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United States District Court,
S.D. Florida.

William ROGERS and C. Mylett, Plaintiffs,
v.
Joseph P. NACCHIO, et al., Defendants.

No. 05-60667-CIV-COHN/SNOW.
|
April 6, 2007.

Attorneys and Law Firms

Alain Liebman, Stern & Kilcullen, Deerfield Beach, FL, J. Brooke Hern, Joel M. Silverstein, Jeffrey Speiser, Herbert J. Stern, David Scott Mandel, Mandel & Mandel LLP, Miami, FL, for Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE ON AWARD OF ATTORNEYS' FEES

JAMES I. COHN, United States District Judge.

***1 THIS CAUSE** is before the Court upon a Report and Recommendation prepared by United States Magistrate Judge Lurana S. Snow, dated March 9, 2007 [DE 464], regarding Defendants' Verified Consolidated Motion for Attorney's Fees [DE 444]. The Court previously adopted the Report and Recommendation when it did not receive timely filed Objections from the Plaintiffs, but vacated that Order on March 30, 2007 once Objections were filed to allow for consideration of those Objections. Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the Report and Recommendation, considering the underlying Motion, the record, and Plaintiffs' Objections, and is otherwise fully advised in the premises.

Plaintiffs effectively raise no new arguments in their Objections, and a review of the Objections and the record leads the Court to no different conclusion than it had already reached before receiving the Objections. Plaintiffs argue in their Objections, as they did before, that the hourly rates for attorneys in this district should be reduced, that the fees should be reduced to account for duplicative work or work that could have been done by associate attorneys or paralegals, that the out of district counsel should be paid at a rate of $200 per hour, and that fees should not be awarded for work on motions or responses in which Defendants did not prevail. Each of these arguments was carefully considered and correctly rejected in the Report and Recommendation. Plaintiffs propose that the Court either deny the motion for fees in its entirety, or impose an across-the-board reduction of 50% to the fees awarded. Neither remedy is supported by the evidence in the record or the law. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of Magistrate Judge Lurana S. Snow, dated March 9, 2007 [DE 464] is **ADOPTED.**

2. Defendants' Verified Consolidated Motion for Attorney's Fees [DE 444] is **GRANTED** in the amount of $231,072.69 for work performed on the civil theft claim, Fla. Stat. § 772.11, and the claim filed pursuant to Florida's Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.104.

3. Consideration of the motion for attorneys' fees related to Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 is **STAYED** until the judgment is final.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 6th day of April, 2007.

REPORT AND RECOMMENDATION

LURANA S. SNOW, United States Magistrate Judge.

THIS CAUSE is before the Court on the Defendants' Verified Consolidated Motion for Attorney's Fees (Docket Entry 444), which was referred to United States Magistrate Judge Lurana S. Snow for report and recommendation.

I. PROCEDURAL HISTORY

The 157-page pro se complaint was filed April 21, 2005, against 49 named defendants plus groups of unnamed defendants, alleging twelve counts of fraud, unfair trade practices and violation of the civil RICO statutes related to stock in Qwest Communications International which was purchased by the plaintiffs. The 306-page S .D.Fla.R. 12.1 Civil RICO Case Statement was filed June 28, 2005. (DE 48) The plaintiffs coordinated service of process and waivers of service of process. On August 5, 2005, the plaintiffs sought leave to file a corrected the Civil RICO Case Statement to correct minor errors. (DE 161)

***2** On July 20, 2005, the Citigroup defendants and Arthur Andersen LLP filed a motion to transfer the case and consolidate it with the multidistrict Qwest litigation in the District of Colorado. (DE 89) They also sought to stay the instant case until 30 days after the decision from the Judicial Panel on Multidistrict Litigation. (DE 86) The Court stayed the case until one day after the Panel decision. (DE 166) The Panel declined to accept the case for transfer on October 19, 2005. (DE 234)

Several groups of defendants filed a motion for the Court to set a date for all defendants to file their motions to dismiss, with a consolidated memorandum of law if possible, and a date for the responses and replies, in an effort to avoid duplication of effort. (DE 100) One defendant, James Kozlowski, filed a motion to dismiss. (DE 131) On November 8, 2005, the plaintiffs filed a 345-page amended complaint adding defendants and causes of action. (DE 200) Pursuant to a stipulation, one defendant not named in the amended complaint, IGC Communications, Inc., was immediately dismissed with prejudice. (DE 222)

