SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JOHNNY MORENO

Plaintiff,

v.

A. WASH & ASSOCIATES, INC., *et al.*,

Defendants.

Case No.: 2018 CA 008055 B

Judge Jason Park

ORDER

This matter is before the Court on the plaintiff's motion for award of attorneys' fees and costs, filed July 2, 2020, and the defendants' motion to stay enforcement of judgment without the posting of a supersedeas bond, filed July 16, 2020. For the reasons discussed below, the Court grants the plaintiff's motion and denies the defendants' motion.

BACKGROUND

On November 16, 2018, plaintiff Johnny Moreno brought this action to recover overtime wages from the defendants under the District of Columbia Minimum Wage Act ("DCMWA"), D.C. Code §§ 32-1001 *et seq.*, and the District of Columbia Wage Payment and Collection Law ("DCWPCL"), D.C. Code §§ 32-1301 *et seq.* On February 5, 2020, the Court presided over a one-day non-jury trial. Upon order of the Court, the plaintiff submitted a post-trial brief on February 26, 2020, and the defendants submitted a post-trial brief on March 26, 2020. On July 18, 2020, the Court filed its Findings of Fact and Conclusions of Law, finding that the defendants had violated the DCMWA and the DCWPCL by failing to pay the plaintiff overtime wages, and that the plaintiff was entitled to damages. The plaintiff filed his motion for attorneys' fees on July 2, 2020, and the defendants filed a motion to stay enforcement of the judgment pending appeal on July 16, 2020.

ANALYSIS

I. PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

The plaintiff argues that, pursuant to the matrix adopted in *Salazar v. District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000), the experience and skill of his counsel, and the hours expended on this litigation, he is entitled to reasonable attorneys' fees in amount of $132,140.10. *See generally* Pl.'s Mot. for Att'y's Fees. In their opposition, the defendants argue that many of the entries in the plaintiff's billing records are "inconsistent with plaintiff's counsel's own billing practices," and that the plaintiff's requested fees are unreasonable and excessive. *See* Defs.' Opp'n to Pl.'s Mot. for Att'y's Fees ("Defs.' Opp'n") at 6-12.

Under the DCWPCL and DCMWA, a prevailing plaintiff is entitled to an award of reasonable attorneys' fees and costs. D.C. Code §§ 32-1012(a), 32-1308(b). The basic formula for calculating attorneys' fees requires multiplication of "the number of hours reasonably exp[e]nded in litigation" by "a reasonable hourly rate or 'lodestar.'" *DL v. District of Columbia*, 924 F.3d 585, 588 (D.C. Cir. 2019) (*quoting Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516, 1521 (D.C. Cir. 1988)). The court may then "consider whether adjustments or multipliers to the lodestar are warranted." *Lucero v. Parkinson Constr. Co.*, 2019 U.S. Dist. LEXIS 109551, at *2, (D.D.C. July 1, 2019) (citing *Covington v. District of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995)).

A. Hourly Rates Charged by Plaintiff's Counsel

Hourly rates sought in a fee application are reasonable if they are consistent with rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *DL*, 924 F.3d at 588 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)). Accordingly, to establish a reasonable hourly rate, an applicant must make a showing of

(1) "the attorneys' billing practices"; (2) "the attorneys' skill, experience, and reputation;" and (3) "the prevailing market rates in the relevant community." *Covington v. District of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995).

