys fees awarded against the
11 Global Defendants. This reduction segregates out the time spent on the
12 discrimination claims and other unsuccessful claims as required by Washington
13 law.

14 Previously, the Court awarded \$1,305,859.00 in reasonable attorneys fees,
15 \$146,972 as a multiplier for the discrimination claims, and \$53,123.55 in costs
16 against the Global Defendants. In their briefing Plaintiffs indicate the Court should
17 not include the multiplier in assessing the attorneys fees (which the Court agrees
18 should not be assessed against the Grower Defendants). The Court will amend the
19 judgment to order that the Grower Defendants be jointly and severally liable for
20 75% of \$1,358,982.55 (\$1,305,859 + \$53,123.55), or \$1,019,236.80.

21 Accordingly, **IT IS HEREBY ORDERED:**

- 22 1. Plaintiffs' Motion for Attorneys fees, ECF No. 1328, is **GRANTED**.
- 23 2. The District Court Executive is directed to amend the Judgment filed
24 on March 24, 2012, ECF 1240, to reflect that the Grower Defendants are jointly
25 and severally liable with Global Horizons, Inc. and Mordechai Orian for
26 **\$979,394.25** of the \$1,452,831.00 for reasonable attorneys fees and **\$39,842.66** of
27 the \$53,123.55 in costs set forth in ECF Nos. 1243 and 1279.

1 3. If Plaintiffs seek an award of fees for the work performed since the
2 appeal, they should file the appropriate request by July 15, 2013.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter
4 this Order and to provide copies to counsel.

5 **DATED** this 28th day of June, 2013.
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8 *s/Robert H. Whaley*
9 **ROBERT H. WHALEY**
United States District Court

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