The defendants again requested a specific date for filing all motions to dismiss the amended complaint. (DE 226) The plaintiffs sought an extension of time to serve the defendants. (DE 232) The Court ordered the plaintiffs to file proof of service no later than December 19, 2005. The defendants' responses to the amended complaint were set for January 12, 2006. (DE 240) The returns of service for the amended complaint were filed December 19, 2005, through January 31, 2006. (DE 266, 267, 268, 269, 279, 280-288, 290-295, 303, 308-312, 319, 323 and 325)

On December 15, 2005, the Court granted the plaintiffs' motion to amend the complaint to add Qwest Communications as a defendant to the federal and state securities claims. (DE 265) The second amended complaint was filed December 28, 2005, and the first amended Civil RICO Case Statement was filed January 9, 2006. (DE 278, 302) Most of the defendants joined in the 58-page consolidated motion to dismiss and memorandum of law, which included 36 affidavits challenging personal jurisdiction or service of process (DE 348). Several defendants filed supplementary memoranda of law, others filed independent motions to dismiss with accompanying memoranda of law: Sonus Networks DE 333-334; Arthur Andersen, LLP, DE 335; Mark Iwan DE 336; James J. Kozlowski DE 340-41; James A. Smith DE 342; Grant P. Graham DE 343; Citigroup defendants DE 347; Credit Suisse DE 354; Jennifer Tanner DE 363; Qwest Communications DE 369; Bank of America DE 373-374; James Kozlowski DE 388, and Mark Schumacher DE 427.

The Court granted the joint motion to extend the briefing schedule for the motions to dismiss. (DE 361) The plaintiffs filed separate responses to the motions to dismiss. (DE 376, 379, 380, 385, 386, 387, 389, 391, 394 and 400) The plaintiffs also filed stipulations of dismissal for three defendants: U.S. Bancorp Piper DE 332; KMC Telecom Holdings DE 356, and Sonus Networks DE 431. The Court ordered the plaintiffs to show cause why the second amended complaint should not be dismissed as to those defendants who had not been timely served. (DE 436)

***3** When the motions were fully briefed, the Court granted the motions to dismiss, finding that (1) the Count 23 claim of federal securities fraud was time barred; (2) the federal RICO claims alleged in Counts 5 and 6 were improperly predicated on crimes not related to the allegations in the Second Amended Complaint; (3) the plaintiffs failed to demonstrate that the Court had personal jurisdiction over 37 individual defendants and one corporate defendant; (4) Counts 7-11 alleging violation of the Colorado civil RICO statutes were time barred; (5) Counts 1-4 and 11, alleging violation of the Florida civil RICO statutes lacked sufficient specificity of fraud to show that there was probable cause that the crimes were committed; (6) Count 12, alleging civil theft pursuant to Fla. Stat. § 772.11, failed to state a claim against any of the remaining defendants; (7) the allegations of fraud in Counts 13, 19 and 24 were not stated with sufficient particularity to meet the requirements of Fed.R.Civ.P. 9(b); (8) the Count 21 and 22 claims of aiding and abetting fraud failed since the

fraud was insufficiently alleged; (9) the Count 14 claim of violation of Florida's Deceptive and Unfair Trade Practices Act failed since the statute did not apply to securities claims; (10) The state law securities claims in Counts 15 and 17 were time barred; (11) the claims of aiding abetting violations of state securities laws failed since the securities claims were time barred; (12) the civil conspiracy claim in Count 20 failed to allege an independent tort, and (13) the respondeat superior claim in Count 25 failed because the Court had dismissed all of the underlying claims of liability. (DE 441) The Court found that (1) the dismissals for lack of personal jurisdiction were without prejudice; (2) the dismissals of time-barred claims were with prejudice, and (3) the counts which failed to state a claim were dismissed with prejudice, since the plaintiffs had a fair opportunity to present proper pleadings in the three complaints filed. (*Id.*) The order awarded attorney's fees to defendants named in the civil theft count, since the claim lacked any supportive evidence. The plaintiffs filed an appeal, which remains pending.

The defendants [1] filed a consolidated motion for attorney's fees, which is fully briefed and ripe for consideration. In addition to attorney's fees for the civil theft claims, pursuant to Fla. Stat. § 772.11, as provided for in the Court's final order, the defendants seek attorney's fees for the claims under Florida's Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.104, and Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501 .201. The plaintiffs do not contest that fees are available to the defendants under the three statutes.

