UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 28, 1997

MICHAEL K. LEE, Complainant, v. AIRTOUCH COMMUNICATIONS, Respondent.	)))) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 97D00029)))

ERRATA

The Order Granting Respondent's Request For Attorney's Fees issued April 15, 1997 is hereby corrected as follows:

(1) At page 1, the citation to *Lee v. AirTouch Communications* 6 OCAHO 901 (199**0**), 1996 WL 780148, *appeal filed*, No. 97–70124 (9th Cir. 1997), is corrected to read:

Lee v. AirTouch Communications, 6 OCAHO 901 (199**6**), 1996 WL 780148, *appeal filed*, No. 97–70124 (9th Cir. 1997).

(2) At page 2, the citation to *Banuelos v. Transportation Leasing Company*, 1 OCAHO 255, at 1652–53 (1990), is supplemented to read:

> *Banuelos v. Transportation Leasing Co.*, 1 OCAHO 255, at 1652–53, ***request for CAHO review denied*, 1 OCAHO 259 (1990), *aff'd, Banuelos v. United States Dep't of Justice*, 5 F.3d 534 (9th Cir. 1993) (unpublished), 1993 WL 312769, *and cert.denied*, 510 U.S. 1112 (1994).**

(3) At page 6, the citation to *Toussaint v. Tekwood Assocs., Inc.*, 6 OCAHO 892, at 15 (1996), is supplemented to read:

Toussaint v. Tekwood Assocs., Inc., 6 OCAHO 892, at 15 (1996)***, appeal filed*, No. 96–3688 (3d Cir. 1996).**

SO ORDERED.

Dated and entered this 28th day of April, 1997.

ELLEN K. THOMAS
Administrative Law Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
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April 15, 1997

MICHAEL K. LEE, Complainant,	)
v.	) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 97D00029
AIRTOUCH COMMUNICATIONS, Respondent.	)

ORDER GRANTING RESPONDENT'S REQUEST FOR ATTORNEY'S FEES

Introduction

On November 21, 1996, I entered a final decision and order dismissing the complaint of Michael K. Lee against AirTouch Communications,[1] in part for lack of jurisdiction and in part for failure to state a claim upon which relief can be granted. *Lee v. AirTouch Communications*, 6 OCAHO 901 (1990), 1996 WL 780148, *appeal filed*, No. 97–70124 (9th Cir. 1997). In that order, I set out a schedule for the parties to file their submissions respecting the issue of attorney's fees. Both parties have now made their submissions and the request is ripe for decision.

Respondent AirTouch filed a brief, an itemized request seeking fees in the total amount of $7,531.26, and various exhibits in support of the request. Complainant Lee filed a brief in opposition which does not question the reasonableness of the claimed hourly rates, or of the time set forth either by AirTouch's in-house counsel herself or by Pillsbury Madison & Sutro for the activities for which expenses are sought. Neither does Lee dispute that AirTouch is the prevailing party. Rather, Lee's brief addresses the merits of the dis-

[1]Respondent's correct name is AirTouch Cellular. Because the complaint was dismissed at an early stage, it was never amended to show the correct designation.

missed action and argues once again that the prior decision was wrong.[2] It sets forth and explains again Lee's contentions that the United States Congress lacks power to impose income tax withholding on United States citizens, and that Congress similarly may not require a United States citizen to apply for a social security number or furnish one to an employer. The issue in this case, however, was whether AirTouch engaged in unfair immigration-related employment practices.

Standards for Awarding Attorney's Fees

The applicable statutory provision governing the award of fees, 8 U.S.C. §1324b(h), directs that an administrative law judge, in a proceeding under that section,

> may allow a prevailing party, other than the United States, a reasonable attorney's fee if the losing party's argument is without reasonable foundation in law and fact.

