UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Verify Smart Corp. v. Colleen Scammell

Verify Smart · No. 3:24-CV-00559-MMD-CLB · Decided December 10, 2025

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 * * * 4 VERIFY SMART CORP., Case No. 3:24-CV-00559-MMD-CLB 5 Plaintiff, ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL AND TO 6 v. ADJUDICATE ATTORNEY’S LIEN 7 COLLEEN SCAMMELL, [ECF No. 36] 8 Defendant. 9 10 Currently pending before the Court is Before the Court is Richard F. Holley and 11 Jessica M. Luhan’s (jointly referred to as “Counsel”) motion to withdraw as counsel for 12 Plaintiff Verify Smart Corp. (“Verify”) and to adjudicate their attorney’s lien.

(ECF No. 36.) 13 I. WITHDRAW AS COUNSEL 14 The Court will first address Counsel’s request to withdraw as counsel for Verify. 15 No opposition was filed, and Counsel certifies that the motion to withdraw was served on 16 Verify. (ECF No. 37.) 17 Good cause appearing, Counsel’s request to withdraw is granted. Verify are 18 advised that the Ninth Circuit has held that a corporation and other unincorporated 19 associations may only appear in federal court through an attorney.

United States v. High 20 Country Broadcasting Co., Inc., 3 F.3d 1244 (9th Cir. 1993); Licht v. America West Airlines, 21 40 F.3d 1058 (9th Cir. 1994). Therefore, Verify shall file a substitution of counsel on or 22 before Monday, January 12, 2026. 23 II. ADJUDICATE ATTORNEY’S LIEN 24 The Court will now turn to Counsel’s request to adjudicate their attorney’s lien.

The 25 Court has ancillary jurisdiction over fee disputes generated by an attorney’s 26 withdrawal. See, e.g., Federal Sav. & Loan Ins. Corp. v/ Ferrante, 364 F.3d 1037, 1041, 27 731 (9th Cir. 2004) (“Determining the legal fees a party to a lawsuit properly before the 1 the concept of ancillary jurisdiction.”).

The state’s law in which a federal court sits governs 2 resolution of an attorney’s lien. Guerrero v. Wharton, 2019 WL 2814662, at *2 (D. Nev. 3 June 17, 2019). This Court sits in the state of Nevada. As such, Nevada law applies.

The 4 Court will first determine the nature of Counsel’s attorney’s lien and then turn to 5 adjudicating the lien. 6 A. Type of Attorney’s Lien 7 Counsel generally alleges they are entitled to a lien under NRS 18.015. (ECF No. 8 36.) “In Nevada, there are two types of liens an attorney may hold to ensure that clients 9 pay their attorney's fees.” Figliuzzi v. Eight Judicial Dist.

Court In and For County of 10 Clark, 111 Nev. 338, 890 P.2d 798, 801 (Nev.1995). The first type of lien is a 11 “charging lien” under § 18.015(1)(a). This lien is upon “any claim, demand[,] or cause of 12 action,” which the client placed in the attorney's hands “for suit or collection, or upon 13 which a suit or other action has been instituted.” NRS 18.015(1)(a).

A charging lien under 14 this subsection “attaches to any verdict, judgment[,] or decree entered and to any money 15 or property which is recovered on account of the suit or other action.” NRS 18.015(4)(a). 16 Thus, a charging lien requires an affirmative money recovery. Fed. Nat’l Mortg. Ass’n v. 17 Villagio Community Ass’n, No. 2:17-cv-01799-JAD-CWH, 2018 WL 6059512, at *2 (D.

18 Nev. Oct. 30, 2018). 19 The second type of lien is a “retaining lien” under § 18.015(1)(b). A retaining lien 20 is “upon any file or other property” that the client left in their attorney's possession, 21 including “copies of the attorney's file if the original documents received from the client 22 have been returned to the client.” NRS 18.015(1)(b). Unlike a charging lien, a retaining 23 lien does not require a verdict, judgment, decree, or affirmative money recovery.

24 Nationstar Mort, 2017 WL 1788682, at *2; see Fredianelli v. Fine Carman Price, 402 P.3d 25 1254, 1256 (Nev. 2017) (finding that N.R.S. 18.015(4)(b) does not require an affirmative 26 recovery for a retaining lien because the lien attaches to “any file or other property 27 properly left in the possession of the attorney by his or her client”). Instead, it “depends 1 for all professional services performed.’ ” Id. (citing NRS 18.015(4)(b)).

