

1 in Hawaii against Global Horizons. *Id.* at 9, 10. Additionally, the
2 Court also found the hours claimed by the attorneys at Stokes
3 Lawrence, Seyfarth Shaw, and Freeman, Freeman & Smiley were on the
4 whole quite reasonable given the complexity of the case and the
5 intensity of the litigation as more fully explained therein. *Id.* at
6 12, 13. The Court reduced only the Stokes Lawrence fee request of
7 \$915,734.07 by \$9,189.50 for the reasons stated. *Id.* at 14, 15. On the
8 issue of hourly rates, the Court noted that the EEOC had not opposed
9 the hourly rates claimed by Stokes Lawrence and found the hourly
10 rates claimed by the attorneys and paralegals at Stokes Lawrence
11 reasonable but reduced the paralegal hourly rates for work done during
12 certain years. *Id.* at 15, 16.

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14 The EEOC did object to Seyfarth Shaw's request for its hourly
15 rates charged in Chicago, rates higher than the rates commonly charged
16 in the Eastern District of Washington. The Court found that there was
17 insufficient support in the filed declarations for an award of Chicago
18 hourly rates but permitted Seyfarth Shaw to file supplementation
19 within a short period of time. The final lodestar analysis was
20 continued to permit this supplementation.

21 Stokes Lawrence filed that supplementation showing the reduced
22 total fee award based on the Court's reduction in hours and the
23 finding of no opposition by the EEOC to its hourly rates in the amount
24 of \$886,881.82. Included in that supplementation was an additional
25 Declaration by Mr. Douglas Darch, a Chicago attorney familiar with
26 Chicago rates and Seyfarth Shaw. ECF No. 668. The EEOC objected. ECF

1 No. 671. The Court found that the pleadings adequately supported an
2 award to Mr. DeGroff of his Chicago hourly rate but did not support
3 an award of Chicago hourly rates to the other Seyfarth Shaw attorneys
4 or paralegals. ECF No. 674. The Court then awarded Seyfarth Shaw fees
5 based on those hourly rate findings: Chicago hourly rates for Mr.
6 DeGroff and Eastern District of Washington rates for the other
7 Seyfarth Shaw attorneys and its paralegals. *Id.* at 3. The Court
8 required the filing of a revised time chart for Seyfarth Shaw
9 consistent with the Court's ruling. *Id.* at 3, 4. That revised Seyfarth
10 Shaw time chart was filed on October 27, 2015. ECF No. 675. It
11 properly revised the claimed hourly rates with the claimed hours
12 resulting in a reduced Seyfarth Shaw fee of \$85,156.50. *Id.*, Ex. A
13 at 4-21.

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15 The Court now completes its lodestar analysis. Under the lodestar
16 method, a two-step process is used to calculate a reasonable
17 attorney's fee. *Blum v. Stenson*, 465 U.S. 886, 888 (1984). The Court
18 first calculates the lodestar. The lodestar is calculated by
19 multiplying the number of hours reasonably expended by the reasonable
20 hourly rate for such tasks. *Moreno v. City of Sacramento*, 534 F.3d
21 1106, 1111 (9th Cir. 2008); *Morales v. City of San Rafael*, 96 F.3d
22 359, 363 (9th Cir. 1996). Although there is a "strong presumption"
23 that the lodestar is a reasonable fee, the second step requires the
24 Court to consider whether either an upward or a downward adjustment
25 is appropriate after considering the totality of the circumstances.
26 *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Ultimately,

1 a reasonable fee is one "that is sufficient to induce a capable
2 attorney to undertake the representation of" the lawsuit, *Perdue*, 559
3 U.S. at 552, and which reflects the "level of success achieved by"
4 the prevailing party, *A.D. v. Cal. Hwy. Patrol*, 712 F.3d 446, 460
5 (9th Cir. 2013).

6 Because the lodestar is strongly presumed to be a reasonable
7 fee, an enhancement to the lodestar is appropriate only in rare and
8 exceptional circumstances. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S.
9 542, 554 (2010) (recognizing that an enhancement is appropriate if
10 the district court provides sufficient explanation for why the
11 circumstances are rare and extraordinary). In the Ninth Circuit, a
12 district court is to ensure that the lodestar is reasonable by
13 considering the totality of the circumstances, including the factors
14 set forth in *Kerr v. Screen Actors Guild, Inc.*, 526 F.2d 67, 70 (9th
15 Cir. 1975) (relying on *Johnson v. Georgia Highway Express, Inc.*, 488
16 F.2d. 714 (5th Cir. 1974)), so long as the *Kerr* factors have not been
17 subsumed by the court in the lodestar analysis. *Pennsylvania v. Del.*
18 *Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986). See
19 also *City of Burlington v. Dague*, 505 U.S. 557, 563 (1992) (ruling
20 that these factors cannot be considered both in terms of rate/fee and
21 the ultimate reasonableness—"double counting" is not permitted).