The point of departure in approaching the award of attorney's fees in OCAHO cases arising under §1324b has generally been the line of cases emanating from the instructions of the Supreme Court in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), which sets forth a dual standard for discrimination cases under Title VII: a prevailing plaintiff in such a case is ordinarily awarded attorney's fees to make it easier for a plaintiff of limited means to bring a meritorious suit, while an award of fees to a prevailing defendant is an exception, designed to deter the bringing of lawsuits without foundation. The Ninth Circuit, in which this case arises, has followed this approach, with particular solicitude for the situation of unrepresented plaintiffs. *See generally Banuelos v. Transportation Leasing Company*, 1 OCAHO 255, at 1652-53 (1990)[3] (citing, *inter alia*, *Miller*

[2]Among the exhibits attached to AirTouch's opposition is the affidavit of Michael Lee, dated January 11, 1997 which, *inter alia*, contradicts the previously filed affidavit of Claire Soderberg as to the factual allegations about how far the hiring process had progressed. Lee contends that based on that alleged factual dispute dismissal of his complaint was premature. The time to have asserted that argument in this forum was in response to the motion to dismiss in September 1996, not now. The merits of the dismissal must now be addressed in the Court of Appeals for the Ninth Circuit; I do not address them here beyond noting that the alleged factual dispute would not have affected the outcome in any event.

[3]Citations to OCAHO precedents reprinted in the bound Volume 1, *Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States*, reflect consecutive pagination within that bound volume; pinpoint citations to Volume 1 are to the specific pages, seriatim, of the *entire* volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 1, however, are to pages within the original issuances.

v. Los Angeles County Bd. Of Educ., 827 F.2d 617 (9th Cir. 1987)). While mindful of the need to deter frivolous lawsuits, courts have also been cautious in awarding fees to defendants in order to avoid any chilling effect upon the prosecution of legitimate civil rights lawsuits which are less than airtight. *See, e.g., Sassower v. Field*, 973 F.2d 75, 79 (2nd Cir. 1992), *cert. denied*, 507 U.S. 1043 (1993).

Before an award of attorney's fees may be granted, it is necessary to consider two questions: first, is the requesting party the "prevailing party" under the Act, and second, did the losing party's argument lack a reasonable foundation in law and fact. The first question need not long detain us as it is clear that AirTouch is the party in whose favor the ruling on the motion to dismiss was rendered, and which received the dispositive relief sought by its motion to dismiss. *Cf. Huesca v. Rojas Bakery*, 4 OCAHO 654, at 8–10 (1994), *United States v. G.L.C. Restaurant, Inc.*, 3 OCAHO 439, at 6–8 (1992). Lee has not contended otherwise. The second question requires further analysis.

Nature of the Case

While status as a prevailing party is a condition precedent to the award of fees, that status alone carries no implications as to the question of whether there was a reasonable legal and factual basis for the action, a question which necessarily involves examination of the case on the merits.

Complainant in this case is not proceeding *pro se*, but with the assistance and representation of John B. Kotmair, Jr., Director of the National Worker's Rights Committee, who filed Lee's original complaint alleging that AirTouch engaged in unfair immigration-related employment practices consisting of three separate types of discrimination: national origin discrimination, citizenship status discrimination, and document abuse. The complaint alleged that AirTouch violated the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324b, and by the Immigration Act of 1990 (IMMACT), 8 U.S.C. §1324b(a)(6).

AirTouch filed an answer to which it attached a letter dated October 3, 1995 received from the National Worker's Rights Committee setting forth in detail theories and arguments as to why

U.S. citizens are not subject to withholding for income taxes and have no obligation to participate in the social security system. The letter asserts that AirTouch treated Lee as a non-resident alien rather than as a citizen when it requested his social security number because only non-resident aliens are subject to withholding for taxes or are required to have social security numbers.

