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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Bradley Schroeder,

10 Plaintiff,

11 vs.

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13 M & I Bank, FSB, et al.,

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15 Defendants.

No. cv-08-2190-PHX-ROS

ORDER

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17 Pending before the Court is Defendant Folks & O’Connor, PLLC’s Motion to Dismiss
18 (Doc. 6). Folks & O’Connor argues that it is a trustee improperly joined as a defendant, and
entitled to immediate dismissal pursuant to A.R.S. § 33-807 E, which states:

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20 The trustee need only be joined as a party in legal actions pertaining to a
breach of the trustee’s obligations under this chapter or under the deed of trust.
21 Any order of the court entered against the beneficiary is binding upon the
trustee with respect to any actions that the trustee is authorized to take by the
trust deed or by this chapter. If the trustee is joined as a party in any other
22 action, the trustee is entitled to be immediately dismissed and to recover costs
and reasonable attorney fees from the person joining the trustee.

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24 Plaintiff does not dispute that Defendant was improperly joined as a trustee. He does,
25 however, dispute that the attorney’s fees requested by Defendant are “reasonable.” He
26 argues that Defendant was joined solely to ensure that the property would not be sold at the
trustee’s sale and that “[o]nce the Plaintiff [sic?] was able to confirm that the trustee’s sale
27 had been postponed, a simple phone call to Plaintiff’s counsel could have accomplished the
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1 requested dismissal of the case against Folks.” Therefore, Plaintiff argues, drafting a Motion
2 to Dismiss was not reasonable.


3 Plaintiff is incorrect. The statute states that the trustee is to be dismissed immediately;
4 a motion to dismiss is the (or, at least, a) appropriate way to make sure the statute’s mandate
5 is fulfilled. Defendant’s Motion is a mere five pages and there is no sign that Defendant’s
6 counsel unreasonably accrued legal fees in anticipation of recovery from Defendant. Nor did
7 Defendant have, to this Court’s knowledge, any reason to suspect Plaintiff welcome a request
8 for dismissal after a phone call; the Complaint does not state so. Compounding the
9 confusion, Plaintiff seems to argue that Defendant’s counsel should have called his counsel,
10 despite the fact that he was appearing *pro se* until well after this motion was filed. And, of
11 course, Plaintiff could have made the same call before Defendant was obligated to file the
12 Motion to Dismiss. Attorney fees are due under the statute.

13 Accordingly,

14 **IT IS ORDERED** Defendant’s Motion is **GRANTED**. The Complaint against Folks
15 & O’Connor is dismissed with prejudice.

16 **FURTHER ORDERED** Folks & O’Connor is awarded its attorney fees and costs
17 pursuant to A.R.S. § 33-807(E). Folks & O’Connor shall submit documentation of these fees
18 and costs in accordance with L. R. Civ. 54.2.

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20 DATED this 16th day of July, 2009.

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25 Roslyn O. Silver
26 United States District Judge
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