IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

FRIENDS OF MAHA‘ULEPU, INC., a Hawai‘i non-profit corporation, Plaintiff, vs. HAWAI‘I DAIRY FARMS, LLC, a Delaware Limited Liability Company; ULUPONO INITIATIVE, LLC, a Delaware Limited Liability Company; MAHA‘ULEPU FARM, LLC, a Delaware Limited Liability Company, Defendants.	)	Civil No. 15-00205 KJM ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR AN AWARD OF ATTORNEYS’ AND EXPERT WITNESSES’ FEES AND COSTS

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR AN AWARD OF ATTORNEYS’ AND EXPERT WITNESSES’ FEES AND COSTS

Plaintiff Friends of Maha‘ulepu, Inc. (“Plaintiff”) filed its Motion and Memorandum in Support of an Award of Attorneys’ and Expert Witnesses’ Fees and Costs (“Motion”) on July 28, 2017. *See* ECF No. 292.[1] On August 11, 2017, Defendants Hawai‘i Dairy Farms, LLC (“HDF”); Ulupono Initiative, LLC (“Ulupono”); and Maha‘ulepu Farm, LLC (“Maha‘ulepu Farm”) (collectively,

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[1] Plaintiff also filed a duplicate of the Motion as ECF No. 293. The documents attached to ECF No. 293 are additional declarations and exhibits in support of the Motion. *See* ECF Nos. 293-1 to 293-9.

"Defendants") filed their Opposition to the Motion ("Opposition"). *See* ECF No. 296. On August 25, 2017, Plaintiff filed its Reply. *See* ECF No. 299.

The Court finds this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). After carefully reviewing the filings and the record in this case, the Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion for the reasons set forth below.

BACKGROUND

This case arises out of Plaintiff's claims against Defendants under the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq*, based on Defendants' alleged construction activities for a dairy farm on the subject property in Maha'ulepu, Kaua'i ("Property"). *See* ECF No. 1 at ¶¶ 36-37. Plaintiff alleged that Defendants' construction activities caused and will continue to cause "unpermitted stormwater runoff" containing construction pollutants into waters of the United States, and that Defendants failed to obtain a National Pollutant Discharge Elimination System ("NPDES") permit in accordance with the CWA. *See id.* at ¶¶ 5, 44. Plaintiff's Complaint sought declaratory and injunctive relief, as well as civil penalties, against Defendants. *See id.* at ¶ 1.

The Court and the parties are familiar with the facts of this case, which are detailed in the district court's Order Denying: (1) Defendants' Motion for Summary Judgment; (2) Plaintiff's Motion for Summary Judgment on Liability; and (3) Plaintiff's Ex Parte Motion for Leave to File Supplemental Declaration in Support of Reply to Motion for Partial Summary Judgment ("MSJ Order"). *See* ECF No. 235, at 3-6. Accordingly, the Court will only discuss the procedural background relevant to the Motion.

I. The Parties' Various Motions

Plaintiff filed its Complaint on June 1, 2015. *See* ECF No. 1. Both Plaintiff and Defendants have been represented by local counsel and counsel admitted *pro hac vice* ("mainland counsel") during the course of this case. Tom Pierce, Esq., Peter N. Martin, Esq., and Linda B. Paul, Esq., served as local counsel for Plaintiff. The court admitted *pro hac vice* Plaintiff's mainland counsel, Charles M. Tebbutt, Esq., and Sarah A. Matsumoto, Esq., on June 5, 2015, and April 25, 2016, respectively. *See* ECF Nos. 15, 102.

On November 3, 2015, Plaintiff filed its Motion to Compel Re: Fed. R. Civ. P. 34 Notice of Site Inspection ("Motion to Compel Site Inspection"). *See* ECF No. 36. In the Motion to Compel Site Inspection, Plaintiff sought an order compelling Defendants to allow certain of Plaintiff's representatives, experts, and counsel to inspect the Property pursuant to Federal Rule of Civil Procedure 34.

See id. at 12; *see also* ECF No. 36-2 at 8. The Court set a hearing on the Motion to Compel Site Inspection for December 22, 2015. *See* ECF No. 40.

On November 25, 2015, Defendants filed their Motion for Summary Judgment ("Defendants' MSJ"). *See* ECF No. 41. The district court initially set the hearing on Defendants' MSJ for February 16, 2016. *See* ECF No. 54. On December 15, 2015, Defendants filed their Motion to Continue Hearing on Plaintiff's Motion to Compel Site Inspection and to Have Motion to Compel Site Inspection Heard Concurrently with Defendants' MSJ ("Motion to Continue Hearing"). *See* ECF No. 57. In the Motion to Continue Hearing, Defendants asserted that a favorable ruling on Defendants' MSJ might render moot Plaintiff's Motion to Compel Site Inspection. *See id.* at 2. Defendants thus argued that the motions should be heard together. *See id.*

On December 17, 2015, the Court denied the Motion to Continue Hearing. *See* ECF No. 64. Thus, the hearing on Plaintiff's Motion to Compel Site Inspection proceeded as scheduled on December 22, 2015. *See* ECF No. 66. At the hearing, the Court found that Plaintiff's "requested discovery was largely relevant to the claims and defenses in this action." *Id.* Accordingly, the Court granted the Motion to Compel Site Inspection, stating that Plaintiff would be permitted to conduct the requested site inspection within 30 days of the district court's ruling on Defendants' MSJ. *See id.*

On January 4, 2016, Plaintiff filed its Fed. R. Civ. P. 56(d) Motion to Defer Consideration of Defendants' MSJ ("Motion to Defer MSJ"). *See* ECF No. 68. In the Motion to Defer MSJ, Plaintiff argued that it needed to conduct discovery, including its Rule 34 site inspection, in order to adequately respond to Defendants' MSJ. *See id.* at 11. On February 29, 2016, the district court issued an entering order granting Plaintiff's Motion to Defer MSJ. *See* ECF Nos. 86, 89. Plaintiff conducted the Rule 34 inspection on March 29 and 30, 2016. *See* ECF No. 293-2 at 7.

On July 1, 2016, Plaintiff filed its Motion for Partial Summary Judgment on Liability ("Plaintiff's MPSJ").[2] *See* ECF No. 107. On July 13, 2016, the Clerk's Office issued an advisory entry, advising Plaintiff's counsel that they did not file Plaintiff's MPSJ in the correct format. *See* ECF Dated 7/13/16. Similarly, Defendants' counsel incorrectly filed documents for the Reply to Defendants' MSJ on August 22 and 24, 2016. *See* ECF No. 153.

On August 25, 2016, Plaintiff's counsel again failed to comply with the Local Rules in their first attempt to file Plaintiff's Motion to Strike Portions of Errata to Deposition of James Garmatz ("Motion to Strike"). *See* ECF No. 159. That same day, the district court issued an entering order to address the parties'

[2] As noted in the district court's MSJ Order, Plaintiff's MPSJ included a Memorandum of Points and Authorities in Support of Plaintiff's MPSJ and Opposition to Defendants' MSJ. *See* ECF No. 235 at 2 n.2.

counsels' incorrect filings ("8/25/16 EO"). In the 8/25/16 EO, the district court deemed the filings related to the Reply to Defendants' MSJ and Plaintiff's Motion to Strike as withdrawn without prejudice. *See id.* The district court provided both parties with new deadlines by which they could re-file their respective documents in accordance with the Local Rules. *See id.*

On August 26, 2016, Plaintiff's mainland counsel submitted a letter to the district court requesting additional guidance on how Plaintiff should respond to the 8/25/16 EO ("8/26/16 Letter"). *See* ECF No. 173. To address the 8/26/16 Letter and issues regarding the incorrect filings, the district court held a status conference with the parties' counsel on August 31, 2016 ("8/31/16 Status Conference"). *See* ECF No. 211. At the 8/31/16 Status Conference, the district court informed counsel that, among other things, only local counsel would be allowed to file documents electronically in this case, and that any further violations could result in the revocation of mainland counsels' *pro hac vice* status. *See id.* On December 1, 2016, the district court issued the MSJ Order, denying both Defendants' MSJ and Plaintiff's MPSJ. *See* ECF No. 235.

In addition to the motions mentioned above, Plaintiff filed a Motion to Compel Discovery of Relevant Financial Information ("Motion to Compel Financial Information") on July 22, 2016. *See* ECF No. 123. Therein, Plaintiff sought an order compelling Defendants to respond to discovery requests that fell

generally into two categories: (1) HDF's capitalization information ("Request 1"); and (2) Ulupono's and Maha'ulepu Farm's financial statements, including federal and state tax returns ("Request 2"). *See* ECF No. 222 at 6-8. On September 2, 2016, this Court issued its Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Financial Information ("9/2/16 Order"). *See id.* Specifically, this Court found that Plaintiff was not entitled to the requested discovery in Request 1 because it was not relevant to Plaintiff's claims under the CWA. *See id.* at 7. As to Request 2, however, the Court found that the requested financial statements were relevant to Plaintiff's claim for civil penalties. *See id.* at 8-9. Notwithstanding its relevance, however, the Court recognized that the scope of Request 2 was overbroad, and sympathized with Defendants' concerns that the disclosed information would be made public. *See id.* at 9. Thus, the Court ordered Ulupono and Maha'ulepu Farms to each produce their financials for the years 2013, 2014, and 2015, subject to a stipulated protective order. *See id.*

The parties subsequently had disputes over the language to include in the stipulated protective order, and requested the Court's assistance. *See* ECF No. 260. On January 17, 2017, this Court issued an entering order resolving the disputed language. *See id.* The Court also ordered the parties to file the finalized stipulated protective order by January 19, 2017. *See id.*

On January 19, 2017, the deadline for the parties to file the stipulated protective order, the parties informed the Court that they had reached a settlement. *See* ECF No. 263. In light of the parties' settlement, the Court entered a 45-day stay of the litigation to allow the parties time to prepare a final Consent Decree for court approval. *See id.*

II. The Parties' Consent Decree

After obtaining a short extension of the litigation stay and the Court's assistance to resolve disputes over language, the parties finalized the terms of the proposed Consent Decree. *See* ECF Nos. 268, 275. The district court initially approved and entered the proposed Consent Decree on April 7, 2017. *See* ECF No. 278.

Immediately thereafter, however, the parties contacted the district court to request that it withdraw the entry of the proposed Consent Decree. The parties informed the court for the first time that, pursuant to 40 C.F.R. § 135.5, no proposed consent decree could be entered prior to 45 days after receipt by the Administrator of the U.S. Environmental Protection Agency ("Administrator") and the U.S. Attorney General ("Attorney General"). *See* ECF No. 281 at 2. Plaintiff's mainland counsel indicated that this 45-day period had not yet expired. *See id.* On April 10, 2017, this Court held a status conference to discuss this issue ("4/10/17 Status Conference"), and the parties agreed to file a joint motion to withdraw the

Consent Decree pending the parties' compliance with 40 C.F.R. § 135.5. *See* ECF No. 280.

On April 12, 2017, the parties filed their Joint Motion to Withdraw Consent Decree (Dkt. 278) Until Expiration of United States' Comment Period ("Joint Motion to Withdraw Consent Decree"). *See* ECF No. 283. This Court granted the Joint Motion to Withdraw Consent Decree on May 10, 2017. *See* ECF No. 284. The district court approved and entered the final Consent Decree on May 31, 2017. *See* ECF No. 290. Pursuant to the Consent Decree, the case was reassigned to this Court, and Plaintiff filed this Motion seeking an award of attorneys' fees, expert witness' fees, and costs incurred in this action. *See* ECF No. 301.

DISCUSSION

I. Plaintiff is Entitled to an Award of Costs of Litigation Under § 1365(d)

Section 1365(d) states, in pertinent part: "The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate." 33 U.S.C. § 1365(d). "In order to award attorney's fees under § 1365(d), a district court must make two findings. First it must find that the fee applicant is a 'prevailing or substantially prevailing party.' Second, it must find that an award of attorney's fees is 'appropriate.'" *Saint John's Organic Farm v.*

Gem Cty. Mosquito Abatement Dist., 574 F.3d 1054, 1058 (9th Cir. 2009). For the reasons set forth below, the Court concludes that (A) Plaintiff is a prevailing party, and (B) an award is appropriate.

A. Plaintiff is a Prevailing Party

"A litigant qualifies as a prevailing party if it has obtained a 'court-ordered chang[e] [in] the legal relationship between [the plaintiff] and the defendant.'" *Id.* at 1058 (alterations in original) (other citations and quotation marks omitted) (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001)). The Ninth Circuit uses the following three-part test in determining whether a settlement agreement confers prevailing party status: "(1) judicial enforcement; (2) material alteration of the legal relationship between the parties; and (3) actual relief on the merits of the plaintiff's claims." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th Cir. 2010); *see also Saint John's*, 574 F.3d at 1058-59 ("[W]e have held that parties must have obtained judicially enforceable actual relief on the merits of [their] claim that materially alter[ed] the legal relationship between the parties." (citation and internal quotation marks omitted)).

1. The Consent Decree is Judicially Enforceable

Regarding the first prong, the Court concludes that the terms of the Consent Decree are judicially enforceable. The Consent Decree expressly provides that this

Court "shall retain jurisdiction for the purposes of issuing any further orders and directions as may be necessary and appropriate for implementation or modification of this Consent Decree and enforcing compliance with or resolving disputes regarding the provisions of this Consent Decree." ECF No. 290 at 3. "Binding settlement agreements over which the district court retains jurisdiction to enforce are judicially enforceable." *Saint John's*, 574 F.3d at 1059 (citing *Richard S. v. Dep't of Dev. Servs. of Cal.*, 317 F.3d 1080, 1088 (9th Cir. 2003)). Accordingly, the Court concludes that the Consent Decree is judicially enforceable.