1 The following Defendants ("Moving Defendants") joined in the motion: Linda G. Alvarado, Philip F.Anschutz, Anschutz Company, Joel Arnold, Arthur Andersen LLP, Bank of America, N.A., Craig R. Barrett, Hank Brown, Gregory M. Casey, Citigroup Inc., Citigroup Global Markets Inc., Citigroup Global Markets Holdings Inc., Augustine M. Cruciotti, Thomas J. Donohue, William L. Eveleth, Michael Felicissimo, Grant P. Graham, Jack Grubman, Thomas W. Hall, Cannon Y. Harvey, Peter S. Hellman, Roger Hoaglund, Douglas K. Hutchins, Mark Ivan, Steven M. Jacobsen, Vinod Khosla, James J. Kozlowski, Afshin Mohebbi, Joseph P. Nacchio, Loren D. Pfau, Frank Popoff, Qwest Communications International Inc., Mark Schumacher, Craig D. Slater, Kimberly A. Smiley (identified in the Amended Complaint as "Kimberly Stout"), James A. Smith, W. Thomas Stephens, Robin R. Szeliga, Jennifer Tanner, Drake Tempest, Bryan K. Treadway, John M. Walker, Sanford ("Sandy") Weill, Richard L. Weston, Marc B. Weisberg, Lewis O. Wilks, and Robert S. Woodruff.

The Court held that the defendants were entitled to attorney's fees for civil theft, Fla. Stat. § 772.11, since the claim lacked any supportive evidence. The award of fees is limited to the fees and costs expended on Count 12. *Marcus v. Miller,* 663 So.2d 1340, 1343 (Fla. 4th DCA 1995); *Friedman v. Lauderdale Medical Equipment Service, Inc.,* 591 So.2d 328, 329 (Fla. 4th DCA 1992).

***4** Florida's Civil Remedies for Criminal Practices Act ("FCRCP"), Fla. Stat. § 772.104, provides for an award of attorney's fees to the defendant if the claim was raised without substantial fact or legal support, as demonstrated by dismissal of the civil RICO counts. *Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc.,* 162 F.3d 1290, 1331 (11th Cir.1998); *Foreman v. E.F. Hutton & Co., Inc.,* 568 So.2d 531, 531 (Fla. 3d DCA 1990). Since the Court dismissed the civil RICO claims, the defendants are entitled to attorney's fees under this statute for the those counts raised under the statute.

Under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, a prevailing party is entitled to attorney's fees for the entire litigation insofar as it is related to the same transaction as the FDUTPA claims, even if that party was unsuccessful in the FDUTPA claim, but was successful in other claims. Fla. Stat. § 501.2105(1)-(4); *Target Trailer, Inc. v.. Feingold,* 632 So.2d 198, 199 (Fla. 3d DCA 1994); *Heindel v. Southside Chrysler Plymouth, Inc.,* 476 So.2d 266 (Fla. 1st DCA 1985). In the instant case, the Court dismissed the FUDTPA claim with prejudice, clearly making the defendants to that claim the prevailing parties. However, the statute does not permit the award of fees until all appeals have been exhausted. Since the plaintiffs' appeal is pending, the defendants ask the Court to stay the award under FUDTPA until after the appeal, at which time the parties can refile or supplement the requests under this statute. [2]

2 However, if the plaintiffs seek to stay the entire award, the defendants ask that they be required to post a bond to cover the amount of the fee award, plus interest and any damages related to the delayed payment.

II. REDOMMENDATIONS OF LAW

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. The party seeking an award of fees should submit evidence supporting the hours worked and the hours claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly.

> The district court also should exclude from this initial fee calculation hours that were not "reasonably expended." ... Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.

Hensley v. Eckerhart, 461 U.S. 424, 433-434, 103 S.Ct.1933, 1939-40 (1983). If the attorney does not exercise billing judgment, the Court must excise "excessive, redundant or otherwise unnecessary" hours. *American Civil Liberties Union v. Barnes,* 168 F.3d 423, 428 (11th Cir.1999). The Florida Supreme Court has adopted the federal lodestar approach for setting reasonable fee awards. *Florida Patient's Compensation Fund v. Rowe,* 472 So.2d 1145, 1150 (Fla.1985) (setting out the relevant factors).