The gravamen of the Lee's complaint is that AirTouch made a request to Lee as his prospective employer that he provide AirTouch with his social security number as a condition of employment and that such a request discriminated against Lee on the basis of his national origin and citizenship. He also alleged that AirTouch engaged in acts of document abuse under 8 U.S.C. §1324b(a)(6), both by requesting Lee's social security number and by refusing to honor his self-created "Statement of Citizenship (stating he is a U.S. Citizen and is not subject to withholding of income taxes under Federal law)"[4] and an "Affidavit of Constructive Notice (He does not have a social security number and is not subject to the Social Security Act)." Lee contends that the INA requires an employer to honor these documents and to accept his claim to be free of withholding for taxes.

However he may seek to characterize this case, Lee's own allegations and submissions show that the complaint is based upon an ideological dispute with the Internal Revenue Service over the method of withholding for taxes and over the constitutionality of the system of taxation in the United States. This case is one of a growing number of OCAHO cases premised upon the same or substantially similar allegations seeking to bring these theories within the ambit of the provisions of the INA designed to eliminate unfair immigration-related employment practices. *Smiley v. Philadelphia*, OCAHO Case No. 96B00049, ___OCAHO___ (1997), *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997), *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO 919 (1997), *Costigan v. Nynex*, 6 OCAHO 918 (1997), *Boyd v. Sherling*, 6 OCAHO 916 (1997), *Winkler v. Timlin*, 6 OCAHO 912 (1997), *Horne v. Hampstead*, 6 OCAHO 906 (1997), *Lee v. AirTouch Communications*, 6 OCAHO 901 (1996), *Toussaint v. Tekwood*

[4]This document is not to be confused with INS Form N–560 or N–561 (INS certificates of U.S. citizenship). These forms are issued by INS and are recognized as documents suitable for establishing both identity and employment eligibility under the verification system set out at 8 U.S.C. §1324a(b) and 8 C.F.R. §274a.2(b)(i)(v)(A)(2). *Cf. Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923, at 2 n.2 (1997), *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO 919, at 1 n.1 (1997), *Boyd v. Sherling*, 6 OCAHO 916, at 19 n.5 (1997).

Assocs., Inc., 6 OCAHO 892 (1996). Most of the complaints were filed and pursued by Mr. Kotmair and the National Worker's Rights Committee. Each of these cases was dismissed at an early stage; none has survived preliminary motions to dismiss either for lack of jurisdiction or for failure to state a claim upon which relief may be granted. Several additional cases advancing the same theories are currently pending in this office against other respondents; Lee himself is the complainant in one of them. *Lee v. AT&T*, OCAHO Case No. 97B00031 (April 11, 1997, Order Excluding Complainant's Representative). The complaints in most of these cases were also filed by Mr. Kotmair.

These and similar theories are well known to the federal courts, including those in the Ninth Circuit in which this case arises. More than a decade ago, a variety of challenges to the withholding of federal taxes or to participation in the social security system was made in a barrage of lawsuits not only against employers, *see, e.g.*, *Lepucki v. Van Wormer*, 765 F.2d 86 (7th Cir. 1985) *cert. denied sub nom. Hyde v. Van Wormer*, 474 U.S. 827 (1985), *Stonecipher v. Bray*, 653 F.2d 398 (9th Cir. 1981), *cert. denied*, 454 U.S. 1145 (1982), *Bright v. Bechtel Petroleum Inc.*, 780 F.2d 766 (9th Cir. 1986), *Edgar v. Inland Steel Co.*, 744 F.2d 1276 (7th Cir. 1984), *Lonsdale v. Smelser*, 553 F. Supp. 259 (N.D.Tex. 1982), *Lonsdale v. Smelser*, 709 F.2d 910 (5th Cir. 1983), *McFarland v. Bechtel Petroleum, Inc.*, 586 F. Supp. 907 (N.D. Cal. 1984), *amended by* No. C–83–3963–JPV, 1985 WL 1630 (N.D.Cal. Apr. 30, 1985) (unreported), *Press v. McNeal*, 568 F. Supp. 256 (E.D. Pa. 1983), but also against federal agencies, *Crain v. Comm'r*, 847 F.2d 887 (D.C.Cir. 1988), *Schoffner v. Comm'r*, 812 F.2d 292 (6th Cir. 1987), *Pascoe v. IRS*, 580 F. Supp. 649 (E.D. Mich. 1984), *aff'd* 755 F.2d 932 (6th Cir. 1985), *Granzow v. Comm'r*, 739 F.2d 265 (7th Cir. 1984), and/or against federal employees, *Ryan v. Bilby*, 764 F.2d 1325 (9th Cir. 1985) (civil rights action against judge, magistrates, attorneys and IRS agents), *United States v. Ekblad*, 732 F.2d 562 (7th Cir. 1984) (lien against property of IRS official), *United States v. Hart*, 701 F.2d 749 (8th Cir. 1983) (IRS officials' action to enjoin taxpayer who recorded "common law liens" on property owned by them).

