

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

|                                  |                              |
|----------------------------------|------------------------------|
| GARY CERASO,                     | :                            |
| Plaintiff,                       | :                            |
|                                  | :                            |
| -vs-                             | : Civ. No. 3:01 CV 193 (PCD) |
|                                  | :                            |
| MOTIVA ENTERPRISES, L.L.C., STAR | :                            |
| ENTERPRISES, INC., STAR          | :                            |
| ENTERPRISE, TEXACO, INC.,        | :                            |
| Defendants.                      | :                            |

RULING ON PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES

Plaintiff moves for attorneys’ fees and costs pursuant to 15 U.S.C. § 2805(d)(1)(C). The motion is granted in part.

**I. BACKGROUND**

Plaintiff, a franchisee as that term is defined in the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2801(4), alleged that defendants’ termination of his franchise violated the Petroleum Marketing Practices Act (PMPA), 92 Stat. 322, 15 U.S.C. § 2801 *et seq.* Defendant Motiva is a franchisor, *see* 15 U.S.C. § 2801(3), and defendant Texaco is a refiner, *see* 15 U.S.C. § 2801(5). One of the underlying issues in the PMPA violation was a zoning dispute before the town of Fairfield Zoning Board of Appeals (ZBA), in which plaintiff was represented by Attorney John Fallon. Defendants were found to have violated 15 U.S.C. § 2802(b) in terminating his franchise and were enjoined from terminating or non-renewing plaintiff’s franchise or affecting plaintiff’s occupation and/or use of the premises in which he operated his franchise. Having prevailed in the underlying action, plaintiff now moves for attorneys’ fees and costs.

## II. JURISDICTION

Defendants filed a notice of appeal as to the merits of the underlying judgment. Such notice usually divests a District Court of jurisdiction over the aspects of the case on appeal. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225 (1982). However, a claim for attorneys' fees is collateral to the merits of the underlying judgment. *See White v. N.H. Dep't of Employment Sec.*, 455 U.S. 445, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982). There thus is jurisdiction over the present issue of an award of attorneys' fees.

## III. DISCUSSION

Plaintiff argues that he is entitled to an award of attorneys' fees and costs of \$93,908.73 and provides his time records in support of his motion. Defendants respond that the amount sought is unreasonable because it includes claims for time spent by Fallon, who is not an attorney in the present case, and time spent by a non-attorney Michael Fox. Defendants also respond that the time records are not sufficiently detailed to justify an award.

"If the franchisee prevails . . . , such franchisee shall be entitled . . . to reasonable attorney and expert witness fees to be paid by the franchisor."<sup>1</sup> 15 U.S.C. § 2805(d)(1)(C).<sup>2</sup> *See Jones v. Crew Distrib. Co., Inc.*, 984 F.2d 405, 407 (11th Cir. 1993)("a prevailing party . . . must be able to point to a resolution of the dispute which changes the legal relationship between [him]self and the defendant").

As PMPA is a fee shifting statute, reasonable attorneys' fees are determined using the lodestar

---

<sup>1</sup> 15 U.S.C. § 2805(d)(1)(C) provides for an award of attorneys' fees against a franchisor, thus the award is by definition limited to Motiva.

<sup>2</sup> There is no dispute that plaintiff is a prevailing party for purposes of 15 U.S.C. § 2805(d)(1)(C).

method.<sup>3</sup> See *Quarantino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999)(applying lodestar method in Title VII claim); see also *Zacharias v. Shell Oil Co.*, 627 F. Supp. 31, 33-34 (E.D.N.Y. 1984)(applying lodestar method to PMPA attorneys' fees claim). In calculating the lodestar, excessive, redundant or otherwise unnecessary hours are excluded, in addition to those hours spent dedicated to severable unsuccessful claims. See *Quarantino*, 166 F.3d at 425.

Mindful of the aforementioned standard, the relevant determinations for purposes of this ruling are (1) the time spent on the case, (2) the appropriate hourly rate by which fees will be computed and (3) the claim for costs involved in the case.

#### **A. Time Spent on the Case**

Before quantifying the reasonable time spent on the case, it is first necessary to establish whose time may be factored into the determination. Defendants take issue with the inclusion of time spent by Fallon on the proceedings before the ZBA and Fox in an award of attorneys' fees.

Fallon has filed no appearance for plaintiff in the present case, and plaintiff has provided no evidence that his involvement was more than incidental to his representation in litigation before the ZBA. Plaintiff replies "that a large portion of Mr. Fallon's time was dedicated solely to resolving matters for purposes of this litigation" or that "there was extensive negotiation, litigation and discussion about the admissibility of the settlement with the Town, Motiva's bad faith refusal to participate in that agreement

---

<sup>3</sup> The twelve factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), provide a useful guide for determining the appropriate lodestar figure. Those factors include (1) time and labor required; (2) novelty and difficulty of the questions; (3) skill requisite to perform the legal services properly; (4) preclusion of employment as a result of accepting the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of the relationship with the client; and (12) awards in similar cases.

and the effect of those two facts on the present litigation.” This does not establish his entitlement to attorneys’ fees under the PMPA. The franchisee “is only entitled to the attorney and expert witness fees that relate to his PMPA claim.” *Jones*, 984 F.2d at 409. Time spent by an attorney involved in a state proceeding may not be characterized as relating to the PMPA claim and will not be included in an award of attorneys’ fees.