***5** The plaintiffs' response to the motion argues, without citation to legal authority, that no fees should be awarded because the Court denied them the opportunity to file a third amended complaint. This argument is reiterated in the plaintiffs' surreply. The Court finds that there is no legal basis for a complete denial of attorney's fees.

The defendants provided the declarations of 25 attorneys who worked on the case for various defendants and the declaration of Brian S. Dervishi, Esquire, who provided an expert opinion of the fees sought for the litigation of the three claims. The legal research and drafting of the consolidated memorandum of law to dismiss the RICO claims was performed primarily by (1) the team headed by Scott Dangler, Esquire, of Gunster, Yoakley & Stewart, which charged $28,639.50 for that task and (2) the team headed by Renee Harrod, Esquire, of Berger Singerman P.A., which charged $32,162.25 for that task.(DE 444, Exhibit A, which summarizes the hours spent on the task by each attorney or paralegal, and the hourly rate for each). These teams charged separately for the other two claims: $1,056 (Dangler for FDUTPA) and $3,687.25 (Harrod for civil theft and FDUTPA). Michael Hoffman, Esquire, of Holme and Roberts LLP, also worked on the consolidated memorandum, charging $442.50 for the civil theft claim, $11,800 for the CRCPA claim and $147.50 on the FDUTPA claim.

The Citigroup defendants filed a separate motion to dismiss and memorandum of law. The team headed by Roberta Kaplan, Esquire, of Paul Weiss, Rifkind, Wharton and Garrison, estimated that the three counts amounted to 15% of their bill of $248,258.23, or $37,238.73.

Arthur Andersen, LLP, and Mark Iwan filed separate motions to dismiss with supporting memoranda of law. Both were prepared by John Freedman, Esquire, who seeks $8,340.81 for these three claims in both memoranda, which represents 5% of the total bill.

James Kozlowski, the only defendant to file a motion to dismiss the amended complaint, adopted that memorandum in his motion to dismiss the second amended complaint. The team headed by Kevin Evans, Esquire, of Steese & Evans, estimated that their work on the three claims amounted to 5% of their bill of $84,964.17, for $4,248.20.

Bank of America, which was not named in the original complaint, was not served with the amended complaint, and was served with the second amended complaint later than the other defendants, prepared its own memorandum of law in support of its motion to dismiss the claims against it. The team headed by Kevin Burke, Esquire, estimated that the three counts amounted to one third of their bill of $66,449.00, or $21,927.

Qwest Communications, which was named for the first time in the second amended complaint, also filed its own memorandum of law in support of its motion to dismiss. The team headed by William Jackson, Esquire, of Boies, Schiller & Flexner, charged $40,152.15 for legal work on the Florida RICO claims, and $9,599.49 for the civil theft and FDUTPA claims.

***6** A number of attorneys did not perform research and drafting for the portions of the motions to dismiss the three claims; instead they worked on other legal issues such as personal jurisdiction or failure to serve. However, these attorneys reviewed the pleadings and motions, participated in conference calls to coordinate the case, prepared declarations, and reviewed the consolidated memorandum of law before adopting it for their clients. These attorneys estimated their time working on the three claims as a percentage of their total work. Most of them estimated that work on the three claims took 5% of their total time. [3] Other attorneys estimated their work on the three claims at a different percentage of the total bill. [4]

[3] For work related to the three claims, Fred Baumann, Esguire, seeks $3,831.68 for representing the outside directors; Patrick Burke, Esquire, seeks $849.88 for representing Augustine Cruciotti; John Darden, Esquire, seeks $861.70 for representing Bryan Treadway; Stepahnie Dunn, Esquire, seeks $2,003.77 for representing Roger Hoagland, and $874.07 for representing James Smith; Scott Himes, Esquire, seeks $4,205 for representing Joseph Nacchio; Karloine Jackson, Esquire, seeks $795.65 for representing William Eveleth; David Mandel, Esquire, seeks $3,264.93; Charles Mitchell, Esquire, seeks $4,780 for representing Steven Jacobsen, $2,134 for representing Kimberly Smiley and $5,051 for representing Lewis Wilks; Barbara Moses, Esquire, seeks $2,194.20 for representing Afshin Mohebbi; and David Zisser, Esquire, seeks $1,335.14 for representing Marc Weisberg.

