

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

---

WILLIAM S. PRIDDY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. <u>03-2664</u> D/P
	)	
FEDERAL EXPRESS CORPORATION and	)	
DONNA NOEL, Individually and as	)	
Agent for FEDERAL EXPRESS	)	
CORPORATION,	)	
	)	
Defendants.	)	

---

REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION FOR AWARD OF  
ATTORNEY'S FEES, COSTS, AND EXPENSES

---

Before the court is plaintiff William Spencer Priddy's Motion for Award of Attorney's Fees, Costs, and Expenses, filed March 1, 2007 (D.E. 113). Defendant Federal Express Corporation ("FedEx") filed a response in opposition to the motion on March 23, 2007. The motion was referred to the Magistrate Judge for a report and recommendation. The court proposes the following findings of fact and conclusions of law, and recommends that Priddy be awarded attorney's fees in the amount of \$52,708.50 to Gregory D. Cotton and \$53,185.50 to James W. Hodges, Jr. The court further recommends that the Priddy be awarded expenses in the amount of \$172.56 to Cotton and \$8,092.67 to Hodges, and that no attorney's fees be awarded to Priddy for legal services rendered by Reginald

F. Yurchik.

**I. PROPOSED FINDINGS OF FACT**

Priddy filed his original complaint in the Circuit Court of Shelby County, Tennessee on July 24, 2003, alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e *et seq.*, on the basis of reverse race discrimination, retaliation, and hostile work environment; 42 U.S.C. § 1981; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-301 *et seq.*, the Tennessee Handicap Act, Tenn. Code Ann. § 8-50-103, and the common law tort of outrageous conduct. Defendants removed the case to federal court on September 4, 2003.

On February 17, 2006, the court entered an Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment. The court dismissed the claims of hostile work environment, disability discrimination based on post-traumatic stress, and outrageous conduct, and dismissed Donna Noel as an individual defendant. The case proceeded to trial on the two remaining claims of reverse race discrimination and retaliation on January 22, 2007. On January 29, 2007, the jury returned a verdict in favor of Priddy on his retaliation claim but against him on the reverse discrimination claim. Priddy was awarded \$200,000 in compensatory damages. The court entered judgment in that amount on February 28, 2007.

Priddy now moves for an award of attorney's fees and expenses in the amount of \$212,845.00, which includes 706.40 hours billed by his attorneys as well as expenses totaling \$9,369.80. Although FedEx does not contend that Priddy has failed to show he is a "prevailing party" entitled to fees under § 2000e-5(k), it argues that the amount should be reduced by "at least 70%" (for a total fee award of no more than \$63,853.50) because (1) the claimed attorney rates of \$300.00 to \$350.00 per hour are excessive; (2) the number of hours claimed by Priddy's counsel are excessive; (3) the attorneys unnecessarily duplicated tasks and charged attorney rates for clerical and administrative work; (4) numerous time entries are vague; (5) the hours spent on unsuccessful claims should be excluded; and (6) all expenses for work performed by associated counsel Reginald F. Yurchik should be excluded.

## II. PROPOSED CONCLUSIONS OF LAW

Title VII provides that "[t]he court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee (including expert fees) as part of the costs." 42 U.S.C. § 2000e-5(k). A "prevailing party" is a party who succeeds on any significant issue in litigation and attains some of the benefit sought in bringing suit. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The amount of attorney's fees compensable under § 2000e-5(k) is determined by the "lodestar" method, in which fees are "calculated by multiplying the number of hours reasonably expended

on the litigation times a reasonable hourly rate." Blanchard v. Bergeron, 489 U.S. 87, 94 (1989) (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)). The court may then adjust this lodestar calculation in light of other factors. Blanchard, 489 U.S. at 94.

