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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARK POTTER, in his capacity
as trustee of various
irrevocable trusts,

O R D E R
Civ. No. 07-244-AA

Plaintiff,

vs.

STEVEN BIGGS, THOMAS CROSSWHITE,
and UNIQUE SETTLEMENTS, LLC, a
foreign corporation,

Defendants.

AIKEN, Judge:

Defendants' motion for attorney fee award is granted.

DISCUSSION

Pursuant to Fed. R. Civ. P. 54(d)(2), defendants, as the prevailing party, may seek recovery of its attorney fees incurred in defending against an action brought in this court. Further, pursuant to Fed. R. Civ. P. 16(f), a court may award attorney fees against a non-complying party as or in addition to any sanction deemed appropriate by the court. Defendants are the prevailing party pursuant to a judgment of dismissal entered in this case on November 3, 2008. That judgment resulted from plaintiff's failure to lodge a pretrial order as required by this

1 court, refusal to participate in preparation of a pretrial order,
2 or to otherwise take any steps required of him by Fed. R. Civ. P.
3 16.

4 Here, plaintiff filed suit against defendants Biggs,
5 Crosswhite and Unique Settlement, LLC. Defendants defended
6 against plaintiff's claims, initially on jurisdictional grounds,
7 requiring several separate rounds of Fed. R. Civ. P. 12 motions.
8 Plaintiff then subsequently settled with defendant Crosswhite and
9 dismissed him from this action. After that plaintiff failed to
10 communicate with defense counsel or the court, and refused to
11 participate in or provide any discovery. Ultimately, this
12 failure extended to plaintiff's failure to participate in
13 preparing a pretrial order, and eventually resulted in dismissal
14 of this matter in its entirety.

15 A determination of a reasonable attorney's fee begins with
16 the "lodestar," which is the "number of hours reasonably expended
17 on the litigation multiplied by a reasonable hourly rate."
18 Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,
19 478 U.S. 546, 563-64 (1986). Defendants carry the burden of
20 proving the lodestar. Id. The factors considered to determine
21 the lodestar figure include: (1) the time and labor required; (2)
22 the novelty and difficulty of the questions; (3) the skill
23 required; (4) the preclusion of other employment by the attorney;
24 (5) the customary fee; (6) whether the fee is fixed or
25 contingent; (7) time limitations imposed by the client or the
26 circumstances; (8) the amount involved and the results obtained;
27 (9) the experience, reputation and ability of the attorneys, (10)
28 the "undesirability" of the case; (11) the nature and length of

1 the professional relationship with the client; and (12) awards in
2 similar cases. Kerr v. Screen Extras Guild, 526 F.2d 67, 70 (9th
3 Cir. 1975), cert. denied, 425 U.S. 951 (1976).

4 The court may adjust the lodestar: (1) downward when there
5 is only partial or limited success, Hensley v. Eckerhart, 461
6 U.S. 424, 435 (1983); or (2) upward in "rare" and "exceptional"
7 cases. Delaware at 565. However, there is a strong presumption
8 that the lodestar figure represents a reasonable fee. Miller v.
9 Los Angeles County Bd. of Educ., 827 F.2d 617, 621 (9th Cir.
10 1987).

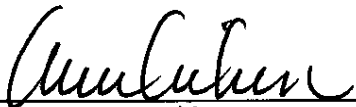
11 Here, defendants request a total fee award of \$27,291.36.
12 After considering defendants' motion for fees, defendants'
13 supporting affidavit containing appropriate and supporting
14 documentation of defendants' fee request, and defendants'
15 Supplemental Affidavit filed at the court's request, I find both
16 the hourly rates and the number of hours expended on the
17 litigation reasonable. Overall, the attorney fees incurred by
18 defendants are reasonable for the services rendered and the
19 results obtained.

20 CONCLUSION

21 Defendants' motion for attorney fee award (doc. 51) is
22 granted in the amount of \$27,291.36.

23 IT IS SO ORDERED.

24 Dated this 8 day of January 2009.

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26
27 
28 Ann Aiken
United States District Judge