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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

BEVERLY BLAKE, STEPHANIE) CIVIL NO. CV08 00281 LEK
CAMILLERI, ARLENE SUPAPO,)
individually, and on behalf of all) (Contract)(Declaratory
persons similarly situated,) Judgment)(Other Civil Action)
) Class Action

Plaintiffs,)

vs.)

CRAIG NISHIMURA, in his official) **PLAINTIFFS' REPLY**
capacity as Acting Director of the) **MEMORANDUM IN**
Department of Facility) **SUPPORT OF MOTION FOR**
Maintenance, City and County of) **AWARD OF ATTORNEYS'**
Honolulu; CITY AND COUNTY OF) **FEES AND COSTS FILED**
HONOLULU, a municipal) **2/12/10 BY ALSTON HUNT**
corporation,) **FLOYD & ING; SECOND**
) **DECLARATION OF JASON H.**
) **KIM; CERTIFICATE OF**
) **SERVICE**
)

Defendant the City and County of Honolulu (“City and County”) and Third-Party Defendant Hawaiian Properties, Ltd.’s (“Hawaiian Properties”) Memorandum in Opposition to the Plaintiffs’ Attorneys’ Fee Motions (“Opposition” or “Opp.”) provides no good reason for this Court to reduce the award of attorneys’ fees and costs requested by AHFI. The rates used to calculate AHFI’s attorneys’ fees are reasonable based on market standards. Furthermore, the Opposition presents no principled reasons for finding that the hours expended by AHFI were excessive or unnecessary: instead, the Opposition relies on purely arbitrary and subjective standards and ignores the context in which AHFI’s work occurred. Finally, the costs sought by AHFI for class notice and computerized research are compensable.

AHFI is entitled to \$54,113.59 in attorneys’ fees and \$6,866.31 in costs. This is a reasonable amount given the inherent complexity of litigating a class action, the length of time that this case has been pending, and Defendant City and County of Honolulu’s initial failure to work cooperatively with Plaintiffs’ counsel to expedite this litigation.

II. ARGUMENT

A. THE HOURLY RATES SOUGHT BY AHFI ARE REASONABLE.

In civil rights cases, this Court should compensate Plaintiffs' counsel at rates comparable to what those counsel are able to obtain from fee paying clients. *See Blum v. Stenson*, 465 U.S. 886, 893, 104 S. Ct. 1541, 1546 (1984) ("It is intended that the amount of fees awarded under § 1988 be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases."). As set forth in the Declaration of Jason H. Kim attached to the Motion for Attorneys' Fees ("Kim Dec."), the professionals involved in this representation typically bill their clients at the rates used to calculate AHFI' fee request in its Motion for Attorneys' Fees.

The fact that other attorneys in this jurisdiction at other firms in this with similar levels of experience may charge lower rates is far from dispositive. As the Court noted in *Blum*, "[t]he types of services rendered by lawyers, as well as their experience, skill and reputation, varies extensively – even within a law firm" and "[a]ccordingly, the hourly rates of lawyers in private practice also vary widely." *Id.* at 895, n. 11, 104 S. Ct. at 1547, n. 11. The rates

AHFI's professionals are able to obtain in a very competitive marketplace is good evidence of the "prevailing market rates" for professionals with similar levels of experience, skill, and reputation.¹

Contrary to the Opposition's argument that "this case did not require much specialized expertise or skill," Opp. at 11, relatively few attorneys in Hawai'i have the extensive experience in prosecuting (and defending) class actions that Mr. Alston and Mr. Kim possess. Their customary hourly rates should be approved accordingly.

B. THE TIME EXPENDED BY AHFI WAS REASONABLE AND APPROPRIATE.

1. AHFI's Time Entries are Based on Contemporaneous Records.

Although monthly invoices were not generated in this matter, the table attached as Exhibit "A" to AHFI's Attorneys' Fee

¹ The City and County and Hawaiian Properties argue – based on no evidence at all – that a rate of \$20 per hour is reasonable for document analysts and that the time incurred by the document analysts is not compensable. As set forth in the Kim Declaration, AHFI customarily charges and receives payment for time spent by document analysts at \$50 per hour. Delegating work that would otherwise be performed by a paralegal to the document analysts resulted in a lower fee award than AHFI would have otherwise claimed.

