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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RAMGEN POWER SYSTEMS LLC,

11 Plaintiff,

12 v.

13 AGILIS ENGINEERING INC,

14 Defendant.

CASE NO. C12-1762 MJP

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS

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16 THIS MATTER comes before the Court on Plaintiff Ramgen Power Systems, LLC's
17 ("Plaintiff") Motion for Attorney's Fees and Costs ("Motion"). (Dkt. No. 132.) The Court
18 reviewed Plaintiff's Motion, Defendant Agilis Engineering, Inc.'s ("Defendant") response, (Dkt.
19 No. 139), and all supporting documents. The Court GRANTS in part Plaintiff's Motion. The
20 Court GRANTS Plaintiff's request for \$1,088,880.00 in attorney's fees and \$6,442.90 in non-
21 taxable costs. The Court does not consider Plaintiff's request for taxable costs in this Order.

22 **Background**

23 On November 7, 2014, the Court entered judgment in favor of Plaintiff following an
24 eight-day bench trial. (Dkt. No. 131.) The agreement between the parties—which was the

1 subject of their dispute—provides that, in the event of a dispute, the prevailing party is entitled to
2 attorney’s fees. (Dkt. No. 129 at 4.) Accordingly, the Court’s Findings of Fact and Conclusions
3 of Law provided: “Ramgen is the prevailing party at trial. Thus, Ramgen is also entitled to an
4 award of costs and attorneys’ fees to be determined by later motion.” (Id. at 13.) Plaintiff filed
5 this Motion—seeking attorney’s fees, taxable costs, and other costs incurred in this litigation—
6 on November 20, 2014. (Dkt. No. 132.)

7 While it does not dispute that Plaintiff is entitled to an award of attorney’s fees and costs,
8 Defendant opposes the Motion arguing Plaintiff’s request for attorney’s fees and costs is
9 unreasonable because: (1) Plaintiff failed to attach its fee agreements with its counsel and proof
10 of payment to its Motion; (2) Plaintiff seeks to recover attorney’s fees for billing entries that are
11 excessive, duplicative, and non-compensable; (3) Plaintiff improperly seeks to recover attorney’s
12 fees pertaining to its unsuccessful claims; (4) Plaintiff has not met its burden of showing that the
13 Court should apply a multiplier to the lodestar calculation; and (5) Plaintiff did not need a
14 contingency agreement. (Dkt. No. 139 at 3-7.)

15 Discussion/Analysis

16 **I. Motion for Attorney’s Fees and Costs**

17 **A. Legal Standard**

18 Washington law governs the method by which this Court calculates an award of
19 attorney’s fees and costs. Mangold v. California Pub. Utilities Comm’n, 67 F.3d 1470, 1478 (9th
20 Cir. 1995) (“ . . . Ninth Circuit precedent has applied state law in determining not only the right to
21 fees, but also in the method of calculating the fees.”) Washington courts apply the “lodestar”
22 method to calculate an award of attorney’s fees. See e.g. Crest. Inc. v. Costco Wholesale Corp.,
23 128 Wn. App. 760, 764 (2005) (“In determining the amount of attorney fees to be awarded to the
24 prevailing party, the proper method for calculating a reasonable award of attorney fees is the

1 lodestar method.”) To calculate the lodestar, the Court must multiply “the total number of hours
2 reasonably expended in the litigation by the reasonable hourly rate.” Clausen v. Iccle Seafoods,
3 Inc., 174 Wash. 2d 70, 81 (2012). “Once the lodestar has been calculated, the court may adjust
4 the fee to reflect factors not considered yet.” Id. “[T]wo categories of adjustment are based on
5 whether the fee was contingent on the outcome and the quality of the work performed.” Id.
6 “The party requesting an adjustment has the burden to show the deviation is justified.” Id.

7 **B. Fee Agreements and Proof of Payment**

8 Defendant first argues that Plaintiff’s fee request is unreasonable because Plaintiff did not
9 attach its fee agreements with its counsel to the Motion and because Plaintiff also failed to
10 attached proof of payment of its attorney’s fees. (Id. at 3-4.)