[4] For work performed on the three claims, Timothy John Casey, Esquire, seeks 3%, $3,855.31, for representing Robert Woodruff; Gary Kramer, Esquire, seeks 15%, $603.75, for representing Mark Shumacher; Stephen Peters, Esquire, seeks 20%, $2,861.67, for representing John M. Walker; Thomas Reichert, Esquire, seeks 10%, $3,849.00, for representing Robin Szeliga; Paul Schwartz, Esquire, seeks 3%, $452.60, for representing Drake Tempest; Joel Silverstein, Esquire, seeks 4%, $3,030.42, for representing Joseph Nacchio, and Greg Waller, Esquire, seeks 10%, # 3,419.39, for representing Gregory Casey.

The declaration of Brian S. Dervishi (DE 444, Exhibit A) states that he is an attorney licensed to practice law in Florida, and is the managing partner of Weissman, Dervishi, Borgo & Northlund P.A., where he oversees billing activities. His main area of practice has been commercial litigation, involving the same claim presented in the instant case.

Mr. Dervishi discusses the factors governing attorney fees set forth in *Rowe, Norman v. Housing Authority of City of Montgomery,* 836 F.2d 1292 (11th Cir.1988) and R. Reg. Fla. Bar 4-1.5. In particular, the instant case (1) was a factually complex case involving legal concepts which were not novel but required time to relate to the lengthy factual allegations; (2) was significant in terms of the damages sought, and its interrelation with similar claims filed across the country; (3) involved both out of state law firms who have represented the same clients in other related litigation and local counsel who were actively engaged in the litigation, and (4) involved highly experienced counsel whose fees reflected that experience.

Considering the hours charged by these attorneys, Mr. Dervishi concluded that they were reasonable, taking into account the factual allegations and the history of the litigation. Noting that Ms. Harrod of Berger Singerman did not separately list the hours for work on the FDUTPA claim and the civil theft claims, he divided the hours in half, allocating 60 hours to the FDUTPA claim and 62.1 to the civil theft claims. Based on the declarations of counsel who did legal research and writing on the motions to dismiss the three claims, 65.4 hours were directly allocated to the FDUTPA claim, 391.2 hours for the FCRCP claim, and 73.3 hours for the civil theft claims. (*Id.* p. 11) The time spent by attorneys who did not research and draft those motions, but who coordinated and reviewed them for their clients are not included in the above hours, but are included in the calculation of compensable services. Noting the care the parties took in allocating the work to avoid duplication of effort, Mr. Dervishi found that the hours claims were not duplicative or unnecessary. (*Id.* p. 10-11)

The plaintiffs contend that the declarations do not provide sufficient detail to determine whether the work could have been done by paralegals or law clerks, rather than by attorneys. For example, Mr. Parke's declaration states that he performed legal research and drafting. Since Mr. Parke charges $300.00 per hour, the legal research should have been done by a paralegal or law clerk. The plaintiffs ask the Court to strike the hours attributed to Mr. Parke. Mr. Patrick Burke spent 60.6 hours representing Augustine Cruciotti, and claimed 5% of those were spent coordinating and reviewing the motion to dismiss the

three claims. The plaintiffs contend that since Mr. Burke's declaration lacked detail, [5] they cannot evaluate whether his work duplicated work done by Berger Singerman, who also represented Mr. Cruciotti. The plaintiffs ask the Court to strike Mr. Burke's claim for fees. The plaintiffs also ask the Court to reduce the hours by 15% to exclude work performed on unsuccessful claims, such as the attempt to transfer the case to Colorado. *Texas State Teacher's Assn' v. Garland Ind. Sch. Dist.,* 489 U.S. 782 (1989); *Hensley,* 461 U.S. at 434. [6]

5 The defendants offer to produce the complete billing records of counsel, but note that this would be a cost negative exercise for most of them since the time spent compiling and organizing such records would exceed the fees sought. Moreover, in those instances when the attorney specifically detailed the hours worked on each of the three claims, the plaintiffs did not challenge them or even comment on them.

6 The plaintiffs' response also asserts that the Court should refuse to award costs, since they are not properly documented. The defendants' reply notes that they have not sought costs in this motion, so the argument is irrelevant. However, they did discover that the fee summary inadvertently included a percentage of costs listed in four of the declarations. The adjustments to the fee summary are detailed in footnote 6 of the response. (DE 456) The total reduction is $44.24.