2. The Consent Decree Effected a Material Alteration of the Legal Relationship Between the Parties

Regarding the second prong, the Court concludes that the Consent Decree effected a material alteration of the legal relationship between the parties. A material alteration of the legal relationship occurs when a settlement agreement "allows one party to require the other party 'to do something it otherwise would not be required to do.'" *Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9th Cir. 2008) (quoting *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118 (9th Cir. 2000)). In this case, the Consent Decree requires, among other things, that Defendants abstain from engaging in certain acts on the Property, including digging, excavating, harrowing, grubbing, and "[a]ny other activity that constitutes 'disturbance of land' as defined in [Hawaii Administrative Rules] Ch. 11-55, Appendix C. Sec. 1.4." ECF No. 290 at 9-10. In addition, all "ground disturbing or construction work that

must be performed by HDF or Ulupono, or others on their behalf, on the [Property]" must be observed by the parties' designated third-party "monitor." *See id.* at 12. Furthermore, the Consent Decree also requires Ulupono to "provide $125,000 in funding for one or more environmental projects in the Maha'ulepu/Po'ipu/Koloa area that are mutually approved by the parties . . . ." *Id.* at 17. Because the Consent Decree requires Defendants to do something they otherwise would not be required to do, the Court finds that there is a material alteration of the legal relationship between the parties.

Defendants' Opposition does not specifically address the three-part test to determine whether Plaintiff is entitled to prevailing party status. Instead, Defendants argue that Plaintiff's "de minimis success" does not entitle it to prevailing party status. *See* ECF No. 296 at 13. Defendants do not cite any authority for this argument, and simply assert that they "had already been complying with the CWA since long before this suit was filed so the Consent Decree did not change Defendant's [sic] behavior." *Id.* Defendants also assert that, although the Consent Decree requires Ulupono to make payment for an environmental project, Ulupono supports the payment "because the [designated project] is addressing the environmental aspects of the area with an unbiased, scientific manner." *Id.*

The relevant inquiry under Ninth Circuit law, however, is not whether or to what extent the Consent Decree changed Defendants' behavior, or whether Defendants supported a term in the Consent Decree. Rather, this Court must determine whether the Consent Decree allows Plaintiff to require Defendants to do what they would otherwise not be required to do. *See Jankey*, 537 F.3d at 1130. The Court thus finds Defendants' argument unpersuasive.

3. Plaintiff Obtained Actual Relief on the Merits of Its Claims

Regarding the third prong, the Court concludes that Plaintiff achieved actual relief on the merits of its claims in this case. "The threshold for sufficient relief to confer prevailing party status is not high." *Saint John's*, 574 F.3d at 1059. To achieve actual relief for purposes of a fees request under § 1365(d), "a plaintiff must receive some actual relief that serves the goals of the claim in his or her complaint." *Id.* "[T]he relief achieved need not be of precisely the same character as the relief sought in the complaint, but it must require defendants to do something they otherwise would not have been required to do." *Id.* "'If the plaintiff has succeeded on any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit, the plaintiff has crossed the threshold to a fee award of some kind.'" *Id.* (alteration in *Saint John's*) (quoting *Tex. State. Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Plaintiff's Complaint sought to require Defendants to cease discharging storm water on the Property without an NPDES permit, which Plaintiff alleged was in violation of the CWA. More specifically, Plaintiff requested, among other things, an order "[e]njoining Defendants from discharging storm water containing construction related pollutants from the [Property] into waters of the United States except as authorized and in compliance with [the CWA] or an applicable permit." ECF No. 1 at 18-19. Under the Consent Decree, Defendants are prohibited from engaging in the following activities on the Property: digging, excavating, harrowing, grubbing, ditch maintenance involving dredging, redirecting of channels, or resizing the channels, and any other activity that constitutes "disturbance of land" as defined under the Hawaii Administrative Rules § Appx. C, 1.4 (collectively, "Prohibited Activities"). *See* ECF No. 290 at 9-10, ¶ 18. By obtaining Defendants' judicially enforceable agreement to not engage in Prohibited Activities, Plaintiff achieved the equivalent of an injunction against activities that could cause or contribute to storm water discharge.

Additionally, the Consent Decree provides: "To address [Plaintiff's] concerns about site conditions (which HDF disputes), HDF and Ulupono agree to install or implement Best Management Practices ('BMPs') on the [Property] . . . ." ECF No. 290 at 16, ¶ 27. Put another way, Defendants agreed that HDF and Ulupono would implement BMPs specifically to address Plaintiff's concerns about

the Property conditions, *i.e.*, discharge of construction pollutants without an NPDES permit, despite HDF's apparent dispute as to the validity of Plaintiff's concerns. This relief, along with Defendants' agreement not to engage in Prohibited Activities, serves the goals of Plaintiff's claims under the CWA. While Defendants may insist that such relief is "de minimis" in comparison to the relief sought in the Complaint, even "an extremely small amount of relief" is nevertheless sufficient to confer prevailing party status. *See Saint John's*, 574 F.3d at 1059-60 (citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)) ("[W]hile the nature and quality of relief may affect the amount of the fees awarded, an extremely small amount of relief is sufficient to confer prevailing party status.").

Based on the foregoing, and given the low threshold of relief obtained required to confer prevailing party status, the Court concludes that Plaintiff achieved actual relief on the merits of its claims. Accordingly, the Court concludes that Plaintiff is a prevailing party for purposes of § 1365(d).

B. An Award is Appropriate

Where a court determines that the party seeking litigation costs is a prevailing party, the court must then determine whether an award is "appropriate." *Id.* at 1058. In *Saint John's*, the Ninth Circuit adopted the "special circumstances" standard to determine whether an award of litigation costs to a prevailing plaintiff is "appropriate" under § 1365(d). *Id.* at 1062. In other words, a "district court may

deny attorney's fees to a prevailing plaintiff under § 1365(d) only where there are 'special circumstances.'" *Id.* at 1063. "Under this standard, 'the court's discretion to deny a fee award to a prevailing plaintiff is narrow,' . . . and a denial of fees on the basis of 'special circumstances' is 'extremely rare.'" *Id.* at 1063-64 (citations omitted). "When there is 'a complete absence of any showing of special circumstances to render [the award of an attorney's fee] unjust,' a district court must award a reasonable fee." *Resurrection Bay Conservation Alliance v. City of Seward, Alaska*, 640 F.3d 1087, 1095 (9th Cir. 2011) (quoting *Ackerly Commc'ns, Inc. v. City of Salem*, 752 F.2d 1394, 1398 (9th Cir. 1985)).

Defendants argue that the following "special circumstances" exist such that this Court should conclude that an award of Plaintiff's litigation costs is not appropriate: (1) Plaintiff achieved only a "nuisance settlement"; (2) Plaintiff did not achieve any meaningful relief; and (3) a fee award would not further the purpose of the CWA. The Court addresses each argument in turn below.

1. Defendants fail to establish that the settlement in this case was a "nuisance settlement"

Defendants argue that, because Plaintiff only achieved a nuisance settlement, a fee award is not appropriate under the circumstances. *See* ECF No. 296 at 15-16. Defendants rely solely upon *Tyler v. Corner Construction Corp.*, 167 F.3d 1202 (8th Cir. 1999), in support of this argument. In *Tyler*, the Eighth Circuit Court of Appeals held that a nuisance settlement constitutes a special circumstance that

would make a fee award unjust. *Tyler*, 167 F.3d at 1206. The court defined "nuisance settlement" as "one that is accepted despite the fact that the case against the defendant is frivolous or groundless, solely in an effort to avoid the expense of litigation." *Id.*

Even if this Court were to apply the holding in *Tyler* to this case, Defendants fail to establish that the settlement in this case was a "nuisance settlement." Defendants assert that "their decision to settle this litigation became a purely economical decision once Plaintiff agreed there would be no admission of liability and no stipulation that Plaintiff was the 'prevailing party.'" ECF No. 296 at 16. Defendants' assertion, however, improperly focuses on their subjective motives for settling the case, rather than the objective meritoriousness of Plaintiff's claims. *See Tyler*, 167 F.3d at 1206 (noting that, rather than focusing on a defendant's subjective motives for settling, "[w]hat a court ought to do . . . is to concentrate on the objective meritoriousness of a plaintiff's claim, and refuse to award fees if the claim is frivolous or groundless.").

While Defendants' Opposition argues generally that Plaintiff's lawsuit was based on ulterior motives and exaggerated claims, Defendants do not present any specific basis to support a finding that Plaintiff's claims were objectively frivolous or groundless. *See* ECF No. 296 at 7-10, 14-15. Indeed, both parties actively litigated this case for approximately three years before they reached a settlement.

Plaintiff's claims also survived Defendants' MSJ. In the MSJ Order, the district court specifically concluded that Plaintiff had "adduced evidence from which a reasonable trier of fact could find a continuing likelihood of a recurrence in intermittent or sporadic violations." ECF No. 235 at 36 (alterations, internal quotation marks, and citation omitted). Accordingly, the Court finds that Defendants fail to establish the existence of a special circumstance based on an alleged nuisance settlement.

2. Defendants fail to establish a special circumstance based on Plaintiff's alleged failure to obtain "meaningful relief"

Defendants contend that Plaintiff is not entitled to an award of fees because it "did not achieve any meaningful relief." ECF No. 296 at 16. Defendants again assert various criticisms of the nature and extent of the relief obtained by Plaintiff through the Consent Decree. For example, Defendants again assert that the Consent Decree is a nuisance settlement, and point out that Plaintiff's Rule 34 inspection of the Property revealed no evidence of unpermitted discharge as alleged in the Complaint. *See id.* at 17-18. In *Resurrection Bay*, however, the Ninth Circuit held that neither a plaintiff's award that is nominal in comparison to the relief sought, nor a lack of evidence of actual pollution, is a special circumstance that would preclude an award under § 1365(d). 640 F.3d at 1093. Thus, Defendants' argument as to Plaintiff's alleged failure to obtain "meaningful relief" does not persuade the Court that a special circumstance exists.

3. Defendants fail to establish that an award would not further the purpose of the CWA

Defendants argue that Plaintiff is not entitled to an award under § 1365(d) because its claims did not further the purpose of the CWA. *See* ECF No. 296 at 19-21. Defendants contend that, because HDF had already suspended all development of the dairy nearly one year before Plaintiff initiated this action, if anything, Defendants—not Plaintiff—achieved the purpose of the CWA. *See* ECF No. 296 at 20. The Court disagrees. The "purpose of an award of costs and fees is . . . to encourage the achievement of statutory goals." *Saint John's*, 547 F.3d at 1061 (alteration in *Saint John's*) (other citation omitted) (quoting *Ruckelshaus v. Sierra Club*,463 U.S. 680 (1983)). The purpose of the CWA is "to restore and *maintain* the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (emphasis added).

On the one hand, "[t]he CWA achieves this goal by forbidding or minimizing pollution through the NPDES permitting process." *Id.* at 1061. Plaintiff, on the other hand, achieved this goal by obtaining Defendants' judicially enforceable agreement to refrain from engaging in the Prohibited Activities. The Consent Decree prevents Defendants from engaging in Prohibited Activities for as long as HDF has an interest in the Property, or until HDF obtains an NPDES permit for the construction of its proposed dairy. *See* ECF No. 290 at ¶ 46. The

Court thus finds that the Consent Decree promotes the CWA's goal of maintaining the Nation's waters.

In sum, the Court finds that no special circumstance exists in this case. Accordingly, Plaintiff is entitled to an award of reasonable attorneys' fees, expert fees, and costs as set forth below.

II. Calculation of Award

"When there is a 'complete absence of any showing of special circumstances to render [the award of an attorney's fee unjust],' a district court must award a reasonable fee." *Resurrection Bay*, 640 F.3d at 1094 (alterations in *Ackerly*) (quoting *Ackerly*, 752 F.2d at 1398).

A. Attorneys' Fees

In *Resurrection Bay*, the Ninth Circuit indicated that courts should apply the lodestar method to attorneys' fee requests under § 1365(d). *See* 650 F.3d at 1095 ("As this Court has explained, the usual approach to evaluating the reasonableness of an attorney fee award requires application of the lodestar method . . . ."). "Under the lodestar method, the district court multiplies the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013); *see also* *Hensley v. Eckerhart*, 461 U.S. 424 (1983). The court may adjust the lodestar calculation based on an evaluation of the factors articulated in *Kerr v. Screen*

Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), that are not already subsumed in the lodestar. *See Leff v. Bertozzi Felice Di Giovanni Rovai & C. Srl*, CIVIL No. 15-00176 HG-RLP, 2015 WL 9918660, at *8-9 (D. Haw. Dec. 30, 2015), *adopted in* 2016 WL 335850 (D. Haw. Jan. 26, 2016) (citing *Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)). "'[T]he determination of attorney fees is within the sound discretion of the trial court . . . .'" *Resurrection Bay*, 640 F.3d at 1094 (brackets in *Resurrection Bay*) (other citations omitted) (quoting *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1065 (9th Cir. 2006)).