Similar theories have been advanced in a variety of contexts, *Gattuso v. Pecorella*, 733 F.2d 709 (9th Cir. 1984) (tax protestors sought "abatement of the finding" that they owed taxes, claiming wages were not income), *In re Becraft*, 885 F.2d 547 (9th Cir. 1989) (sanctions under Fed. R. App. P. 38 against criminal defense counsel

who had claimed, *inter alia*, on appeal that it was error for district court to refuse to give jury instruction that U.S. citizen residing in the United States is not subject to federal income tax laws under Sixteenth Amendment), *Neal v. Regan*, 587 F. Supp. 1558 (N.D.Ind. 1984) (action for writs of mandamus seeking return of IRS penalties), and multiple appeals from Tax Court deficiency determinations, *Sochia v. Comm'r*, 23 F.3d 941 (5th Cir. 1994), *cert. denied sub nom. Socchia v. United States*, ___ U.S. ___, 115 S.Ct. 1107 (1995), *Urban v. Comm'r*, 964 F.2d 888 (9th Cir. 1992), *Smith v. Comm'r*, 800 F.2d 930 (9th Cir. 1986), *Rager v. Comm'r*, 775 F.2d 1081 (9th Cir. 1985), *Hudson v. United States*, 766 F.2d 1288 (9th Cir. 1985).

What these cases have in common is that all rejected the theories put forward. Many of these cases awarded attorney's fees; some assessed sanctions as well. The fact that in some instances the cases were pursued *pro se* did not provide protection from the award of attorney's fees. *Gattuso*, 783 F.2d at 710 (argument that wages are not "income" is frivolous), *Lovell v. United States*, 755 F.2d 517, 519 (7th Cir. 1989) (frivolous argument that *pro se* tax protestors are exempt from taxation because they were "natural individuals" who had not requested any privilege from the government), *Lonsdale v. United States*, 919 F.2d 1440 (10th Cir. 1990) (*pro se* attempt to prevent IRS levies), *Press*, 568 F. Supp. at 259 (challenge to employer's withholding for federal income tax found meritless, vexatious and abusive), *Wise v. Comm'r*, 624 F. Supp. 1124, 1129 (D. Mont. 1986) (*pro se* challenge to withholding for taxes where the slightest amount of research would have disclosed there was no foundation for claim; plaintiff's *pro se* status "does not excuse him from researching the law").

In short, similar challenges to the constitutionality of the tax withholding system have been addressed and rejected on numerous occasions by a variety of circuits including the Ninth, in which this case arises: "This circuit has repeatedly held that an employer is not liable to an employee for complying with a legal duty to withhold tax." *Bright*, 780 F.2d at 770. The law is also clear that one is not at liberty unilaterally to opt-out of the social security system. *United States v. Lee*, 455 U.S. 252, 258 (1982).

