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9 Attorneys for Plaintiff,
10 DEANNA R. FOGARTY-HARDWICK

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

11 DEANNA FOGARTY-HARDWICK &) Case No. 01CC02379 (Case Assigned to
12 ROES 1-5,) Hon. Ronald L. Bauer, Dept. CX103)
13 Plaintiffs,))
14 v.) Date Action Filed: 2/15/01
15 COUNTY OF ORANGE, et al.,) Trial Date: 02/13/07
16 Defendants.))
17 **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

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

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

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10 Dated: December 21, 2010
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THE LAW OFFICES OF SHAWN A. MCMILLAN, APC

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

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

[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

1	Attorney	Reasonable Hourly Rate	Number of Hours Billed	Corresponding Fees
2	Shawn A. McMillan, Esq.	\$485	694.73 11.20 ¹ - 39.45 ² 644.08	\$312,378.80
3	Samuel H. Park, Esq.	\$225	7.4	\$1,665.00
4	Jody M. Hausman, Esq.	\$265	27.57	\$7,306.05
5	Stephen D. Daner, Esq.	\$265	30.52	\$8,087.80
6	Kathryn Karcher, Esq.	\$580	34.6 - 4.9 ³ 29.7	\$17,226.00
7	Sondra S. Sutherland, Esq.	\$295	105.40	\$31,093.00
8	Dennis B. Atchley, Esq.	\$585	56.70	\$33,169.50
9	Donnie R. Cox, Esq.	\$585	53.9 - 1.5 ⁴ 52.4	\$30,654.00
10	Gregory Ellis, Esq.	\$500	28.6	\$14,300.00
11	Esther Boynton, Esq.	\$550	12.2 - 3.2 ⁵ 9.0	\$4,950.00
12		Sub-Total	991.37	\$460,830.15
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21 ¹The time spent on the motion to strike the County's Opening Brief on appeal is not to be
22 compensated.

23 ²Time 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 ³See footnote 2 above.

26 ⁴See footnote 1 above.

27 ⁵See 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
7	Sub-Total			\$23,735.25

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

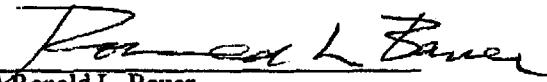
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13 IT IS SO ORDERED

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Date:

15 December 17, 2010


Hon. Ronald L. Bauer

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Approved as to form:

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Date: December 15, 2010

The Law Office of Shawn A. McMillan, APC

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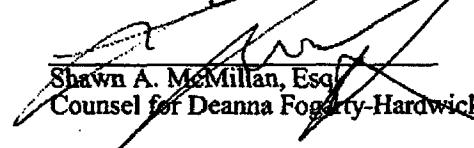
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Date:

12/16/10


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

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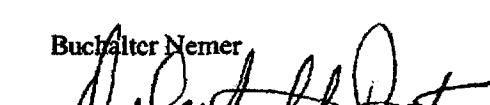
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Buchalter Nemer


Robert M. Dato, Esq.
Counsel for all Defendants

[Proposed] ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES
THE PARTY ALLEGEDLY RESPONSIBLE FOR THE ATTORNEYS' FEES
IS TO SERVE COPIED COPIES ON ALL OTHER PARTIES

Case No. 01CC02379

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**

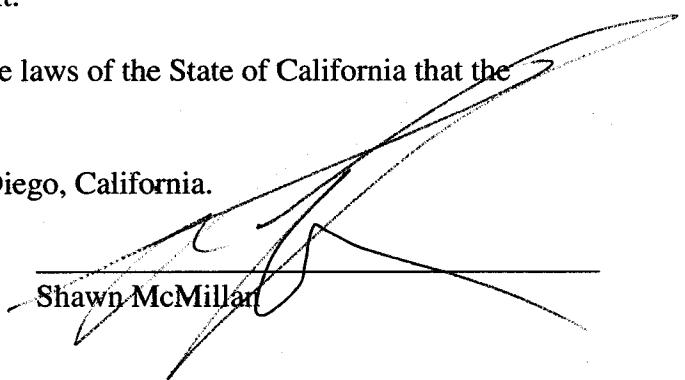
on the interested parties in this action addressed as follows:

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