

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER**

Department: CX1030

COURT CONVENED AT:		ON:	October 31, 2007
JUDGE / COMM:	RONALD L. BAUER	CLERK:	J. FRAUSTO
BAILIFF:	V. CHAVIRA	REPORTER:	NONE

AND THE FOLLOWING PROCEEDINGS WERE HAD:

01CC02379 FOGARTY HARDWICK VS COUNTY OF ORANGE

No appearances.

The Court having taken this matter under submission on 10-22-07 now rules as follows:

Plaintiff moves for an award of attorney fees for the services performed on her behalf in this litigation. Defendants do not challenge the plaintiff's right to an award, but they contest the amount sought and suggest a specific smaller sum.

An award of fees is never an easy task for the court. Counsel may perceive the entire exercise as a challenge to their performance, professionalism, and integrity. But the court is obliged to review and analyze a variety of issues that can be felt by counsel to be very personal. In fact, no one else is in a better position to do this. As plaintiff noted in footnote 10 of the Points and Authorities in support of this motion, "the Court is in a much better position [than counsel] to judge the value of professional services rendered in this case."

In one sense, the calculation of a fee is the essence of simplicity. A base fee, or lodestar, is the product of the hours reasonably devoted to the litigation and a reasonable hourly rate assigned to each of those hours. A multiplier (a number above or below 1.0) can then be applied to the base fee to yield the total award.

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However, behind this simple mathematical exercise are a variety of factors which must be applied in the decision-making process which yields the numbers to be plugged into the formula. Among the many factors considered by the court, the following may merit note here:

- Mere success in the litigation is only the bare necessity for an award of fees. Only the prevailing party can make such a motion. Therefore, although "success" is often called a factor meriting a special award, it really has little impact on this calculation.

- The magnitude of the prevailing party's success is important. The award in this case, widely described as "unprecedented," favors a significant fee award.

- This notable success was achieved against difficult issues and a skilled adversary. This was by no means an easy or "cookie-cutter" case, as reflected by its early dismissal; an appeal that succeeded only after rehearing; multiple challenges to the pleadings and the evidence; extensive research of unusual issues; and serious pre- and post-trial motions.

- The largely contingent nature of the fee agreements between plaintiff and her counsel favor the use of a multiplier of greater than 1.0 (sometimes imprecisely called a "positive" multiplier).

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- There can be little doubt that the all-consuming nature of this litigation required counsel (especially attorney McMillan) to limit other professional opportunities over an extensive period of time.

- Fees incurred after this judgment was secured should be analyzed differently. The issues involved in this motion can be interesting, but they are easily accessible in the cases, and the risks inherent in a contingent fee are now significantly reduced.

- The moving party undoubtedly does not expect to be compensated for the time and effort required to correct glitches and errors in this motion, which led to another hearing and the preparation of new materials. Additional papers not authorized by the court will, of course, be compensated fittingly.

- The case has never presented the risk that any award might be uncollectible.

- Concern about duplicative efforts is regularly a factor in fee motions, but that is a minimum issue here. The trial was the principal occasion when two attorneys represented the plaintiff in court, and their joint effort was eminently justifiable on every such occasion. It can only be a guess, of

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course, but it is reasonable to think that the plaintiff would not have prevailed without the presence of both attorneys at trial.

- The Jardini Declaration was of great interest to this court; his professional knowledge and experience are truly impressive. However, the overwhelmingly argumentative nature of that "declaration" largely performed the function of an auxiliary (and unauthorized) brief.

In theory, a diligent and industrious court - with no other cases - would put the microscope to each individual billing entry in this claim and determine its propriety. The bills could then be reconstructed and recalculated accordingly. With seven years of records to peruse, this court will not do that. It has, however, reviewed all of the records and has reached the following conclusions about the major components of this claim:

- Attorney McMillan has presented one of the most precise and detailed collection of bills this court has ever reviewed. Never has it seen reports of tasks completed in 0.03 hour or 0.05 hour, as shown here. Other billings of precise amounts for specified tasks suggest exemplary accuracy and legitimacy. The court will assign all of his 667.86 hours, as shown on page four of this Motion, a value of \$400 per hour. The court would not ordinarily award such a high rate for such a

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relatively new attorney, but his performance in this case belied his inexperience and requires a high rate.

- Attorney Shumate's records were the antithesis of McMillan's. Large blocks of time (apparently rounded to the nearest hour) were claimed for tasks that were described in very cursory terms. There is no reason to doubt this attorney's honesty or the very rough accuracy of her records, so the fifty-seven hours devoted to a Reply Brief in November and December, 2002 and the twenty-nine hours for a Petition for Rehearing in June, 2003 must be attributed to a lack of knowledge and experience in these substantive and procedural areas. If the court is to honor all of the reported hours, the rate therefor cannot exceed \$225 per hour.

- Attorney Sutherland was confessedly venturing into new waters in this litigation, and she wisely sought the assistance of a relatively more experienced hand. This court would ordinarily assign a rate of no more than \$200 per hour for such an inexperienced attorney working in an unfamiliar field. However, as with Attorney McMillan, Sutherland's demonstrated performance at trial justifies a boost, in this case to \$250 per hour. This will be applied to all of the 792.4 hours which she billed to her client. The fact that many of these time entries reflect tasks that a more experienced

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attorney would have completed faster does not mean that the time should be rejected. This is simply further reason to apply a modest base rate.

- A reasonable rate for the subsidiary work of Attorney Parks cannot exceed \$250 per hour.

That fairly reflects his experience, his billings, and his services.

- An appropriate base rate for Attorney Benes would be \$350 per hour.

- A fair rate for Attorney Sampaga's level of experience, responsibility, and tasks in this case would be \$240 per hour. As with others above, the court has made no adjustment in the amount of hours claimed. It has instead made the necessary revision in the proposed hourly rate.

The foregoing analysis requires a downward adjustment in the \$914,075.40 lodestar fee suggested in this Motion and summarized on page 4 thereof. The total reduction would be \$249,052.35, moving the tentative lodestar figure to \$665,023.05.

A few further adjustments are needed, as follows:

- As proposed by the Plaintiff, the Carpenter-Greer hours will be cut by 37.12, with a resulting lodestar reduction of \$1,113.60.

- An additional Carpenter-Greer billing error of 0.3 hour reduces the lodestar by \$49.50.

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- While Attorney Jardini's argument about his "Clerical" category is largely an unavailing attack upon deposition review and trial preparation, there are a few of those entries that the court has rejected. These comprise 4.3 hours of Attorney Sutherland's time and 6.0 hours of Attorney Parks's time. At their adjusted base rates, that reduces the lodestar a further \$2,575.

The total effect of these adjustments is a lodestar reduction of \$3,738.10. We now have a lodestar of \$661,284.95.

The defendants' suggestion that no multiplier be applied is brave, but unreasonable. In view of the court's tailoring of the lodestar rates to a fair range reflecting the market for such services from attorneys of these qualifications, and in view of the many factors discussed above regarding the nature of this litigation, a multiplier of 2.5 will be applied. That produces a fee award of \$1,653,212.38.

Entered: 10-31-07.

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Clerk's Certificate of Mailing (C.C. P. 1013a) I certify that I am not a party to this cause, over 18, and a copy of this document was mailed first class postage fully prepaid, in a sealed envelope addressed as shown. Mailing and execution of this certificate occurred on **NOV -1 2007** in Santa Ana, California. ALAN SLATER, EXECUTIVE OFFICER/CLERK by
JANET FRAUSTO deputy.

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