If a retaining lien 2 attaches, then the statute authorizes the attorney to retain a client’s property until the lien 3 is adjudicated under NRS 18.015(6). NRS 18.015(4)(b). 4 Counsel does not specify whether they are entitled to a charging or retaining lien. 5 (See ECF No. 36.)

In this case, there has been no verdict, judgment, or decree upon 6 which to attach a charging lien. Thus, Counsel is not entitled to a charging lien. Fed. Nat’l 7 Mortg. Ass’n, 2018 WL 6059512, at *2. Consequently, Counsel asserts a retaining lien 8 based on files or other property left in possession of Counsel by Verify. 9 B. Adjudication of Retaining Lien 10 Having now determined the type of attorney’s lien in question, the Court must 11 evaluate whether Counsel perfected the lien by properly serving notice of the 12 retaining lien and the amount of the lien upon Verify.

See NRS 18.015(3). Here, Counsel 13 provided a declaration stating they served a Notice of Attorney’s Lien in compliance with 14 NRS 18.015 upon Verify and attached the certified mailing receipts. (ECF No. 36-1, 36- 15 3.)

Therefore, the lien attached to Verify’s papers and files left in Counsel’s 16 possession. See NRS 18.015(4)(b). As more than five days has passed since the motion 17 to adjudicate the attorney’s lien was filed and served upon Verify, adjudication of the 18 attorney’s lien is now proper. See NRS 18.015(6). 19 The Court must now determine whether the fees requested by Counsel are 20 reasonable fees for the services rendered, because Counsel does not provide any fee agreement or contract regarding payment for their services.

NRS 18.015(2) (“In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.”). In the Ninth Circuit, “[t]he customary method of determining fees... is known as the lodestar method,” which “is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir.

1996), opinion amended on denial of reh’g, 108 F.3d 981 (9th Cir. 1997); Hensley v. amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.”). Importantly, the lodestar figure enjoys a “strong presumption” of reasonableness, but it can be “enhanced or reduced in ‘rare and exceptional cases.’ ” Fischer v. SJB-P.D.

Inc, 214 F.3d 1115, 1119 n.4 (9th Cir. 2000) (citation omitted); Morales, 96 F.3d 363 n.8 (“There is a strong presumption that the lodestar figure represents a reasonable fee. ‘Only in rare instances should the lodestar figure be adjusted on the basis of other considerations.’ ” (citation omitted)). Considering that some “[c]ases may be overstaffed, and the skill and experience of lawyers vary widely,” courts can exclude from the lodestar amount those hours unreasonably expended.

Hensley, 461 U.S. at 434. After calculating the lodestar figure, “the district court then assesses whether it is necessary to adjust the presumptively reasonable lodestar figure on the basis of the Kerr factors that are not already subsumed in the initial lodestar calculation.” Morales, 96 F.3d at 363–64 (citing McGrath v. Cnty. of Nevada, 67 F.3d 248, 252 (9th Cir.

1995)). The Court’s Local Rules require that a motions for attorney’s fees must include a brief summary of the Kerr factors, specifically: (A) The results obtained and the amount involved; (B) The time and labor required; (C) The novelty and difficulty of the questions involved; (D) The skill requisite to perform the legal service properly; (E) The preclusion of other employment by the attorney due to acceptance of the case; (F) The customary fee; (G) Whether the fee is fixed or contingent; (H) The time limitations imposed by the client or the circumstances; (I) The experience, reputation, and ability of the attorney(s); (J) The undesirability of the case, if any; (K) The nature and length of the professional relationship with the client; (L) Awards in similar cases; and (M) Any other information the court may request.

LR 54-14(a)(3). Additionally, Nevada courts must also review the requested amount “in light of the factors set forth in” the Supreme Court of Nevada's decision in Brunzell v. Golden Gate National Bank. Haley v. Dist. Ct., 273 P.3d 855, 860 (Nev. 2012) (citing Brunzell v. Golden Gate National Bank, 455 P.2d 31, 33 (Nev. 1969)).

The Brunzell factors include: 1 (1) the qualities of the advocate: his ability, his training, education, experience, professional standing, and skill; 2 (2) the character of the work to be done: its difficulty, its intricacy, its 3 importance, time, and skill required, the responsibility imposed and the 4 prominence and character of the parties where they affect the importance of the litigation; 5 (3) the work actually performed by the lawyer: the skill, time and attention given 6 to the work; 7 (4) the result: whether the attorney was successful and what benefits were derived.