The party seeking attorney's fees has the burden of showing that he is entitled to the award. Reed v. Rhodes, 179 F.3d 453, 471 (6th Cir. 1999); see also Hensley, 461 U.S. 433. Accordingly, that party also bears the burden of proof on the number of hours expended and the hourly rates claimed. Hensley, 461 U.S. at 433. The court has discretion in determining the amount of the fee award. Id. at 437. Factors the court should consider are (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Johnson v. Ga. Highway Express, 488 F.2d 714, 720 (5th Cir. 1974). The Supreme Court has recognized these factors as a "useful catalog of the many factors to be considered in assessing the reasonableness of an award of

attorney's fees." Blanchard, 489 U.S. at 93-94; see also Hensley, 461 U.S. at 430 n.3 (citing Johnson).

As a threshold matter, the court submits that Priddy is a "prevailing party" entitled to attorney's fees under Title VII, 42 U.S.C. § 2000e-5(k). "The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute . . . [which] may be accomplished by obtaining some relief on the merits through a favorable judgment . . . ." Crabtree v. Collins, 900 F.2d 79, 82 (6th Cir. 1990) (citations and internal quotations omitted); see also Farrar v. Hobby, 506 U.S. 103, 111 (1992) ("[T]o qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim.").

Here, Priddy qualifies as a "prevailing party" for purposes of Title VII's attorney's fees provision because the jury returned a verdict in his favor on the retaliation claim and awarded him \$200,000 in damages. "Plaintiff's status as a prevailing party is not altered simply because he did not obtain relief on all of his original claims or as against each original defendant." Kadri v. Johnson, No. 03-2562 Ml/V, 2005 WL 3454330, at \*4 (W.D. Tenn. Dec. 16, 2005); see also Reed v. Cracker Barrel Old Country Store, Inc., 171 F. Supp. 2d 751, 754 (M.D. Tenn. 2001) (holding that plaintiff was "prevailing party" entitled to recover attorney's fees and

costs even though plaintiff did not succeed on all claims at trial and the court dismissed some claims on summary judgment). Thus, having determined that Priddy is a prevailing party, the court must next determine the amount of attorney's fees and costs that should be awarded.

**A. Reasonable Hourly Rate**

To determine a reasonable hourly rate, "courts use as a guideline the prevailing market rate, defined as the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record." Geier v. Sundquist, 372 F.3d 784, 791 (6th Cir. 2004); see also Hadix v. Johnson, 65 F.3d 532, 536 (6th Cir. 1995) (quoting Blum, 465 U.S. at 896 n.1 ("rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.")).

Priddy claims an hourly rate of \$300.00 for work performed by attorneys Cotton and Hodges.<sup>1</sup> He also seeks an hourly rate of \$350.00 for work performed by attorney Yurchik. In support of these rates, Priddy submits affidavits from William B. Ryan and Donald A. Donati, attorneys who specialize in plaintiffs work in labor and employment law in the Memphis area. According to their

---

<sup>1</sup>FedEx does not challenge the hourly rate of \$100.00 for paralegal services, a rate which this court has previously found to be reasonable. Brack v. Shoney's, Inc., No. 01-2997, 2004 WL 2806495, at \*2 (W.D. Tenn. July 29, 2004) (Donald, J.).

affidavits, Ryan has served as lead plaintiff's counsel on numerous employment cases in federal court and charges \$200.00 per hour, while Donati has served as lead plaintiff's counsel in hundreds of employment cases and charges \$300.00 to \$350.00 per hour. Both Donati and Ryan opine that Cotton's and Hodges's hourly rates are "fair and reasonable" and "all of the time and work reflected in the time records are reasonable, necessary, and appropriate to have competently and professionally represented the Plaintiff in this case." Neither Donati nor Ryan mention Yurchik's bills or offer an opinion regarding his claimed \$350.00 hourly rate.

