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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REXEL, INC.,)	Case No. 2:16-cv-00408-JAM-EFB
)	
Plaintiff,)	
)	ORDER GRANTING IN PART AND
v.)	DENYING IN PART
)	COUNTERCLAIMANT'S MOTION FOR
HUBZONE CORP., et al.,)	ATTORNEYS' FEES
)	
Defendants.)	
)	
)	

Counterclaimant, American Contractors Indemnity Company ("ACIC") moves the Court to award \$15,795.50 in attorney fees resulting from the granting of default judgment on its breach of contract claim. Mot., ECF No., 39. No opposition has been filed. For the reasons stated below, the Court GRANTS IN PART and DENIES IN PART ACIC's motion.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 18, 2019.

1 I. OPINION

2 A. Factual and Procedural Background

3 Plaintiff Rexel brought a complaint to recover under the
4 Miller Act, 40 U.S.C. § 3133, in February 2016. Compl., ECF No. 1.
5 ACIC filed its answer and cross-claim in August 2016, asserting
6 that the Court has supplemental subject matter jurisdiction over
7 its pendent state law claims. Answer, ECF No. 9; see also Am.
8 Cross-Claim, ECF No. 18. ACIC sought default judgment against
9 cross-defendants Hubzone Corporation, Charmiane Burnett, and Larry
10 Deon Lofton in June 2018. ECF No. 24. The Court adopted the
11 Magistrate Judge's findings and recommendations, ECF No. 30, on
12 March 29, 2019 and awarded ACIC damages of \$528,574.44 and
13 prejudgment interest. Default Order, ECF No. 34. The Court
14 directed the Clerk "to enter judgment in ACIC's favor and against
15 Hubzone, Charmiane Burnett, and Larry Lofton on ACIC's breach of
16 contract claim." Id. at 2. A day earlier, the Plaintiff and ACIC
17 stipulated to dismiss the case with prejudice. Dismissal Order,
18 ECF No. 33. On April 11, 2019, ACIC moved to stay proceedings
19 against Charmaine Burnett due to an automatic stay caused by a
20 filing in another court. Notice Stay, ECF No. 36. ACIC timely
21 moved for an award of attorney's fees under state law on April 19,
22 2019. See Mot.

23 B. Legal Standard

24 Generally, parties bear their own attorneys' fees, absent
25 contractual or statutory authorization. Sheet Metal Workers' Int'l
26 Ass'n Local Union No. 359 v. Madison Indus., Inc. of Arizona, 84
27 F.3d 1186, 1192 (9th Cir. 1996). While Federal Rule of Civil
28 Procedure 54(d)(2) sets the procedure for claiming attorney's fees,

1 there must be an independent source of authority for an attorney
2 fee award. See MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co., 197 F.3d
3 1276, 1281 (9th Cir. 1999).

4 District courts follow the forum state's law for awarding
5 attorney fees when exercising their subject matter jurisdiction
6 over supplemental state-law claims. See id. Although California
7 law ordinarily does not allow for recovery of attorneys' fees,
8 Farmers Ins. Exch. v. Law Offices of Conrado Joe Sayas, Jr., 250
9 F.3d 1234, 1237 (9th Cir. 2001), there are exceptions. One
10 exception occurs in an action to enforce the liability on a bond.
11 Cal. Civ. Code § 9564.

12 C. Discussion

13 1. Section 9564 Requires an Attorney Fee Award to ACIC

14 ACIC asserts that it is entitled to an award of attorney's
15 fees as the prevailing party in this case. See Mot. "In an action
16 to enforce the liability on the bond," California Civil Code
17 mandates that the Court award the prevailing party a reasonable
18 attorney's fee. Cal. Civ. Code § 9564. The section does not
19 define "prevailing party," so the Court looks to how California
20 courts interpret the term. California courts have found that a
21 party has prevailed in this context where it receives a final
22 judgment that provides all the relief that the party requested.
23 Winick Corp. v. Safeco Ins. Co., 232 Cal. Rptr. 479, 482 (Ct. App.
24 1986) (interpreting "prevailing party" as to Cal. Civ. Code § 3250,
25 which was repealed in 2010 and reinstated in 2012 as Cal. Civ. Code
26 § 9564).

27 Here, Plaintiff Rexel, Inc. brought a single claim under the
28 Miller Act against defendants Hubzone and ACIC. See Compl. ACIC

1 answered and filed five cross-claims against Hubzone; its
2 president, Charmaine Burnett; and its secretary, Larry Lofton. See
3 Answer. The Court granted ACIC's Motion for Default Judgment, in
4 which ACIC prevailed on its breach of contract claim against
5 Hubzone, Burnett, and Lofton and was awarded damages. See Default
6 Order. Thus, under the prevailing legal standards, ACIC can be
7 considered the prevailing party in its cross-claims against
8 Hubzone, Burnett, and Lofton.

9 Accordingly, the Court finds that the provisions of Section
10 9564 are satisfied. ACIC is the prevailing party against Hubzone,
11 Burnett, and Lofton in an action to enforce the liability on the
12 bond. The Court next determines what constitutes a reasonable
13 attorney fee in this case.

14 2. An Award of \$14,952.00 Is Reasonable

15 ACIC contends that an award of \$15,795.50 is reasonable for
16 the fees incurred in the instant case. See Mot. The Court
17 utilizes its discretion to determine what constitutes reasonable
18 attorney fees under California law. PLCM Grp. v. Drexler, 997 P.2d
19 511, 519 (2000), as modified (Cal. 2000).