1. Reasonable Hourly Rates

The "district court must determine a reasonable hourly rate to use for attorneys and paralegals in computing the lodestar amount." *Gonzalez*, 729 F.3d at 1205. "To determine a reasonable hourly rate, 'the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.'" *Sierra Club v. BNSF Ry. Co.*, CASE NO. C13-0967-JCC, 2017 WL 3141899, at *4 (W.D. Wash. July 25, 2017) (quoting *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (regarding a fee request under §1365(d)). "'Generally, the relevant community is the forum in which the district court sits.'" *Id.* (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)); *see also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (citing *Barjon*)). "Importantly, the fee applicant has the burden of

producing 'satisfactory evidence' that the rates [it] requests meet these standards." *Gonzalez*, 729 F.3d at 1206 (citing *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005)); *see also S.E.C. v. Gemstar-TV Guide Int'l, Inc.*, 401 F.3d 1031, 1056 n.8 (9th Cir. 2005) ("[I]t is '[t]he fee applicant [that] has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation.'" (some brackets added) (quoting *Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 (9th Cir. 1987))).

Plaintiff requests the following hourly rates for its timekeepers in this case:

Name	**Title**	**Requested Hourly Rate**
Charles Tebbutt, Esq.	Attorney	$440
Sarah Matsumoto, Esq.	Attorney	$260
Sarah Matsumoto, Esq.	Paralegal Tasks	$125
Dan Snyder, Esq.	Attorney	$260
Amanda Martino, Esq.	Attorney	$175
Linda Paul, Esq.	Attorney	$350
Linda Paul, Esq.	Paralegal Tasks	$125
Tom Pierce, Esq.	Attorney	$330
Peter Martin, Esq.	Attorney	$300
Andrew Mulkey	Law Clerk	$125
Genay Bland	Paralegal	$125
Marisela Taylor	Paralegal	$125

See ECF No. 292-1 at 2. In support of the requested hourly rates, Plaintiff submits declarations from several of its attorneys, Mr. Tebbutt, Ms. Matsumoto, Ms. Paul, and Mr. Pierce. *See* ECF Nos. 292-2, 293-1, 293-3, 293-5. Plaintiff also submits a

declaration from Paul Achitoff, Esq., an attorney with Earthjustice's office in Honolulu, Hawai'i. *See* ECF No. 293-7 at ¶ 2.

Defendants only dispute the reasonableness of the requested hourly rates for Mr. Snyder, Ms. Matsumoto, Ms. Martino, Ms. Taylor, and Ms. Bland. *See* ECF No. 296 at 22. Notwithstanding the lack of objection from Defendants as to Plaintiff's other timekeepers, however, the Court addresses the reasonableness of each of Plaintiff's requested hourly rates in fulfilling its obligation to ensure that the total fee award is reasonable.

a. Charles Tebbutt

Mr. Tebbutt served as lead counsel for Plaintiff in this case. *See* ECF No. 292-2 at ¶ 1. Mr. Tebbutt's Declaration provides that Mr. Tebbutt has been practicing environmental law for nearly 30 years, and has extensive experience representing clients across the country in environmental matters. *See id.* at ¶¶ 2-6. Plaintiff requests an hourly rate of $440 for Mr. Tebbutt's work on this case. Notwithstanding Mr. Tebbutt's competence and experience litigating claims under the CWA, the Court finds that Mr. Tebbutt's requested hourly rate of $440 is excessive for the reasons set forth below.

In the Motion, Plaintiff asserts that its requested hourly rates, including that for Mr. Tebbutt, "have been vetted by [Mr. Achitoff], a leading public interest environmental attorney who has practiced in Hawaii since 1990 and is competent

to opine about the hourly rates charged by attorneys of comparable skill, experience, and reputation in the District of Hawaii." ECF No. 292 at 24. In his Declaration in support of the Motion, Mr. Achitoff provides a summary of his experience in environmental litigation and his familiarity with Hawaii's legal market. Mr. Achitoff opines that "Plaintiff's litigation team is well qualified in the area of environmental law . . . ." *Id.* at ¶ 9. Mr. Achitoff then opines that, based on Mr. Tebbutt's years of experience, national reputation, and expertise, "$440/hour is consistent with the hourly rate that large law firms in Hawai'i would charge for the services of a partner with Mr. Tebbutt's expertise and experience." *Id.* at ¶ 10.

The Court recognizes that Mr. Achitoff has been practicing environmental law in Hawai'i for nearly 30 years, and does not doubt that he is familiar with the rates typically charged in Hawaii's legal market. Significantly, however, "'there is a distinction between the prevailing rates in the community, i.e., what one might charge and collect from a client, and the prevailing rates awarded by the Court.'" *Roberts v. City and Cnty. of Honolulu*, Civ. No. 15-00467 ACK-RLP, 2016 WL 3136856, at *5 (D. Haw. June 2, 2016) (other citation omitted) (quoting *Onishi v. Redline Recovery Servs., LLC*, Civ. No. 10-00259 DAE-KSC, 2010 WL 5128723, at *2 n.1 (D. Haw. Nov. 12, 2010), *adopted in* 2010 WL 5128720 (D. Haw. Dec. 9, 2010)); *see also Au v. Funding Grp., Inc.*, 933 F. Supp. 2d 1264, 1275 (D. Haw. 2013) ("To ensure consistency within this district, the Court is guided by the

hourly rates generally awarded in this district, not the amounts charged to clients, nor the rates that appear to be outliers.”).

Mr. Achitoff does not cite to any decisions from this district court regarding previously awarded rates in support of his opinions as to the purported reasonableness of Plaintiff's requested rates. Additionally, while Mr. Achitoff's Declaration indicates that Hawai‘i attorneys with experience and skill comparable to that of Mr. Tebbutt would charge $440 per hour, it fails to indicate the amount these attorneys are actually able to collect from paying clients. Thus, the Court does not find Mr. Achitoff's assertion—that Plaintiff's requested rates are consistent with rates charged by Hawai‘i attorneys—to be helpful in determining a reasonable rate for Mr. Tebbutt in this case.[3]

Mr. Tebbutt also submits a Declaration in support of his requested hourly rate. *See* ECF No. 292-2. In his Declaration, Mr. Tebbutt states: “Having practiced in multiple jurisdictions, I am aware of the rates charged by opposing counsel from specialized law firms and the rates requested herein are less than the rates charged by those national firms.” *See id.* In addition, Mr. Tebbutt cites to five decisions in which he was awarded hourly rates ranging from $430 to $753.

[3] To the extent Plaintiff asks this Court to rely upon Mr. Achitoff's Declaration to determine the reasonable hourly rates for Plaintiff's remaining timekeepers based on their asserted consistency with rates charged by Hawai‘i attorneys, the Court declines to do so for the same reasons stated above.

See id. at ¶¶ 34-35. All of Mr. Tebbutt's cited decisions, however, were issued by courts outside of this district.

Mr. Tebbutt also asks the Court to consider the so-called "Laffey Matrix" as an "appropriate gauge" for determining that $440 is a reasonable hourly rate for his worked performed in this case. *See id.* at ¶ 33. "Approved originally in *Laffey v. Nw. Airlines, Inc.*, 573 F. Supp. 354) (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), the *Laffey* matrix is an inflation-adjusted grid of hourly rates for lawyers of varying levels of experience in Washington, D.C." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010). The copy of the Laffey Matrix attached to Mr. Tebbutt's Declaration indicates that, for the period covering June 2016 through May 2017, the "market rate" for an attorney with 20 or more years of experience was $826 per hour. *See* ECF No. 292-6 at 2. Mr. Tebbutt asserts that the hourly rates requested in the Motion for him and Ms. Matsumoto are "far less" than the rates suggested in the Laffey Matrix for attorneys with the same amount of years of experience. *See* ECF No. 292-2 at ¶ 33. Mr. Tebbutt appears to imply that this automatically makes Plaintiff's requested rates reasonable. The Court disagrees.

Like the statements in Mr. Achitoff's Declaration, neither the Laffey Matrix, Mr. Tebbutt's knowledge of rates charged by national firms, nor hourly rates awarded to Mr. Tebbutt in other districts addresses the applicable standard for

determining a reasonable hourly rate. That is, such evidence does not establish that Plaintiff's requested hourly rates are in line with the prevailing rates in *this* community, *i.e.*, the District of Hawaiʻi. *See Haw. Defense Found. v. City and Cnty. of Honolulu*, Civil No. 12-00469 JMS-RLP, 2014 WL 2804448, at *3 (D. Haw. June 19, 2014) (citations omitted) ("The Laffey matrix and evidence regarding the cost of living in Hawaii do not address the applicable standard for determining a reasonable hourly rate—*i.e.*, they are not evidence of the prevailing rates in the District of Hawaii."); *see also Prison Legal News*, 608 F.3d at 454 ("[J]ust because the Laffey matrix has been accepted in the District of Columbia does not mean that it is a sound basis for determining rates elsewhere, let alone in a legal market 3,000 miles away."). Accordingly, the Court declines to rely upon Plaintiff's above evidence in determining a reasonable hourly for Mr. Tebbutt.[4]

In light of the foregoing, the Court finds that Plaintiff fails to produce "satisfactory evidence" to support the hourly rates requested. *See Gonzalez*, 729 F.3d at 1206. Significantly, Plaintiff, as well as Defendants, fails to cite a single case from this district awarding hourly rates to attorneys with comparable skill, experience and reputation. Thus, the Court must rely on its experience with attorneys' fees motions, knowledge of the prevailing rates in this community and

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[4] To the extent Plaintiff asks this Court to rely upon the same evidence in determining the reasonableness of the hourly rates for Plaintiff's remaining timekeepers, the Court declines to do so for the same reasons stated above.

those generally awarded in this district, familiarity with this case, and Plaintiff's counsel's submissions detailing their experience. *See Ingram*, 647 F.3d at 928. In particular, the Court gives consideration to Mr. Tebbutt's extensive experience in environmental litigation and Mr. Achitoff's attestation to Mr. Tebbutt's reputation. *See* ECF No. 293-7 (Decl. of P. Achitoff) at ¶ 8 ("I am aware . . . that Mr. Tebbutt is nationally regarded as an expert in the [CWA].").

Based on the foregoing considerations, the Court finds that a reduced rate of $400 is a reasonable hourly rate for Mr. Tebbutt in this case. *See Liberty Mut. Ins. Co. v. Sumo-Nan LLC*, CIVIL NO. 14-00520 DKW-KSC, 2017 WL 810277, at *9-10 D. Haw. Mar. 1, 2017) (awarding an hourly rate of $400 to an attorney with 34 years of experience); *Honolulu Acad. of Arts v. Green*, CIVIL NO. 15-00355 DKW-KSC, 2017 WL 1086224, at *7-8 (D. Haw. Feb. 28, 2017), *adopted sub nom. Honolulu Acad. of Arts v. Greene*, 2017 WL 1091309 (D. Haw. Mar. 21, 2017) (awarding an attorney with over 35 years of experience his requested hourly rate of $350, finding it to be "well within the range of reasonableness for attorneys with his experience, skill and reputation").

b. Sarah Matsumoto

Plaintiff requests an hourly rate of $260 for Ms. Matsumoto's attorney tasks and an hourly rate of $125 for her paralegal tasks. In her Declaration, Ms. Matsumoto states that she graduated from law school in May 2010 and was

admitted to the Oregon bar in May 2011. *See* ECF No. 293-1 at ¶¶ 2-3. Ms. Matsumoto joined Mr. Tebbutt's firm in May 2012, where her practice has primarily focused on civil enforcement of federal environmental statutes, such as the CWA. *See id.* at ¶¶ 3-4.

Defendants argue that an hourly rate of $260 for Ms. Matsumoto is unreasonable, but do not suggest a reduced hourly rate for this Court to apply to Ms. Matsumoto. Instead, Defendants simply cite to a decision from a Washington district court that awarded Ms. Matsumoto an hourly rate of $175. *See* ECF No. 296 at 23 (citing *Cmty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC*, NOS: 13-CV-3016-TOR, 13-CV-3017, 13-CV-3019-TOR, 2016 WL 3580754, at *9-10 (E.D. Wash. Jan. 12, 2016)). Similarly, Ms. Matsumoto points to a different Washington case where she was awarded an hourly rate of $275. *See* ECF No. 293-1 at ¶ 7 (citing *Sierra Club v. BNSF Ry. Co.*, CASE NO. C13-0967-JCC, 2017 WL 3141899, at *5 (W.D. Wash. July 25, 2017)). As explained above, however, hourly rates awarded in Washington districts have no bearing on determining prevailing rates in the District of Hawai'i. The Court is thus not persuaded by either parties' cited cases.