This court recently reduced a claimed hourly rate of \$350.00 to \$200.00 in another Title VII case. Dye v. BellSouth Telecommunications, Inc., 462 F. Supp. 2d 845, 850 (W.D. Tenn. 2006). In several other employment discrimination cases, this court has approved hourly rates that were considerably lower than the rates claimed by Priddy's counsel. See, e.g., Vaughan v. Memphis Health Center, Inc., No. 03-2470, 2006 WL 572694, at \*1 (W.D. Tenn. Mar. 8, 2006) (finding that hourly rate of \$200.00 to \$225.00 in ADEA case was reasonable); Cox v. Shelby State Community College, No. 00-2027, 2006 WL 3359327, at \*2 (W.D. Tenn. Nov. 17, 2006) (finding hourly rate of \$170 "is reasonable in light of the prevailing market rate in the Memphis area"); Kadri v. Johnson, No. 03-2562, 2005 WL 3454330, at \*3 (W.D. Tenn. Dec. 16, 2005) (finding hourly rate of \$250.00 for experienced employment lawyer

reasonable); Brack v. Shoney's, Inc., No. 01-2997, 2004 WL 2806495, at \*2 (W.D. Tenn. July 29, 2004) (finding hourly rates of \$275 and \$225 reasonable for Memphis market); see also Isabel v. City of Memphis, 404 F.3d 404, 415-16 (6th Cir. 2005) (upholding hourly rate of \$250.00 for Memphis-based employment attorney). Priddy has not cited - and the court in conducting its own research could not find - any case authority to support his counsel's claimed hourly rates.

In this case, as in Dye, the issues were not highly novel or complex such as would justify hourly rates that are well above the prevailing market rate. Priddy's counsel does not assert any exceptional reputation or experience in the area of employment law to justify the requested rates, or that the case was particularly undesirable. Moreover, Priddy provides no support for Yurchik's \$350.00 rate. Thus, this court finds that \$225.00 per hour is a reasonable hourly rate for plaintiff's counsel, which will be used in the calculation of the award of attorney's fees in this case.

#### **B. Reasonable Hours**

The court must exclude from its calculation hours that are "excessive, redundant, or otherwise unnecessary." Hensley, 461 U.S. at 434; Northcross v. Bd. of Educ. of Memphis City Sch., 611 F.2d 624, 646 (6th Cir. 1979). The party seeking the fees bears the burden of demonstrating the reasonableness of hours by providing detailed billing records. Blum, 465 U.S. at 897;



Hensley, 461 U.S. at 437. The opposing party must "raise objections with specificity, pointing out particular items, rather than making generalized objections to the reasonableness of the bill as a whole." Woolridge v. Marlene Indus. Corp., 889 F.2d 1169, 1176 n.14 (6th Cir. 1990).

Priddy has submitted billing records claiming a total of 706.40 attorney hours in this case, which includes 349.15 hours by Cotton, 330.75 hours by Hodges, and 26.5 hours by Yurchik. The court notes that, although not raised by any of the parties, it appears that attorney Cotton has miscalculated his fees. Cotton's fees as reported in Exhibit A attached to Priddy's motion include 349.15 attorney hours which, when multiplied by \$300.00 per hour, totals \$104,345 in fees. However, 88.25 of those 349.15 hours are recorded by Cotton as work performed by his paralegal and which should have been billed at only \$100.00 per hour. Therefore, the fees sought for Cotton's work should be based on 260.9 attorney hours and 88.25 paralegal hours, which totals \$87,095.<sup>2</sup>

FedEx first argues that the 30.65 hours spent by Cotton and Hodges before the complaint was filed is excessive. (See Ex. C to FedEx Resp. at 1). The court disagrees, and finds that counsel's

---

<sup>2</sup>In fact, when one adds together the amount of fees listed on Cotton's bill, the total comes to \$85,996, which is even less than the \$87,095 figure, and much less than the \$104,345 claimed. Given these discrepancies, and in the interest of maintaining consistency, the court's analysis will focus on the amount of hours, as opposed to the dollar amount of fees, claimed.

time spent before filing the complaint, which necessarily included meeting with Priddy, investigating the claims, conducting legal research, and drafting the complaint was reasonable. See Brack, 2004 WL 2806495, at \*5 (rejecting defendant's argument that attorney hours spent prior to filing of lawsuit should be excluded). However, the court agrees that all of Yurchik's time should be excluded. Yurchik was not counsel of record for Priddy, and the court cannot determine from Priddy's motion exactly what work Yurchik performed on behalf of the plaintiff. Priddy has failed to provide the court with any explanation as to why Yurchik's 26.5 hours of work as associated counsel on this case was not unnecessarily duplicative of the work already performed by plaintiff's two trial attorneys.

