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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HOWARD E. HINMAN, et al.,	)	
	)	
Petitioner,	)	No. C05-3509 PJH (BZ)
	)	
v.	)	
	)	<b>REPORT AND RECOMMENDATION</b>
FUJITSU COMPUTER SYSTEMS	)	<b>AWARDING RESPONDENT</b>
CORP.,	)	<b>ATTORNEY'S FEES</b>
	)	
Respondent.	)	
_____	)	

Respondent Fujitsu Computer Systems Corporation's Motion for Attorney's Fees and Costs was referred to me by the Honorable Phyllis J. Hamilton for a report and recommendation. Fujitsu prevailed on its motion to dismiss the petition to vacate the arbitration award and now requests attorney's fees pursuant to the Master Distribution and Services Agreement (Agreement) between the parties.

The facts which underly this motion are set forth in Judge Hamilton's Order granting Fujitsu's Motion to Dismiss. The import of that ruling was to let stand an arbitrator's award entered pursuant to paragraph 9.4 of the Agreement. Paragraph 9.4 recites that the Agreement is governed by California Law and provides that in the event of arbitration

1 "[t]he substantially prevailing party shall be entitled to its  
2 attorneys' fees, witness fees, and other costs awarded by the  
3 arbitrator."<sup>1</sup>

4 Fujitsu requests fees of \$133,018.01 and expenses of  
5 \$14,499.89. Counsel declares that Fujitsu incurred these  
6 amounts in the defense of this action and has paid them.

7 The only opposition was filed by Howard Hinman, pro se.  
8 Mr. Hinman does not object to any of the specific fee requests  
9 but complains generally that the amount of fees that have been  
10 awarded in the arbitration and earlier state proceedings (over  
11 \$500,000) and that are sought by this motion, are excessive  
12 and greatly exceed the value of the Agreement. Even accepting  
13 Mr. Hinman's characterization of the value of the Agreement,  
14 the fact remains that it was the petitioners who initiated  
15 this proceeding and required Fujitsu to defend itself.

16 Mr. Hinman also claims that many of the documents that  
17 Fujitsu filed were copies of documents previously filed in  
18 state court. It appears from a review of the fee request that  
19 the fees which Fujitsu is claiming were incurred in  
20 proceedings in this court, such as in Fujitsu's successful  
21 motion raising the Colorado River abstention doctrine and in  
22 moving successfully to seal certain documents over  
23 petitioners' opposition.

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26 <sup>1</sup> Under California law, an agreement entitling a  
27 prevailing party to its fees and expenses in an arbitration  
28 proceeding also permits the recovery of fees and costs incurred  
in any related confirmation proceedings. See Ajida Techs.,  
Inc. v. Roos Instruments, Inc., 87 Cal.App.4th 534, 552 (2001).

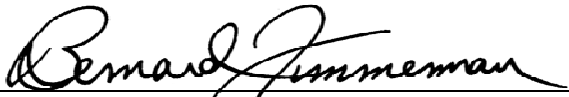
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2 In computing attorney's fees pursuant to contract under  
3 California or federal law, courts follow the "lodestar"  
4 approach. Signature Networks, Inc. V. Estefan, 2005 WL 151928  
5 (N.D. Cal. 2005); PLCM Group v. Drexler, 22 Cal.4th 1084, 1095  
6 (2000). The loadstar is calculated by multiplying time spent  
7 by a reasonable hourly rate. Here, the vast majority of the  
8 time Fujitsu claims was spent by Andrew E. Monach and Richard  
9 S. Hung. Fujitsu claims a total of 338.25 hours at an  
10 average hourly rate of \$393.25. As Mr. Hung explains in his  
11 declaration, the claimed hours and amounts have been  
12 substantially discounted. Based on Mr. Hung's declaration and  
13 my knowledge of local billing rates, I find the rates Fujitsu  
14 claims are reasonable for attorneys of the experience and  
15 background of Fujitsu's.

16 As for the hours claimed, petitioner does not  
17 specifically challenge any of them. While the time is  
18 substantial, it was petitioners who filed and litigated over  
19 three years an unnecessary parallel action. It is important  
20 to remember that Fujitsu has paid these fees. Having reviewed  
21 the time records, I did not find any entries that appear  
22 excessive or objectionable. In particular, there does not  
23 appear to have been much duplication of effort or  
24 administrative overlap between Mssrs. Monach and Hung. And  
25 Fujitsu has carefully apportioned the time it spent in the  
26 various proceedings between the parties and seeks only fees  
27 incurred in this proceeding. I therefore recommend that the  
28 entire amount of attorney's fees be awarded.

1 As for the \$14,499.89 in claimed expenses, \$12,373.08  
2 represents computerized legal research, the recovery which is  
3 permissible. Trustees of Const. Industry v. Redland Ins. Co.,  
4 460 F.3d 1253, 1258 (9th Cir. 2006). The other expenses  
5 include such matters as messenger and photocopying services  
6 and appear reasonable. I recommend that they be awarded as  
7 well.

8 Mr. Hinman also objects to the award of any fees and  
9 costs against Mr. Dent and zBatch on the grounds that it would  
10 be unjust since he filed this action. However, Mr. Dent and  
11 zBatch voluntarily joined the action on October 3, 2005  
12 (Doc. 34) and are parties to the Agreement. I therefore  
13 recommend that Fujitsu be awarded \$133,018.01 in attorney's  
14 fees and \$14,499.89 in expenses against Howard E. Hinman, Glen  
15 K. Dent and zBatch LLC.<sup>2</sup>

16 Dated: September 16, 2008

17   
18 Bernard Zimmerman  
United States Magistrate Judge

19 G:\BZALL\REFS\HINMAN V. FUJITSU COMPUTER\REPORT AND REC. RE ATTYS FEES AND COSTS.FINAL  
20 RULING.wpd

21 <sup>2</sup> On September 5, 2008, I issued this Report and  
22 Recommendation as a Tentative Ruling. No party has objected or  
23 requested a hearing. However, Fujitsu notified the court that  
24 on September 2, 2008, Mr. Hinman had filed a chapter 7  
25 voluntary petition in the Bankruptcy Court for the Southern  
26 District of Indiana. It does not appear to me that Mr.  
27 Hinman's bankruptcy filing should impact this Report as to Mr.  
28 Dent and zBatch. Nor is it clear that filing this Report  
violates the stay as to Mr. Hinman, as he filed this  
proceeding. In an abundance of caution, I am serving this  
report and recommendation on Mr. Hinman and his bankruptcy  
counsel. If either of them believe that entry of a judgment  
based on this report and recommendation would violate the  
bankruptcy stay, he shall file a letter brief to that effect by  
September 29, 2008. No response need be filed, unless  
requested.