Based on the information in Ms. Matsumoto's Declaration regarding her experience and this Court's knowledge of the prevailing rates in this community, the Court finds that $200 is a reasonable hourly rate for Ms. Matsumoto's attorney

tasks performed in this case. *See Liberty Mut. Ins.*, 2017 WL 810277, at *10 (awarding an hourly rate of $200 to an associate with approximately six years of experience); *Faith Action for Cmty. Equity v. Haw. Dep't. of Transp.*, CIVIL NO. 13-00450 SOM/RLP, 2015 WL 5162477, at *5-6 (D. Haw. Sept. 1, 2015) (citations omitted) (applying an hourly rate of $175 to a litigation associate with five years of experience); *Valencia v. Carrington Mortg. Servs. LLC*, Civil No. 10-00558 LEK-RLP, 2013 WL 3223628, at *8 (D. Haw. June 25, 2013) (awarding an hourly rate of $175 to a fifth-year litigation associate). As to Ms. Matsumoto's paralegal tasks, the Court finds that $100 is a reasonable hourly rate. *See Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Ctrs. for Disease Control and Prevention*, CIVIL NO. 16-00008 JMS-KSC, 2017 WL 664446, at *10 (D. Haw. Jan. 31, 2017), *adopted in* 2017 WL 663232 (D. Haw. Feb. 16, 2017) (finding an hourly rate of $100 for paralegal tasks performed by an attorney with fifteen years of experience to be manifestly reasonable); *cf. Liberty Mut. Ins.*, 2017 WL 810277, at *11 (awarding an hourly rate of $100 for paralegals). Accordingly, the Court awards Ms. Matsumoto an hourly rate of $200 for her attorney tasks and an hourly rate of $100 for her paralegal tasks.

c. Dan Snyder

Plaintiff requests an hourly rate of $260 for Mr. Snyder. Mr. Snyder has been practicing law since 2010. *See* ECF No. 293-7 at ¶ 12; *see also* ECF

No. 292-2 at ¶ 27. The Court notes that Mr. Snyder spent a total of 57.5 hours on this case, 40.9 of which were for tasks performed in 2015. *See* ECF No. 292-3 at 9. Defendants assert that an hourly rate of $260 for Mr. Snyder is unreasonable, but do not provide any further argument or case law to support this conclusory assertion. *See* ECF No. 296 at 22-24. Nor do Defendants suggest a reduced hourly rate to apply to Mr. Snyder.

In addition, Defendants contend that Mr. Snyder's time entries lack foundation because Mr. Snyder did not submit a separate declaration and, therefore, the Court should disregard them entirely. *See id.* at 24. In his Declaration, Mr. Tebbutt authenticates Exhibit "1," which includes time entries by Mr. Snyder and others in Mr. Tebbutt's law firm. *See* ECF No. 292-2 at ¶ 7. Defendants cite no legal authority for their contention that each attorney for whom fees are requested must submit a separate declaration. Nor do Defendants present any basis for this Court to question Mr. Tebbutt's Declaration as to the truth or accuracy of the time entries in Exhibit "1." Accordingly, the Court does not agree with Defendants' contention to disregard Mr. Snyder's time entries.[5]

Based on this Court's knowledge of the prevailing rates in the community, and given Mr. Snyder's limited role in the case and that a majority of his requested

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[5] Defendants similarly ask this Court to disregard the time entries for Ms. Martino, Mr. Mulkey, and Ms. Taylor in Exhibit "1" based on their alleged lack of foundation. *See* ECF No. 296 at 24. The Court declines to do so for the same reasons stated above.

hours were expended in 2015, when he had approximately five years of experience, the Court finds that $200 is a reasonable hourly rate for Mr. Snyder. *See Liberty Mut. Ins.*, 2017 WL 810277, at *10 (awarding an hourly rate of $200 to an associate with approximately six years of experience); *Faith Action*, 2015 WL 5162477, at *5-6 (without making a finding as to reasonableness, applying an hourly rate of $175 to a litigation associate with five years of experience); *Valencia*, 2013 WL 3223628, at *8 (awarding an hourly rate of $175 to a fifth-year litigation associate); *cf. Honolulu Acad. of Arts*, 2017 WL 1086224, at *8 (awarding an hourly rate of $190 to an attorney with approximately seven years of experience); *see also D.S. v. Haw. Dep't of Educ.*, Civ. No. 12-00533 DKW-RLP, 2014 WL 772895, at *3 (D. Haw. Feb. 25, 2014) (considering the attorney's role in the litigation in determining a reasonable hourly rate).

d. Amanda Martino

Plaintiff requests an hourly rate of $175 for Ms. Martino. Mr. Tebbutt's Declaration provides that Ms. Martino graduated from law school in 2016. *See* ECF No. 292-2 at ¶ 28. Mr. Tebbutt's Declaration fails to indicate when Ms. Martino was admitted to the Washington bar. According to the Washington State Bar Association official website, Ms. Martino was admitted in October 2016. *See* Wash. State Bar Ass'n, Lawyer Directory, Amanda Martino, https://www.mywsba.org/LegalDirectory/LegalProfile.aspx?Usr_ID=00000005142

2 (last visited Nov. 9, 2017). Thus, Ms. Martino had less than a year of experience when she began working on this case. Defendants argue that Plaintiff's requested hourly rate is unreasonable, but again provide no further legal basis or analysis for this argument. *See* ECF No. 296 at 22.

Based on Ms. Martino's limited experience when she began working on this case, and this Court's knowledge of prevailing rates for attorneys with similar experience, the Court finds that $150 is a reasonable hourly rate for Ms. Martino. *See BlueEarth Biofuels, LLC v. Hawaiian Elec. Co.*, Civil No. 09-00181 LEK-KSC, 2015 WL 881577, at *13 (D. Haw. Feb. 27, 2015) (awarding an hourly rate of $140 to a first-year associate); *Faith Action*, 2015 WL 5162477, at *5-6 (citing *BlueEarth*, and without making a finding as to reasonableness, applying an hourly rate of $140 to an associate with one year of experience); *cf. Trendex Fabrics, Ltd. v. Chad Jung Kim*, Civil No. 13-00253-LEK-RKP, 2013 WL 5947027, at *8-9 (D. Haw. Nov. 5, 2013) (reducing requested hourly rate of $190 to $125 for an attorney who was admitted to the Hawai'i bar in 2011).

e. Linda Paul

Ms. Paul served as local counsel for Plaintiff, and requests an hourly rate of $350 for her attorney tasks and an hourly rate of $125 for her paralegal tasks. *See* ECF No. 293-3 at ¶¶ 1, 6. Ms. Paul's Declaration provides that she has been practicing law for over 26 years, and that her primary areas of practice include

environmental law and torts, natural resources law, and land use law. *See id.* at ¶ 1.

Based on Ms. Paul's experience, Defendants' lack of objection to Ms. Paul's requested hourly rate, and the Court's knowledge of prevailing rates in the community, the Court finds that an hourly rate of $350 is manifestly reasonable. *See Honolulu Acad. of Arts*, 2017 WL 1086224, at *9 (awarding an hourly rate of $325 to an attorney with 25 years of experience); *Booth v. Wong*, Civil No. 10-00680 DKW-RLP, 2015 WL 4663994, at *4 (D. Haw. July 17, 2015), *adopted in* 2015 WL 4676343 (D. Haw. Aug. 5, 2015) (awarding an hourly rate of $300 to an attorney with 20 years of experience); *BlueEarth*, 2015 WL 881577, at *3 (awarding an hourly rate of $290 to an attorney with over 26 years of civil litigation experience). As to Ms. Paul's paralegal tasks, however, the Court finds that a reduced hourly rate of $100 is reasonable. *See Civil Beat Law Ctr.*, 2017 WL 664446, at *10 (finding an hourly rate of $100 for paralegal tasks performed by an attorney with fifteen years of experience to be manifestly reasonable); *cf. Liberty Mut. Ins.*, 2017 WL 810277, at *11 (awarding an hourly rate of $100 for paralegals). Accordingly, the Court awards an hourly rate of $350 for Ms. Paul's attorney tasks and an hourly rate of $100 for her paralegal tasks.

f. Tom Pierce and Peter Martin

Mr. Pierce and Mr. Martin served as local counsel for Plaintiff "during the development and initiation of this case[.]" *See* ECF No. 293-5 at ¶ 3. Relatedly, the Court notes that Messrs. Pierce and Martin collectively spent a total of 27.6 hours in this case, most of which were for tasks completed in 2015. *See* ECF No. 293-6 at 1-2. Plaintiff requests an hourly rate of $330 for Mr. Pierce, and an hourly rate of $300 for Mr. Martin. *See id.* at ¶¶ 14, 18. According to Mr. Pierce's Declaration, Mr. Pierce has approximately 20 years of experience, while Mr. Martin has approximately 15 years. *See id.*

Based on the Court's knowledge of the prevailing rates in the community, and these attorneys' limited role in the initial stages of the case, the Court finds that reduced hourly rates of $300 and $260 for Mr. Pierce and Mr. Martin, respectively, are reasonable. *See Honolulu Acad. of Arts*, 2017 WL 1086224, at *9 (awarding an hourly rate of $325 to an attorney with 25 years of experience); *Booth*, 2015 WL 4663994, at *4 (awarding an hourly rate of $300 to an attorney with 20 years of experience); *Liberty Mut. Ins.*, 2017 WL 810277, at *10 (awarding an hourly rate of $250 to an attorney with approximately thirteen years of experience); *Faith Action*, 2015 WL 5162477, at *5 (finding an hourly rate of $240 to be reasonable for an attorney with twelve years of experience); *see also*

D.S., 2014 WL 772895, at *3 (considering the attorney's role in the litigation in determining a reasonable hourly rate).

g. Andrew Mulkey

Plaintiff requests an hourly rate of $125 for Mr. Mulkey, a law clerk with Mr. Tebbutt's firm. Defendants again assert their conclusory argument that Plaintiff's requested rate is excessive. *See* ECF No. 296 at 22. The Court, however, finds this rate to be manifestly reasonable. *Sunday's Child, LLC v. Irongate Azrep BW LLC*, 2014 WL 2451560, at *2-3 (D. Haw. May 30, 2014) (concluding that $100 is a reasonable hourly rate for law clerks); *see also Donkerbrook v. Title Guaranty Escrow Servs., Inc.*, Civil No. 10-00616 LEK-RKP, 2011 WL 3649539, at *8 (D. Haw. Aug. 18, 2011) (reducing law clerk's hourly rate as excessive from $120 to $100). Accordingly, the Court awards Mr. Mulkey an hourly rate of $125.

h. Genay Bland

Plaintiff requests an hourly rate of $125 for the work performed by Ms. Bland, a paralegal with Mr. Pierce's office. *See* ECF No. 292-1 at 2. Mr. Pierce's Declaration provides that Ms. Bland started working as a paralegal in 1997. *See* ECF No. 293-5 at ¶ 19. Mr. Pierce also indicates that, in 2009, Ms. Bland "received the Certificate of Professional Development in Paralegal Studies from the University of Nevada Reno." *Id.*

Based on Ms. Bland's 20 years of experience as a paralegal, and this Court's knowledge of prevailing rates in the community for paralegals of similar skill and experience, the Court finds that $105 is a reasonable hourly rate for Ms. Bland. *See Honolulu Acad. of Arts*, 2017 WL 1086224, at *9 (reducing requested hourly rate of $100 to $90 for a litigation paralegal with 18 years of experience); *Booth*, 2015 WL 4663994, at *4 (reducing requested hourly rate of $145 to $100 for a paralegal with over 20 years of experience). Accordingly, the Court awards an hourly rate of $105 to Ms. Bland for her work as a paralegal in this case.

i. Marisela Taylor

Plaintiff requests an hourly rate of $125 for the work performed by Ms. Taylor, a paralegal with Mr. Tebbutt's office. *See* ECF No. 292-1 at 2. In his Declaration, Mr. Tebbutt provides that Ms. Taylor "has worked with [him] since [his] time at the Western Environmental Law Center," where Mr. Tebbutt worked from 1994 to 2009. ECF No. 292-2 at ¶¶ 2, 28. Mr. Tebbutt's Declaration fails to specify, however, when Ms. Taylor initiated work as a paralegal. As was the case with Ms. Bland, for example, a person may work at a law firm as a legal secretary for a substantial amount of time before transitioning to the role of a paralegal. *See* ECF No. 293-5 at ¶ 19. Thus, the Court will not assume that a person's years of experience working with an attorney were done so in a single capacity. Furthermore, even if the Court was to make such an assumption, Mr. Tebbutt's

statement that Ms. Taylor has worked with him since his time at the Western Environmental Law Center, a period spanning fifteen years, does not aid the Court in assessing Ms. Taylor's paralegal experience.

Based on the foregoing, the Court finds that Plaintiff fails to provide "satisfactory evidence" that its requested hourly rate of $125 for Ms. Taylor is reasonable. Notwithstanding the lack of information from Plaintiff regarding Ms. Taylor's qualifications and paralegal experience, and recognizing that courts in this district typically award an hourly rate of $85 for paralegals, the Court finds that an hourly rate of $95 is reasonable. *See Honolulu Acad. of Arts*, 2017 WL 1086224, at *9 (awarding a paralegal with 18 years of experience an hourly rate of $90); *see also D.S.*, 2014 WL 772895, at *4 (citations omitted) ("Courts in this district have awarded an hourly rate of $85 for paralegals."); *Frankl v. HGH Corp.*, Civil No. 10-00014 JMS-RLP, 2012 WL 1755423, at *8 (D. Haw. Apr. 23, 2012), *adopted in* 2012 WL 1753644 (D. Haw. May 14, 2012) ("A reasonable hourly rate for an experienced paralegal is $85."). Accordingly, the Court awards hourly rate of $95 to Ms. Taylor.

j. Summary of Hourly Rates

In summary, the Court finds the following rates to be reasonable for the work performed by Plaintiff's attorneys, law clerk, and paralegals in this case:

Name	**Title**	**Requested Hourly Rate**	**Awarded Hourly Rate**
Charles Tebbutt, Esq.	Attorney	$440	$400
Sarah Matsumoto, Esq.	Attorney	$260	$200
Sarah Matsumoto, Esq.	Paralegal Tasks	$125	$100
Dan Snyder, Esq.	Attorney	$260	$200
Amanda Martino, Esq.	Attorney	$175	$150
Linda Paul, Esq.	Attorney	$350	$350
Linda Paul, Esq.	Paralegal Tasks	$125	$100
Tom Pierce, Esq.	Attorney	$330	$300
Peter Martin, Esq.	Attorney	$300	$260
Andrew Mulkey	Law Clerk	$125	$125
Genay Bland	Paralegal	$125	$105
Marisela Taylor	Paralegal	$125	$95

Accordingly, the Court will apply the foregoing hourly rates in calculating Plaintiff's lodestar.

