

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANTA FE POINTE, L.P., et al.,  
Plaintiffs,  
v.  
GREYSTONE SERVICING  
CORPORATION, INC., et al.,  
Defendants

No. C-07-5454 MMC

**ORDER GRANTING GREYSTONE CDE'S  
MOTION FOR ATTORNEY'S FEES AND  
COSTS; VACATING HEARING**

GREYSTONE CDE, LLC,  
Counterclaimant,  
v.  
THEOTIS F. OLIPHANT, et al.,  
Counter-defendants

Before the Court is defendant/counterclaimant Greystone CDE, LLC's ("Greystone CDE") "Motion for Attorney's Fees and Costs Pursuant to Stipulation and Judgment," filed September 14, 2009. Plaintiffs/counter-defendants Santa Fe Pointe, LP ("SFP"), Santa Fe Management, LLC ("SFM"), Rant, LLC ("Rant"), and Theotis F. Oliphant ("Oliphant") have not filed opposition.<sup>1</sup> On October 13, 2009, Greystone CDE filed a "Reply/Notice," in which

<sup>1</sup>Pursuant to the Civil Local Rules of this District, opposition was due no later than October 2, 2008. See Civil L. R. 7-3(a) (providing opposition to motion must be filed no later than 21 days before hearing date).

1 Greystone CDE represents that Rant and Oliphant, on September 25, 2009 and September  
2 29, 2009, respectively, have filed for bankruptcy protection, and, accordingly, Greystone  
3 CDE seek an award of fees and costs as against SFP and SFM only. Having read and  
4 considered the papers filed in support of the motion, the Court deems the matter suitable  
5 for decision on the moving papers, VACATES the hearing scheduled for October 23, 2009,  
6 and rules as follows.

7 By stipulation filed June 15, 2009, and subsequently approved by the Court,  
8 Greystone CDE and SFP agreed that SFP “owe[s] . . . attorney fees and costs incurred in  
9 this litigation pursuant to [specified contractual provisions] in an amount to be determined  
10 by the Court.” (See Docket No. 185.) Similarly, by stipulation filed July 31, 2009, and  
11 subsequently approved by the Court, Greystone CDE and SFM agreed that SFM “owes  
12 (jointly and severally with . . . SFP) . . . attorney fees and costs incurred in this litigation  
13 pursuant to [specified contractual provisions] in an amount to be determined by the Court.”  
14 (See Docket No. 229.)

15 In light of the above stipulations, the Court finds Greystone CDE is entitled to  
16 recover from SFP and SFM the attorney’s fees and costs it incurred in the prosecution of  
17 Greystone CDE’s claims and in the defense of the claims brought against Greystone CDE.

18 **A. Attorney’s Fees**

19 “The operative standard to be applied in New York in determining an appropriate  
20 award of counsel fees is the fair and reasonable value of the services rendered.” Matter of  
21 Spingarn, 626 N.Y.S.2d 650, 651 (N.Y. Sup. Ct. 1995).<sup>2</sup> In making such determination, a  
22 court considers the “hours reasonably expended” and the “reasonable hourly rate.” See id.  
23 at 652.

24 //

25 //

26 \_\_\_\_\_  
27 <sup>2</sup>As set forth in the Court’s May 19, 2009 order, the agreements at issue provide that  
28 such agreements are governed by New York law; as further set forth in said order, such  
choice of law provisions are enforceable herein. (See Order, filed May 19, 2009, at 5:4-  
17.)

Here, Greystone CDE seeks an award of attorney's fees, as follows:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Mark D. Kemple	424.05	\$675 (2009)	\$ 286,233.75
Mark D. Kemple	238.40	\$600 (2008)	\$ 143,040.00
Mark D. Kemple	37.25	\$550 (2007)	\$ 20,487.50
Erik Swanholt	25.90	\$575 (2009)	\$ 14,892.50
Erik Swanholt	256.30	\$525 (2008)	\$ 134,557.50
Erik Swanholt	106.25	\$450 (2007)	\$ 47,812.50
Ruth Holt	122.90	\$450	\$ 55,305.00
Jason Haas	29.80	\$450	\$ 13,410.00
Kamran Miffafati	26.20	\$450	\$ 11,790.00
Hirad Dadgostar	500.80	\$400 (2009)	\$ 200,320.00
Hirad Dadgostar	493.70	\$350 (2008)	\$ 172,795.00
Hirad Dadgostar	134.50	\$285 (2007)	\$ 38,332.50
Lin Wang	149.50	\$300	\$ 44,850.00
Judy Lin	64.00	\$275	\$ 17,600.00
Rebecca Sterling	22.75	\$260	\$ 5,915.00
Valrie Crawford	213.20	\$250	\$ 53,300.00
Evelyn Duarte	48.00	\$200	\$ 9,600.00
James Senter	<u>5.25</u>	\$175	<u>\$ 918.75</u>
Total	2898.75		\$1,271,160.00 <sup>3</sup>

