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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

DEC 17 2010

ALAN CARLSON, Clerk of the Court

*J Frausto*  
BY J FRAUSTO

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CIVIL COMPLEX CENTER

DEANNA FOGARTY-HARDWICK &  
ROES 1-5,

Plaintiffs,

v.

COUNTY OF ORANGE, et al.,

Defendants.

Case No. 01CC02379 (Case Assigned to  
Hon. Ronald L. Bauer, Dept. CX103)

Date Action Filed: 2/15/01  
Trial Date: 02/13/07

~~[Proposed]~~ ORDER GRANTING  
PLAINTIFF HER REASONABLE  
ATTORNEYS' FEES INCURRED ON  
APPEAL

Hearing Date: December 13, 2010  
Time: 10:30 a.m.  
Dept: CX103

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[Proposed] ORDER GRANTING PLAINTIFF HER REASONABLE ATTORNEYS' FEES  
INCURRED ON APPEAL

1 This matter came on regularly for hearing on December 13, 2010, at 10:30 a.m.. Attorney  
2 Shawn A. McMillan from The Law Offices of Shawn A. McMillan, APC appeared and argued  
3 for the Plaintiff, Deanna Fogarty-Hardwick. Attorney Robert M. Dato from the firm of Buchalter  
4 Nemer appeared and argued on behalf of all defendants. Having considered the moving,  
5 opposing, and reply papers and all evidence filed therewith as well as the arguments of counsel,  
6 the Court rules as follows:

7 At the outset, the Court notes that with one exception – the time spent on Plaintiff's  
8 motion to strike the opening brief on appeal – defendants do not dispute the reasonableness of the  
9 time spent by Plaintiff's counsel. The Court agrees that the motion to strike was, in essence,  
10 dead on arrival. Hence, the hours devoted to that effort shall not be compensated.

11 Defendants challenge the rates sought by Plaintiff's various counsel. For the most part  
12 the Court finds the rates suggested by Plaintiff to be reasonable and supported by the evidence  
13 with two exceptions: Esther Boynton and Gregory Ellis. Based on the circumstances of this case,  
14 the Court finds that the reasonable hourly rate for the services performed by attorney Esther  
15 Boynton is \$550 per hour. With regard to attorney Ellis, because he had the most significant  
16 guarantee of payment, the justification for a higher rate is reduced. Accordingly, the Court finds  
17 that the reasonable hourly rate for attorney Gregory Ellis is \$500 per hour. The court finds that,  
18 other than as noted, the rates requested were fair and reasonable for a case of this nature. The  
19 appropriate lodestar fee is thus the product of the reasonable number of hours devoted to work on  
20 the appeal times the reasonable rates of all counsel as depicted in the chart below.

21 The Court also finds that the circumstances of this case justify a fee enhancement. The  
22 issues were difficult. If by some happenstance and fortuitous result the trial court was more right  
23 than wrong in analyzing those issues, that doesn't mean that they weren't susceptible to reversal,  
24 it doesn't mean they were easy issues, and it doesn't mean that this trial court judgment wasn't at  
25 substantial risk of reversal. There was some very convincing testimony in the record about the  
26 all consuming nature of this work. The case was difficult. It is a tribute to Mr. Dato and his  
27 talent that this had to be fought tooth-and-nail at every stage. It was through the good effort of the  
28

1 team Mr. McMillan put together that the result on behalf of his client was entirely affirmed. The  
2 only extent to which the judgment was not affirmed did not relate to anything benefitting the  
3 Plaintiff in this case, Deanna Fogarty-Hardwick. But, was just something she undertook in a  
4 broader sense for the public good. Considering all the usual reasons, as outlined in the moving  
5 papers including the accompanying declarations, the Court finds a multiplier of two is fair and  
6 reasonable.

7 With regard to the application of a multiplier, the time devoted to preparing this motion is  
8 treated differently from the time devoted to the appeal. There is nothing contingent at all  
9 anymore. When we deal with a defendant of this nature, there is nothing uncertain about  
10 collectability. On a motion for fees, there is nothing difficult. There are no arcane legal issues.  
11 There is basically no justification at all for the application of any multiplier to fees or time  
12 devoted to this motion. Thus, the Court finds that fees incurred in the preparation of this motion  
13 should be deducted from the lodestar amount reflected in the chart below for purposes of  
14 applying a multiplier, and the Court has done so. That is not to say however, that the effort to  
15 bring this motion should not be compensated. It should be. Thus, as depicted in the chart below,  
16 the time spent on this motion has been removed from the amount subject to a multiplier, then  
17 added back into the total fee calculation.