"A matrix showing the average hourly price tag of comparable lawyers may 'provide a useful starting point' in calculating market rates." *DL*, 924 F.3d at 589. Indeed, the DCWPCL expressly mandates that courts use the *Laffey* matrix adopted in *Salazar* to compute reasonable attorneys' fees in DCWPCL actions. *See* D.C. Code § 32-1308(b)(1) ("In any judgment in favor of any employee under this section . . . the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees computed pursuant to the matrix approved in [*Salazar*], and updated to account for the current market hourly rates for attorney's services."); *Salazar*, 123 F. Supp. 2d at 13 (citing *Laffey v. Northwest Airlines*, 572 F. Supp. 354, 371-75 (D.D.C. 1983)). In *Salazar*, the district court concluded that an updated *Laffey* matrix, incorporating data for the legal services index ("LSI") component of the nationwide Consumer Price Index produced by the Bureau of Labor Statistics of the U.S. Department of Labor, "more accurately reflects the prevailing rates for legal services in the D.C. community" than the U.S. Attorney's Office fee matrix. 123 F. Supp. 2d at 15; *see also Herrera v. Mitch O'Hara LLC*, 257 F. Supp. 3d 37, 46 (D.D.C. 2017) (observing that "the . . . plain language [of the DCMWA and DCWPCL] requires use of the LSI *Laffey* matrix to determine the applicable rate").

The LSI *Laffey* matrix approved in *Salazar* establishes hourly rates for lawyers practicing "complex federal litigation." *Salazar*, 123 F. Supp. 2d. at 13; *see also Stephens v. Farmers Rest. Grp.*, 2019 U.S. Dist. LEXIS 103031, at *28-29 (D.D.C. June 20, 2019) (finding that the prevailing party's requested attorney's fees were reasonable when compared to market rate for similar complex federal litigation). Other courts have employed lower hourly rates in awarding attorney's

fees in wage and hour disputes. *See, e.g., Amaya v. Logo Enters., LLC*, 251 F. Supp. 3d 196, 202 (D.D.C. 2017) (applying the U.S. Attorney's Office fee matrix rather than the LSI *Laffey* matrix in awarding attorney's fees in wage and hour dispute); *Chen v. Jin Holding Grp.*, 2012 U.S. Dist. LEXIS 11570, at *11-12 (S.D.N.Y. Jan. 31, 2012) (finding that an hourly rate of $350 for an experienced attorney in a Fair Labor Standards Act case with a one-day bench trial was reasonable); *Roldan v. Pure Air Sols., Inc.*, 2010 U.S. Dist. LEXIS 12779, at *11 (S.D. Fla. Jan. 29, 2010) (finding that an hourly rate of $300 was reasonable in a Fair Labor Standards Act case decided by a bench trial).

Regardless, the DCWPCL expressly requires the Court to employ the *Laffey* matrix rate adopted in *Salazar*—that is, the LSI *Laffey* matrix—in computing attorney's fees sought by the prevailing employee. *See* D.C. Code § 32-1308(b)(1); *see also Ramos v. Justin's Café, LLC*, 2020 U.S. Dist. LEXIS 67947, at *10 (D.D.C. Apr. 15, 2020) (entering default judgment on DCWPCL and DCMWA claims and awarding attorneys' and paralegals' fees based on the LSI *Laffey* matrix). The LSI *Laffey* matrix provides that the prevailing rate for plaintiff's attorneys, each of whom has between eleven and twelve years of experience, is $747.00 per hour. *See* Pl.'s Mot. for Att'y's Fees at 5 (citing Pl.'s Ex. D (Adjustments to the 1988-1989 *Laffey* Matrix Rates Using the Legal Services Index)).[1] The LSI *Laffey* matrix also provides that the prevailing rate for the plaintiff's paralegal and administrative assistants is $203.00 per hour. *Id.* The defendants do not challenge the hourly rates sought by the plaintiff. *See generally* Defs.' Opp'n. Accordingly, the Court finds that the plaintiff is entitled to recover reasonable attorney's fees, and finds that the hourly rates of

[1] In determining the reasonableness of the hourly fee sought, the Court has also considered the declaration of plaintiff's counsel detailing the educational background and professional experience of counsel and staff who worked on this matter. *See* Pl.'s Mot. for Att'y's Fees, Decl. of Justin Zelikovitz, Esq. ("Zelikovitz Decl.") ¶¶ 3-7.

