

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
SAN JOSE DIVISION

NO. C 08-00201 JW

In re ComUnity Lending, Inc.

ORDER SETTING ATTORNEY FEES

Mai Christina Pham, et al.,

Plaintiffs,

vs.

ComUnity Lending, Inc., et al.,

Defendants

_____ /

On April 24, 2009, the Court granted Plaintiffs’ Motions for Attorney Fees, in light of their prevailing party status in this ERISA action. (Docket Item No. 105.) Jesse Hill, the attorney representing the Buckmeyer group of Plaintiffs, requested \$160,000.00. (Docket Item No. 82.) The law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, which represents the Pham group of Plaintiffs, requested \$358,934.75. (Docket Item Nos. 80-81.) The Court, however, found that Plaintiffs’ requested fees were insufficiently documented, and directed Plaintiffs to file supplemental declarations detailing the nature and extent of the fees requested. Presently before the Court are Plaintiffs’ Declarations in support of their motions for attorney fees. Jesse Hill filed a Declaration. (Docket Item Nos. 106-07), as did the Liner law firm (Docket Item Nos. 108, 112.).

To determine reasonable attorney fees, a court must at a minimum, calculate a lodestar by multiplying the number of hours it finds the prevailing party reasonably expended on the litigation

1 by a reasonable hourly rate. MacDougal v. Catalyst Nightclub, 58 F. Supp. 2d 1101, 1104 (N.D.
2 Cal. 1999) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The Ninth Circuit has adopted a
3 twelve factor test,¹ which a court may consider as a possible basis for adjusting the lodestar.
4 MacDougal, 58 F. Supp. 2d at 1104 (citing Kerr v. Screen Extras Guild, 526 F.2d 67, 70 (9th Cir.
5 1975)). The court need not discuss each of the Kerr factors, but only those relevant to the particular
6 case. Id. at 1105.

7 In this case, the Court finds that the fees requested by the Liner law firm on behalf of the
8 Pham Plaintiffs to be reasonable. This action involved complex issues of ERISA and bankruptcy
9 law. The Court is satisfied by the Liner firm's Declaration, in which it provided a detailed
10 breakdown of the basis for its fees. Accordingly, the Court awards the Pham Plaintiffs the full
11 requested amount of \$358,934.75.

12 The Court, however, does not find that the fees charged by Jesse Hill, representing the
13 Buckmeyer Plaintiffs, to be reasonable. The Court found Mr. Hill's submissions to generally be
14 duplicative of the work done by the Liner firm. The Court did not rely on his submissions in
15 reaching its decision. Ultimately, it was the representations of the Liner firm upon which the Court
16 relied. Accordingly, the Court awards the Buckmeyer Plaintiffs \$90,000.00 in attorney fees.

17
18
19 Dated: May 22, 2009



JAMES WARE
United States District Judge

20
21
22
23 _____
24 ¹ The twelve so-called Kerr factors are: (1) the time and labor required; (2) the novelty and
25 difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4)
26 the preclusion of other employment by the attorney due to the acceptance of the case; (5) the
27 customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client
28 or the circumstances; (8) the amount involved and the results obtained; (9) the experience,
reputation and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and
length of the professional relationship with the client; and (12) awards in similar cases. MacDougal,
58 F. Supp. 2d at 1104.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Jeffrey L. Fillerup jfillerup@luce.com
3 Jesse Landis Hill JLBHill@aol.com
4 John Walshe Murray jwmurray@murraylaw.com
5 Matthew Brooks Borden mborden@linerlaw.com
6 Robert Anthony Franklin rfranklin@murraylaw.com
7 Ronald Scott Kravitz Rkravitz@LinerLaw.com
8 Suzanne L. Decker suzannedecker@sbcglobal.net

9 **Dated: May 22, 2009**

Richard W. Wieking, Clerk

10
11 **By: /s/ JW Chambers**
12 **Elizabeth Garcia**
13 **Courtroom Deputy**
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28