2. Hours Reasonably Expended

The fee applicant bears the burden of documenting the hours expended and must submit evidence in support of the hours worked. *Hensley*, 461 U.S. at 437; *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). The prevailing party bears the burden of proving that the fees requested are associated with the relief requested and are reasonably necessary to achieve the results obtained. *See Tirona*

v. State Farm. Mut. Auto. Ins. Co., 821 F. Supp. 693, 636 (D. Haw. 1993) (citations omitted). The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing part in its submitted affidavits. *Gates*, 987 F.2d at 1397-98.

The Court, however, has its own "independent duty to review the submitted itemized log of hours to determine the reasonableness of the hours requested in each case." *Irwin v. Astrue*, No. 3:10-CV-545-HZ, 2012 WL 707090, at *1 (D. Or. Mar. 5, 2012) (citing *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001)). The court must guard against awarding fees and costs which are excessive, and must determine which fees were self-imposed and avoidable. *See Tirona*, 821 F. Supp. at 637 (citation omitted). To this end, courts are empowered to use their discretion to "'trim fat' from, or otherwise reduce, the number of hours claimed to have been spent on the case." *Soler v. G & U, Inc.*, 801 F. Supp. 1056, 1060 (S.D.N.Y. 1992) (citation omitted). Accordingly, courts must deny compensation for time expended on work deemed excessive, redundant, or otherwise unnecessary. *See Gates*, 987 F.2d at 1933 (citing *Hensley*, 461 U.S. at 433-34).

Plaintiff seeks to recover a total of 1,880.9 hours[6] expended by its attorneys, law clerk, and paralegals in this case as follows:

Name	Title	Requested Hours
Charles Tebbutt, Esq.	Attorney	463.7
Sarah Matsumoto, Esq.	Attorney	981.9
Sarah Matsumoto, Esq.	Paralegal Tasks	15.5
Dan Snyder, Esq.	Attorney	56.5
Amanda Martino, Esq.	Attorney	91.9
Linda Paul, Esq.	Attorney	115.5
Linda, Paul, Esq.	Paralegal Tasks	3.4
Tom Pierce, Esq.	Attorney	3.5
Peter Martin, Esq.	Attorney	24.1
Andrew Mulkey	Law Clerk	102.6
Genay Bland	Paralegal	5.2
Marisela Taylor	Paralegal	17.1
	TOTAL	**1,880.9**

Defendants argue that, at minimum, Plaintiff is not entitled to recover $341,512.12 of its total fee request. *See* ECF No. 296 at 22. Defendants' Opposition sets forth various reasons as to why Plaintiff's requested hours are excessive or otherwise non-compensable. The Court addresses each of Defendants' asserted reasons in addition to the entries this Court finds excessive based on its own independent review of the Motion.

[6] In the Motion, Plaintiff asserts that its timekeepers expended a total of 1,876.2 hours. *See* ECF No. 292 at 12. Upon review of Plaintiff's exhibits to the Motion, however, Plaintiff appears to have inadvertently omitted 3.4 hours of Ms. Paul's time spent on paralegal tasks as part of its total hours. *See* ECF No. 292-1 at 2. Mr. Tebbutt's total time also appears to inadvertently include an additional 0.5 hours that he intended to omit. *See* ECF No. 292-3 at 8. Thus, Plaintiff's correct total hours requested is 1,880.9.

a. Andrew Mulkey

As an initial matter, the Court addresses Plaintiff's request as to the hours expended by Mr. Mulkey. According to the timesheets, Mr. Mulkey actually expended a total of 154 hours in this case. *See* ECF No. 292-3 at 11. Mr. Tebbutt's Declaration states that, for purposes of the Motion, Mr. Tebbutt used his billing discretion to reduce this number to 102.5, *i.e.*, by one-third. *See* ECF No. 292-2 at ¶ 30. In reviewing Mr. Mulkey's time entries, the Court identified a handful of deficient entries that are either subject to exclusion or reduction. The Court finds, however, that Mr. Tebbutt's self-imposed reduction of Mr. Mulkey's hours accounts for the deficient entries. Accordingly, the Court finds that 102.6 hours is a reasonable amount of time for Mr. Mulkey's work performed in this case.

b. Insufficient Descriptions

Local Rule 54.3 expressly provides: "The party seeking an award of fees must describe adequately the services rendered so that the reasonableness of the requested fees can be evaluated." LR54.3(d)(2). Local Rule 54.3 also gives guidance as to the level of detail a time entry should contain:

> For example, time entries for telephone conferences must include an identification of all participants and the reason for the call; entries for legal research must include an identification of the specific issue researched and, if possible, should identify the pleading or document for which the research was necessary; entries describing the preparation of pleadings and other papers must include an

> identification of the pleading or other document prepared and the activities associated with such preparation.

Id.

"Attorneys are 'not required to record in great detail how each minute of [their] time was expended.'" *United Steelworkers of Am. v. Ret. Income Plan for Hourly-Rated Emps. of ASARCO, Inc.*, 512 F.3d 555, 565 (9th Cir. 2008) (quoting *Hensley*, 461 U.S. at 437 n.12). Nonetheless, as the party seeking attorneys' fees, Plaintiff bears the burden of keeping records in sufficient detail so that "a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed." *Id.* Where Plaintiff fails to satisfy this burden, the Court will reduce Plaintiff's requested hours accordingly. *See* LR54.3(d)(2) ("If the descriptions are incomplete, or if such descriptions fail to describe adequately the services rendered, the court may reduce the award accordingly.").

Here, the Court carefully analyzed Plaintiff's timesheets, and finds that a number of entries in Plaintiff's timesheets are incomplete. Rather than excluding all time associated with the incomplete entries, wherever possible, the Court evaluated the reasonableness of the fees requested with context clues based on the time entries immediately before and after the questionable entry. The Court also cross-referenced questionable entries with dates and events noted on the ECF

docket for this case.[7] Nonetheless, the Court finds that the remaining incomplete entries are so lacking in detail that this Court is unable to evaluate whether the time expended was reasonable. For example, a handful of the entries for telephone and in-person conferences omit the participants and/or the reason for the conference.[8] Similarly, Plaintiff's timekeepers sometimes fail to indicate with whom they were corresponding via e-mail, and the subject matter of such e-mails.[9] As a result, the

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[7] As an example, Mr. Tebbutt's timesheet indicates that, on 12/15/16, he expended 1.2 hours on a "call w/Court." *See* ECF No. 292-3 at 4. On its face, this entry is questionable at best. The Court recalls, however, that it held a settlement conference on 12/15/16, and that Mr. Tebbutt participated by phone. *See* ECF No. 239. Accordingly, the Court is able to evaluate the reasonableness of this entry, and finds that it is compensable. The Court cautions Plaintiff and its counsel that, in the future, such lack of detail may result in the denial of fees.

[8] *See, e.g.*, ECF No. 292-3 at 3, 8 (CT – 11/9/15 "ph w/ LB re various," 12/30/16 "call w/CC"); ECF No. 292-3 at 9 (DS – 2/24/15 "Meeting with BH, JK (1.0); lunch meeting with small group (1.5); meeting with large group and follow-up (2.5)"); ECF No. 292-3 at 11 (AMa – 10/12/16 "mtg & research re expert witnesses," 12/29/16 "emails and phone calls re deposition scheduling changes"); ECF No. 293-2 at 8 (SM – 5/20/16 "call w/D. Erickson (0.7); call w/clients (2.0)"); ECF No. 293-4 at 4 (LP – 1/8/17 "conferred with client; . . . conference call with co-counsel, clients").

[9] *See e.g.*, ECF No. 292-3 at 3, 6 (CT – 3/19/15 "email to JK & related research," 4/8/16 "emails re discovery," 5/4/16 "emails re discovery and related," 6/1/16 "emails re depo sched"); ECF No. 292-3 at 11 (AMa – 10/6/16 "Emails and research re expert witnesses," 12/12/16 "meeting & research re motion for reconsideration; email relevant case law"); ECF No. 293-4 at 2 (LP – 4/22/16 "Email exchange re filing Motion for pro hac vice," 8/19/16 "Emails, reply re revised Second Stipulated Revision").

Court is unable to evaluate the reasonableness of such entries, and deducts the associated time spent.

Based on the foregoing, the Court makes the following reductions for insufficient descriptions: (1) Mr. Tebbutt – 22.6 hours;[10] (2) Ms. Matsumoto's attorney tasks – 8.5 hours;[11] (3) Mr. Snyder – 5 hours;[12] (4) Ms. Martino – 37.9 hours;[13] and (5) Ms. Paul's attorney tasks – 8 hours.[14]

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[10] The Court reduces Mr. Tebbutt's requested hours by 22.6 hours as follows: (1) Case Development – 2/24/15, 3/19/15, 4/27/15, 5/8/15, 0.2 hours from 5/12/15, 5/15/15, 6/2/15, 6/5/15, 7/30/15, 8/6/15, 11/9/15, 12/18/15, 1/19/16, 5/12/16, 7/22/16, 0.1 hours from 9/26/16, 11/16/16, 12/9/16, 1.7 hours from 12/16/16, 12/19/16, 2/16/17, 5/3/17, 5/18/17; (2) Pleadings – 5/22/15; (3) Discovery – 4/8/16, 4/8/16, 4/20/16, 5/4/16, 5/10/16, 0.1 hours from 5/26/16, 8/12/16; (4) Depositions – 6/1/16, 0.5 hours from 12/6/16, 3 hours from 1/5/17; (5) Court Appearances – 0.2 hours from 12/1/16, 0.3 hours from 12/2/16, 0.6 hours from 12/2/16; (6) Trial Preparation – 1.2 hours from 12/30/16. *See* ECF No. 292-3 at 3-8.

[11] The Court reduces Ms. Matsumoto's requested hours for attorney tasks as follows: (1) Case Development – 0.1 hours from 1/6/16, 8/4/16, 9/16/16; (2) Discovery – 3/18/16, 5/20/16, 5/26/16; (3) Motions – 5/15/17, 5/19/17; (4) Trial – 1/6/17. *See* ECF No. 293-2.

[12] *See* ECF No. 292-3 at 9 (2/24/15).

[13] The Court reduces Ms. Martino's requested hours by 37.9 hours as follows: (1) Case Development – 3 hours from 10/6/16, 1.2 hours from 10/12/16, 12/21/16, 2/15/17; (2) Discovery – 12/14/16, 12/15/16, 12/16/16, 12/29/16; (3) Depositions – two entries on 12/21/16; (4) Motions - 12/12/16, 1/4/17, 1.5 hours from 1/12/17; (5) Trial – 12/22/16. *See* ECF No. 292-3 at 11-12.

[14] *See* ECF No. 293-4 (3/21/16, 4/22/16, 12/12/16, 1/7/17, 1/8/17, 1.6 hours from 1/18/17, 3/20/17).

c. Clerical Tasks

Defendants contend that the Court should reduce Plaintiff's total fee request by $29,659.75 for time expended on clerical tasks. *See* ECF No. 296-2 at 1; ECF No. 296-6. "[C]lerical or ministerial costs are part of an attorney's overhead and are reflected in the charged hourly rate." *Jeremiah B. v. Dep't of Educ.*, Civil No. 09-00262 DAE-LEK, 2010 WL 346454, at *5 (D. Haw. Jan. 29, 2010) (citing *Sheffer v. Experian Info. Sols., Inc.*, 290 F. Supp. 2d 538, 549 (E.D. Pa. 2003)). The following is a list of clerical and ministerial tasks deemed non-compensable in this district:

> reviewing Court-generated notices; scheduling dates and deadlines; calendaring dates and deadlines; notifying a client of dates and deadlines; preparing documents for fling with the Court; filing documents with the Court; informing a client that a document has been filed; . . . copying, printing, and scanning documents, receiving, downloading, and emailing documents; and communicating with Court staff.

Crawford v. Japan Airlines, Civil No. 03-00451 LEK-KSC, 2014 WL 1326576, at *4 (D. Haw. Jan. 22, 2014), *adopted in* 2014 WL 1326580 (D. Haw. Mar. 28, 2014) (citations omitted). This list is not exhaustive, and this district court has deemed other tasks as non-compensable, clerical tasks, such as the identification and organization of exhibits and work expended on a table of authorities. *See Haw. Motorsports Inv., Inc. v. Clayton Grp. Servs., Inc.*, Civ. No. 09-00304 SOM-BMK, 2010 WL 4974867, at *5 (D. Haw. Dec. 1, 2010), *adopted in* 2010 WL

5395669 (D. Haw. Dec. 22, 2010) (deeming the identification and organization of exhibits as clerical); *Yamada v. Weaver*, Civil No. 10-00497 JMS-RLP, 2012 WL 6019363, at *10 (D. Haw. Aug. 30, 2012), *adopted in pertinent part in* 2012 WL 6019121 (D. Haw. Nov. 30, 2012) (deeming work completed on a table of authorities as clerical).

In Exhibit "E" to the Opposition, Defendants identify a number of tasks in Plaintiff's submitted timesheets that they assert are clerical. *See* ECF No. 296-6. The Court has carefully reviewed these entries, and finds that most of the tasks are clerical. The Court also performed its own analysis of Plaintiff's timesheets, and identified additional clerical tasks.[15] All such tasks are non-compensable, regardless of whether they were completed by Plaintiff's attorneys, law clerk, or paralegals. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) ("Of course, purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.").