$747.00 per hour for the plaintiff's attorneys and $203.00 per hour for the plaintiff's paralegals and administrative assistants are reasonable.

B. The Hours Billed by Plaintiff's Counsel

The party seeking an award of attorney's fees also bears the burden of establishing the reasonableness of the hours for which they seek reimbursement. *See Herrera*, 257 F. Supp. 3d at 46. A fee applicant satisfies its burden by submitting "sufficiently detailed information about the hours logged and the work done that permits the [] court to make an independent determination whether or not the hours claimed are justified." *Cobell v. Norton*, 231 F. Supp. 2d 295, 305-06, (D.D.C. 2002) (citing *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1327 (D.C. 1982)) (internal quotation marks omitted). "In determining reasonable hours expended . . . billing judgment must be exercised, and hours that are excessive, redundant or otherwise unnecessary must be excluded." *District of Columbia v. Hunt*, 525 A.2d 1015, 1016 (D.C. 1987) (citing *Henderson v. District of Columbia*, 493 A.2d 982, 999 (D.C. 1985)) (internal quotation marks omitted). "Compiling raw totals of hours spent . . . does not complete the inquiry. It does not follow that the amount of time actually expended is the amount of time reasonably expended." *Id.* (citing *Copeland v. Marshall*, 641 F.2d 880, 891-94 (D.C. Cir. 1980)).

A fee application "should not result in a second major litigation." *Driscoll v. George Wash. Univ.*, 55 F. Supp. 3d 106, 114 (D.D.C. 2014) (citing *Covington v. Dist. of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995)). Courts need not "engage in a detailed line-by-line analysis of the fee petition and the voluminous file in this case to determine, like a quasi-management consultant, if plaintiffs' counsel could have accomplished particular tasks or pleadings more efficiently." *Hodel*, 651 F. Supp. at 1532; *see also Copeland*, 641 F.2d at 896 (trial court should not "become enmeshed in a meticulous analysis of every detailed facet of the professional representation").

Here, the plaintiff has submitted contemporaneous billing records documenting the hours expended by counsel and support staff on this litigation, as well as a declaration from counsel explaining its billing practices. Pl.'s Mot. for Att'y's Fees, Exs. A-C. These records reflect that 160.1 attorney hours and 61.8 support staff hours were expended on this litigation to the point of the filing of the plaintiff's motion for attorney's fees. *See id.*, Ex. A. Of those hours, 55.6 attorney hours and 34.8 support staff hours were expended on the plaintiff's post-trial briefing. *Id.* at 4 & Ex. A. In addition, 11.2 attorney hours and 4.2 support staff hours were devoted to preparing the plaintiff's initial motion for attorney's fees and costs. *Id.*, Ex. A. The plaintiff also seeks an additional $6,125.40 in fees for the 8.2 hours spent preparing the reply briefing in support of their motion for attorney's fees. *See generally* Pl.'s Reply in Support of Mot. for Att'y's Fees.

The Court has reviewed the materials submitted by the plaintiff, as well as defendants' objections to certain entries in those billing records. *See generally* Defs.' Opp'n. As an initial matter, the Court is unpersuaded by the defendants' objection that many of the entries are inconsistent with the plaintiff's billing practices. *See id.* at 4-8. Although plaintiff's counsel does state in his declaration that his firm "do[es] not bill for incidental expenses such as photocopying, conference calls, and legal research data," Zelikovitz Decl. ¶ 10, time spent communicating with the client and conducting legal research is not, as the defendants suggest, "incidental" to the litigation, and charging for that time does not appear to be inconsistent with counsel's stated billing practices.

The Court is also unpersuaded that it should decline to award any fees for hours expended on the post-trial briefing simply because, as the defendants argue, it was the Court that directed the parties to submit that briefing. The submission of post-trial briefing is hardly unprecedented or unusual following the conclusion of a bench trial, particularly one that touched upon nuanced areas

of the law, such as the joint employer liability that figured heavily into this trial. The Court declines the defendants' invitation to refuse categorically to award fees generated through routine post-trial litigation.