20 Attorney fee awards are computed in a two-step process.
21 First, the Court calculates the "lodestar": the "the number of
22 hours reasonably expended multiplied by the reasonable hourly
23 rate." Ctr. for Biological Diversity v. Cty. of San Bernardino,
24 Cal. Rptr. 3d 762, 772 (Ct. App. 2010), as modified (Oct. 18,
25 2010). "Generally, the reasonable hourly rate used for the
26 lodestar calculation is that prevailing in the community for
27 similar work." Id. (internal quotation marks omitted).

28 In the second step, the Court may increase or reduce the

1 lodestar calculation amount based on factors such as "the novelty
2 and difficulty of the issues, the attorneys' skill in presenting
3 the issues, the extent to which the case precluded the attorneys
4 from accepting other work, and the contingent nature of the work."
5 Id. at 772-73. "The purpose of such adjustment is to fix a fee at
6 the fair market value for the particular action." Ketchum v.
7 Moses, 17 P.3d 735, 741 (Cal. 2001). The party seeking attorney
8 fees bears the burden of proving that its requested fees are
9 reasonable. Ctr. for Biological Diversity, 115 Cal. Rptr. 3d at
10 772.

11 a. Reasonable Hourly Rates

12 As to hourly rates, ACIC has requested the following:

13 (1) Francis J. Lanak, an attorney with over 45 years of experience,
14 at \$350 per hour; (2) Tracy A. Stevenson, an attorney with more
15 than 26 years of experience, at \$310 per hour; (3) Colin K.
16 McCarthy, an attorney with over 15 years of experience, at \$310 to
17 \$325 per hour; (4) Kelly C. Sloan, an attorney with four years of
18 experience, at \$220 per hour; and (5) paralegals at \$150 to \$190
19 per hour.

20 "The relevant 'community' is that where the court is located."
21 Altavion, Inc. v. Konica Minolta Sys. Lab., Inc., 171 Cal. Rptr. 3d
22 714, 751 (Ct. App. 2014). ACIC has billed for attorneys' and
23 paralegals' time at a rate charged in Orange County, rather than
24 that charged within Sacramento. Nevertheless, for most of ACIC's
25 attorneys, its requested rate is within the range of prevailing
26 rates in Sacramento. See TCF Inventory Fin., Inc. v. Marker Oil
27 Co., Inc., No. 2:17-CV-1768-JAM-DB, 2018 WL 3615862, at *1 (E.D.
28 Cal. July 26, 2018) (finding that rates of \$365 to \$385 for

1 partners were reasonable). For ACIC's paralegals and junior
2 associate, however, the rate sought exceeds that awarded in
3 Sacramento. See id. (finding paralegal rates to be between \$75 and
4 \$100 per hour); Early v. Keystone Rest. Grp., LLC, No. 2:16-CV-
5 00740-JAM-DB, 2019 WL 918211, at *6 (E.D. Cal. Feb. 25, 2019)
6 (awarding \$175 per hour for an attorney with one to four years of
7 experience).

8 Accordingly, the Court will apply the following hourly rates
9 to its attorneys fees' award: (1) Lanak, \$350 per hour;
10 (2) Stevenson, \$310 per hour; (3) McCarthy, \$310 to \$325 per hour;
11 (4) Sloan, \$200 per hour; and (5) paralegals at \$100 per hour.

12 b. Hours Reasonably Billed

13 In the present case, ACIC filed (1) an Answer and Cross-Claim,
14 (2) a First Amended Cross-Claim, (3) a Motion for Default Judgment,
15 (4) Notices of Stay and Entry of Judgment, and (5) a Motion for
16 Attorney Fees. None of ACIC's filings were opposed.

17 The Court has completed a thorough review of the billing
18 entries attached to Tracy Stevenson's Declaration, ECF No. 39-2,
19 and finds that all of the hours billed were reasonably expended in
20 furtherance of the case. The Court will not reduce the number of
21 hours billed by ACIC's counsel and paralegals.

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1 The Court's findings of the lodestar amount in this case is
2 determined as follows:

3 Attorney	Rate Requested	Rate Awarded	Hours Awarded	Total Awarded
4 Lanak	\$350/hour	\$350/hour	0.1	\$35.00
5 Stevenson	\$310/hour	\$310/hour	33.3	\$10,323.00
6 McCarthy	\$310/hour to \$325/hour	\$310/hour to \$325/hour	5.9	\$1,844.00
7 Sloan	\$220/hour	\$200/hour	7.8	\$1,560.00
8 Paralegals	\$150/hour to \$190/hour	\$100/hour	11.9	\$1,190.00
9			Total Fees	\$14,952.00

10 No upwards or downwards adjustment of the above amount is
11 necessary. This case did not present any novel or difficult
12 issues, so the lodestar value represents the fair market value of
13 this particular action. See Ketchum, 17 P.3d at 741. The Court
14 finds that ACIC has demonstrated that \$14,952.00 is the reasonable
15 attorneys fee to which ACIC is entitled under California Civil Code
16 § 9564.
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20 II. ORDER

21 For the reasons set forth above, the Court GRANTS IN PART and
22 DENIES IN PART ACIC's Motion for Attorneys' Fees and AWARDS ACIC
23 \$14,952.00 in attorneys' fees.

24 IT IS SO ORDERED.

25 Dated: July 8, 2019

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28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE