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Appeal Filed by [PIZZA HUT v. PANDYA](#), 5th Cir., January 24, 2023
2022 WL 18456981

Only the Westlaw citation is currently available.

United States District Court,
E.D. Texas, Texarkana Division.

PIZZA HUT, LLC, as successor-in-
interest to PIZZA HUT, INC., Plaintiff,

v.

RONAK FOODS, LLC, ET AL., Defendants,

and

RONAK CAPITAL, LLC, Intervenor.

CIVIL ACTION NO. 5:21-CV-00089-RWS

I

Filed 12/22/2022

ORDER

ROBERT W. SCHROEDER III UNITED STATES
DISTRICT JUDGE

*1 Before the Court is Pizza Hut's Motion for Attorney Fees. Docket No. 404; *see also* Docket Nos. 418 and 424. Defendants oppose this motion. Docket No. 416; *see also* Docket No. 420. In the parties' briefs, the amount of the claim is disputed. Also before the Court is Pizza Hut's Partially Opposed Motion for Bill of Costs. Docket No. 407. Defendants oppose Pizza Hut's request for certain costs arising from printing and copying. Docket No. 415.

For the reasons explained below, the Court finds that Pizza Hut's motion for attorney's fees should be **GRANTED** and awards attorney's fees to Pizza Hut in the amount of \$4,332,504.24. The Court further finds that Pizza Hut's motion for bill of costs should be **GRANTED-IN-PART** and awards costs to Pizza Hut in the amount of \$57,186.87.

I. BACKGROUND

This litigation has been hard fought for over three years now. It involves a franchise dispute raising allegations of breach of contract, various violations of the Lanham Act, and various counterclaims (including fraud, breach of contract and tortious interference with prospective business relations).

See Docket No. 401. It required 20 depositions, voluminous discovery, and very extensive motions practice. Millions of dollars were at stake and the importance of this case to the parties is well reflected in the lengthy docket and record. Following a five-day bench trial, the Court ultimately found Pizza Hut to be the prevailing party and awarded damages and fees. Docket No. 401 at 106; Docket No. 414 at 1.

In its amended final judgment, the Court ordered that Pizza Hut was entitled to reasonable and necessary attorney's fees, costs, and expenses in an amount to be determined. Docket No. 414. Now, Pizza Hut has put forth evidence to support its position that it is entitled to fees in the amount of \$4,332,504.24. *See* Docket No. 405. Defendants contest the amount of the attorney's fees sought and argue that the amount should be reduced by as much as 70 percent. Docket No. 416 at 2–3 (seeking a reduction of a “reasonable amount”); Docket No. 420; Docket No. 441 at 15:25–16:2 (stating that a “70-percent reduction” is sought in Defendants' motion). On September 14, 2022, the Court held a hearing on the matter. Docket No. 441. Now, having considered the parties' respective arguments and evidence presented, the Court issues this order.

II. MOTION FOR ATTORNEY'S FEES

The parties agree that Texas law governs the contracts at issue here. *See generally* Docket Nos. 404 and 416. In Texas, and in federal courts situated in Texas, a prevailing party may recover its attorney's fees where recovery of the attorney's fees are legally authorized and the requested attorney's fees are reasonable and necessary for the legal representation obtained. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 487 (Tex. 2019) (citations omitted). Such fee shifting is “legally authorized” where a statutory or contractual authority allows it. *Id.* To determine if the requested attorney's fees are reasonable and necessary, Texas courts frequently apply the lodestar method. *See id.* at 490.

*2 Application of the lodestar method involves two steps. First, the lodestar (or base number) is calculated by determining the reasonable hours worked multiplied by a reasonable hourly rate. *Id.* at 501. The fee claimant bears the burden of proving sufficient evidence for both the reasonable hours and the reasonable rate. *Id.* Sufficient evidence includes evidence of (1) the particular services performed, (2) who performed those services, (3) an approximate time at which those services were performed, (4) the reasonable amount of time to perform those services, and (5) the reasonable hourly

rate for each person performing those services. *Id.* at 501–02. And second, the Court determines whether an upwards or downwards adjustment is appropriate. *Id.* The lodestar amount, however, is presumptively reasonable and should only be modified in exceptional cases. *El Apple I, Ltd. V. Olivas*, 370 S.W.3d 757, 765 (Tex. 2012).

To determine the adjustment amount of an exceptional case, courts may consider various factors, including: (1) time and labor required; (2) novelty and difficulty of issues; (3) skill required; (4) loss of other employment in taking the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by client or circumstances; (8) amount involved and results obtained; (9) counsel's experience, reputation, and ability; (10) case undesirability; (11) nature and length of relationship with the client; and (12) awards in similar cases. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Factors that were accounted for when calculating the lodestar amount should not be counted twice when determining whether an upwards or downwards adjustment is justified. *Rohrmoos*, 578 S.W.3d at 501–02. With this legal framework in mind, the Court considers the parties arguments.

A. The lodestar amount in this case is \$4,332,504.24.

As an initial matter, the Court notes that the parties do not dispute that fee shifting is legally authorized in this case. The Court, therefore, focuses its analysis on determining the attorney's fees that are reasonable and necessary for the legal representation obtained, and determining whether a departure from the reasonable and necessary amount is warranted.

As the party with the burden of proving the reasonable and necessary attorney's fees, Pizza Hut relies on detailed billing records and other materials, as well as the declaration of Mr. Harper to support its position that the lodestar amount in this case is \$4,332,504.24. *See generally* Docket Nos. 404, 405, 424, 426.

As explained above, the lodestar amount is calculated by determining the reasonable hours worked and multiplying those hours by a reasonable hourly rate. *Rohrmoos*, 578 S.W.3d at 501. To determine the reasonable hours, Pizza Hut has presented sufficient evidence of the particular services performed, who performed those particular services, when those services were performed, and the amount of time to perform those services. *See generally* Docket No.

405 (including nearly 700 pages of comprehensive billing records and other supporting materials); Docket No. 426. The services performed include preparing and responding to multiple pleadings, preparing discovery, mediating the case, preparing and presenting 10 witnesses for deposition, taking the deposition of 10 witnesses for opposing parties, preparing and responding to motions, negotiating and briefing numerous pre-trial matters, preparing for trial, trying the case, and preparing and amending comprehensive proposed findings of fact and conclusions of law. *See generally* Docket Nos. 404, 405, 426 and 424; *see also* Docket No. 405-1 at ¶ 44. These services were performed by a core team of attorneys and legal professionals. *See generally* Docket Nos. 404, 405, 424 and 426; *see also* Docket No. 405-1 at ¶¶ 46–50. The invoiced services were performed during the case. *See generally* Docket Nos. 404, 405, 424 and 426; Docket No. 405-1 at ¶ 51. In total, counsel for Pizza Hut submits that about 750 hours of billed time was reduced or eliminated in the exercise of billing judgment, and Pizza Hut was billed for approximately 8,500 hours. *See generally* Docket No. 404, 405, 424 and 426; *see also* Docket Nos. 405-1 at ¶¶ 53–54. In other words, counsel for Pizza Hut removed just under nine percent of the total time billed in the exercise of billing judgment. Having performed a review of the billing records, the Court finds that proper billing judgment was exercised. The Court finds that the time billed, when viewed in the context of the tasks performed and after adjustments were made, was reasonably spent on tasks necessary to the litigation.

*3 Further, the Court finds that Pizza Hut has presented sufficient evidence of the reasonable hourly rate for each person performing those services. *See generally* Docket No. 405. The rates of the attorneys and legal professionals working on this matter either did not exceed the customary rates or were reasonable in view of the issues involved in this case—and these rates were discounted. *See generally* Docket Nos. 404, 405, 424 and 426; *see also* Docket Nos. 405-1 at ¶¶ 56–63 (providing various billing rates for the three firms representing Pizza Hut); Docket No. 441 at 34:1–6 (stating that the blended billing rate for all attorneys involved is \$522). To reach this conclusion, Mr. Harper compares the rates charged in this litigation with the rates of comparable firms. Docket No. 405-1 at ¶¶ 56–63; Docket No. 405-24.

At the September 14, 2022 hearing, Defendants argued that the fees were not reasonable because they did not reflect the reasonable rate of attorneys located in Texarkana, Texas. Docket No. 441 at 16:8–14. This argument, however,

is legally unsupported and otherwise unpersuasive. *See McClain v. Lufkin Indus., Inc.*, 649 F.3d 374 (5th Cir. 2011); *Crane v. Rave Rest. Grp., Inc.*, Civil Action No. 4:20-CV-13-ALM, 2022 WL 403291 (E.D. Tex. Feb. 9, 2022). Attorneys from across the nation advocate for their clients in this Court, and the caliber of attorneys seen locally is very high. In this case, the Court finds that Pizza Hut reasonably sought an out-of-town firm with experience especially relevant to the case at bar. And the Court finds that the rate charged—a blended rate of \$522—is reasonable based on the skill, experience, and reputation of the attorneys involved. For example, Ms. Coldwell is a highly regarded attorney who is well known for her franchising expertise, and Hayes and Boone, LLP is highly ranked as a firm. Docket No. 405-24.

Further, trial courts themselves are considered experts as to the reasonableness of fees. *See Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004) (citation omitted). And the Court finds that rate presented is well within the rates of attorneys practicing in the community. For these reasons, the Court finds that Defendants' unsupported argument that the reasonable rate should be limited to the rate of attorneys residing in Texarkana fails. Instead, the Court finds that the rate presented by Pizza Hut is in line with (and perhaps even lower than) the reasonable rates charged in this community by lawyers with comparable skill, expertise, and reputation. Thus, the Court accepts the rates presented as the reasonable rates for the purposes of calculating the lodestar amount.

When the reasonable hours worked are multiplied by the reasonable hourly rates, Pizza Hut represents that a lodestar amount of \$4,332,504.24 is appropriate, which reflects the sum of \$4,162,970.34 for work billed through May 31, 2022, \$98,606.65 for work billed during the month of June in 2022, and \$70,927.25 for work billed during the month of July in 2022. Docket Nos. 404, 405, 424 and 426; *see also* Docket Nos. 405-1 at ¶¶ 40, 76, 80; Docket No. 424-1 ¶ 19. Pizza Hut further represents that the lodestar amount calculated excludes certain fees that Pizza Hut is not seeking to recover, including (1) fees for work done by attorneys and professionals who charged Pizza Hut for fewer than 20 hours of work; (2) half of the fees for services rendered by Haynes and Boone, LLP through February 28, 2021, when counsel on the case was transitioning from Pizza Hut's prior counsel to Haynes and Boone, LLP; (3) the last month of remaining fees for services rendered by Pizza Hut's prior counsel; (4) certain fees for tasks deemed purely administrative; (5) fees for time entries that have been so heavily redacted to protect Pizza

Hut's attorney-client privilege that the Court would be unable to determine the particular task performed; (6) fees already collected from Defendants under a Rule 68 Agreement; and (7) all fees reflected in an invoice dated December 3, 2019, which are excluded to offset fees that Defendants at one time contended might be related to a cause of action that was the subject of a judgment already entered. *See* Docket No. 405-1 at ¶ 31; Docket No. 424-1 at ¶ 11.

*4 Defendants contest the reasonableness of Mr. Harper's lodestar calculation and allege that Pizza Hut seeks duplicative indemnification fees that were already awarded, fees for tasks duplicated by multiple timekeepers, fees for administrative tasks billed at attorney rates, fees for time entries that lack evidence of the task performed, and they seek a decrease in the lodestar amount based on its position that the Hayes and Boone, LLP attorney's fees are unreasonably high. Docket No. 416.