The Order of Inquiry

On August 30, 1996 I issued an order of inquiry raising factual questions related to jurisdictional and other issues and advising the parties that each should review the legal context in which the alle-

gations were raised. That order specifically cited and discussed OCAHO precedents addressing the issue of whether a request for a social security number can give rise to a claim of document abuse. *Lee v. AirTouch Communications*, 6 OCAHO 888, at 6 (discussing, *inter alia*, *Westendorf v. Brown & Root Inc.*, 3 OCAHO 477 (1992) and *Lewis v. McDonald's Corp.*, 2 OCAHO 383, at 5 (1991), which observed that "[n]othing in the logic, text or legislative history of IRCA hints that an employer may not require a social security number as a precondition of employment"). That order of inquiry also set forth in detail the requirements of the employment eligibility verification system and its implementing regulations, *Lee*, 6 OCAHO 888, at 4–5, and observed that Lee's self-created documents were not documents listed in 8 C.F.R. §§274a.2(b)(v)(A), (B), and (C) as documents acceptable to show eligibility for employment, and were not offered for that purpose, noting further that "nothing in the employment eligibility verification system requires an employer uncritically to accept a prospective employee's unilateral representations of exemption from federal taxes, whether income or social security taxes, or to accept documents to establish identity or eligibility other than those specifically enumerated." *Lee*, 6 OCAHO 888, at 5. Lee's response to the order of inquiry explained why he believed my specific factual inquiries to be irrelevant, and expounded upon his contrary interpretations of the United States Constitution, statutes, and cases. These same theories and legal conclusions are elaborated at even greater length in Lee's reply to AirTouch's Affirmative Defenses.

There Was No Legal or Factual Basis for Any of the Allegations

Each of the specific allegations of the complaint was subsequently dismissed summarily for reasons more fully set forth in the Order of Dismissal.

a. Jurisdiction was wholly lacking over allegations of national origin discrimination.

Lee's national origin was at no time identified or disclosed by anything in the record. There is no allegation or any reason to believe that the respondent knew Lee's national origin. A claim of national origin discrimination which does not specify any national origin is insufficient as a matter of law. *Boyd v. Sherling*, 6 OCAHO 916, at 23 (1997), *Toussaint v. Tekwood Assocs. Inc.*, 6 OCAHO 892, at 15 (1996). More importantly, this portion of the complaint was dismissed because AirTouch had in excess of 200 employees at all times

relevant to the complaint and OCAHO jurisdiction over claims of national origin discrimination is limited to employers of more than three but fewer than fifteen employees. To cite even a fraction of the many cases so holding would, as Judge Trott has observed in another context, "menace the endangered species of the world who live in trees. . . ." *Butros v. INS*, 990 F.2d 1142, 1148 (9th Cir. 1993) (en banc) (Trott, J. dissenting). A modicum of pre-filing research—such as reading the statute—would have disclosed the jurisdictional limitation. 8 U.S.C. §1324b(a)(2)(B).

b. The allegations of citizenship status discrimination fail to state a *prima facie* case.

Absent a claim that any other prospective employee was treated more favorably, no *prima facie* case of disparate treatment was stated. The order of inquiry thus sought to ascertain whether Lee believed that persons of other citizenship status were treated differently. In response to the inquiry, he basically answered that the question was irrelevant. The allegation of citizenship status discrimination was accordingly dismissed.

c. Document Abuse

Lee's response to the request for attorney's fees continues to argue that the requirement of §1324b(a)(6) that an employer honor documents which reasonably appear to be genuine[5] is not limited to the documents set forth in the statute and regulations presented to show eligibility to work in the United States, but rather is a general requirement that an employer honor any document whatsoever presented for any purpose whatsoever. As was observed in *United States v. Zabala Vineyards*, 6 OCAHO 830 (1995), however,

> There is precious little legislative history undergirding enactment of §1324b(a)(6), but there can be no doubt in [the] context of the GAO and Task Force Reports that the seminal problem to be addressed was that of 'employers' refusal to accept or uncertainty about, valid work eligibility documents.'