Second, FedEx contends that the 0.5 hour spent by Cotton to leave two telephone messages with opposing counsel is excessive. (See Ex. C to FedEx Resp. at 2). The court agrees with FedEx's objection, which raises a concern with the court that counsel employed a minimum billing increment policy in calculating their hours. As Judge Donald observed in Brack, "[t]he court looks with disfavor on minimum billing increments because they result in padding of time and do not accurately reflect the actual time required to perform a particular service. Padding hours demonstrates lack of billing judgment, and hours may be cut for padding." Brack, 2004 WL 2806495, at \*5 (quoting Anglo-Danish

Fibre Indus., Ltd. v. Columbian Rope Co., No. 01-2133-G/V, 2003 WL 223082, at \*8 (W.D. Tenn. Jan. 28, 2003)). Here, as in Brack, all of Priddy's counsel's time entries appear to be recorded in 0.25 hour increments. Therefore, because counsel's use of minimum billing increments impacts the total number of hours billed, the court will account for this billing practice by applying a 10% reduction to the final overall calculation of hours.

Third, FedEx asserts that certain tasks, such as filing the complaint, checking on the status of service, assembling documents, and organizing files are clerical duties that should not be billed at the attorneys' hourly rate. (See Ex. C to FedEx Resp. at 3). It also argues that Cotton and his paralegal should not be allowed to both bill for work performed during the trial. (Id.). With respect to the former, the court agrees, and will exclude 9.25 hours from Hodges's overall time (but will credit Hodges's fees by adding 9.25 hours billed at the \$100.00 per hour paralegal rate).<sup>3</sup> As for the latter argument, the court disagrees, as it is certainly reasonable for Cotton to have a paralegal perform work in preparation for trial and to assist him during trial.

Fourth, FedEx claims that 22 specific entries totaling 47 hours are excessive, including four separate entries totaling nearly 20 hours spent on a three-page response to a summary

---

<sup>3</sup>The court will not exclude the 4.0 hours claimed by Cotton for file review and preparation for FedEx's motions, as this type of work may very well need to be performed by an attorney.

judgment motion. (See Ex. C to FedEx Resp. at 4). It also argues that 44 specific entries totaling 72.5 hours and 7 specific entries totaling 3.5 hours are vague and thus lack sufficient specificity to support an award. (Id. at 5, 6). The court agrees that some of these time entries appear to be excessive or vague, or both. For example, some of the entries simply state "Letter setting hearing," "Letter from opposing counsel," "order," "File Review/Dennis Price," "Review documents/talked to Jim," "review documents/work on numbers," and even one entry dated June 14, 2005 for 3.0 attorney hours has no accompanying description. The court therefore will reduce these hours by 33%, which results in a reduction of 12.2 hours from Cotton's time and 28.4 hours from Hodges's time.<sup>4</sup>

Fifth, FedEx contends that 4.75 hours claimed by Priddy's counsel should be excluded because they relate to unnecessary work in reviewing removal-related documents and letters drafted by plaintiff's counsel which were never sent to FedEx. (See Ex. C to FedEx Resp. at 7). The court finds that even though Priddy did not file any motions challenging the removal of this case to federal court, the 1.5 hours spent by counsel to review and consider the issues surrounding removal were reasonable. The court agrees with FedEx, however, that Hodges should not be permitted to bill for

---

<sup>4</sup>FedEx's objections to the hours contained on pages 4, 5, and 6 to Exhibit C include a total of 37.0 hours for Cotton and 86 hours for Hodges. A 33% reduction results in 12.2 hours excluded from Cotton's time and 28.4 hours excluded from Hodges's time.

time spent on drafting letters which were never delivered to FedEx. The court will thus exclude 2.25 hours from Hodges's time.