The Court does, however, conclude that the more than 160 attorney hours and 30 staff hours spent on this matter were moderately excessive under the circumstances of this case. The Court finds that the approximately ninety-five hours of attorney time and twenty hours of staff time devoted to this matter from investigation through the close of evidence at trial to be somewhat excessive, given that this wage and hour matter involved limited discovery and factual investigation,[2] no motions practice, and a one-day trial during which four witnesses testified. *See* Zelkovitz Decl. ¶¶ 11-14, 17; Pl.'s Mot. for Att'y's Fees, Ex. A; Trial Tr. 196:6-11. The defendants have identified potential inefficiencies in the plaintiff's billing records, which, though perhaps the result of inadequate billing descriptions, support a reduction in the requested hours. *See, e.g.*, Defs.' Opp'n at 8 (objecting to the May 6, 2019 entry of 1.8 attorney hours devoted to "File first amended complaint").

The Court further finds that the 55.6 attorney hours and the 32.1 staff hours expended on post-trial briefing to be moderately excessive. This briefing was of a high quality, and helpfully explored legal issues discussed at the conclusion of trial that proved important to the Court's analysis. On the other hand, this post-trial briefing addressed a limited factual record, consisting of the testimony of the four trial witnesses and handful of trial exhibits. Further, a portion of this briefing addressed issues, such as the independent contractor/employee distinction and plaintiff's purported two separate jobs, which, though not conceded by defendants, were relatively mundane

[2] Counsel deposed one witness, responded to and issued one set of document requests and one set of interrogatories, and obtained defendants' bank records. Zelkovitz Decl. ¶¶ 11-14, 17.

and whose resolution did not demand extensive treatment. Finally, the Court concludes that the 19.4 attorney hours and the 4.2 staff hours devoted to the motion for attorney's fees and reply to be moderately excessive under the circumstances; the hours expended on attorney's fees litigation equals nearly half the hours spent drafting the 40+ pages of post-trial briefing, and three times the number of hours spent in trial.

In light of these considerations, and based on the entire record in this case, the Court finds that 100 attorney hours and 40 staff hours were reasonably expended on this matter. *See Fox v. Vice*, 563 U.S. 826, 827 (2011) ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection."). Applying those hours to the hourly rates found reasonable above ($747 per attorney hour and $203 per support staff hour) results in a total award of $82,820 of attorney's fees.

The Court further finds that no upward or downward adjustment of this amount is warranted. Although the defendants suggest that a fee award on this magnitude would be unconscionable given that the total amount of unpaid overtime wages that gave rise to this litigation, the fees awarded by this Court are hardly unprecedented. *See, e.g.*, *James v. Wash Depot Holdings, Inc.*, 489 F. Supp. 2d 1341, 1353 (S.D. Fla. 2007) (awarding $114,021 in attorney's fees following three-day FLSA trial resulting in $3,493.62 judgment); *Mogilevsky v. Bally Total Fitness Corp.*, 311 F. Supp. 2d 212, 226 (D. Mass. 2004) (entering judgment for plaintiff in FLSA claim of $4,567.21 following four-day bench trial and awarding $68,149.17 in attorney's fees). As one court has observed in rejecting this proportionality challenge to a fee application, "[t]he whole purpose of fee-shifting statutes is to generate attorneys' fees that are disproportionate to the plaintiff's recovery." *Driscoll v. George Wash. Univ.*, 55 F. Supp. 3d 106, 114 (D.D.C. 2014) (quoting *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 169 (2d Cir. 2011)); *see also Radtke v.*

Caschetta, 254 F. Supp. 3d 163, 171-172, 183 (D.D.C. 2017) (remarking that "simply because a fee award is greater than—even much greater—the damages ultimately awarded does not automatically make that fee excessive" and awarding $307,980 in attorney's fees in litigation with underlying damages of approximately $6,000). Accordingly, for the reasons discussed above, the Court awards the plaintiff attorney's fees in the amount of $82,820.