### 1. Hours Reasonably Expended

"The burden is on counsel to keep and present records from which the court may determine the nature of the work done, the need for it, and the amount of time reasonably required; where adequate contemporaneous records have not been kept, the court should not award the full amount requested." Spingarn, 626 N.Y. 2d at 652 (internal quotation and citation omitted.)

Here, in support of the instant motion, Greystone CDE has submitted numerous invoices, which invoices identify each task for which Greystone CDE's counsel, Jones Day, billed Greystone CDE during the course of the instant litigation, as well as the number of hours expended on such work, the identity of the attorney(s) and/or paralegals who performed the work, and the hourly rate charged by each such attorney and paralegal. (See Kemple Decl., filed September 14, 2009, Exs. 10-27.) Additionally, Greystone CDE

---

<sup>3</sup>The hours and rates set forth in the chart above are taken from declarations submitted by Greystone CDE in support of the instant motion. (See Kemple Decl. ¶¶ 50, 52, 55-56; Holt Decl. ¶¶ 2, 8; Mirrafati Decl. ¶¶ 2-3; Wang Decl. ¶¶ 2, 10; Swanholt Decl. ¶ 17; Dadgostar Decl. ¶ 26).

1 has offered evidence to support a finding that the hours reflected in the invoices were  
2 “posted on a daily basis by timekeepers.” (See id. ¶ 6.) Further, Greystone CDE has  
3 submitted the declarations of the attorneys who performed the work for which Greystone  
4 CDE was billed, which declarations set forth in greater detail the specific nature of, and  
5 reason for, the work he or she performed. (See id. ¶¶ 28-49; Holt Decl. ¶¶ 3-7; Mirrafati  
6 Decl. ¶ 3; Wang Decl. ¶¶ 3-9; Swanholt Decl. ¶¶ 3-16; Dadgostar Decl. ¶¶ 4-25).<sup>4</sup>

7 Having reviewed the above-described evidence, all of which is undisputed, as well  
8 as having reviewed the record in the instant matter, including the pleadings and numerous  
9 motions and documents filed by the parties to the instant litigation, the Court finds, for the  
10 reasons stated by Greystone, that the 2898.75 hours expended were reasonable, given the  
11 length of the proceedings, the nature of the claims alleged by Greystone CDE and by SFP  
12 and SFM, and the defenses raised by the respective parties.

## 13 **2. Hourly Rates**

14 “The reasonable hourly rate should be based on the customary fee charged for  
15 similar services by lawyers in the community with like experience and of comparable  
16 reputation to those by whom the prevailing party was represented.” Spingarn, 626 N.Y. 2d  
17 at 652 (internal quotation and citation omitted).

18 As noted above, Greystone CDE has offered evidence setting forth the rate charged  
19 by each attorney and paralegal who performed work on behalf of Greystone CDE. Further,  
20 Greystone CDE has identified the number of years each attorney who performed such work  
21 has practiced law, and offers evidence to show the rates charged herein are the ordinary  
22 billing rates used by Jones Day. Additionally, Greystone CDE has shown it was charged  
23 for, and that it paid for, the services rendered at the rates requested herein. (See Levine  
24 Decl. ¶ 3.)

25 //

---

26  
27 <sup>4</sup>Additionally, the declaration submitted by Mark D. Kemple, lead counsel,  
28 summarizes in detail the work performed by two associates who no longer are employed by  
Jones Day, as well as various tasks performed by paralegals. (See Kemple Decl.  
¶¶ 52-56.)