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[15] *See, e.g.*, ECF No. 292-3 at 3 (CT – 11/12/15 "review Ct. scheduling ntc, email to clients"); ECF No. 293-2 at 4 (SM – 3/24/17 "assemble signatures and send final stip to Mansfield_orders"); ECF No. 292-3 at 9 (DS – 8/20/15: "Deal with filing issues for conference report"); ECF No. 292-3 at 11 (AMa – 1/4/17 "Arranging depo binders, creating table of contents, confirming deposition times"); ECF No. 292-3 at 12 (MT – 7/1/16 "finalize & format R45 ltr; draft TOA/TOC"); ECF No. 293-6 at 2 (GB – 6/1/15 "assist with completing and filing complaint and supporting documents; downloading docketed documents and emailing to Sarah and Charlie; calendaring scheduling conference").

As with the entries with insufficient descriptions, certain of the clerical tasks were block-billed with other tasks.[16] Plaintiff's comingling of compensable and non-compensable clerical tasks in block-billed format makes it all but impossible for the Court to reasonably apportion time expended on non-compensable tasks. Thus, even though an entry may include non-clerical tasks, the Court excludes the entry altogether in the instances when the block-billed entries prevented the Court from reasonably apportioning the time expended on the clerical tasks and the non-clerical tasks. *See Honolulu Acad. of Arts*, 2017 WL 1086224, at *12 (citation omitted) (excluding block-billed entries containing clerical, non-compensable tasks); *see also I.T. v. Dep't of Educ., Haw.*, 18 F. Supp. 3d 1047, 1054 (D. Haw. 2014) ("[I]n light of the fact that this Court cannot determine how much of the 2.3 hours attributed to the entry as a whole was spent on the legal services [versus clerical work], this Court agrees with the magistrate judge that the entire entry should be excluded as improper block billing.").

Based on its review of Plaintiff's timesheets and Defendants' Exhibit "E," the Court reduces Plaintiff's requested hours for time expended on clerical tasks as

[16] *See, e.g.*, ECF No. 293-2 at 4 (SM – 1/9/17 "Review order vacating deadlines and corresp w/ clients re same, discuss proposed new dates w/ co-counsel, work with co-counsel to prep for discovery hearing and pre-trial conference"); ECF No. 293-4 at 2 (LP – 1/18/17 "attend settlement conference w/ clients; reviewed emails, received, reviewed protective order; signed, scanned, & e-mailed to co-counsel."); ECF No. 293-6 at 2 (PM – 4/22/16 "file pro hac vice motion for S. Matsumoto; emails re same and withdrawal of counsel").

follows: (1) Mr. Tebbutt – 2.2 hours;[17] (2) Ms. Matsumoto's attorney tasks – 45.7 hours;[18] (3) Ms. Matsumoto's paralegal tasks – 8.7 hours;[19] (4) Mr. Snyder – 0.5 hours;[20] (5) Ms. Martino – 14 hours;[21] (6) Ms. Paul's attorney tasks – 3.5 hours;[22] (7) Ms. Paul's paralegal tasks – 3.2 hours;[23] (8) Mr. Pierce – 3.0 hours;[24]

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[17] The Court reduces Mr. Tebbutt's requested hours by 2.2 hours as follows: (1) Case Development – 4/27/15, 6/3/15, 6/11/15, 8/20/15, 0.1 hours from 10/20/15, 11/12/15, 0.3 hours from 12/20/16; (2) Discovery – 3/23/16. *See* ECF No. 292-3 at 3-4, 6.

[18] The Court reduces Ms. Matsumoto's requested hours for attorney tasks by 45.7 hours as follows: (1) Case Development – 0.1 hours from 1/6/16, 1/22/16, 1/29/16, 8/16/16, 1/9/17; (2) Pleadings – 1/4/16; (3) Discovery – 1/4/16, 1/14/16, 3/27/16, 7/22/16, 9/9/16, 1/13/17, 1/18/17; (4) Depositions – 5/20/16, 5/23/16, 6/9/16, 12/1/16, 12/8/16, 12/23/16; (5) Motions – 12/8/15, 1/15/16, 6/30/16, 5/1/17; (6) Court Appearances – 9/10/16; (7) Trial – 12/19/16, 12/20/16, 12/23/16, 1/2/17. *See* ECF No. 293-2.

[19] The Court reduces Ms. Matsumoto's requested hours for paralegal tasks by 8.7 hours as follows: (1) Case Development – 6/4/15, 6/5/15, 12/22/15, 4/12/16, 7/6/16, 4/6/17; (2) Depositions – 5/27/16, 12/30/16, 1/3/17; (3) Motions – 11/3/15, 12/8/15, 1/4/16, 8/24/16. *See* ECF No. 293-2.

[20] *See* ECF No. 292-3 at 9 (8/20/15).

[21] The Court reduces Ms. Martino's requested hours by 14 hours as follows: (1) Case Development – 12/14/16; (2) Discovery – 1/2/17, 1/4/17, 1/5/16, three entries on 1/6/17; (3) Motions – 1/6/17. *See* ECF No. 292-3 at 11.

[22] The Court reduces Ms. Paul's requested hours for attorney tasks by 3.5 hours as follows: 3/25/16, 8/24/16, 8/25/16, 8/26/16, 4/7/17, 3/16/17. *See* ECF No. 293-4.

[23] The Court reduces Ms. Paul's requested hours for paralegal tasks by 3.2 hours as follows: 5/6/16, 9/1/16, 11/10/16, 12/15/16, 8/29/17, 12/30/17 (this appears to be an inadvertent typo), 1/6/17, 1/12/17, 3/24/17, 4/12/17, 5/18/17, 5/26/17. *See* ECF No. 293-4.

(9) Mr. Martin – 0.6 hours;[25] (10) Ms. Bland – 5.2 hours;[26] and (11) Ms. Taylor – 5.3 hours.[27]

d. Duplicative Billing

The Court generally does not permit more than one attorney to bill for attending a meeting between co-counsel, a client meeting, or a meeting with opposing counsel. *Sheehan v. Centex Homes*, 853 F. Supp. 2d 1031, 1039 (D. Haw. 2011). "The duplicative entries for which client and co-counsel meetings, settlement conferences, and strategy meetings between co-counsel are not the types events for which duplicative billing is permitted." *Liberty Mut. Ins.*, 2017 WL 810277, at *12 (citing *Robinson v. Plourde*, 717 F. Supp. 2d 1092, 1099 (D. Haw. 2010)). In addition, attendance by multiple attorneys at a hearing may result in needless duplication. *See Democratic Party of Wash State v. Reed*, 388 F.3d 1281, 1287 (9th Cir. 2004) (citation omitted) ("[C]ourts ought to examine with skepticism claims that several lawyers were needed to perform a task, [ ] and should deny compensation for such needless duplication as when three lawyers

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[24] *See* ECF No. 293-6 (two entries on 6/1/15, 6/2/15).

[25] *See* ECF No. 293-6 (4/22/16, 5/18/16).

[26] *See* ECF No. 293-6 (all entries).

[27] *See* ECF No. 292-3 at 12 (9/2/15, 7/1/16, 6/23/17).

appear for a hearing when one would do.”). “‘In such a situation, the Court typically deducts the time spent by the lowest-billing attorney.’” *Id.* (citing *Seven Signatures Gen. P’ship v. Irongate Azrep BW LLC*, 871 F. Supp. 2d 1040, 1055 (D. Haw. 2012)).

The Court acknowledges, however, that duplicative preparation for attendance of certain hearings and conferences are not in and of themselves unreasonable. Nonetheless, when “a plaintiff chooses to retain more than one attorney to prosecute his or her case, the plaintiff, as the applicant for attorneys’ fees, has the burden of demonstrating that where more than one attorney is involved, the time requested reflects the distinct contribution of each attorney.” *Muegge v. Aqua Hotels & Resorts, Inc.*, Civ. No. 09-00614 LEK-BMK, 2015 WL 4041313, at *18 (D. Haw. June 30, 2015) (internal quotation marks and citation omitted).

Defendants argue that Plaintiff’s requested hours should be reduced by $54,983 for instances where more than one of Plaintiff’s attorneys billed for attendance or participation in the same event. *See* ECF No. 296 at 28. Defendants’ Exhibit “B” to the Opposition lists entries that Defendants assert constitute duplicative billing. *See* ECF No. 296-3. The Court carefully analyzed

Plaintiff's timesheets and Defendants' Exhibit "B," and finds that certain of these entries constitute non-compensable, duplicative billing.[28]

For example, Defendants argue that Plaintiff cannot recover for both Mr. Tebbutt's and Ms. Matsumoto's attendance at various court proceedings, including the hearing on Defendants' MSJ and Plaintiff's MPSJ ("MSJ hearing") and settlement conferences. *See* ECF No. 296 at 28. The Court agrees. Ms. Matsumoto indicates that the MSJ hearing is the only court proceeding for which she traveled to Hawai'i, and otherwise appeared by telephone to minimize fees. *See* ECF No. 293-1 at ¶ 19. This information, however, fails to establish for the Court Ms. Matsumoto's distinct contribution to the MSJ hearing and other court proceedings, *i.e.*, why her attendance was necessary in addition to Mr. Tebbutt's. *See Muegge*, 2015 WL 4041313, at *18. Accordingly, the Court deducts Ms. Matsumoto's time expended on court proceedings for which Mr. Tebbutt also billed.

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[28] Mr. Snyder's entries for 5/20/15, 2/25/15, and 6/14/17 are duplicative of conferences for which Mr. Tebbutt and/or Ms. Matsumoto billed. *See* ECF No.292-3 at 9. Ms. Matsumoto also frequently billed for time expended on conferences with clients, co-counsel, and/or opposing counsel in which Mr. Tebbutt participated and billed. *See, e.g.*, ECF No. 293-2 at 3 (11/21/16 "Meet & confer telephone call w/ Defendants, follow-up discussion w/ CT re settlement possibilities," 11/22/16 "Prep for and second meet & confer telephone call w/ Defendants," 12/15/16 "Call w/ CC, CT, LP, PM to discuss settlement offers and clarify proposal").

Defendants also argue that Plaintiff is not entitled to recover for Ms. Matsumoto's attendance at three depositions with Mr. Tebbutt. *See* ECF No. 296 at 28. According to Mr. Tebbutt's Declaration, Ms. Matsumoto assisted him in the preparation of all three depositions, one of which she conducted, and she attended the depositions to help him cross-reference the deponents' testimony with case documents. *See* ECF No. 292-2 at ¶ 17; *see also* ECF No. 293-1 at ¶ 17. In addition, Mr. Tebbutt asserts that Ms. Matsumoto's attendance at one of the depositions aided her preparation for the subsequent one she conducted. *See* ECF No. 292-2 at ¶ 17. The Court is satisfied with Mr. Tebbutt's offered basis for having Ms. Matsumoto accompany him to all three depositions. Accordingly, the Court finds that Ms. Matsumoto's attendance for all three depositions to be necessarily and reasonably incurred.

Regarding local counsel's duplicative attendance, the Court finds that local counsel's participation in court proceedings were necessarily and reasonably incurred. Local Rule 83.2 provides, in pertinent part: "The associated attorney shall participate in all court proceedings unless otherwise ordered by the court, but need not attend depositions or participate in other discovery." LR83.2. Given that Local Rule 83.2 requires local counsel's participation, the Court finds that Ms. Paul's time spent attending the MSJ hearing, status conferences, and settlement conferences to be necessarily and reasonably incurred. Notwithstanding

this finding, however, the Court recommends reducing Mr. Martin's time by 0.5 hours for time spent on a discovery-related call with Mr. Tebbutt and opposing counsel. *See id.*

Based on the foregoing, the Court reduces Plaintiff's requested hours expended for block-billing as follows: (1) Ms. Matsumoto's attorney tasks – 59.8 hours;[29] (2) Mr. Snyder – 3 hours;[30] and (3) Mr. Martin – 0.5 hours.[31] The Court calculated these amounts by deducting time from the lowest-billing attorney. *See Reed*, 388 F.3d at 1287. In addition, where the lowest-billing attorney's duplicative task was listed in block-billed format, the Court combed through Plaintiff's time sheets and, wherever possible, used the highest-billing attorney's designated time spent on the task.[32] Where block-billed entries made apportionment impossible, however, the Court excludes the entry altogether.[33]

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[29] The Court reduces Ms. Matsumoto's requested hours for attorney tasks by 59.8 hours as follows: (1) Case Development – 0.9 hours from 1/6/16, 11/18/16, 11/21/16, two entries on 11/22/16, 12/1/16, 3.5 hours from 12/14/16, 12/15/16, 12/27/16, 1/8/17, 1/10/17, 1/12/17, 2.1 hours from 1/13/17, 1/18/17, 2/27/17, 0.9 hours from 3/20/17; (2) Court Appearances – 9/1/16, 9/11/16, 9/12/16, 9/13/16; (3) Discovery – 10/21/15, 2/12/16.

[30] *See* ECF No. 292-3 at 9 (2/25/15, 5/20/15, 6/14/17).

[31] *See* ECF No. 293-6 at 2 (10/21/15).