C. Request for Costs

As the prevailing party in this litigation, the plaintiff is also entitled to an award of costs. *See* D.C. Code § 32-1308(b)(1); D.C. Super. Ct. Civ. R. 54(d)(1). The plaintiff seeks an award of $2,431.97 in litigation costs, documented in billing records submitted with his motion. *See* Pl.'s Mot. for Att'y's Fees, Ex. A. The defendants do not dispute the costs requested. *See generally* Defs.' Opp'n. the Court finds the request reasonable and well supported and awards the plaintiff $2,431.97 in litigation costs.

II. DEFENDANTS' MOTION TO STAY ENFORCEMENT OF JUDGMENT

The defendants have filed a motion to stay judgment pending the outcome of the appeal they intend to file. *See generally* Defs.' Mot. to Stay Enforcement of J. More specifically, the defendants ask the Court to stay of enforcement of the judgment without requiring the posting of a supersedeas bond. *See generally id.* The plaintiff does not object to the motion being filed before the filing of a notice of appeal, but argues that the Court should not grant a stay of its judgment without first requiring defendants to post a bond. *See generally* Pl.'s Opp'n to Defs.' Mot. to Stay Enforcement of J.

D.C. Super. Ct. Civ. R. 62(b) provides that "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other

security." "While granting a stay without a supersedeas bond is within the discretion of the judge, the exercise of such discretion requires an adequate factual basis." *Goldberg, Marchesano, Kohlman, Inc. v. Old Republic Sur. Co.*, 727 A.2d 858, 861 n.2 (D.C. 1999) (citing *Johnson v. United States*, 398 A.2d 354, 362 (D.C. 1979)). "Before a court will depart from the usual requirement of a bond for the full amount of the judgment, the moving party must 'objectively demonstrate the reasons for such a departure.'" *Athridge v. Rivas*, 236 F.R.D. 6, 8 (D.D.C. 2006) (citing *Grand Union Co. v. Food Employers Labor Relations Ass'n*, 637 F. Supp. 356, 357 (D.D.C. 1986)).

The defendants argue that the Court should relieve them of the obligation of posting a supersedeas bond because they intend to file an appeal in this matter and because the plaintiff will suffer no prejudice. Defs.' Mot. to Stay Enforcement of J. at 2. Yet the mere fact that the defendants disagree with the Court's ruling and intend to appeal is plainly not an adequate factual basis to depart from the bond requirement. Nor is the Court persuaded that no prejudice to the plaintiff will result from relieving the defendants of the bond obligation; rather, it is because "a supersedeas bond is designed to protect the appellee [that] the party seeking the stay without a bond has the burden of providing specific reasons why the court should depart from the standard requirement of granting a stay only after a posting of a supersedeas bond in the full amount of the judgment." *De la Fuente v. DCI Telecomms., Inc.*, 269 F. Supp. 2d 237, 240 (S.D.N.Y. 2003). The Court therefore denies the defendants' motion to stay enforcement of the judgment without posting a supersedeas bond.

CONCLUSION

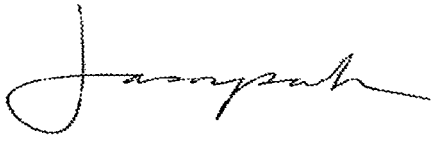
For the foregoing reasons, it is 16th day of November, 2020, hereby

ORDERED that the plaintiff's motion for award of attorney's fees and costs is **GRANTED**; and it is further

ORDERED that the plaintiff is awarded attorney's fees and costs in the amount of $85,251.97; and it is further

ORDERED that the defendants' motion to stay enforcement of judgment is **DENIED WITHOUT PREJUDICE**.

SO ORDERED.



HONORABLE JASON PARK
ASSOCIATE JUDGE

Copies to counsel of record via CaseFileXpress.