Zabala Vineyards, 6 OCAHO 810, at 15 (citing General Accounting Office Report B—125051, at 86 (1990)).

[5]Because the documents presented have no relevance to the employment eligibility verification system, I had no occasion to reach the question of whether a document purporting to exempt a person from the Internal Revenue Code or the Social Security Act could "reasonably appear to be genuine" when created by an individual, not by the IRS or the Social Security Administration.

The practices that Lee complains of are not immigration-related employment practices at all, much less unfair immigration-related employment practices. The claims of document abuse were summarily dismissed, first because a request for a social security number is not a request for a document at all,[6] and second because the rejection of Lee's proffered documents does not fall within the ambit of §1324b or within the limited jurisdiction of this forum.

The Immigration Reform and Control Act of 1986 (IRCA), enacted as an amendment to the Immigration and Nationality Act, (INA), enacted a comprehensive system of employment verification, 8 U.S.C. §1324a, as well as prohibitions against certain unfair immigration-related employment practices. 8 U.S.C. §1324b. Congress for the first time made it unlawful to hire employees without verifying their eligibility to work in the United States. A prospective employer is obligated under the verification system to examine certain documents acceptable for demonstrating a worker's identity and eligibility under §1324a(b)(1), 8 C.F.R. §274a.2(b)(1)(v), and to complete form I–9. When a document from the lists set out in §1324a(b)(1), 8 C.F.R. §274a.2(b)(1)(v) is presented for purposes of satisfying the requirements of the verification system, an employer is obligated to accept the document if it appears on its face to be genuine. The underlying aim of IRCA is to deter illegal immigration of persons in search of jobs by imposing on employers the duty to verify the employment eligibility of employees to ensure that a prospective employee is not an unauthorized alien.

Notwithstanding Lee's contentions to the contrary, nothing in the verification system requires an employer to accept self-generated documents presented to a prospective employer for purposes other

[6]Lee vigorously argues that it is "a naked fact the Social Security Card and Number are one in (sic) the same thing in the eyes of the Social Security Administration (SSA), the Office of Management and Budget (OMB) and therefore the law." I held otherwise. Lee's argument that an employer may not require a social security number also rests in part upon isolated sentences culled out of context from a brief filed by the EEOC in a religious discrimination case in Texas, which brief he asserts is binding on the Department of Justice. It is well established that the litigation posture of an agency in a particular case has no estoppel effect, even on the agency itself and is not an "interpretation" of the agency. *Ames v. Merrill Lynch Inc.*, 567 F.2d 1174, 1177 n.3 (2nd Cir. 1977). *Cf. Appalachian Power Co. v. Train*, 620 F.2d 1040, 1045–46 (4th Cir. 1980) ("But as the mere recommendation of a subordinate does not bind the Agency, neither does the mere assertion of an attorney in a brief except for the purposes of that case.").

than establishing a prospective worker's identity or eligibility to work in the United States. The INA does not purport to address issues of taxation, nor is there any reasonable basis upon which to believe that it does, or to conclude that this forum has jurisdiction over disputes about withholding for taxes.

AirTouch is Entitled to Attorney's Fees

Ordinarily it is difficult to show that a complaint has no reasonable foundation in fact or law. This is not, however, an ordinary case. Neither is it a case where an award of attorney's fees would chill the prosecution of legitimate lawsuits which are less than airtight. On the contrary, it is precisely the type of case which the statute was designed to deter.

As was observed in *Wise*, 624 F. Supp. at 1130

> There are those who believe they can ignore the decisions of the United States courts and can read our Constitution in a vacuum, construing its provisions as they please. Many of these people are misled and misguided by others who, carefully, do not put themselves at risk but rather seem to act as 'coat-holders.' Some protest our tax laws by refusing payment and incurring criminal penalties, while others file frivolous civil suits. In both instances, they seem to exalt their personal views above the law as decided by our courts.