***7** The defendants' reply notes that none of the attorneys sought fees for anything but the three claims, and excluded other work, such as the motion to transfer. With regard to Mr. Parke's legal research, the defendants assert that the plaintiffs have provided no legal authority that an associate cannot bill for legal research. The only case the defendants found held that a partner should not bill for legal research which could be done by an associate. *St. Fleur v. City of Fort Lauderdale,* 149 Fed. Appx. 849, 853 (11th Cir.2005). With regard to Mr. Burke, the defendants note that the plaintiffs have provided no legal authority that a client cannot hire his customary counsel as well as local counsel for a particular case. Mr. Burke has represented Mr. Cruciotti in a number of cases involving Qwest. Such dual representation is reasonable if it reflects "the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation." *ACLU v. Barnes,* 168 F.3d at 432; *Scelta v. Delicatessen Support Services, Inc.,* 203 F.Supp.2d 1328, 1333 (M.D.Fla.2002). Finally, the defendants assert that since the plaintiffs did not object to the hours claimed by the other attorneys, those hours should be accepted. *Scleta,* 203 F.Supp.2d 1333.

The defendants have provided the expert opinion of the managing partner of a commercial litigation firm, stating that the hours claimed are reasonable for the work performed, while the plaintiffs have provided no evidence that the hours are unreasonable. The Court also has reviewed the evidence and finds that the hours claimed are reasonable in light of the fact-intensive nature of the second amended complaint and the amended Civil RICO Case Statement. *Loftus v. Southeastern Pennsylvania Transportation Authority,* 8 F.Supp.2d 458, 463 (E.D.Pa.1998)("in the absence of evidence presented to the contrary" the court will accept the evidence provided by the fee applicant); *Allen v. Bay Area Rapid Transit District,* 2003 WL 23333580 at *8 (N.D.Cal.2003) ("Absent evidence more persuasive than defendants' bald assertion to the contrary, the court cannot consider the number of hours .... to be unreasonable under the circumstances.")

Next, Mr. Dervishi considered the hourly rates charged by counsel. He is familiar with the rates charged in the Southern District of Florida, and has some familiarity with rates in other areas across the country. In the Southern District of Florida, rates for complex securities and RICO litigation range from $300 to $500 per hour for partners, from $175 to $335 for associates, up to $175 for law clerks and from $75 to $150 for paralegals. The firms located in the Southern District of Florida have excellent reputations, and the partners who conducted the lawsuit are prominent. Their associates can reasonably be assumed to be of similar quality, taking into account their levels of experience.

For those attorneys from other parts of the country, these firms have represented the same clients in related litigation. Mr. Dervishi believes that these attorneys should be compensated at their usual rates, even if they are higher than the rates found in this District, particularly since these rates often include a reduction for long-term clients.

***8** However, Mr. Dervishi has also provided calculations which would bring the rates of all attorneys into the range common to the Southern District of Florida. Mr. Ty Cobb, a partner at Hogan & Hartson in Washington,

D.C., charges $600 per hour. To bring this into line with local rates, his rate should be reduced to $500 per hour. His associate, Mr. Coates Lear, charges $375 per hour. That would be reduced to $335 per hour. Mr. Dervishi provided a chart of other associates, paralegals, law clerks and partners who charge more than the local rates, and the applicable rate if they worked in the District. If Court adopts the reduced rates, the total reduced fees sought would be $235,359.76, instead of the full fee of $250,592.29. [7]

7 As discussed in footnote 6, supra, these amounts should be reduced by $44.24 to correct for errors in calculations.

The plaintiffs' response asserts that a reasonable hourly rate for the Southern District of Florida is $240 per hour. *United States Equal Employment Opportunity Commission v. Enterprise Leasing Company, Inc.,* 2003 U.S. Dist. Lexis 12852 (M.D.Fla. May 13, 2003)(reducing the rate of an employment attorney from $300 to $200 in light of the prevailing market in the Tampa Bay area). Moreover, the case was not highly complex, in light of the Court's analysis of the motions to dismiss. The plaintiffs urge the Court to exercise its discretion to reduce the rates. *Scleta,* 203 F.Supp.2d 1331. The defendants' reply argues that rates for employment law in Tampa are not comparable to rates for complex securities and RICO litigation in the Southern District of Florida. Again the defendants have provided evidence of the reasonable rates in the District for this type of litigation, while the plaintiffs have provided no evidence in support of their request to reduce the rates. Nor have the plaintiffs opposed the use of the actual rates, even though higher than the local rates, for out of District counsel.