Attorney	Reasonable Hourly Rate	Number of Hours Billed	Corresponding Fees
Shawn A. McMillan, Esq.	\$485	694.73 11.20 <sup>1</sup> <u>- 39.45<sup>2</sup></u> 644.08	\$312,378.80
Samuel H. Park, Esq.	\$225	7.4	\$1,665.00
Jody M. Hausman, Esq.	\$265	27.57	\$7,306.05
Stephen D. Daner, Esq.	\$265	30.52	\$8,087.80
Kathryn Karcher, Esq.	\$580	34.6 <u>- 4.9<sup>3</sup></u> 29.7	\$17,226.00
Sondra S. Sutherland, Esq.	\$295	105.40	\$31,093.00
Dennis B. Atchley, Esq.	\$585	56.70	\$33,169.50
Donnie R. Cox, Esq.	\$585	53.9 <u>- 1.5<sup>4</sup></u> 52.4	\$30,654.00
Gregory Ellis, Esq.	\$500	28.6	\$14,300.00
Esther Boynton, Esq.	\$550	12.2 <u>- 3.2<sup>5</sup></u> 9.0	\$4,950.00
	<b>Sub-Total</b>	<b>991.37</b>	<b>\$460,830.15</b>

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<sup>1</sup>The time spent on the motion to strike the County's Opening Brief on appeal is not to be compensated.

<sup>2</sup>Time spent preparing the motion for attorney's fees is not subject to a multiplier, and hence is deducted from the initial calculation to be added to the total fee award after application of a multiplier to the fees incurred in appeal.

<sup>3</sup>See footnote 2 above.

<sup>4</sup>See footnote 1 above.

<sup>5</sup>See footnote 2 above.

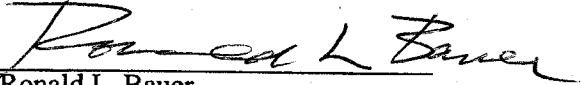
[Proposed] ORDER GRANTING PLAINTIFF HER REASONABLE ATTORNEYS' FEES INCURRED ON APPEAL

1 Thus, the sub-total attorneys' fees after applying the multiplier is \$921,660.30. To this  
 2 amount the attorneys' fees incurred in preparing this motion must be added as follows:

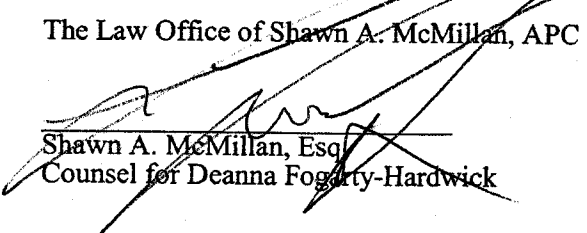
3	Shawn A. McMillan, Esq.	\$485	39.45	\$19,133.25
4	Kathryn Karcher, Esq.	\$580	4.9	\$2,842.00
5	Esther Boynton, Esq.	\$550	3.2	\$1,760.00
6				
7		<b>Sub-Total</b>		<b>\$23,735.25</b>

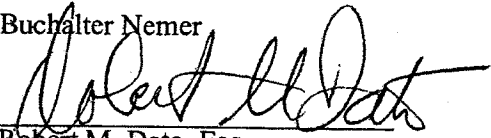
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 9 Based on the evidence and arguments presented, the Court finds that the reasonable  
 10 attorneys' fees for time devoted to the appeal in this case, and time spent in preparing this motion  
 11 are \$945,395.55

12  
 13 IT IS SO ORDERED

14 Date: *December 17, 2010*  
 15   
 16 Hon. Ronald L. Bauer

17 Approved as to form:

18 Date: December 15, 2010  
 19 The Law Office of Shawn A. McMillan, APC  
 20   
 21 Shawn A. McMillan, Esq.  
 22 Counsel for Deanna Fogarty-Hardwick

23 Date: *12/16/10*  
 24 Buchalter Nemer  
 25   
 26 Robert M. Dato, Esq.  
 27 Counsel for all Defendants

28 [Proposed] ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS THIS DOCUMENT  
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