Regarding the alleged duplicative indemnification fees, Defendants argue that Pizza Hut is seeking \$464,174.48 in fees that have already been awarded for the indemnification matters previously addressed. Docket No. 416 at 4–5. Defendants identify four billing entries as illustrative entries that support their argument. *Id.* The entries that Defendants cite, however, were not included in the Court's Amended Final Judgment. *See* Docket No. 414; *see also* PX001 (spreadsheet with indemnity fees). For these reasons, Defendants argument that Pizza Hut is seeking duplicative fees is unpersuasive. Thus, the Court will not apply a reduction on this basis.

Regarding the alleged fees for tasks duplicated by multiple timekeepers, Defendants argue that “Pizza Hut's billing statements are replete with examples of duplicative work[] and should be denied because it seeks attorney[s] fees for duplicative tasks.” Docket No. 416 at 6. To support its position, Defendants cite four examples of alleged duplicated billing. *Id.* Having reviewed Defendants' exemplary entries, the Court disagrees that these tasks are duplicative—these entries are for related, but not duplicative, tasks. *See* PH017725; PH017726; PH17852; PH017855; PH017483; PH17484; PH17485. Because of the distinct nature of these tasks, the Court finds this argument unpersuasive and holds that no reduction is warranted.

Additionally, at the September 14, 2022 hearing, Defendants put forth an argument that, if all attorneys present at a meeting billed their time, this should be considered duplicative in nature. Docket No. 44 at 128:23–31:7 (arguing that only

the “highest biller should be the one to bill” their time for a meeting and suggesting that attorneys should draft memorandums to each other instead of holding meetings). This creative argument ignores reality. Attorneys meet. They meet to discuss the case, assign tasks, brainstorm, and many other things. To suggest that the benefits of holding meetings could—and should—be replaced by drafting memorandums is not reasonable. Defendants failed to present any case that was on point for this proposition, and the Court is unaware of any legal authority that supports such stance. The Court, therefore, finds that fees billed by attorneys for attending meetings are not duplicative in nature.

Regarding the alleged fees for administrative tasks billed at attorney rates, Defendants argue that Mr. Harper's removal of 20 to 25 hours from the reasonable hours calculated due to the “purely administrative” nature of the tasks “lack[s] specificity [and] leaves the Court to guess whether the fees for all administrative tasks were adequately eliminated from the fees sought for recovery.” Docket No. 416 at 7. Notably, to support its argument, Defendants cites no examples where Pizza Hut sought to recover for administrative tasks billed at attorney rates. The Court has considered Defendants' argument that Mr. Harper's analysis lacks specificity; however, upon review of the billing records provided, the Court does not disagree with Mr. Harper's assessment. Counsel for Pizza Hut has already reduced the total billed by 26 percent. *See* Docket Nos. 405, 426, 424-1, 405-1 at ¶ 40. And purely administrative tasks were removed in the process of making these reductions. The Court finds that Defendants' unsupported suspicion that further reduction is warranted is unpersuasive and, thus, the Court will not apply a reduction based on this argument.

*5 Regarding fees for time entries that are alleged to lack evidence of the task performed, Defendants argue that certain fees incurred were so heavily redacted that they should not be recoverable. Docket No. 416 at 7–8. Defendants further allege that certain entries “fail[] to sufficiently identify the task performed.” *Id.* For support, Defendants provide two exemplary time entries. Regarding the time entries cited, which account for \$182.50, the Court agrees that the descriptions provided are vague. *See* Docket No 405-3 at PH017428, PH017387. But counsel for Pizza Hut has already exercised reasonable billing judgment as summarized in Mr. Harper's report. *See* Docket Nos. 405, 426, 424-1, 405-1 at ¶ 40. The Court finds that these adjustments more than account for the \$182.50 of fees that Defendants use to support their

position. Thus, the Court finds that no reduction should be applied based on this argument.