Fox provided non-lawyer support services to Attorneys Barr and Morgan, apparently in the capacity of legal assistant or paralegal. Time spent by non-lawyers may be included in an award of attorneys’ fees. *See U.S. Football League v. Nat’l Football League*, 887 F.2d 408, 416 (2d Cir. 1989). It is of no moment that the non-lawyer support was provided by an outside service rather than a non-lawyer employed by the firm.

The fact that Mr. Fox’s services may be includable does not require that they be included. The documentation of hours must adequately support an award of fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 433, 429, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). The documentation provided by Fox in support of the award for attorneys’ fees states “As requested, my best review of the file is that a total of \$16,610.00 was billed up to November 30, 2001. . . . I have concluded that a total of \$11,750.00 is directly related from the time of termination.” Attached thereto is a consulting service agreement for services rendered in the present case and monthly invoices from December 2000 to November 2001. The monthly invoices include a prominent disclaimer stating that “[t]his invoice is a compiled list of what was done during the month and is not intended to be an itemized, day-by-day accounting. The total hours at the end represent the entire time spent during the month as to all work performed.” The claimed entitlement for fees during the period is 151.1 hours. A monthly summary is not of sufficient

specificity to permit an assessment of the work done. The only invoices that are deemed sufficiently specific account for 9.1 hours, specifically those invoices limited to one or two entries with a sufficiently detailed description to justify the time expenditure claimed.

Proceeding to a review of the hours claimed by Attorneys Albert Barr and John Morgan, the time sheets are of sufficient specificity, notwithstanding redactions, to grant the hours requested as claimed. The total hours spent are reasonable for a PMPA and the underlying zoning issue. Attorney Barr is found to have spent 36.7 hours in the present litigation. Attorney Morgan has spent 271.9 hours on the present litigation.

#### **B. Appropriate Hourly Rate**

Having determined the reasonable hours expended on the litigation, it is next necessary to determine the applicable rate. Fee applicants must “produce satisfactory evidence — in addition to the attorneys’ own affidavits — that the requested rates are in line with those prevailing in the community for similar lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The award may be based in part on knowledge of hourly rates charged in a community and is not limited to the submitted evidence. *Miele v. N.Y. State Teamsters Conf. Pension & Ret. Fund*, 831 F.2d 407, 409 (2d Cir. 1987). There is no substantiation of the hourly rates requested. Rates therefore will be assigned based on knowledge of rates charged by counsel in this District. *See Smart SMR of N.Y., Inc., v. Zoning Comm’n of Stratford*, 9 F. Supp. 2d 143, 150 (D. Conn.1998); *Evans v. Conn.*, 967 F. Supp. 673, 691-92 (D. Conn.1997). Thus, the Court finds the following rates to be reasonable: Attorney Barr - \$225.00/hour; Attorney Morgan - \$150.00/hour and Mr. Fox - \$75.00/hour. Applying the rates to the

time spent on the present litigation, plaintiff is entitled to an award of \$49,725.

### **C. Costs**

Plaintiff argues that he is entitled to \$5,901.65 in costs in addition to his attorneys' fees. Plaintiff filed a bill of costs with the Court, which was denied for failure to specify costs claimed. Plaintiff filed a second bill of costs, which was again denied without prejudice to refile pending resolution of the appeal.

The present motion was submitted in addition to the bill of costs. The costs claimed are duplicative of the costs claimed through the bill of costs. D. CONN. L. CIV. R. 17(a) provides that

[a]ny party who seeks costs in the District Court shall, within ten (10) days after the District Court judgment becomes final due to the expiration of the appeal period, as defined by Fed. R. App. P. Rule 4, or within ten (10) days after the issuance of a mandate by the federal appellate court, file with the Clerk and serve on all other parties a verified bill of costs . . . setting forth each item of cost that is claimed.

The present motion does not meet the requirements of D. CONN. L. CIV. R. 17(a). Plaintiff's motion for attorneys' fees does not constitute a verified bill of costs. It is also premature as the appeal is pending before the Court of Appeals, thus no mandate has issued to date. The motion for costs is denied.

### **IV. CONCLUSION**

Plaintiff's Motion for Attorneys' Fees (Doc. 55) is **granted in part**. Defendant Motiva is ordered to pay \$49,725 in attorneys' fees.

SO ORDERED.

Dated at New Haven, Connecticut, May \_\_\_\_, 2002.

---

Peter C. Dorsey  
United States District Judge