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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

JAMES E. LARGE, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 05-CV-0270J
FREMONT COUNTY, WYOMING, et al.,	)	
Defendants,	)	

Plaintiffs' Reply to Defendants' Response In Opposition to Plaintiffs' Supplemental Motion for Costs and Attorney's Fees

I. Plaintiffs' Out-of-Town Attorneys Are Entitled to Their Out-of-Town Rates

Defendants contend that "the Plaintiffs' attorney's fees should be based upon fees regularly and customarily charged within Wyoming Courts". Defendants' Response In Opposition to Plaintiffs' Supplemental Motion for Costs and Attorney's Fees, p. 2 (Doc. #181).

As previously noted in their brief in support of their motion for costs and fees, Doc. #158-20, which is incorporated herein by reference thereto, Plaintiffs contend that their out-of-town attorneys are entitled to their out-of-town rates rather than those applicable in Fremont County or the State of Wyoming. In Kersh v. Board of County Commissioners of Natrona County, Wyoming, 851 F.Supp. 1541, 1544 (D. Wyo. 1994), in awarding out-of town rates to plaintiffs' attorney, the Court identified the following standards for determining if an award based upon out-of-town rates was warranted: whether (1) the case required a specialized expertise not found in the local market: (2) the case required or could have required significant financial resources; (3) the case raised unpopular issues; and (4) it was reasonable for the clients to look to out-of-town counsel because attorneys in the community have not filed, and have shown no interest in filing, such litigation. For the reasons discussed in detail in their brief, these factors support out-of-town rates for Plaintiffs= out-of-town attorneys in the present case. See Doc. #158-20, pp. 9-14. For cases cited in Kersh noting the appropriateness of out-of town rates, see Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 768 (7th Cir. 1981) (the court erred as a matter of law in limiting the hourly rates to local rates); Maceira v. Pagan, 698 F.2d 38, 40 (1st Cir. 1983) (out-of-town rates were appropriate where lawyers of similar expertise and specialization were not available in the local community); Polk v. NYS Dept. of Corr. Services, 722 F.2d 23, 25 (2d Cir. 1983) (out-of-town rates are appropriate where special expertise of counsel from a distant district is required); Dunn v. The Florida Bar, 726 F.Supp. 1261, 1279-80 (M.D. Fla. 1988), aff'd, 889 F.2d 1010 (11th Cir. 1989) (awarding Washington, D.C. rates in Florida civil rights case where out-of-town counsel provided specialized assistance); American Booksellers Ass'n, Inc. v. Hudnut, 650 F.Supp. 324, 328 (S.D. Ind. 1986) (awarding out-of-town rates to counsel

with special expertise); and Riddell v. National Democratic Party, 545 F.Supp. 252, 256 (S.D. Miss. 1982) (where special expertise in unavailable locally, the proper fee rate is that prevailing in the out-of-town lawyer's community). See also Ultra Resources, Inc. v. Hartman, 226 P.3d 889, 939 (Wyo. 2010) (the $400 rate charged by some of the plaintiffs' attorneys was fair and reasonable under the circumstances of this case given the nature, extent, status of, and defendants' opposition to, these proceedings).

II. Plaintiffs' Wyoming Counsels' Rates, Expenses, and Time Spent are Reasonable

Defendants reiterate complaints raised against Plaintiffs' initial motion for fees, applying them now to Plaintiffs' supplemental motion.

A. Defendants' objection to hourly rates is addressed in Doc. #174-2, pp.7-8.

B. Defendants' objection that travel time should be billed at a lower rate is addressed in Doc. #174-2, p. 12. In addition, Defendants do not identify any single time entry that is objectionable. In fact, to take but one example, Travel to Denver on March 9, 2011, consistent with Baldwin, Crocker & Rudd's practice, is entered as three hours, whereas the actual driving time from Lander to Denver is 6.5 hours. By this method, travel time is in fact billed at a reduced rate.

C. Defendants' objection to "review of documents already prepared by lead counsel" is baseless. A closer look at the time entries reflects that no mere review was involved. Instead, the time was spent editing, commenting, and otherwise contributing to the content of those documents. Furthermore, consistent with both Local Rule 83.12.2(b), and the Motion for Pro Hac Vice Admission of Laughlin McDonald (Doc. #2), Wyoming counsel needed to be fully prepared to represent the clients at any time, in any capacity, id., making a thorough review of all

documents obligatory.

D. Defendants' objection that certain matters, such as preparation of billing and fee declarations, should have been delegated to non-professionals ignores the fact that the declarations must be made from personal knowledge. Detailed review of original time and expense records is, under these circumstances, non-delegable.

E. Plaintiffs agree that hours billed for drafting and editing a letter to the state legislative committee should not be recoverable, but Plaintiffs can find no such time entry.

F. Contrary to Defendants' assertion, only Berthenia Crocker attended oral argument in Denver on March 10, 2011, and a review of Exhibit 1 to the Declaration of Berthenia S. Crocker reflects that fact. No time or expenses were billed for Andrew Baldwin or Janet Millard in connection with attendance at oral argument.

WHEREFORE, plaintiffs respectfully pray that this Court enter a supplemental award of attorney's fees and expenses incurred on or after August 12, 2010, in the amount of $88,185.39.

Respectfully submitted,

/s/Laughlin McDonald

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CERTIFICATE OF SERVICE BY CM-ECF

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL MOTION FOR COSTS AND ATTORNEY'S FEES** was served by electronic means through this Court's CMECF system, on the 31st day of May, 2012 to the following parties:

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