Motion was generated directly from AHFI's computerized time entry and billing system. See attached Second Declaration of Jason H. Kim ("Second Kim Dec.") at ¶ 2. AHFI professionals input their time into this system contemporaneously. *Id.* at ¶ 3. The entries from that system were copied directly into Exhibit "A." *Id.* at ¶ 4. The only alterations made to those entries were: (1) to classify time entries as required by Local Rule 54.3; (2) to clarify and add detail to certain time entries to meet the standards set forth in that rule; (3) to split one entry into two or more when the single entry involved work in two or more categories; and (4) to eliminate or reduce certain entries in the exercise of billing judgment. *Id.*

2. AHFI May Recover for Time Spent by Attorneys and Other Professionals for Performing Purported "Administrative Tasks."

The Opposition arbitrarily classifies some of the time billed by AHFI as non-compensable time for "administrative tasks." The Opposition nowhere explains what this term means and nowhere provides any authority holding that such time is non-compensable. A review of the few AHFI entries to which the City and County and Hawaiian Properties object demonstrates that these so-called administrative tasks are the sort that attorneys

typically perform and bill for. The time to which they object is for: (1) reviewing newspaper articles about the lawsuit; and (2) emails or communications with paralegals and document analysts necessary to delegate work to them and supervise that work. The Opposition provides no explanation for why performing these tasks was unnecessary or unreasonable.²

3. The Time Spent by AHFI Researching, Drafting, and Reviewing the Complaint Was Reasonable.

The City and County and Hawaiian Properties argue – again based on their arbitrary subjective opinions – that AHFI and LEJ combined should only be compensated for ten hours to research and draft the Complaint. Opp. at 19-20. The lengthy and detailed 73-paragraph Complaint in this case was thoroughly researched and carefully drafted. In addition to the four claims included in the Complaint, AHFI also incurred time in researching the viability of claims that Plaintiffs’ counsel eventually decided not

² The Opposition also argues that AHFI is not entitled to compensation for time spent delivering the class notice. That argument is addressed in section C1, below.

to bring.³ The time spent carefully researching, drafting, and reviewing the Complaint reflects the diligent pre-suit investigation required by Rule 11 and Plaintiffs' counsel should not be penalized for taking the time to prepare a detailed complaint that contained only well-founded claims.

4. The Time Expended by the Law Clerk Was Reasonable.

As shown in Exhibit "A" to the Attorneys' Fee Motion, a law clerk billed time researching the applicability of unfair and deceptive trade practices statutes to rental housing – an unsettled issue of law in Hawai`i – and drafting a memorandum summarizing the research. Numerous courts in other jurisdictions have considered this issue, with varying results. Plaintiffs anticipated that the City and County would seek to dismiss this claim. The fact that this case moved towards settlement before the issue was raised is no reason to exclude this time.

³ As the Opposition correctly notes, attorneys for LEJ and AHFI have filed similar complaints against the State of Hawai`i. This case is substantially different, however, as the range of potential claims available against the City and County is much broader than those available against the State due to sovereign immunity.

5. The Time Spent in Connection with the Class Certification Motion Was Reasonable.

There is no basis for excluding over sixty percent of the time expended in connection with the class certification motion. First, the City and County itself caused much of this time to be incurred, as it refused to stipulate to class certification but then did nothing to oppose the motion, as documented in LEJ's reply memorandum. Second, the 53.3 hours spent on class certification reflects numerous complex tasks, including drafting the motion itself, drafting the order granting the motion, arranging for class notice, and administering the class. There is nothing unreasonable about spending a little over fifty hours total over the course of almost one year on these tasks.

6. The Time Spent on Discovery Was Reasonable.

Similarly, there is no basis to reduce the time spent by Mr. Kim and Ms. Guadagno⁴ on discovery by twenty-five percent.⁵ The time entries of Ms. Guadagno and Mr. Kim show that there was no duplication of work. Rather, for the sake of efficiency, Mr. Kim

⁴ Kelly Guadagno was formerly known as Kelly Muller and some billing entries identify her as K. Muller rather than K. Guadagno.