11 Defendant’s first argument is unavailing. Defendant cites to no case law or authority that
12 requires Plaintiff to produce its fee agreements. Further, as Plaintiff points out in its reply brief,
13 absent an order from this Court to do so, Plaintiff was not required to produce its fee agreements.
14 Fed. R. Civ. P. 54(d)(2)(B)(iv) (“. . .the motion [for attorney’s fees] must: disclose, if the court
15 so orders, the terms of any agreement about fees for the services for which the claim is made.”)
16 (emphasis added). Further, while Defendant contends Plaintiff failed to attach proof of payment
17 to its Motion, Plaintiff has provided both invoices from its counsel and a supporting declaration
18 that explains Plaintiff paid the invoices before the agreement between Plaintiff and Plaintiff’s
19 counsel was converted into a contingent agreement. (See Dkt. No. 133 at 7.); (see also Dkt. No.
20 133-1.)

21 **C. Billing Entries**

22 Defendant’s second argument is that Plaintiff seeks to recover attorney’s fees for billing
23 entries that are excessive, duplicative, and non-compensable. (Dkt. No. 139 at 4.) However,
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1 | instead of identifying particular billing entries that it believes to be excessive, duplicative, or
2 | non-compensable, Defendant argues that, “viewed as a whole,” Plaintiff’s counsel’s billing
3 | entries are unreasonable. (Id.)

4 | This argument is unpersuasive. Defendant’s argument is premised on the contention that
5 | the core of this case was simple. (Dkt. No. 139 at 5.) However, this contention is belied both by
6 | the scope of work done by counsel for both parties in this case and by the complexity of
7 | Defendant’s defense. As Defendant concedes in its response brief, Plaintiff opposed three
8 | dispositive motions, took the deposition of ten witnesses, and defended eight depositions during
9 | the course of this litigation in addition to propounding and responding to written discovery and
10 | making other preparations for trial. (Id.) In addition, Plaintiff filed six motions in limine prior to
11 | trial. (Dkt. No. 83.) Further, as Plaintiff points out in its reply brief, because Defendant asserted
12 | seventeen affirmative defenses in this matter, Plaintiff was also required to investigate each of
13 | these defenses. (Dkt. No. 36.) Finally, Plaintiff filed its complaint October 9, 2012. (Dkt. No.
14 | 1.) This Court entered judgment in this matter on November 7, 2014. (Dkt. No. 131.) Plaintiff’s
15 | counsel billed roughly 2,900 hours in this case—the equivalent of about 362 eight-hour work
16 | days. (Dkt. No. 139.) Given the duration of the litigation—more than two years—the hours
17 | Plaintiff’s counsel billed are not excessive.

18 | In light of the foregoing, the Court finds that Plaintiff’s counsel’s billing entries are
19 | reasonable.

20 | **D. Unsuccessful Claims**

21 | Defendant also argues Plaintiff improperly seeks to recover attorney’s fees that relate to
22 | Plaintiff’s unsuccessful UCC and negligence claims. (Dkt. No. 139 at 6-7.) Plaintiff contends
23 | that while these claims were unsuccessful, they share a “common core of facts” with the claims
24 |

1 upon which Plaintiff prevailed and that the Court, therefore, need not exclude billing entries
2 pertaining to these claims from its lodestar calculation. (Dkt. No. 132 at 8-9.) Plaintiff further
3 contends that it has excluded certain billing entries pertaining to its UCC claims from its fee
4 calculation. (Id. at 9.)

5 “The total hours an attorney has recorded for work in a case is to be discounted for hours
6 spent on ‘unsuccessful claims, duplicated effort, or otherwise unproductive time.’” Miller v.
7 Kenny, 180 Wn. App. 772, 823 (2014) (citing Bowers v. Transamerica Title Ins. Co., 100 Wash.
8 2d 581, 597 (1983)). “But where the plaintiff’s claims involve a common core of facts and
9 related legal theories, ‘a plaintiff who has won substantial relief should not have his attorney’s
10 fees reduced simply because the district court did not adopt each contention raised.’” Martinez
11 v. City of Tacoma, 81 Wn. App. 228, 243 (1996) (citing Hensley v. Eckhart, 461 U.S. 424, 440
12 (1983)).

13 Here, all of Plaintiff’s claims—including its unsuccessful claims—share a common core
14 of facts. Indeed, Defendant concedes as much in its response brief but argues “[w]hile the claims
15 upon which Ramgen prevailed may share a common core of facts with these unsuccessful
16 claims, the matters at issue were not essentially the same . . .” (Dkt. No. 139 at 6.) Defendant’s
17 argument is unpersuasive. As Plaintiff points out in its Motion, “. . . the issues central to all of
18 the claims were the cause of the Rig’s failure and whether Agilis breached a contract promise, a
19 warranty or a standard.” (Dkt. No. 132 at 8.) Further, Plaintiff has excluded from its fee
20 calculation certain billing entries pertaining to its UCC claims. (Id. at 9); (see also Dkt. No. 133
21 at 9.) Finally, Plaintiff has excluded from its fee calculation other categories of attorney’s fees—
22 e.g. fees associated with a motion for summary judgment that it did not bring and fees associated
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1 with initial case evaluation work—to ensure that its fee request is reasonable. (Dkt. No. 133 at
2 10.)