For the above reasons, the Court finds that the Pizza Hut's proposed lodestar amount, \$4,332,504.24, is supported by sufficient evidence and represents a presumptively reasonable and necessary lodestar amount. The Court therefore adopts \$4,332,504.24 as the lodestar amount for the purposes of its analysis in this case.

B. No upwards or downwards adjustment of the lodestar amount is warranted in this case.

As explained above, the lodestar is presumptively reasonable and should only be modified in exceptional cases. *El Apple I*, 370 S.W.3d at 765. Modification of the lodestar is based upon the *Johnson* factors; however, courts must take care not to double count factors already accounted for in the lodestar amount. *Rohrmoos* 578 S.W.3d at 501–02.

Defendants argue that a decrease in the lodestar amount is proper. To support this argument, Defendants rely on arguments that allegedly implicate *Johnson* factors 1, 2, 3, 4, 7, 8, and 9. Rather than address the *Johnson* factors cited by Defendants individually, the Court addresses the Defendants' arguments as they are presented.

1. A decrease in the lodestar amount is not warranted based upon a disparity in the fees charged by counsel for the Defendants.

Defendants argue that Hayes and Boone, LLP's attorney's fees are unreasonably high and warrant a decrease in the lodestar amount based on a comparison with their own fees and the size of litigation team. Docket No. 416 at 8–9. They say their arguments implicate *Johnson* factors 1 (time and labor required), 2 (novelty and difficulty of issues), 3 (skill required), 6 (whether the fee is fixed or contingent), 7 (time limitations imposed by client or circumstances), and 9 (counsel's experience, reputation and ability). The Court does not find Defendants' argument persuasive.

First, Defendants argument that Pizza Hut's attorney's fees are unreasonably high based on a comparison with their own fees is legally irrelevant. *See In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 809–13 (Tex. 2017) (explaining that opposing counsel's fees were not relevant for the purpose

of calculating reasonable and necessary attorney's fees to be awarded). Second, this argument is misleading. Plaintiff's fees are not double those of Defendants. Defendants represent that they have incurred \$2.8 million in attorney's fees during this litigation. Docket No. 416 at 9.¹ Taking this as true, Plaintiff's \$4.3 million in attorney's fees are not double. Third, Plaintiff's team was not overstaffed. It is common in a case of this size to have large teams to deal with the voluminous discovery, motions practice, and countless other tasks. And Pizza Hut is not seeking to recover fees for (1) work done by attorneys and professionals who charged Pizza Hut for fewer than 20 hours of work; (2) half of the fees for services rendered by Haynes and Boone, LLP through February 28, 2021, when counsel on the case was transitioning from Pizza Hut's prior counsel to Haynes and Boone, LLP; or (3) the last month of remaining fees for services rendered by Pizza Hut's prior counsel. *See* Docket No. 405-1 at ¶ 31; Docket No. 424-1 at ¶ 11.

*6 Further, the Court notes that this case involved Defendants' counterclaims asserted on the last day to amend pleadings (including claims of fraud, breach of fiduciary duty, and tortious interference theories). Defendants also demanded a jury and sought punitive damages. And Defendants filed over 50 briefs in the nine months leading up to trial. Pizza Hut's team size reflects the needs of the case, and they are seeking fees for professionals with significant involvement in the case—the mere number of attorneys does not support a finding that the case was overstaffed, especially when considering the context of the needs of this litigation. Thus, the Court finds that no downwards departure from the lodestar amount is warranted under this argument.

2. *The results obtained by Pizza Hut do not warrant a decrease in the lodestar amount.*

Defendants allege that *Johnson* factor 8 (amount involved and results obtained) weighs in their favor because Pizza Hut only achieved partial success in its claims. Docket No. 416 at 10–11. Defendants argue that because Pizza Hut was not awarded future royalties that the fees requested should be reduced by “as much as 70 [percent], which is commensurate with Pizza Hut's overall success on damages sought.” Docket No. 416 at 10–13.

