

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

1302 NORTH MAIN ST.)	
MERIDIAN LLC, a California)	
Limited Liability Company,)	CASE NO. CV-09-367-S-BLW
)	
Plaintiff,)	
)	MEMORANDUM DECISION
v.)	AND ORDER
)	
MERIDIAN KIDS CLUB, INC.,)	
INC., an Idaho Corporation,)	
)	
Defendant.)	
_____)	

INTRODUCTION

The Court has before it Plaintiff’s Motion For An Award of Attorney Fees and Costs (Docket No. 12). The Court has determined that the decisional process on the motion would not be significantly aided by oral argument. Therefore, the Court will address the motion without a hearing.

BACKGROUND

On March 20, 2010, this Court granted 1302 North Main St. Meridian LLC’s (“North Main”) motion to remand this case back to state court. The Court also granted North Main’s request for attorney fees because Meridian Kids Club

improperly removed the case to federal court. The Court retained jurisdiction for the sole purpose of determining the amount of costs and fees Defendants owe North Main.

As explained in the Court's earlier Order, an order of remand may require the defendant to pay the plaintiff's "just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. In this case, the Court determined that North Main is entitled to an award of its attorney fees and costs incurred in seeking a remand. Meridian Kids Club had no objectively reasonable basis for removing the matter to this Court. The removal statute and case law plainly state that removal based on diversity jurisdiction is confined to instances where no defendant is a citizen of the forum state. There is no dispute that Meridian Kids Club is a citizen of Idaho, the forum state.

The Court therefore asked North Main's counsel to file an affidavit setting forth the following: (1) date(s), (2) service(s) rendered, (3) hourly rate, (4) hours expended, (5) a statement of attorney fee contract with the client, and (6) information, where appropriate, as to other factors which might assist the Court in

determining the dollar amount of the fee and costs to be allowed. North Main has now complied with that request, and seeks an order of fees and costs in the amount of \$3,675.00. Defendants failed to respond to the request.

North Main's expenses must be reasonable and their attorney rates must be "comparable with prevailing rates in the community." *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1386 (9th Cir. 1988). The Court must determine a reasonable hourly rate by considering the experience, skill and reputation of the attorneys requesting fees. *Schwarz v. Secretary of Health and Human Services*, 73 F.3d 895, 906 (9th Cir. 1995). "A district court should calculate this reasonable hourly rate according to the prevailing market rates in the relevant community, which typically is the community in which the district court sits." *Id.* (internal quotations and citations omitted). The relevant community in this case is Boise, Idaho, where this Court sits.

The Court finds that the amount requested by North Main is reasonable under the circumstances of this case. North Main's counsel, Kimbal Gowland, is a partner at his firm with 25 years of experience. (Gowland Aff.) His hourly rate for services rendered in this case was \$245.00 per hour, which is reasonable for the prevailing market in Boise, Idaho. (*Id.*) Mr. Gowland expended fifteen hours on the motion, memorandum in support, reply brief, and other necessary work related

to the motion to remand. Fifteen hours is a reasonable amount of time for such work. Accordingly, the Court will grant North Main's request for \$3,675.00 in costs and fees.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Plaintiff's Motion For An Award of Attorney Fees and Costs (Docket No. 12) shall be, and the same is hereby, GRANTED. Defendants shall pay North Main \$3,675.00 in costs and fees.



DATED: **May 5, 2010**

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill
Chief U. S. District Judge