⁵ Mr. Alston's time is addressed in Section 7 below.

delegated certain discovery tasks to Ms. Guadagno such as preparing the initial draft of discovery requests and supervised and revised her work. Delegating such tasks to a paralegal is an accepted and efficient practice and courts have long recognized that work by paralegals is compensable as an element of attorneys' fees. *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 286-87, 109 S. Ct. 2463, 2470-71 (1989).

Furthermore, as with the class certification motion, the City and County itself caused Plaintiffs' counsel to incur much of this time. For example, Mr. Kim spent 4.3 hours preparing for a deposition of the City and County pursuant to FRCP Rule 30(b)(6) and the deponent failed to appear (with no notice). *See* Plaintiffs' Motion to Compel Discovery filed October 1, 2008. Similarly, the City and County failed to make timely initial disclosures and to respond to Plaintiffs' discovery requests. *Id.* This led to numerous communications with the City and County and co-counsel that would not have been necessary had the City and County taken a reasonable approach to discovery.

7. The Time Spent by Mr. Alston was Reasonable.

The City and County and Hawaiian Management object to essentially all the time Mr. Alston spent in this matter. This objection is entirely unreasonable and ignores prevailing practices in this market. As this Court is aware, it is customary for the work of non-partners (such as Mr. Kim) to be supervised by partners (such as Mr. Alston).

Mr. Alston devoted slightly more than ten hours to this litigation over the course of close to two years. This amount of supervisory time is more than reasonable and reflects a proper and efficient delegation of most of the work in this case from Mr. Alston to Mr. Kim. *See Key Bank Nat. Ass'n v. Van Noy*, 598 F. Supp. 2d 1160, 1164-65 (D. Or. 2009) (awarding attorneys' fees for the work of experienced partners who supervised the work of associates: "[t]his is reflective of an efficient use of attorney time, with the attorneys who have greater experience performing a supervisory role, and attorneys with less experience, although still significant experience, performing more of the work").

8. The Other Objections to the Attorneys' Fees Claimed by AHFI Also Lack Merit.

The Opposition also raises other objections to the time incurred by AHFI and LEJ. These objections are addressed in LEJ's separate reply memorandum, which is incorporated here by reference.

There is no basis to reduce the lodestar amount based on the City and County and Hawaiian Properties' belated cooperation with settlement. The lodestar calculation is the presumptively reasonable attorney fee award and may only be adjusted in unusual circumstances. *Blum*, 465 U.S. at 888-91, 104 S. Ct. at 1549-50. The City and County and Hawaiian Properties have offered no authority to support reducing a lodestar award on the basis of a defendant's cooperation in reaching or implementing settlement.

C. AHFI IS ENTITLED TO ITS CLAIMED EXPENSES.

1. Class Notice Expenses

AHFI is entitled to reimbursement of its expenses for providing notice of this action to the class, including publication costs, copying costs, mailing costs, costs for identifying addresses of class members, and costs for delivery of the notices. This Court may order reimbursement to Plaintiffs' counsel for the costs of

providing class notice. *See Steiner v. Hercules, Inc.*, 835 F. Supp. 771, 794 (D. Del. 1993).

More generally, under 42 U.S.C. § 1988, “**all** reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs.” *Dowdell v. City of Apopka*, 698 F.2d 1181, 1188 (11th Cir. 1983) (emphasis added). *See also Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1058 n. 1 (9th Cir. 2006) (costs pursuant to Section 1988 are “not restricted to the statutory items of costs under 28 U.S.C. § 1920” and a court may “award out of pocket expenses and costs” if such expenses and costs are normally billed to fee-paying clients).

2. Computerized Research

Similarly, charges for computerized research are compensable as costs pursuant to Section 1988. *See Bakalis v. Board of Trustees of Community College Dist. No. 504, County of Cook, State of Illinois*, 1998 WL 311994 * 3 (N.D. Ill. 1998).