8 Brunzell, 455 P.2d at 34. 9 If no opposition is filed, the court may grant the motion after independent review of 10 the record. LR 54-14(d). Ultimately, "[t]here is no precise rule or formula for making these 11 determinations," so "[t]he court necessarily has discretion in making this equitable 12 judgment." Hensley, 461 U.S. at 436–37; see also Morales, 96 F.3d at 362.

13 1. Reasonable Hourly Rate 14 "[W]hen determining a reasonable hourly rate, the relevant community is the forum 15 in which the district court sits." Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th 16 Cir. 2008). Courts look to "evidence supporting the hours worked and rates claimed" to 17 determine whether the number of hours expended were reasonable.

Hensley, 461 U.S. 18 at 433. 19 Counsel provides a declaration stating the hourly billing rates for the attorneys who 20 worked on this case. Richard Holley, an experienced attorney acting in a supervisory 21 capacity, billed at $860 per hour. (ECF No. 36-1 at 1-2.) Jessica Lujan, who has been 22 practicing since 2018, billed at $525 per hour. (Id. at 1.) Jessie Padua, an associate 23 attorney who was admitted to the Nevada State Bar in May of 2025, billed at $315 per 24 hour.1 25 In 2025, a court in this district found fees of $600 per hour for an attorney with 24 26 1 Counsel did not provide an hourly rate for Jessie Padua.

(See ECF No. 36- 27 1.) However, based on the timesheet provided, the Court calculated that Padua's hourly rate was $315. (See ECF No. 36-3 at 9 (billing $94.50 for 0.3 hours of work and $819.00 1 years of experience, $500 per hour for an attorney with 19 years of experience, and $350 2 for an attorney with 9 years of experience were reasonable in a patent case.

Aim High 3 Inv. Grp., LLC v. Spectrum Lab'ys, LLC, No. 2:22-CV-00158-GMN-DJA, 2025 WL 4 1569268, at *3 (D. Nev. June 3, 2025). In other, non-patent cases, the hourly rate of $400- 5 500 has been approved for attorneys with between 18-30 years of experience and $225 6 for an associate. Newmark Group, Inc. v. Avison Young, No. 2:15-cv-00531-RFB-EJY, 7 2022 WL 990640 (D.

Nev. Apr. 1, 2022); Leftenant v. Blackmon, No. 2:18-cv-01948-EJY, 8 2022 WL 605344 (D. Nev. Feb. 28, 2022); Newmark Group, Inc. v. Avison Young, No. 9 2:15-cv-00531-RFB-EJY, 2022 WL 990640 (D. Nev. Apr. 1, 2022); Buck v. Lakeview 10 Mediation Solutions, No. 2:20-cv-00189-GMN-BNW, 2021 WL 5176472, at *6 (D. Nev. 11 Oct. 19, 2021); McGuire v. Allegro Acceptance Corp., No. 2:18-cv-01635-MMD-VCF, 12 2020 WL 3432533, at *4 (D.

Nev. June 22, 2020); Dentino v. Moiharwin Diversified Corp., 13 No. 2:16-cv-904, 2017 WL 187146 at *2-3 (D. Nev. Jan. 17, 2017) (granting fees at $350 14 per hour for a partner and $225 for an associate.) Recently, a court in this district found 15 that an hourly rate of $550 was excessive for a case involving the Fair Labor Standards 16 Act. Sherman v. Carl Hornung LLC, No. 2:24-CV-2391 JCM (MDC), 2025 WL 3033998, 17 at *5 (D.

Nev. Oct. 29, 2025). 18 Although the subject matter is complex, as the case concerns multiple patents in 19 the United States and Canada, the Court finds that the hourly rates charged are 20 excessive. Counsel does not provide, nor could the Court find, caselaw that supports the 21 hourly rate of $860 in the District of Nevada.

However, as identified above, there is very 22 recent caselaw in this district that found a rate of $600 for a very experienced attorney to 23 be reasonable in a patent case. Aim High Inv. Grp., 2025 WL 1569268, at *3.

The Court 24 does not find that an hourly rate of $525 is reasonable for an attorney with 7-8 years of 25 experience, even in a complex patent case such as this, especially considering another 26 court in this district found that $350 was appropriate for an attorney with 9 years of 27 experience in a similar case. Id. Finally, the Court finds that an hourly rate of $315 is 1 Based on the awards previously allowed within this district and the Court's 2 familiarity with prevailing rates in this community, the Court finds the following to be 3 reasonable hourly rates: 4 Name Hourly Rate 5 Richard F. Holley, Esq. $625.00 6 Jessica M. Lujan, Esq. $375.00 7 Jessie Padua, Esq. $225.00 8 2.