22 The *Kerr* factors are 1) the time and labor required, 2) the
23 novelty and difficulty of claims involved, 3) the skill required to
24 properly perform the legal service, 4) whether the attorney was
25 precluded from other employment due to the lawsuit, 5) the time
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1 limitations imposed by the client or circumstance, 6) the amount
2 involved and results obtained, 7) the undesirability of the case, 8)
3 the nature and length of the professional relationship with the
4 client, 9) awards in similar cases, and 10) amounts discussed in
5 settlement negotiations, and 11) the customary fee. Although Kerr
6 listed whether the fee was a contingent-fee or flat-fee as a factor,
7 this factor has been removed from the reasonableness analysis. *City*
8 *of Burlington v. Dague*, 505 U.S. at 564; see also *Davis v. City &*
9 *Cnty. of San Francisco*, 976 F.2d 1536 (9th Cir. 1992), vacated in
10 part on other grounds, 984 F.2d 345 (9th Cir. 1993) (recognizing that
11 whether the fee was a contingent fee is not a factor in either the
12 initial lodestar calculation or the ultimate reasonableness
13 assessment). In addition, the Ninth Circuit has noted there is some
14 question whether the lawsuit's desirability is relevant to the fee
15 calculation. See *Davis*, 976 F.2d at 1548-49 (citing *Dague*, 505 U.S.
16 at 566-67).

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18 The determination of the attorney's fee award is within district
19 court's sound discretion but the court must explain how it came up
20 with the amount. *Carter v. Caleb Brett LLC*, 757 F.3d 866, 868 (9th
21 Cir. 2014) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).
22 The court has an independent obligation to ensure that the requested
23 attorney's fees and costs are reasonable. *In re Bluetooth Headset*
24 *Prods. Liability Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The
25 court's explanation "need not be elaborate, but it must be
26 comprehensible . . . Where the difference between the lawyer's request

1 and the court's award is relatively small, a somewhat cursory
2 explanation will suffice. But *where the disparity is larger, a more*
3 *specific articulation of the court's reasoning is expected.*" *Carter*
4 *v. Caleb Brett LLC*, 757 F.3d 866, 869 (9th Cir. 2014) (quoting *Moreno*
5 *v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (emphasis
6 added)).

7 The Court has carefully considered both the hourly rates and the
8 number of hours claimed; as analyzed and adjusted in ECF Nos. 666 and
9 674, the Court finds them reasonable. The Court has also considered
10 the *Kerr* factors, which were not subsumed in the lodestar analysis.
11 Given the complexity of the issues and the intensity of the litigation
12 between the Grower Defendants and the EEOC involving the large amount
13 of damages claimed, and the time and skill required by counsel for
14 the Grower Defendants to properly represent them, the Court finds
15 that the reduced fee award of \$886,881.82 to Stokes Lawrence is
16 reasonable and proper.

17 For the same reasons, the Court also finds a reduced fee award
18 of \$85,156.50 to Seyfarth Shaw and an award of \$595.00 to Freeman,
19 Freeman & Smiley is also reasonable and proper.

20 The taxable costs awarded are set forth in ECF No. 674; no
21 objections were filed to that award. Therefore, the awarded taxable
22 cost amount of \$13,399.98 will be included in the attorney-fee-and-
23 costs judgment.
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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The remainder of the Grower Defendants' Joint Motion for Award
3 of Attorney's Fees and Costs, **ECF No. 626**, is **GRANTED**.

4 2. The Clerk's Office is to enter judgment against the EEOC in
5 the Grower Defendants' favor in the amount of **\$986,033.30**, which is
6 based on the following attorney's fees and costs: \$886,881.82, Stokes
7 Lawrence; \$85,156.50, Seyfarth Shaw, \$595.00, Freeman, Freeman &
8 Smiley; and \$13,399.98, taxed costs.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
10 Order and provide copies to counsel.

11 **DATED** this 2nd day of November 2015.

12
13 s/Edward F. Shea

EDWARD F. SHEA

14 Senior United States District Judge
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