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Attorneys for Recorder David Stevens

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

ARIZONA ALLIANCE FOR RETIRED AMERICANS, INC. and STEPHANI STEPHENSON, | CASE NO: CV2022-00518

Plaintiffs,

**RECORDER STEVENS'
OPPOSITION TO APPLICATION
FOR FEES AND COSTS**

v.

TOM CROSBY, ANN ENGLISH, and PEGGY JUDD, in their official capacities as the Cochise County Board of Supervisors; DAVID STEVENS, in his official capacity as the Cochise County Recorder; and LISA MARA, in her official capacity as the Cochise County Elections Director,

Defendants.

1 The Cochise County Attorney's office pays attorneys a starting salary of \$66,000
2 a year.¹ For two weeks of work, Plaintiffs ask this Court to award them double this
3 amount - enough to keep an attorney employed in this community practicing for two
4 years. This is the very definition of an unreasonable fee. *See Blum v. Stenson*, 465 U.S.
5 886, 897 (1984) (cleaned up) (“[A] reasonable attorney's fee is one that is adequate to
6 attract competent counsel, but that does not produce windfalls to attorneys.”), *see also*
7 Pls.’ Mot. 1:7-11 (acknowledging that ARS 16-602 provides only for an award of
8 reasonable fees).

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10 “[T]he traditional measure for a fee award in public rights litigation is the
11 reasonable hourly rate used in the community for similar types of cases.” *Thompson v.*
12 *Corry*, 231 Ariz. 161, 165 (Ct. App. 2012).² Plaintiffs’ requested windfall award of fees
13 and costs must be denied for at least three reasons. **Firstly**, Plaintiffs have failed to meet
14 their burden of proving that the hourly rates they seek to impose are in line with the
15 reasonable hourly rates charged in Cochise County for similar types of cases. **Secondly**,
16 Plaintiffs’ requested rates are not, in fact, in line with the reasonable hourly rates charged
17 in Cochise County for similar work. **Thirdly**, Plaintiffs seek recovery of (i) costs not
18 properly taxable against the County and (ii) recovery of costs unreasonably expended.
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25 ¹ See https://www.glassdoor.com/Job/bisbee-az-attorney-i-jobs-SRCH_IL.0.9_IC1133964_KO10.20.htm?src=GD_JOB_AD&rdserp=true&srs=EI_JOBS&jl=1008303738734&ao=1136043&s=21&guid=00000184c69b72bbbf772c0303adca88&pos=101&t=ESR&vt=w&uido=9DA1A1AD1B6C680E92403A546A0D79DF&cs=1_66ea2c5f&cb=1669779387545&jobListingId=1008303738734&jrtk=3-0-1gj39mt0kihnb801-1gj39mt1qi17g800-b113cec86a593be2- (last accessed 11/29/22).

28 ² Compare with *Schweiger v. China Doll Rest.*, 138 Ariz. 183, 187 (Ct. App. 1983) (contrasting this rule with the rule for fee awards in corporate and commercial litigation where greater weight is placed on the rate the client agreed to pay).

1 **I. Plaintiffs have failed to meet their burden of proving that the hourly rates**
2 **they seek to impose are in line with the reasonable hourly rates charged**
3 **in Cochise County for similar types of cases.**

4 “[T]he burden is on the fee applicant to produce satisfactory evidence -- in addition
5 to the attorney's own affidavits -- that the requested rates are in line with those prevailing
6 in the community for similar services[.]” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984),
7 *see also Prescott v. Chino Valley*, 163 Ariz. 608, 623 (Ct. App. 1989) (“We believe that
8 the trial court was justified in holding the claim for fees insufficiently supported with
9 adequate detail.”),³ *Schweiger v. China Doll Rest.*, 138 Ariz. 183, 189 (Ct. App. 1983)
10 (looking to U.S. Supreme Court precedent for guidance in determining reasonableness).

11 Despite this rule, the requested rates are supported only by a conclusory assertion
12 from one of Plaintiffs’ attorneys that the “rates are in line with standard rates of
13 comparable firms in Arizona.” Branch Dec. ¶ 12. In line with the above authorities, this
14 is insufficient to meet Plaintiffs’ burden of establishing reasonableness as a matter of law
15 and Plaintiffs’ requested fee award must therefore be completely rejected. Further, the
16 relevant “community” is not Arizona, but Cochise County, because a community is a
17 region such as a city or metropolitan area. *See Excel Fortress, Ltd. v. Wilhelm*, 2019 U.S.
18 Dist. LEXIS 180856, at *14 (D. Ariz. Oct. 18, 2019) (“the rates charged ... are reasonable
19 rates in the Phoenix market”), *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz.
20 344, 356 (Ct. App. 2006) (expert opinion sufficient to support superior court finding that
21 rates requested were in line with “the prevailing hourly rates in the Phoenix
22 community[.]”), *Ballentine’s Law Dictionary*, 3rd Ed. (defining a “community” as a
23 “town; a municipality; a district; a neighborhood”).