In contrast, Pizza Hut argues that Defendants underplay the dismissal of all of Defendants' counterclaims, which sought up to \$51.5 million dollars. Docket No. 418 at 2. Further, Pizza Hut argues that Defendants' argument that Pizza Hut

experienced “limited success” focuses “entirely on Pizza Hut's pursuit of lost future royalties.” Docket No. 418 at 5. Further, at the hearing, Pizza Hut argued that it “prevailed on every cause of action” and “only didn't prevail on one aspect of the remedy that was sought” Docket No. 441 at 42:4–6. Pizza Hut further argued it would be “very difficult ... to identify ... a segregable portion” of the work attributed to its pursuit of future lost royalties. Docket No. 441 at 41:2–10. Pizza Hut further represents that, while the damages amount sought for lost future royalties was large, the billable work attributable to the damages sought was not. Docket No. 441 at 12:15–21.

As the Court noted previously, a finding of the lodestar amount does not end the Court's analysis. Instead, the Court must consider whether a departure is warranted based on various factors. One of the factors considered takes into account the amount involved and the results obtained. Where the results obtained by the prevailing party are mixed, a court may consider (1) if those failures were unrelated to claims upon which the party prevailed, and (2) if the level of success renders the hours expended a satisfactory basis for making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) (explaining that there is no precise rule or formula for departing from the lodestar amount and noting that a district court has wide discretion to make an equitable judgment). Here, Pizza Hut obtained excellent results even though it did not ultimately prevail in its effort to be awarded lost future royalties. Additionally, a claim of lost future royalties is not a stand-alone cause of action; instead, it is a remedy for a breach of contract claim. Thus, lost future royalties are related to claims upon which Pizza Hut did ultimately prevail. Finally, the work attributable to the lost future royalties is inextricably intertwined with Pizza Hut's work seeking findings of breach of contract. Thus, given the interrelated nature of the facts and legal theories involved, the Court believes that the case presents circumstances where a decrease in the lodestar based on the amount involved and results obtained is not warranted and finds that no downwards departure from the lodestar amount is warranted under this argument.

III. MOTION FOR BILL OF COSTS

*7 Pizza Hut seeks \$61,000.27 in costs. Docket No. 407 at 1–2. Of these costs, Defendants challenge \$3,813.40 arising from Hayes and Boone, LLP's internal printing and copying. *Id.* Defendants argue that Pizza Hut has failed to provide adequate information regarding the requested in-house copying and printing fees. Docket No. 415 at 1–2.

Having reviewed the parties' arguments, the Court finds that Pizza Hut's counsel has not provided adequate information to aid the Court in reaching a determination. The records provided merely state that a photocopy was made on a certain date and that an amount was charged for that photocopy. Without more information, it is not possible for the Court to confirm what these copies were and how they were used. And Pizza Hut's brief does not assist the Court in reaching this determination. Accordingly, the Court finds that Defendants should not be charged for the disputed \$3,813.40 for printing and copying costs.

IV. CONCLUSION

It is therefore **ORDERED** that Pizza Hut's motion for attorney's fees (Docket No. 404) is **GRANTED** in the amount of \$4,332,504.24 against Defendants. It is further

ORDERED that Pizza Hut's motion for bill of costs (Docket No. 407) is **GRANTED-AS-MODIFIED** and **ORDERS** an entry of bill of costs in the amount of \$57,186.87 against Defendants.

So ORDERED and SIGNED this 22nd day of December, 2022.

All Citations

Slip Copy, 2022 WL 18456981

Footnotes

- 1 Plaintiff asserts this amount is lower than the fees that Defendants have actually incurred. Docket No. 418 at 4–5.

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