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5 Attorneys for Plaintiff,  
DEANNA R. FOGARTY-HARDWICK  
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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF ORANGE, CIVIL COMPLEX CENTER  
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11 DEANNA FOGARTY-HARDWICK & )  
ROES 1-5, )  
12 )  
Plaintiffs, )  
13 )  
v. )  
14 )  
COUNTY OF ORANGE, et al., )  
15 )  
Defendants. )  
16 )

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

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

**NOTICE OF RULING AND ENTRY OF  
ORDER ON PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES INCURRED  
ON APPEAL**

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

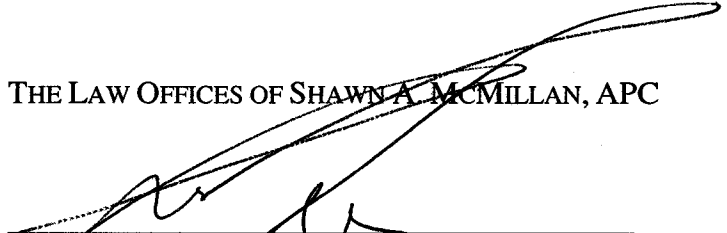
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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS ACTION:  
PLEASE TAKE NOTICE THAT on December 17, 2010, the Court in the above entitled action  
entered its written order granting Plaintiff Deanna Fogarty-Hardwick's motion to recover her  
attorney's fees incurred on appeal.

A true and correct copy of said written order is attached hereto as **Exhibit A**, and is  
incorporated herein by this reference in its entirety as if set forth in full.

THE LAW OFFICES OF SHAWN A. McMILLAN, APC

  
\_\_\_\_\_  
Shawn A. McMillan, Esq.  
Attorneys for Plaintiff Deanna Fogarty-Hardwick

Dated: December 21, 2010

# **EXHIBIT A**

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

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.

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

Case No. 01CC02379

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

23 <sup>2</sup>Time spent preparing the motion for attorney's fees is not subject to a multiplier, and hence  
24 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.

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

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

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

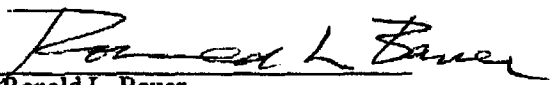
28 [Proposed] ORDER GRANTING PLAINTIFF HER REASONABLE ATTORNEYS' FEES  
INCURRED ON APPEAL

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	<b>Sub-Total</b>		<b>\$23,735.25</b>

8  
 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

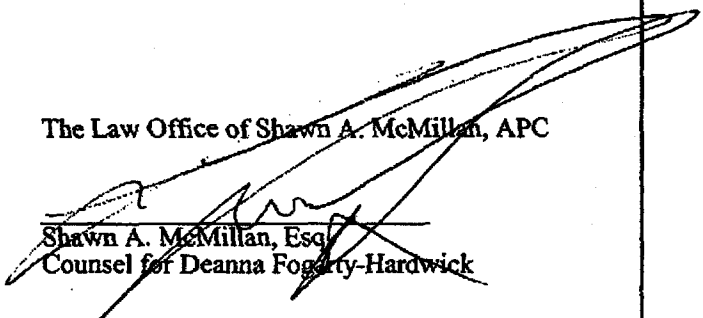
12  
 13 IT IS SO ORDERED

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

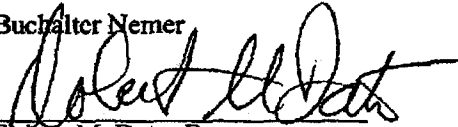
16 Approved as to form:

17  
 18 Date: December 15, 2010

The Law Office of Shawn A. McMillan, APC

  
 20 Shawn A. McMillan, Esq.  
 21 Counsel for Deanna Fogarty-Hardwick

22  
 23 Date: *12/16/10*

Buchalter Nemer  
  
 25 Robert M. Dato, Esq.  
 26 Counsel for all Defendants



**PROOF OF SERVICE - CCP § 1013**

*Deanna R. Fogarty-Hardwick v. County of Orange, et al.*  
Orange County Superior Court, Case No. 01CC02379

I am employed in the County of San Diego, State of California. I am over 18 years of age and am not a party to the within action. My business address is 4955 Via Lapiz, San Diego, California 92122. On December 21, 2010, I served the foregoing documents described as:

- **NOTICE OF RULING AND ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES INCURRED ON APPEAL**

on the interested parties in this action addressed as follows:

Robert M. Dato, Esq. BUCHALTER NEMER, 18400 Von Karman Ave.,#800 Irvine, CA 92612	Byron J. Beam, Esq. Glen A. Stebens, Esq. BEAM, BROBECK, WEST, BORGES & ROSA LLP 1301 Dove Street, Suite 700 Newport Beach, CA 92660	

XX (BY MAIL) I placed a true and correct copy of the original thereof in a sealed envelope addressed as indicated above, and I caused such envelope to be deposited in the mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the deposit for mailing in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 21, 2010, at San Diego, California.

  
Shawn McMillan