Computerized research charges are also compensable as an element of attorneys’ fees. *See In re Frazin*, 413 B.R. 378, 436-37 (Bkrtcy. N. D. Tex. 2009) (awarding costs for computerized legal research as

part of attorneys' fee award). This Court's decision denying such costs in *Taylor H. v. Dep't of Education*, 2009 WL 3461306 * 6 (D. Haw. 2009) was based on the costs allowed under FRCP Rule 54(d)(1). The costs allowed under § 1988 are much broader. *Dowdell*, 698 F.2d at 1188.

3. AHFI Has Provided Appropriate Documentation for Other Out-of-Pocket Costs.

As with attorney time, costs for items such as in-house photocopies, postage, and long-distance telephone calls were entered contemporaneously in AHFI's computerized time keeping and billing system that formed the basis of the information in Exhibit "A" to AHFI's Motion for Attorneys' Fees. Second Kim Dec. at ¶ 5. No separate invoices are generated for these items. *Id.* The cost items reflected in Exhibit "A" are the types of costs typically billed to fee-paying clients and were recorded, documented, and calculated in the exact same way as for fee-paying clients. Second Kim Dec. at ¶ 6.

III. CONCLUSION

For the foregoing reasons, this Court should award AHFI \$54,113.59 in attorneys' fees and \$6,866.31 in costs.

DATED: Honolulu, Hawai'i, March 5, 2010.

/s/ Jason H. Kim

PAUL ALSTON

JASON H. KIM

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BEVERLY BLAKE, et al.,)	CIVIL NO. CV08 00281 LEK
)	
Plaintiffs,)	(Contract)(Declaratory
)	Judgment)(Other Civil Action)
vs.)	Class Action
)	
CRAIG NISHIMURA, etc., et al.,)	SECOND DECLARATION OF
)	JASON H. KIM
Defendants.)	
_____)	
)	
CITY AND COUNTY OF)	
HONOLULU,)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
HAWAIIAN PROPERTIES, LTD.)	
)	
Third-Party)	
Defendants.)	
_____)	

SECOND DECLARATION OF JASON H. KIM

Pursuant to 28 U.S.C. § 1746, I declare that:

1. I am an attorney with the law firm of Alston Hunt
Floyd & Ing (“AHFI”), counsel for Plaintiffs herein. I make this
declaration based on my personal knowledge and am competent to
testify as to the matters set forth herein.

2. Although monthly invoices were not generated in this matter, the table attached as Exhibit "A" to AHFI's Attorneys' Fee Motion was generated directly from AHFI's computerized time entry and billing system.

3. AHFI attorneys and other professionals input their time into this system contemporaneously.

4. The entries from that system were copied directly into Exhibit "A." The only alterations made to those entries were: (1) to classify time entries as required by Local Rule 54.3; (2) to clarify and add detail to certain time entries to meet the standards set forth in that rule; (3) to split one entry into two or more when an existing entry involved work in two or more categories; and (4) to eliminate or reduce certain entries in the exercise of billing judgment.

5. Similarly, expenses such as in-house photocopies, long distance telephone calls, and postage are entered into the billing system contemporaneously and that information was directly imported into Exhibit "A" (subject to elimination of certain entries in the exercise of billing judgment).

6. The cost items reflected in Exhibit "A" are the types of costs typically billed to fee-paying clients and were recorded, documented, and calculated in the exact same way as for fee-paying clients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai`i, on March 5, 2010.

/s/ Jason H. Kim
JASON H. KIM

CERTIFICATE OF SERVICE

IT HEREBY CERTIFY that on the dates and methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served electronically through CM/ECF:

D. Scott Dodd, Esq. dsdodd@honolulu.gov	March 5, 2010
David M. Louie, Esq. dlouie@rlhlaw.com	March 5, 2010
James Shin, Esq. jshin@rlhlaw.com	March 5, 2010

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Attorneys for Third-Party Defendant
HAWAIIAN PROPERTIES, LTD.

DATED: Honolulu, Hawai`i, March 5, 2010.

/s/ Jason H. Kim
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JASON H. KIM
Attorneys for Plaintiffs