Hours Reasonably Expended 9 The Court must next consider the hours expended on the tasks outlined in 10 Counsel’s itemization of fees and costs. (ECF No. 36-3.) The party seeking an award of 11 fees must submit evidence supporting the hours worked. Hensley, 461 U.S. at 433. 12 “Where the documentation of hours is inadequate, the district court may reduce the award 13 accordingly.” Id. The Court should exclude from the initial fee calculation hours that are 14 not reasonably expended.

Id. at 433-34. Using the lodestar approach, courts may exclude 15 such hours using one of two methods. Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 16 (9th Cir. 2013). “First, the court may conduct an ‘hour-by-hour analysis of the fee request,’ 17 and exclude those hours for which it would be unreasonable to compensate the prevailing 18 party.” Id. Second, the court may “make across-the-board percentage cuts either in the 19 number of hours claimed or in the final lodestar figure as a practical means of excluding 20 non-compensable hours from a fee application.” Id. (internal quotation marks omitted).

21 “[W]hen a district court decides that a percentage cut (to either the lodestar or the number 22 of hours) is warranted, it must ‘set forth a concise but clear explanation of its reasons for 23 choosing

a given percentage reduction.' " Id. The Court finds that almost all hours billed were reasonably expended.

However, Counsel seeks compensation for 3.4 hours spent preparing the motion to withdraw and for adjudication of the lien, including time spent drafting the Notice of Attorney's Lien. (ECF No. 36-3 at 11-12.) Counsel does not provide case law or a contract showing they Court has found only two instances of a court in the District of Nevada addressing this issue.

Nationstar Mortgage, LLC v. Desert Shores Community Assoc., 2017 WL 1788682, at *3 (D. Nev. Jan. 13, 2017) ("The court is aware of only one Nevada case in which a court addressed a request of this nature.") (citing Montgomery v. eTreppid Technologies, LLC, No. 3:06-cv-0056-PMP(VPC), 2008 WL 820072 *1 (D. Nev. Mar. 24, 2008)). However, only one case addresses the issue where the parties did not have a signed fee agreement, like the instant case.

In Montgomery v. eTreppid Technologies, LLC, an attorney requested payment for hours spent preparing motions to withdraw and for attorney's fees. No. 3:06-cv-0056-PMP(VPC), 2008 WL 820072, at *1 (D. Nev. March 24, 2008).

The parties had no signed fee agreement, so the court determined the reasonableness of fees based on the doctrine of quantum meruit. Id. at *3-4. The court awarded fees for hours spent preparing the motion to withdraw but found that the fees for preparing the motion for attorney's fees were not recoverable under quantum meruit. Id. at *12–13. The doctrine of quantum meruit generally applies to an action for restitution where work performed by one party is founded on a promise by another party to pay as much as is reasonably deserved for that work.

Sack v. Tomlin, 110 Nev. 204, 208, 871 P.2d 298 (1994). An "attorney may recover the reasonable value of his services on a quantum meruit basis." Harwood v. Carter, 47 Nev. 334, 222 P. 280 (1924); see also Gordon v. Stewart, 74 Nev. 115, 324 P.2d 234 (1958) ("The attorneys' right is not based upon (or limited to) his lien. It is based upon contract express or implied.

The lien, as is true of other forms of lien, is but security for his right."). The instant case is similar to eTreppid in that Counsel does not provide any sort of fee agreement, meaning Counsel is entitled to fees based on quantum meruit.

As the Court in eTreppid found, Counsel is entitled to fees for drafting the motion to withdraw but not as to drafting the Notice of Lien or the portion of the motion seeking adjudication of the attorney's lien. This is reasonable considering that Counsel must withdraw in order for Verify to find other counsel to represent them, but its work. Counsel provides a timesheet showing Holley spent 0.1 hour reviewing and revising the draft Notice of Attorney's Lien and Lujan spent 2.4 hours finishing the motion to withdraw and adjudicate lien, preparing the Notice of Attorney’s Lien, and coordinating 5 with the accounting department to ascertain client billing information.

(ECF No. 36-6 at 6 11-12.) Of the 2.4 hours spent by Lujan on the combination of tasks, the Court deems it 7 reasonable to find that 1.2 hours were spent working on tasks relating to the adjudication 8 of the lien. Thus, the Court will reduce the hours provided by Counsel by 1.3 hours, 0.1 9 hours billed by Holley and 1.2 billed by Lujan, to account for time expended working on 10 the Attorney’s Lien.