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27 ³ Affirmed in part, vacated in unrelated part by *Prescott v. Chino Valley*, 166 Ariz. 480, 486 (1990) (“We affirm the
28 decisions of the trial court and the court of appeals that Chino Valley's transaction privilege tax is not null and void
 for violating the open meeting law. However, we vacate those portions of the court of appeals' opinion that are
 inconsistent with our discussion of the open meeting law issue.”).

1 **II. Plaintiffs' requested hourly rates are not in line with the reasonable rates**
2 **charged in Cochise County for similar services.**

3 Fee awards "need not equal or relate to the attorney fees actually paid or
4 contracted." *Flood Control Dist. v. Paloma Inv. Ltd. P'ship*, 230 Ariz. 29, 50 (Ct. App.
5 2012), *see also Tucson Estates Prop. Owners Ass'n v. McGovern*, 239 Ariz. 52, 55-56
6 (Ct. App. 2016) (purpose of fee shifting statutes is not to make litigants whole but merely
7 to mitigate the burden of establishing a just claim or defense). Rather, what constitutes a
8 reasonable rate for the purposes of a fee award is based upon what (i) a reasonable rate is
9 (ii) for similar work in the community. *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984),
10 *City of Tempe v. State*, 237 Ariz. 360, 368 (Ct. App. 2015).

11 The Cochise County Attorney's office performs similar work in the community.
12 Including the cost of salaries and overhead, its cost per hour to provide legal services is
13 well under \$100/hr.⁴ The United States Attorney's Office ("USAO") publishes an
14 attorney's fees matrix setting forth the presumptively reasonable hourly rates for fee
15 awards made to private counsel in cases against the federal government in the District of
16 Columbia.⁵ Such cases, of course, are often of a political nature and attract excellent
17 counsel. As explained by the USAO: "The matrix is intended for use in cases in which a
18 fee shifting statute permits the prevailing party to recover 'reasonable' attorney's fees.
19 *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. §
20 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice
21 Act)." In other words, cases of a similar nature and complexity subject to similar fee
22 shifting provisions. *See Blum v. Stenson*, 465 U.S. 886, 893 (1984) (statute authorizing
23 fee awards under Civil Rights Act is based on similar fee shifting statutes used around
24 the country for "complex Federal litigation[.]").

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⁴ *See Barth v. Cochise Cty.*, 213 Ariz. 59, 64-65, 138 P.3d 1186, 1191-92 (Ct. App. 2006) (reasonable fees for Cochise County Attorney, including overhead, are \$52.52 per hour).

⁵ *See* <https://www.justice.gov/file/1461316/download>.

1 Prices for a wide basket of goods and services are, on average, 46.5% less in
2 Bisbee than in Washington, D.C.⁶ Adjusted for lesser costs in the local community, the
3 reasonable hourly rates for each attorney according to this matrix are as follows:
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5 Ms. Branch (10 years experience): **\$246.34/hr.**

6 Ms. Madduri and Mr. Arellano (8-10 years experience): **\$241.82/hr.**

7 Ms. DiBrell, Ms. Andrews, Ms. Ford and Mr. Cohen (4-5 years experience): **\$203.30/hr.**
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10 Applying these rates yields an award of fees in the amount of **\$61,675.14** and,
11 accordingly, this is the maximum amount that should be awarded.
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13 The rates calculated by this method are entirely in line with the Court of Appeals'
14 holding that a "reasonable basis" existed to find that the prevailing "market rate" for work
15 such as that performed by two assistant attorneys general would be \$300 an hour in the
16 Phoenix market. *City of Tempe v. State*, 237 Ariz. 360, 368 (Ct. App. 2015). As Plaintiffs
17 have sought fees under the private attorney general doctrine, they can hardly dispute that
18 *City of Tempe* involved a fee award for similar types of work. Pls.' Mot. 5:6-7. Nor can
19 they dispute that the attorneys involved in *City of Tempe* were similarly, indeed even
20 more, qualified - one had twenty-five years and one had over fourteen years of
21 experience. *City of Tempe* at 368. The only thing different is the market – Phoenix is
22 25.9% pricier than Cochise County.⁷
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25 ⁶ See <https://www.bestplaces.net/cost-of-living/washington-dc/bisbee-az/1> ("Overall, Bisbee, Arizona is 46.5%
26 cheaper than Washington, District of Columbia."), compare also https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-results/?action=perdiems_report&state=DC&fiscal_year=2023&zip=&city= (per diem
27 reimbursement rates for D.C.) with https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-results/?action=perdiems_report&state=AZ&fiscal_year=2023&zip=&city= (per diem expenses for all locations in
28 Arizona without specified rates such as Cochise County).

⁷ See <https://www.bestplaces.net/cost-of-living/phoenix-az/bisbee-az/50000> ("Overall, Bisbee, Arizona is 25.9%
cheaper than Phoenix, Arizona.")

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing has been served on the other parties to this matter pursuant to the applicable rules of procedure.

By: /s/Yuka Bacchus

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