The Court finds that the rates charged are reasonable. Insofar as rates for out of state attorneys exceed the local rates, the Court should award fees based on the actual charges for those attorneys. These rates are based on longstanding relationships between attorney and client, and often also reflect discounts based on that relationship. The Court should not force clients to abandon their usual counsel, or require counsel to reduce their customary fees, simply because the lawsuit was filed in the Southern District of Florida. Moreover, the work was not duplicative of work done by local counsel. Many of the out of state counsel provided evidence for the issues of service and personal jurisdiction, and advised the local counsel on relevant issues arising in the other ligations. The Court should award the full fees sought.

Finally, Mr. Dervishi discusses whether there should be an adjustment to the lodestar figure. He rejects any adjustment, noting that the excellent result is adequately reflected in the rates claimed. The plaintiffs' response contends that the lodestar amount should be adjusted downward owing to the ease with which the attorneys prevailed over the pro se litigants. The defendants' reply notes that this is not one of the factors considered in lodestar adjustments. *Grant v. George Schumann Tire & Battery Co.,* 908 F.2d 874, 878 n. 9 (11th Cir.1990) (citing the factors in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir.1974). The plaintiffs filed lengthy and complex complaints and civil RICO statements, resulting in substantial litigation, and no reduction is appropriate. The Court agrees that there is no basis for adjusting the lodestar either up or down.

***9** The final issue is the effect of the stay on the payment of attorneys' fees provided in the FDUTPA statute. In light of the pending appeal, the Court cannot award fees for work on the FDUTPA claim. There is no such restriction on an immediate award of fees for the civil theft claim and the FCRCP claim. Mr. Devishi calculated that lawyers, paralegals and law clerks directly spent 65 .4 hours on FDUTPA, 391.2 hours on FCRCP, and 73.3 hours on civil theft.

Mr. Dangler's declaration seeks $28,639.50 for FCRCP work and $1,056 for FDUTPA work. Ms. Harrod's declaration claims $32,475 for FCRCP work and $3,687.25 for civil theft and FDUTPA. Mr. Devishi concluded that approximately half, $1900, was for the civil theft work. Mr. Hoffman's declaration details $11,800 for CRCPA work, $442.50 for civil theft and $147.50 for FDUTPA work. Mr. Jackson's declaration seeks 40,152.15 for FCRCP work, and $9,599.49 for civil theft and FDUTPA combined. Using Mr. Devishi's approximation, half of the latter amount ($4799.75) would be charged to the civil theft claim. Accordingly, the data presented allows a calculation of $113,066.65 for the FCRCP work and $8,198.25 for the civil theft work, for a total of $121,264.90. This amount clearly can be awarded immediately.

More problematic are the attorneys who coordinated and reviewed the work on these three claims on behalf of

their clients, who seek amounts without differentiating between the three claims. The total of such claims is $122,052.90. Since the majority of the complaint and the legal work involved the RICO claims, at least 80% of this amount can be charged to FCRCP: $97,642.32. Using Mr. Devishi's approximation, half of the rest (10%) would be allocated to the civil theft claim: $12,205.29. The total of these amounts is $109,847.61. This amount should be reduced by 90% of the erroneously billed $44.24 ($39.82) detailed in the defendants' reply memorandum, resulting in an award of $109,807.79. If the Court accepts these calculations, this amount also could be awarded immediately, for a total award of $231,072.69. The remaining amount is designated to the FDUTPA claim, and cannot be awarded at this time.

III. CONCLUSION

This Court having considered carefully the pleadings, arguments of counsel, and the applicable case law, it is hereby

RECOMMENDED as follows:

1. That the Defendants' Verified Consolidated Motion for Attorney's Fees (Docket Entry 444), be GRANTED in the amount of $231,072.69 for work performed on the civil theft claim, Fla. Stat. § 772.11, and the claim filed pursuant to Florida's Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.104.

2. That the Court STAY consideration of the motion for attorney's fees related to Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, until the judgment is final.

The parties will have ten days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, for consideration by The Honorable James I. Cohn, United States District Judge. Failure to file objections timely shall bar the parties from attacking on appeal factual findings contained herein. *LoConte v. Dugger,* 847 F.2d 745 (11th Cir.1988), *cert. denied,* 488 U.S. 958 (1988); *RTC v. Hallmark Builders, Inc.,* 996 F.2d 1144, 1149 (11th Cir.1993).

All Citations

Not Reported in F.Supp.2d, 2007 WL 1064314