[32] For example, on 1/8/17, both Mr. Tebbutt and Ms. Matsumoto participated in a client conference call to discuss the term sheet. *See* ECF No. 292-3 at 4; ECF No. 293-2 at 4. Although Mr. Tebbutt properly indicates that he spent 1.6 hours on this specific task, Ms. Matsumoto does not. Instead, Ms. Matsumoto includes

e. Block-Billed Time Entries

"Block billing refers to the practice of recording various tasks performed on a case, but entering only a total time spent collectively on those tasks, rather than entering the time spent on each discrete task." *Painsolvers, Inc. v. Statefarm Mut. Auto. Ins. Co.*, CIV. No. 09-00429 ACK-KSC, 2012 WL 25292998, at *13 (D. Haw. June 28, 2012) (citation and internal quotation marks omitted). This practice violates Local Rule 54.3(d), which requires that a memorandum in support of a motion for attorneys' fees describe "the work performed by each attorney and paralegal, broken down by hours or fractions thereof expended on each task . . . ." LR54.3(d). The Ninth Circuit has recognized a district court's authority to reduce hours that are billed in block format. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Generally, the district court "may properly impose a reduction for block billing, but it should 'explain how or why . . . the reduction . . . fairly

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multiple tasks in the same entry, and indicates that she spent a total of 5.4 hours on such tasks. This is improper block-billing, which the Court discusses in further detail below. Rather than deduct all 5.4 hours of Ms. Matsumoto's time for duplicative billings, however, the Court recommends only reducing her time by the 1.6 hours designated by Mr. Tebbutt.

[33] *See, e.g.*, ECF No. 293-2 at 3 (SM – 8.7 hours expended on 12/1/16 to ". . . prep for and attend settlement conference with court and clients, legal research re HI caselaw on prevailing party status, call w/ CC & DP, review Defendants' revised term sheet, follow-up call with clients"); *see* ECF No. 293-6 at 2 (PM – 0.5 hours expended on 10/21/15 to "participate in meet and confer w/ C Tebbutt, D. Paloutzian, P. McHenry re: objections to Plaintiff's Rule 34 inspection; review documents re: same").

balance[s] those hours that were actually billed in block format." *Id.* (quoting *Sorenson*, 239 F.3d at 1146).

Defendants argue that the Court should reduce Plaintiff's total fee award by $128,681 to account for block-billed entries by Plaintiff's timekeepers. *See* ECF No. 296-2 at 1; ECF No. 296-5. Exhibit "D" to the Opposition sets forth the entries Defendants assert are block-billed entries. *See* ECF No. 296-5. Plaintiff contends that the time entries listed in Exhibit "D" to the Opposition are either not block-billed entries or "provide sufficient detail such that the Court can identify what the timekeeper was doing and whether the time spent was reasonable." *Id.* The Court disagrees, and finds that Plaintiff's award should be reduced for block-billed entries for the reasons below.

This district court has previously declined to impose a reduction for block-billed entries. In doing so, however, the courts found that the "limited instances" of block-billing that did not prevent the court from evaluating the reasonableness of the hours expended. *See Santana v. Berryhill*, Civil No. 16-00367 ACK-KJM, 2017 WL 4211044, at *4 (D. Haw. Aug. 31, 2017), *adopted in* 2017 WL 4202153 (D. Haw. Sept. 21, 2017) (citations omitted) ("The limited instances of block-billed entries . . . do not prevent the Court from evaluating the reasonableness of the hours expended."); *Dep't of Educ. Haw. v. C.B. ex rel. Donna B.*, Civil No. 11-00576 SOM-RLP, 2012 WL 7475406, at *10 (D. Haw. Sept. 28, 2012) (citing *Ko*

Olina Dev., LLC v. Centex Homes, CV. NO. 09-00272 DAE-LEK, 2011 WL 1235548, at *11 (D. Haw. Mar. 29, 2011)) (declining to apply a percentage reduction for block billing because "[v]iewing the record as a whole, the limited of instances of block billing do not prevent the Court from evaluating the reasonableness of the hours expended."). That is not the case here.

After carefully reviewing the parties' submissions, the Court finds that 196 of the requested hours are for block-billed tasks, including some of those identified in Exhibit "D" to the Opposition. For example, Ms. Matsumoto's entry for 12/1/16 indicates that she expended 8.7 hours to perform at least seven different tasks:

> Review penalty factor docs and create spreadsheet, notes to co-counsel re same, work on draft term sheet and send to co-counsel w/ BMP notes, prep for and settlement conference with court and clients, legal research re HI caselaw on prevailing party status, call w/ CC & DP, review Defendants' revised term sheet, follow-up call with client.

ECF No. 293-2 at 3.[34] When a single entry contains multiple tasks—particularly tasks that are clearly different, such as document review, participation in a settlement conference, and legal research—the Court is unable to assess the

[34] *See also, e.g.*, ECF No. 292-3 at 9 (DS – 1/9/17 "Rev HDF opp to motion for recon. Review cases and consider reply. Begin drafting reply."); ECF No. 292-3 at 11 (AMa – 12/21/16 "meeting re witness list; consulting local rules & drafting witness list."); ECF No. 293-4 at 4 (LP – 1/18/17 "attended settlement conference w/ clients; reviewed emails, received, reviewed protective order; signed, scanned, & e-mailed to co-counsel."); ECF No. 293-6 at 2 (PM – 6/1/15 "review of photos, photo synopsis and videos of construction activities and project area; twc finalize complaint; edits to same; twc T. Pierce, S. Matsumoto and C. Tebbutt re: same").

reasonableness of the hours expended on each specific task. The Court thus applies an across-the-board reduction of 20% to Plaintiff's block-billed entries. *See also Liberty Mut. Ins.*, 2017 WL 810277, at *14 (imposing an across-the-board reduction of 20% to block-billed entries); *Painsolvers, Inc.*, 2012 WL 2529298, at *3 (reducing block-billed hours by 20%); *Signature Homes of Haw., LLC v. Cascade Sur. and Bonding, Inc.*, 2007 WL 2258725, at *3 (D. Haw. Aug. 3, 2007) (reducing block-billed hours by 20%).

Based on the foregoing, the Court reduces Plaintiff's requested hours for block-billing as follows: (1) Mr. Tebbutt – 7 hours;[35] (2) Ms. Matsumoto's attorney tasks – 25 hours;[36] (3) Mr. Snyder – 1.3 hours;[37] (4) Ms. Martino – 0.8

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[35] The Court finds that 34.9 hours of Mr. Tebbutt's requested time for Case Development is subject to a 20% reduction for block-billing as follows: (1) Case Development – 2/23/15, 5/19/15, 5/20/15, 10/4/16; (2) Pleadings – 6/1/15; (3) Discovery – 8/10/16; (4) Motions – 12/15/15, 12/31/15; (5) Court Appearances – 1/28/16, 11/30/16, 10.3 hours from 12/1/16. *See* ECF No. 292-3 at 3-12.

[36] The Court finds that 25 hours of Ms. Matsumoto's requested time for attorney tasks is subject to a 20% reduction for block-billing as follows: (1) Case Development – 8/6/15, 8/11/15, 12/14/15, 2/3/16, 12/16/16, 1/8/17, 2/22/17, 4/3/17, 4/4/17, 4/5/17; (2) Pleadings – 5/19/15, 5/29/15, 6/1/15; (3) Discovery – 2/12/16, 2/15/16, 2/16/16, 2/19/16, 2/22/16, 7/13/16, 10/6/16, 9/24/16, 1/6/17; (4) Motions – 12/7/15, 12/15/15, 6/19/16, 6/27/16, 6/28/16, 8/26/16, 8/31/16, 12/13/16; (5) Trial – 12/30/16, 1/6/17. *See* ECF No. 293-3.

[37] The Court finds that 6.6 hours of Mr. Snyder's requested time is subject to a 20% reduction for block-billed entries as follows: 5/19/15, 5/27/15, 1/9/17. *See* ECF No. 292-3 at 9.

hours;[38] (5) Ms. Paul's attorney tasks – 8.3 hours;[39] and (6) Mr. Martin – 3.7 hours.[40]

f. Unnecessary Hours Expended

Defendants contend that "[m]uch of Plaintiff's tactics were geared towards purposes not relevant to this litigation and thus were neither reasonable nor necessary." *See* ECF No. 296 at 24. Defendants fail to provide, however, specific evidence to support this contention or indicate which of Plaintiff's requested hours are unreasonable on this basis. Accordingly, the Court is not persuaded by Defendants' contention. *See Gates*, 987 F.2d at 1397-98 (recognizing that party opposing an attorneys' fees request has the burden of rebuttal that requires specific evidence challenging the reasonableness of the hours charged or the facts submitted in the requesting party's affidavits); *Moreno*, 534 F.3d at 1116 ("If opposing counsel cannot come up with specific reasons for reducing the fee

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[38] The Court finds that 4.1 hours of Ms. Martino's requested time is subject to a 20% reduction for block-billed entries as follows: 1/11/17. *See* ECF No. 292-3 at 11.

[39] The Court finds that 41.6 hours of Ms. Paul's requested time for attorney tasks is subject to a 20% reduction for block-billing as follows: 4/12/16, 5/10/16, 8/29/16, 8/30/16, 1.6 hours from 9/1/16, 12/15/16, 12/16/16, 12/19/16, 12/20/16, 12/22/16, 12/29/16, 1/6/17, 1/12/17, 1/13/17, 2/3/17, 2/14/17, 2/15/17, 2/17/17, 2/24/17, 2/27/17, 3/9/17, 3/10/17, 3/13/17, 3/14/17, 5/17/17. *See* ECF No. 293-4.

[40] The Court finds that 18.6 hours of Mr. Martin's requested time is subject to a 20% reduction for block-billed entries as follows: 5/28/15, two entries on 5/29/15, 5/31/15, two entries on 6/1/15, 8/6/15, 8/20/15, 9/9/15, 9/11/15, 9/14/15, 12/17/15, 12/31/15, 1/4/16, 1/15/16. *See* ECF No. 293-6 at 2.

request that the district court finds persuasive, it should normally grant the award in full, or with no more than a haircut").

The Court does, however, find that time spent to address counsels' failure to file documents in accordance with the Local Rules, as well as time spent to withdraw the proposed Consent Decree, was unnecessary. First, by the time the district court held a status conference to address the filing issues on August 31, 2016, Plaintiff's counsel had been repeatedly warned about needing to comply with the filing requirements in the Local Rules. *See, e.g.*, ECF Dated 8/27/15 (Corrective Entry re ECF Nos. 29, 30); ECF No. 37; ECF Dated 4/22/16 (Advisory Entry). Despite these warnings, both parties' mainland counsel continued to file documents incorrectly to the point that it forced the district court to step in and prohibit mainland counsel from filing documents electronically. This Court finds that, but for counsel's failure to comply with the Local Rules, there would have been no need for the 8/31/16 Status Conference and Plaintiff's 8/26/16 Letter. Accordingly, the Court finds that time spent on these tasks were unnecessarily incurred, and reduces Plaintiff's requested hours accordingly.[41]

Second, the Court reduces Plaintiff's requested hours for time spent to withdraw the proposed Consent Decree initially entered on April 17, 2017. 40

[41] The Court finds that the following hours were unnecessarily expended: (1) Mr. Tebbutt's collective 2.5 hours on 8/26/16 and 8/31/16, ECF No. 292-3 at 3; and (2) Ms. Paul's 1.7 hours on 8/31/16, ECF No. 293-4 at 2.

C.F.R. § 135.5 required the parties "notify the court of the statutory requirement that the consent judgment shall not be entered prior to 45 days following receipt by both the Administrator and the Attorney General a copy of the consent judgment." 40 C.F.R. § 135.5(b). The parties failed to comply with this requirement. Had the parties properly notified the district court that the Administrator and Attorney General had not yet received the proposed Consent Decree, the expense to attend the 4/10/17 Status Conference and file the Joint Motion to Withdraw Consent Decree could have been avoided. The Court thus reduces Plaintiff's requested hours accordingly.[42]

Based on the foregoing, the Court reduces Plaintiff's requested hours for time expended on unnecessary tasks as follows: (1) Mr. Tebbutt – 3.1 hours; (2) Ms. Matsumoto – 4 hours; Ms. Paul – 3.1 hours.

g. Summary of Hours Expended

Notwithstanding the foregoing deductions, this Court finds that the remaining 1,584.65 hours expended in this litigation are reasonable. The following chart is a summary of this Court's deductions and total compensable hours:

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[42] The Court finds that the following hours were unnecessarily expended: (1) Mr. Tebbutt's collective 0.6 hours on 4/10/17 and 4/12/17, ECF No. 292-3 at 5; and (2) Ms. Matsumoto's collective 4 hours on 4/11/17 and 4/12/17, ECF No. 293-2 at 12; and (3) Ms. Paul's collective 1.4 hours on 4/10/17, 4/11/17, and 4/12/17, ECF No. 293-4 at 6.