Sixth, FedEx claims that 157 hours charged by Cotton, Hodges, and Yurchik should be reduced because these hours reflect duplicative work performed by the attorneys. (See Ex. C. to FedEx Resp. at 9-10). The court previously addressed Yurchik's hours, and concluded that all of his time should be excluded. With respect to Cotton's and Hodges's duplicative time, however, Judge Donald previously considered and rejected this argument in Brack:

As to the recording of duplicative time for each attorney, in a case of multiple attorneys, it is inevitable that some of the same work will be performed by both attorneys. For example, both attorneys will want to review the Court's orders, to stay abreast of the status of the case. Also, both attorneys may bill for their meetings with each other, as both attorneys' time is being expended. Finally, if both attorneys attend depositions or court hearings, then, again, both attorneys' time is being expended and may be billed.

Id. at \*5. This court has reviewed the "duplicative" time entries and likewise concludes that the time expended by both attorneys should not be reduced.<sup>5</sup>

---

<sup>5</sup>FedEx also argues that the combined 18.0 hours billed by Cotton and Hodges for attending the mediation session are excessive, since the mediation lasted only 6 hours. (See Ex. D to FedEx Resp.). FedEx further claims that hours billed for both attorneys to attend depositions where only one of the attorneys asked questions should be reduced or excluded. The court finds that Cotton and Hodges may both bill for the mediation and deposition appearances, as both attorneys reasonably would have wanted to attend these important proceedings, even if one of the attorneys was a more active participant. The court also finds that the 8.0 hours spent by Cotton and Hodges to search for and discuss Gwen Byrd is reasonable and may be billed as attorney

**C. Reasonable Expenses**

In addition to the attorney's fees, FedEx also claims that (1) expenses totaling \$2,286.47 should be excluded from the fee award, including expenses for copying, postage, parking, and legal research because the time entries lack specificity; (2) Hodges's reimbursement for \$854.57 in airfare should be excluded because there is no indication from the entry that the travel was case-related; and (3) Hodges's reimbursement for \$250.00 for consulting services from attorney Hayden Lait should be excluded because Priddy does not provide any explanation as to why this expense was incurred. (See FedEx Resp. at 9; Ex. C to FedEx Resp. at 7, 8). "Reasonable photocopying, paralegal expenses, and travel and telephone costs" are recoverable. Northcross v. Bd. of Ed. of Memphis City Schools, 611 F.2d 624 ,639 (6th Cir. 1979). The court finds that the expenses for copying, postage, parking, and limited legal research assignments performed by research assistants are reasonable. However, because Priddy has provided no explanation for Hodges's airfare and consulting service, the court will exclude these amounts, totaling \$1,104.57, from Hodges's expenses.

**D. Reduction for Unsuccessful Claims**

Finally, FedEx contends that Priddy's overall attorney's fee award should be reduced to reflect his limited success at trial. Since fees may only be awarded to prevailing parties, "hours  

---

time as well.

devoted to unsuccessful claims should be subtracted from the number of hours reasonably expended on the case as a whole." Hensley, 461 U.S. at 435. However, the task of separating time spent litigating unsuccessful claims "is a complicated one in civil rights cases, where many of the cases involve overlapping factual issues and related legal theories." Cracker Barrel Old Country Store, 171 F. Supp. 2d at 764. "When claims are based on a common core of facts or are based on related legal theories, for the purpose of calculating attorney fees they should not be treated as distinct claims, and the cost of litigating the related claims should not be reduced." Thurman v. Yellow Freight Sys., Inc., 90 F.3d 1160, 1169 (6th Cir. 1996). "[A] court should not reduce attorney fees based on a simple ratio of successful claims to claims raised." Id.