3 Based on the foregoing, the Court finds Plaintiff does not improperly seek to recover
4 attorney’s fees that relate to its unsuccessful claims.

5 **F. Lodestar Multiplier**

6 Plaintiff requests the Court apply a multiplier of 1.2 to the lodestar calculation. (Dkt. No.
7 132 at 10-11.) Defendant argues Plaintiff does not meet its burden of showing the Court should
8 apply a multiplier to the lodestar calculation because Plaintiff’s Motion does not address its
9 chances of success in the litigation. (Dkt. No. 139 at 7.)

10 Defendant’s contention that Plaintiff does not address its chances of success in the
11 litigation is meritless because Plaintiff explains in its Motion that “[p]re-judgment, the technical
12 complexity of this case posed substantial litigation risk, and Agilis was steadfast in its denial of
13 responsibility.” (Dkt. No. 132 at 11) (quotations omitted).

14 Further, courts—including this Court—have applied a multiplier to the lodestar
15 calculation where there is a risk of non-payment and where the case is contingency-based. See
16 e.g. Bloor v. Fritz, 143 Wn. App. 718, 749 (2008) (finding a multiplier of 1.2 appropriate where
17 attorneys represented plaintiffs on contingent fee basis); see also In re Washington Mut., Inc.
18 Sec. Litig., No. 08-MD-1919 MJP, 2011 WL 8190466, at *1 (W.D. Wash. Nov. 4, 2011) (“The
19 Court finds that a multiplier of 1.2 is reasonable and properly reflects the risk of non-payment
20 and the challenges Plaintiffs' counsel faced in pursuing this contingency-based case.”) Plaintiff
21 demonstrates that these factors were present in this case. (Dkt. No 132 at 11); (see also Dkt. No.
22 133 at 11-12.)

1 In light of the foregoing, the Court finds a lodestar multiplier of 1.2 is appropriate in this
2 case.

3 **G. Contingency Agreement**

4 Defendant's final argument is that Plaintiff did not need a contingency agreement. (Dkt.
5 No. 139 at 7.) Defendant argues: "At trial, Aaron Koopman testified that Ramgen had retained
6 \$1 million in its account. Thus there was no reason to enter into a contingency fee arrangement.
7 . ." (Id.) This argument fails because the \$1 million Defendant refers to was a payment Plaintiff
8 received from Dresser-Rand just before trial, more than a year after Plaintiff entered into the
9 contingency fee agreement with its counsel. (Dkt. No. 148 at 9.)

10 **H. Taxable and Non-Taxable Costs**

11 Plaintiff seeks \$55,938.44 in taxable costs and \$6,442.90 in non-taxable costs. (Dkt. No.
12 133 at 12-13.) On January 7, 2015, the Court issued a minute order directing Plaintiff to file its
13 bill of taxable costs as a separate motion for the clerk's consideration per the local rules. (Dkt.
14 No. 150.) Therefore, the Court does not consider Plaintiff's request for taxable costs here.

15 Plaintiff seeks \$6,442.90 in non-taxable costs. (Dkt. No. 133 at 13.) These non-taxable
16 costs include costs associated with discovery, mediation, and costs associated with courier
17 services. (Dkt. No. 133-6.) Defendant does not address Plaintiff's request for costs in its
18 response brief. (Dkt. No. 139.)

19 Because Defendant does not challenge Plaintiff's request for non-taxable costs and
20 because the request is reasonable, the Court GRANTS Plaintiff's request for \$6,442.90 in non-
21 taxable costs.

1 **Conclusion**

2 In light of the foregoing, the Court GRANTS in part Plaintiff's Motion. The Court
3 GRANTS Plaintiff's request for \$1,088,880.00 in attorney's fees and \$6,442.90 in non-taxable
4 costs. The Court does not consider Plaintiff's request for taxable costs in this Order.

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6 The clerk is ordered to provide copies of this order to all counsel.

7 Dated this 23rd day of January, 2015.

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10 Marsha J. Pechman
11 United States District Judge
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