Name	Total Hours Requested	Insufficient Descriptions	Clerical Deductions	Duplicative Billings	20% Deduction from Block-Billed Entries	Unnecessary Hours Expended	Total Compensable Hours
Charles Tebbutt, Esq.	463.7	22.6	2.2		7	3.1	428.8
Sarah Matsumoto, Esq. (Attorney Tasks)	981.9	8.5	45.7	59.8	25	4	838.9
Sarah Matsumoto, Esq. (Paralegal Tasks)	15.5		8.7				6.8
Dan Snyder, Esq.	56.5	5	0.5	3	1.3		46.7
Amanda Martino, Esq.	91.9	37.9	14		0.8		39.2
Linda Paul, Esq. (Attorney Tasks)	115.5	8	3.5		8.3	3.1	92.6
Linda, Paul, Esq. (Paralegal Tasks)	3.4		3.2				0.2
Tom Pierce, Esq.	3.5		3				0.5
Peter Martin, Esq.	24.1		0.6	0.5	3.7		19.3
Andrew Mulkey	102.6						102.6
Genay Bland	5.2		5.2				0
Marisela Taylor	17.1		5.3				11.8
TOTAL HOURS	1,880.9	82	91.9	63.3	46.1	10.2	1,587.4

3. Total Lodestar Calculation

The following is a breakdown of this Court's findings as to attorneys' fees:

Name	Title	Hourly Rate	Total Hours	Total Award
Charles Tebbutt, Esq.	Attorney	$400	428.8	$171,520
Sarah Matsumoto, Esq.	Attorney	$200	838.9	$167,780
Sarah Matsumoto, Esq.	Paralegal Tasks	$100	6.8	$680
Dan Snyder, Esq.	Attorney	$200	46.7	$9,340
Amanda Martino, Esq.	Attorney	$150	39.2	$5,880
Linda Paul, Esq.	Attorney	$350	92.6	$32,410
Linda Paul, Esq.	Paralegal Tasks	$100	0.2	$20
Tom Pierce, Esq.	Attorney	$300	0.5	$150
Peter Martin, Esq.	Attorney	$260	19.3	$5,018
Andrew Mulkey	Law Clerk	$125	102.6	$12,825
Genay Bland	Paralegal	$105	0	$0
Marisela Taylor	Paralegal	$95	11.8	$1,121
		TOTAL	**1,587.4**	**$406,744**

The Court finds the above amounts reasonable, and declines to adjust this lodestar amount. Accordingly, the Court awards Plaintiff $406,744 in attorneys' fees.

B. Expert Witnesses' Fees

In addition to attorneys' fees, § 1365(d) allows for the recovery of reasonable expert witness fees. *See* 33 U.S.C. § 1365(d). Defendants assert that this Court must make a separate finding that an award of expert witness fees is "appropriate." *See* ECF No. 296 at 34. The Court disagrees. Section 1365(d) provides for an award of "costs of litigation (including reasonable attorney and

expert witness fees) . . . whenever the court determines such award is appropriate." 33 U.S.C. § 1365(d). As set forth above, this Court has determined that an award is appropriate in this case and, therefore, Plaintiff is entitled to "costs of litigation." Pursuant to the plain language of § 1365(d), this includes attorneys' fees *and* expert witness' fees. Like an attorneys' fees award, however, an expert witness' fees award must be reasonable. *See* 33 U.S.C. § 1365(d).

In addition, Defendants contend that the documentation supporting Plaintiff's request for expert fees lack foundation because the experts did not submit separate declarations and, therefore, the Court should disregard them entirely. *See* ECF No. 296 at 35. In his Declaration, Mr. Tebbutt authenticates Exhibit "8," which includes the invoices from Plaintiff's experts, all of which are addressed to Mr. Tebbutt's law office. *See* ECF No. 292-2 at ¶ 39; ECF No. 292-10 at 8-21. Defendants cite no legal authority for their contention that each expert for whom fees are requested must submit a separate declaration. Nor do Defendants present any basis for this Court to question Mr. Tebbutt's Declaration as to the truth or accuracy of the invoices in Exhibit "8." Accordingly, the Court does not agree with Defendants' contention to disregard the experts' invoices.

Plaintiff's request expert fees for three experts as follows: (1) $79,258.20 for Dave Erickson ("Mr. Erickson"), (2) $ 1,850 for Byron Shaw ("Dr. Shaw"),

and (3) $10,600 for Michael Russelle ("Dr. Russelle"). *See* ECF No. 292-2 at ¶ 39. The Court addresses each request below.

1. Mr. Erickson

Plaintiff seeks $79,258.20 in expert fees incurred for Mr. Erickson. *See* ECF No. 292-2 at ¶ 39. Plaintiff provides the Court with little detail as to Mr. Erickson's expertise and his specific contribution to this case. Notwithstanding the lack of information in the Motion, the Court is familiar with Mr. Erickson's expertise in the field of hydrogeology/geology based on Plaintiff's prior submissions. *See, e.g.*, ECF No. 39. Although Defendants correctly assert that Mr. Erickson did not testify at trial because of the parties' settlement, the Court nevertheless finds that Mr. Erickson provided expert services that furthered Plaintiff's position in this case.

For example, Mr. Erickson submitted a declaration in support of Plaintiff's Motion to Compel Site Inspection, which this Court granted. *See id.* Mr. Erickson also submitted a declaration in support of Plaintiff's MPSJ and in opposition to Defendants' MSJ. In the MSJ Order, the district court specifically referenced the opinions in Mr. Erickson's declaration, and relied upon them in concluding that there were questions of material fact. *See* ECF No. 253 at 32-36. While this precluded the district court from granting Plaintiff's MPSJ as to liability, it likewise precluded the district court from granting Defendants' MSJ on Plaintiff's

claims. The Court thus finds that the expert fees for Mr. Erickson were reasonably incurred, and that Plaintiff is entitled to recover such fees. *See Cmty. Ass'n for Restoration Env't v. Henry Bosma Diary*, No. CY-98-3011, 2001 WL 1704240, at *21 (E.D. Wash. Feb. 27, 2001) (considering importance of the expert's expertise in deciding to award requested expert fees); *but cf. San Francisco Baykeeper v. W. Bay Sanitary Dist.*, No. C-09-5676 EMC, 2011 WL 6012936, at *14 (N.D. Cal. Dec. 1, 2011) (citing *Henry Bosma*, but declining to award interim expert fees based on finding that the expert's testimony had "minimal impact" on the court's granting of partial summary judgment); *see also Am. Canoe Ass'n v. City of Louisa*, 683 F. Supp. 2d 480, 498-500 (E.D. Ky. 2010) (considering each expert's value and contribution to the case in determining whether to award the plaintiff its requested expert fees).

Defendants assert that Mr. Erickson's invoices include time spent on tasks unrelated to this litigation. *See* ECF No. 296 at 36. The Motion and Mr. Tebbutt's Declaration, however, represent to this Court that expert fees Plaintiff requests for Mr. Erickson are limited to time spent working on this case. *See* ECF No. 292 at 28 n.8; ECF No. 292-2 at ¶ 38. The Court finds no reason to question the truth of Mr. Tebbutt's Declaration. Accordingly, the Court awards Plaintiff $79,258.20 in expert fees incurred for Mr. Erickson.

2. Dr. Shaw and Dr. Russelle

Plaintiff requests expert fees in the amount of $1,850 and $10,600 incurred for Dr. Shaw and Dr. Russelle, respectively. *See* ECF No. 292-2 at ¶ 39. The Motion contains insufficient information for the Court to determine the expertise Drs. Shaw and Russelle contributed to Plaintiff's case. Indeed, Plaintiff does not even provide Dr. Shaw's and Dr. Russelle's areas of expertise or the specific services rendered. Although Plaintiff's Reply belatedly indicates that both are "soils experts," as a whole, Plaintiff's submissions fail to provide this Court with satisfactory evidence that the expert fees incurred for Drs. Shaw and Russelle were reasonably incurred. Accordingly, the Court denies Plaintiff's expert fee request as to Drs. Shaw and Russelle.

C. Other Costs

Lastly, in addition to attorneys' and expert fees, Plaintiff also seeks to recover $29,514.74 in other costs. *See* ECF No. 292-10 at 7; ECF No. 293-6 at 4. "The Ninth Circuit permits the recovery of out-of-pocket expenses that would normally be charged to a fee-paying client." *San Francisco Baykeeper*, 2011 WL 6012936, at *14 (citing *Harris v. Marheofer*, 24 F.3d 16, 19 (9th Cir. 1994)) (addressing the plaintiff's requests for "other litigation expenses" under § 1365(d)). "These costs and expenses 'are subject to a test of relevance and reasonableness in amount . . . . The judge must look at the practical and reasonable needs of the

party in the context of the litigation.'" *Id.* (other citation omitted) (quoting *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362 (N.D. Cal. 1995)).

1. Electronic Legal Research

The only cost to which Defendants object is the $2,049.51 amount Plaintiff requests for electronic legal research. Defendants assert that such costs are "generally considered overhead to be reflected in a law firm's hourly rate, and are not properly included in requests for attorneys' fees." ECF No. 296 at 34 (citation and internal quotation marks omitted). Contrary to Defendants' assertion, however, costs for electronic legal research are recoverable "if such expenses are usually billed in addition to the attorney's hourly rate." *See Trs. of Constr. Indus. & Laborers Health & Welfare trust v. Redland Ins. Co.*, 460 F.3d at 1253, 1257-58 (9th Cir. 2006); *see also Sound v. Koller*, Civil No. 09-00409 JMS/KSC, 2010 WL 1992194, at *8 (D. Haw. May 19, 2010) (citing *Redland Ins.*) (awarding costs for electronic legal research pursuant to 42 U.S.C. § 1988); *Am. Canoe Ass'n*, 683 F. Supp. 2d at 501 ("Since TPM ordinarily bills its clients separately for electronic research in addition to its hourly rate, it is reasonable to award American Canoe fees for this expense [under § 1365(d)]."). Here, Mr. Tebbutt's Declaration indicates that Mr. Tebbutt's firm billed Plaintiff costs for electronic legal research in addition to its hourly rates. *See* ECF No. 292-2 at ¶ 39. Based on this Court's

familiarity with the case, the Court finds the requested amounts to be reasonable. Accordingly, the Court awards Plaintiff $2,049.51 for electronic legal research.

2. Meals, Copies, and Long-Distance Telephone Calls

Plaintiff requests (1) $2,299.31 for meals, (2) $6,443.14 for copies, and (3) $438.95 for long-distance telephone calls. Although these are out-of-pocket expenses that are generally recoverable, the Court declines to award them here. First, the Court finds Plaintiff's request for meal expenses to be excessive. Second, Plaintiff's supporting documentation contains insufficient information for this Court to analyze whether such costs were reasonable. For example, Plaintiff requests $980.05 for meals on 3/31/16 with a bare description of "meals, site inspec attys & expert." *See* ECF No. 292-10 at 3. In another meal entry, Plaintiff requests $141.77 for "meals CT and SM SJ hearing." *Id.* Without more information, the Court has no basis to find that Plaintiff's requested meal expenses are reasonable.

Plaintiff's request for copying and long-distance phone calls are similarly lacking in sufficient detail to make an assessment as to reasonableness. Although Plaintiff often specifies the number of pages copied at the price charged per page, Plaintiff fails to include a description of the document or otherwise explain why such copies were necessary. As to the costs for long-distance calls, Plaintiff merely lists the month and year for the call with the associated charge, and does

not provide to whom the calls were made or the reason for the call. Because Plaintiff fails to provide this Court with sufficient information to assess the reasonableness of Plaintiff's request for meals, copies, and long-distance telephone calls, the Court denies such costs. *See BlueEarth*, 2015 WL 881577, at *20 (denying messenger delivery and postage costs "because other than dates and associated costs, there [was] no description of the postage or messenger expenses[,]" which precluded an assessment as to reasonableness).

3. Filing Fees, Postage, Supplies, and Travel

Plaintiff also requests (1) $1,263.90 for filing fees, (2) $848.37 for postage,[43] (3) $88.08 for supplies, and (4) $16,076.58 for travel. Based on a review of Plaintiff's documentation, and given the lack of objection from Defendants, the Court finds these amounts to be reasonable. Accordingly, the Court awards Plaintiff a total of $18,276.93 for the above-listed costs. In addition, Plaintiff requests $40.25 for costs incurred through Ms. Paul's office. *See* ECF No. 293-4 at 6; ECF No. 293-3 at ¶¶ 10-11. Neither the Motion nor Ms. Paul, however, describes for what these costs were incurred. Because the Court is unable to assess the reasonableness of this request, the Court denies it.

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[43] This amount includes Plaintiff's request for $3.52 for "copies and postage for courtesy copies of Pro Hac Vice Motion to be mailed to USDC." ECF No. 293-6 at 4. Notwithstanding the Court's foregoing finding as to Plaintiff's request for copying costs, the Court finds that, as a whole, this request is reasonable.

In summary, the Court awards costs to Plaintiff in the amount of $20,326.44.[44]

CONCLUSION

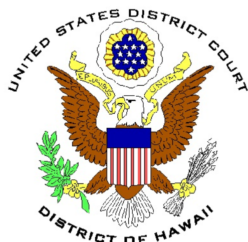
Based upon the foregoing, the Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion for Attorneys' and Expert Witnesses' Fees and Costs. Specifically, the Court GRANTS Plaintiff's request for attorneys' fees, expert witnesses' fees, and costs as follows:

(A)	Attorneys' Fees	$406,744.00
(B)	Expert Witnesses' Fees	$79,258.20
(C)	Costs	$20,326.44
	TOTAL	**$506,328.64**

The Court DENIES Plaintiff's Motion in all other respects.

IT IS SO ORDERED.

Dated: Honolulu, Hawai'i, November, 13, 2017.



/S/ Kenneth J. Mansfield
Kenneth J. Mansfield
United States Magistrate Judge

Friends of Maha'ulepu, Inc. v. Hawai'i Dairy Farms, LLC, et al., CV 15-00205 KJM; Order Granting in Part and Denying in Part Plaintiff's Motion for an Award of Attorneys' and Expert Witnesses' Fees and Costs

[44] This amount includes: (1) $2,049.51 for electronic legal research; (2) $1,263.90 for filing fees; (3) $848.37 for postage; (4) $88.08 for supplies; and (5) $16,076.58 for travel.