That I am without authority to award fees against the "coat holder" does not preclude an award against the complainant, particularly where, as here, Lee was put on notice by the order of inquiry that his claims were not cognizable in this forum.

The Amount of the Fees

OCAHO procedural rules[7] require that the requesting attorney file an itemized statement of the actual time expended and the rate at which fees and other expenses were computed. 28 C.F.R. §68.52(c)(2)(v). Counsel for AirTouch submitted a brief, an itemized request (Exhibit A), seeking fees in the total amount of $7,531.26, ($5,890.00 representing 38 hours of her time at the rate of $155.00 per hour, and $1,625.56 representing consultation with outside counsel for 7.5 hours billed at the rate of $216.75 per hour). Costs are listed in the amount of $15.70. Also accompanying the request is a Record of In-House Counsel Time (Exhibit B), setting forth the dates

[7]Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1996).

on which work was performed and the number of hours worked on the case, the time periods and the billing rates, together with a printout from Pillsbury Madison & Sutro. The Declaration of Tracy A. Livezey (Exhibit C), also filed with the request, sets forth counsel's education and experience and states that Pillsbury Madison & Sutro advised her on litigation strategy and administrative procedure. It asserts that $155.00 an hour is the rate at which AirTouch charges its San Diego subsidiary for her time and that this is substantially below the market rate charged by private law firms in both the San Diego and San Francisco markets.

While the submission does not specify precisely what was being worked on during the particular time periods, a comparison of those periods to the significant dates in the progress of the case shows a reasonable correlation with specific filings of the case as follows:

July 16–31, 1996—11 hours;	AirTouch's Answer to Complaint filed August 2, 1996
August 16–31, 1996—½ hour	AirTouch's Motion to dismiss filed
September 10, 1996	
September 1–15, 1996—7 hours	
September 16–30, 1996—5 hours October 1–15, 1996—9 hours	AirTouch's Response to Order of Inquiry filed September 20, 1996 and AirTouch's Opposition to Appearance and Request for Exclusion filed October 4, 1996
November 16–30, 1996—½ hour	Order of Dismissal filed November 21, 1996
December 15–23, 1996—5 hours	Petition for Attorney's Fees filed December 24, 1996

The printout from Pillsbury Madison & Sutro appears to show 7.50 hours between July 21, 1996 and November 4, 1996 by R.J. Gerard, Jr. for a total of $1,625.56. (Another entry on the printout appears to reflect 1/2 hour for an unnamed person on October 31, 1996 at the rate of $108.37, but does not indicate who performed the work or the nature of the work. Evidently this amount is not included in the request which counts only 7.5 hours for outside counsel.) Telephone charges of $4.45 and fax charges of $11.25 are also shown, but without elaboration.

Lee has not challenged the specifics of the request and I find the submission to be generally reasonable in light of the record.[8] While it is true that the complaint was dismissed at an early stage, it is also true that complainant's filings were voluminous. Lee's response to the order of inquiry alone consists of 24 pages. Lee's reply to respondent's affirmative defenses consists of 32 pages. Both discourse at great length as to why complainant should be free of withholding for taxes; the latter engages in invective against respondent as well. The prose is dense and the reasoning obscure, requiring substantial time even to read much less to understand.

Conclusion

Complainant is directed to pay to respondent the sum of $7,531.26 for attorney's fees including costs of $15.70.

SO ORDERED.

Dated and entered this 15th day of April, 1997.

ELLEN K. THOMAS
Administrative Law Judge

APPEAL INFORMATION

In accordance with the provisions of 8 U.S.C. §1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. §1324b(i), any person aggrieved by such Order seeks timely review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.

[8]Ordinarily greater specificity would be required, particularly with respect to the time of outside counsel. Absent objection, however, the request on its face generally commensurate with the requirements of the case.