11 Thus, based on the Court's determination of reasonable hourly rates and hours 12 reasonably expended, the following fee computation applies: 13 Name Hourly Rate Hours Fees 14 Richard F. Holley, Esq. $625.00 18.1 $11,312.50 15 Jessica M. Lujan, Esq. $375.00 52.7 $19,762.50 16 Jessie Padua, Esq. $225.00 2.9 $652.50 17 TOTAL: $31,727.50 18 3. Reasonableness of Lodestar Amount 19 Having considered the hourly rate and the legal services itemized in Counsel’s 20 declaration, the final step of the analysis is evaluating whether it is necessary to adjust 21 the lodestar amount.

Fischer, 214 F.3d at 1119 n.4 (citations omitted). Here, the Court 22 must decide whether to increase or reduce the lodestar amount based upon 23 the Kerr factors not already included in the initial lodestar calculation. Id. The Court must 24 also evaluate the Brunzell factors. Haley, 273 P.3d at 860. 25 After reducing both the hourly rate and hours billed, the total amount of fees is 26 $31,727.50.

This amount is consistent with awards granted in similar cases in this district. 27 See Bird-B-Gone, Inc. v. Haierc Industry Co., Ltd., 2018 WL 4682320, at *5 (D. Nev. 1 judgment). 2 The Court has also considered all the relevant factors and finds that no 3 other Kerr factors or Brunzell factors warrant enhancement or reduction of the fees.

The 4 Court further finds that there are no exceptional circumstances in this case warranting a 5 reduction of this presumptively reasonable lodestar figure. See Pennsylvania v. Delaware 6 Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986).

Therefore, based on the 7 discussion above, Defendants are entitled to recover $31,727.50 in attorney’s fees and 8 $1,130.00 in costs,2 for a total of $32,857.50. 9 4. Interest 10 Finally, Counsel requests an award of interest at the statutory rate found in NRS 11 99.040. Pursuant to NRS 99.040(1)(d), when there is no contract establishing an interest 12 rate, a person is entitled to interest “[u]pon contracts, express or implied, other than book 13 accounts.” “The rate must be adjusted accordingly on each January 1 and July 1 14 thereafter until the judgment is satisfied.” NRS 99.040(1).

Under NRS 99.040, 15 prejudgment interest accrues from the time “money becomes due.” Id. This has been 16 construed to mean that the interest is recoverable from the time when performance of a 17 payment was due. Safeco Ins. Co. of Illinois v. Midwest Fam. Mut. Ins. Co., No. 2:22-CV- 18 01133-ART-EJY, 2024 WL 5275729, at *2 (D. Nev. Nov. 19, 2024) (citing Paradise 19 Homes, Inc. v. Cent.

Sur. & Ins. Corp., 437 P.2d 78, 83 (Nev. 1968)). 20 Based on the information provided by Counsel, the earliest date upon which the 21 Court can confirm that the entire amount was due is October 28, 2025, when the Notice 22 of Attorney’s Lien was served. (ECF No. 36-1 at 3.)

The prime interest rate as of July 1, 23 2025, was 7.50%.3 Thus, the Court finds that Counsel is entitled to 7.50% interest on the 24 amount of $32,857.50, accruing until payment. 25 2 Counsel provides documentation to show costs incurred pursuant to their 26 representation in the amount of $1,131.00. (ECF No. 36-3 at 13.) 27 3 Nevada Financial Institutions Division, Prime Interest Rate, https://fid.nv.gov/Resources/Fees_and_Prime_Interest_Rate/ (last visited December 9, 1| Ill. CONCLUSION 2 IT IS THEREFORE ORDERED that Counsel's motion to withdraw as counsel and 3 | to adjudicate their attorney’s lien, (ECF No. 36), is GRANTED.

4 IT IS FURTHER ORDERED that the Clerk shall update the docket to reflect the 5 | following address for Verify. In addition, a copy of this order and all documents hereafter 6 | filed shall be served on Verify via regular mail at the following address: 7 Verify Smart Corp. 8 Annamarie Seabright, CEO 40 Hillside Ave. Mahwah, NJ, 07430 9 Mobile: 949-235-8181 Email: annamarie@signaturepr.press 10 11 IT IF FURTHER ORDERED that Verify shall file a substitution of counsel on or before Monday, January 12, 2026.

13 IT IS FURTHER ORDERED that Counsel has an attorney’s lien in the amount of $32,857.50, with a 7.50% interest rate accruing until payment. 15 IT IS SO ORDERED.. 16 DATED: December 10, 2025. 17 UNITED STATES, MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28 44