1 Further, Greystone CDE has offered excerpts from a May 2009 summary, published  
2 by Westlaw CourtExpress, setting forth hourly rates charged by counsel and paralegals in  
3 nine other firms in California, and, for fifty of those individuals, has provided in addition their  
4 years of experience. (See Kemple Decl. Ex. 28.) The rates set forth in the summary are  
5 comparable to those requested herein. For example, the summary indicates that an  
6 attorney with two years experience employed by O'Melveny & Myers LLP bills at the hourly  
7 rate of \$330, and an attorney with two years experience employed by Weil, Gotshal &  
8 Manges LLP bills at the hourly rate of \$415. In the instant case, associate Hiram Dagostar,  
9 during his second year of practice, billed Greystone CDE at the hourly rate of \$350. As  
10 another example, the summary indicates that an attorney with twenty-two years experience  
11 employed by Munger Tolles & Olson LLC bills at the hourly rate of \$650. In the instant  
12 case, partner Mark D. Kemple, during his twentieth year of practice, billed Greystone CDE  
13 at the hourly rate of \$675.

14 The Court may rely on evidence of the nature described above in determining a  
15 reasonable hourly rate. See United Steelworkers of Am. v. Retirement Income Plan for  
16 Hourly-Rated Employees of ASARCO, Inc., 512 F.3d 555, 564-65 (9th Cir. 2008) (affirming  
17 district court's determination of reasonable hourly rate for prevailing plaintiff's attorney in  
18 ERISA case, where district court relied on "customary fee charged by ERISA plaintiff's  
19 attorneys in [that state]" and declaration of plaintiff's counsel as to counsel's typical rate)  
20 (internal quotation and citation omitted).

21 Having read and considered the above-described evidence, all of which is  
22 undisputed, the Court finds, for the reasons stated by Greystone CDE, the rates requested  
23 are reasonable.

24 **3. Conclusion Re: Attorney's Fees**

25 Greystone CDE has shown it is entitled to an award of attorney's fees in the amount  
26 of \$1,271,160.00.

27 //

28 //

1 **B. Costs and Expenses**

2 Under New York law, where, as here, the parties have agreed by contract that the  
3 prevailing party is entitled to recover the costs and expenses it incurs in subsequent  
4 litigation concerning such contract, the prevailing party is entitled to the costs and expenses  
5 reasonably incurred in connection with such litigation. See, e.g., Morse/Diesel, Inc. v.  
6 Trinity Indus., Inc., 875 F. Supp. 165, 181 and n. 23 (S.D. N.Y. 1994) (holding prevailing  
7 party entitled to recover expenses incurred for “telephone service and word processing,”  
8 where such charges were “reasonably charged by counsel” and “such charges are  
9 ordinarily and routinely billed to clients”).

10 Here, Greystone CDE seeks an award of costs and expenses in the total amount of  
11 \$60,484.04, which costs and expenses were charged to, and subsequently paid by,  
12 Greystone CDE. (See Levine Decl. ¶ 3; Kemple Decl. Exs. 10-27.) The nature of the  
13 specific costs and expenses sought herein are set forth in the invoices sent to Greystone  
14 CDE by Jones Day. (See Kemple Decl. Exs. 10-27.) The Court, having reviewed the  
15 invoices, as well as the record in the instant matter, finds the costs and expenses sought  
16 herein were reasonably incurred in the prosecution of Greystone CDE’s claims and in the  
17 defense of the claims brought against Greystone CDE.

18 Accordingly, Greystone CDE has shown it is entitled to an award of costs and  
19 expenses in the amount of \$60,484.04.

20 **CONCLUSION**

21 For the reasons stated above, Greystone CDE’s motion is hereby GRANTED, and  
22 Greystone CDE, LLC is hereby awarded, as against Santa Fe Pointe, LP, and Santa Fe  
23 Management, LLC, jointly and severally, attorney’s fees in the amount of \$1,271,160.00,  
24 together with its costs and expenses in the amount of \$60,484.04, for a total award of fees  
25 and costs in the amount of \$1,331,644.04.<sup>5</sup>

26  
27 

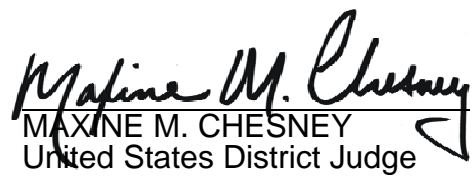
---

<sup>5</sup>This total sum is \$112.95 less than the total claimed by Greystone CDE. As  
28 discussed, the Court’s calculation of the total is based on the component sums provided by  
Greystone CDE and set forth above.

1 Greystone CDE is hereby DIRECTED to submit, no later than October 30, 2009, a  
2 proposed amended judgment.

3 **IT IS SO ORDERED.**

4  
5 Dated: October 16, 2009

  
MAXINE M. CHESNEY  
United States District Judge

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28