Priddy's original complaint contained several claims, and all but two were dismissed on summary judgment. Of the two surviving claims, Priddy prevailed at trial only on the retaliation claim. The court submits, however, that all of the dismissed and unsuccessful claims, except for the disability discrimination claim, were interrelated with the retaliation claim. Although the elements of Priddy's retaliation claim differ from his other claims, he nevertheless had to prove a causal connection between the filing of his internal EEO complaint against Noel and his subsequent citations that led to his termination. The evidence of Noel's racial animus towards Priddy was relevant both to proving

the retaliatory motive and Priddy's other racial discrimination claims. See Brack, 2004 WL 2806495, at \*4 (holding that claims dismissed on summary judgment for color discrimination, retaliation, and outrageous conduct were interrelated with successful claims, as "[m]ost of them also involved the same legal theories as did the successful claims, in that all of the color discrimination claims came under the same Title VII legal standard, as did all of the retaliation claims."). Thus, it is submitted that "a reasonable attorney would believe that the work expended on the unsuccessful claims was reasonably expended in pursuit of success on the remaining claims." Id. Conversely, Priddy's dismissed disability discrimination claim involved separate facts and legal theories, and therefore was not interrelated with the other claims. Because Priddy's counsel's time entries do not show how much time was spent on the disability discrimination claim, the court will apply a 10% reduction to the total number of attorney hours to reflect the work performed on this unsuccessful claim.<sup>6</sup>

#### **E. Lodestar Calculation**

Based on the above analysis, the court calculates Priddy's award of attorney's fees and expenses as follows: (1) Cotton's 260.9 attorney hours should be reduced by 12.2 hours, for a total

---

<sup>6</sup>This 10% reduction will not apply to the paralegal hours, since it appears most of the paralegal work was performed after the court dismissed the disability discrimination claim or was otherwise unrelated to that unsuccessful claim.



of 248.7 attorney hours, which should be further reduced by 20% (to reflect minimum billing increments and unsuccessful claim), resulting in 198.96 attorney hours times \$225.00 per hour, for a total of \$44,766.00; (2) Cotton's 88.25 hours for paralegal services should be reduced by 10%, resulting in 79.425 paralegal hours times \$100.00 per hour, for a total of \$7,942.50; (3) Hodges's 330.75 attorney hours should be reduced by 39.9 hours, for a total of 290.85 attorney hours, which should be further reduced by 20%, resulting in 232.68 attorney hours time \$225.00 per hour, for a total of \$52,353; (4) Hodge's 9.25 hours for time credited as paralegal services should be reduced by 10%, resulting in 8.325 paralegal hours times \$100.00 per hour, for a total of \$832.50; (5) Cotton's expenses of \$172.56 should not be reduced; and (6) Hodges's expenses of \$9,197.24 should be reduced by \$1,104.57, for a total of \$8,092.67.

Finally, the court submits that this is not a rare or exceptional case that would merit any upward or downward adjustment of the fee award.<sup>7</sup> "Once the Court determines the lodestar figure, it may, in limited circumstances, consider other factors and adjust the award upward or downward to achieve a reasonable result." Brack, 2004 WL 2806495, at \*6. This court submits that the factors identified in Johnson are properly and fairly reflected in the

---

<sup>7</sup>In Cotton's affidavit, he states that "[w]e do not seek an enhancement in this case." (Cotton Aff. ¶ 10).

court's determination of the hourly rate and number of hours reasonably expended by Priddy's attorneys. Id.

**III. RECOMMENDATION**

For the forgoing reasons, the court recommends that Priddy be awarded attorney's fees in the amount of \$52,708.50 to Cotton and \$53,185.50 to Hodges. The court further recommends that the Priddy be awarded expenses in the amount of \$172.56 to Cotton and \$8,092.67 to Hodges. Finally, the court recommends that no attorney's fees be awarded to Priddy for legal services rendered by Yurchik.

Respectfully submitted,

s/ Tu M. Pham

---

TU M. PHAM

United States Magistrate Judge

June 8, 2007

---

Date

**NOTICE**

**ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.**