

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 01/29/2016

TIME: 10:30:00 AM

DEPT: CX105

JUDICIAL OFFICER PRESIDING: Thierry Patrick Colaw

CLERK: P. Rief

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Gracie Valenzuela

CASE NO: **30-2012-00591239-CU-WM-CJC** CASE INIT.DATE: 08/15/2012

CASE TITLE: **Daniel Walker as Trustee for the 1997 Walker Family Trust vs. City of San Clemente**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Writ of Mandate

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EVENT ID/DOCUMENT ID: 72286471

**EVENT TYPE:** Motion for Attorney Fees

MOVING PARTY: Daniel Walker as Trustee for the 1997 Walker Family Trust, W Justin McCarthy

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees, 12/09/2015

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**APPEARANCES**

Madison S. Spach Jr., Esq., from Spach, Capaldi & Waggaman, LLP, present for Respondent on Appeal, Petitioner, Appellant(s).

Seena Samimi, Esq., from Best Best & Krieger, present for Respondent(s).

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MOTION BY PLAINTIFFS DANIEL WALKER AS TRUSTEE FOR THE 1997 WALKER FAMILY TRUST AND W. JUSTIN MCCARTHY FOR AN AWARD OF COSTS AND ATTORNEYS' FEES ON APPEAL

Tentative Ruling posted on the Internet.

The Tentative Ruling will become the final ruling of the court. Parties waive notice.

Motion by Plaintiffs Daniel Walker as Trustee for the 1997 Walker Family Trust and W. Justin McCarthy For an Award of Costs and Attorneys' Fees on Appeal:

(a) As to the present attorney fee request, the ruling is to approve supplemental attorney fees in the sum of \$1,050,161.40, with regard to this request based on an adjusted lodestar base of \$350,053.80 (reduced from base described in moving papers of \$367,553.80, pursuant to Reply failure to address Opposition criticism that no evidence or even timekeeper is identified to support entry of 50 hours of Additional Work on Matter billed out at \$350 per hour (i.e. reducing lodestar by \$17,500.00) multiplied by a reasonable multiplier of 3 in these circumstances (3 x \$350,053.80 = \$1,050,161.40).

[See, generally, *Serrano v. Unruh* (1982) 32 Cal 3d 621, 639, *Bernardi v. County of Monterey* (2008) 167 Cal App 4th 1379, 1394, *Morcos v. Board of Retirement of County of Los Angeles Employees' Retirement Assn* (1990) 51 Cal 3d 924, 927, and *Mustachio v. Great Western Bank* (1996) 48 Cal App 4th 1145, 1148-1150.]

This represents a slight reduction of the \$1,102,661.40 requested in supplemental attorney fees invested

by plaintiff counsel after the prior 9/5/14 attorney fee award, herein. This is time spent in defense of the two appeals by the City and this motion.

The amount is authorized by both C.C.P. § 1021.5 (plaintiff attorney work to enforce important public rights affecting the public interest - with an Appellate Court published decision – and order to refund 'BPIF Funds' to more than 6,200 lot owners who paid into that fund over the years), akin to conclusion reached back on 9/5/14 as to prior plaintiff attorney fee request, herein – and pursuant to a 'common fund' percentage cross-check of the lodestar with multiplier calculation described above (attorney fee figure approved here is less than 25% of the admitted Common Fund benefit realized). [See *Woodland Hills Residents Assoc., Inc. v. City Council of Los Angeles* (1979) 23 Cal 3d 917, 933.]

While some of the same reasoning is offered to support the hourly rates sought by plaintiff counsel, and the multiplier of 3 requested (risk assumed, skill applied, etc.) – that concern is more than adequately addressed by the indicated plaintiff attorney reduction of more than \$418,000.00 in this fee request – as well as the outstanding result achieved, here, on behalf of approximately 6,200 lot owner tax payers.

No satisfactory explanation is offered to support the Opposition contention that the multiplier of 3 should be reduced or denied entirely. [See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal App 4th 224, 255 (multipliers can be '2 to 4' or even higher).] Also, this court recognizes that a multiplier of 4 was previously-approved in this matter. Both sides agree that additional arguments were presented on appeal (such as standing). Defense effort to belittle the risk faced in defending the appeals, is belied by defense attorney effort to prosecute those appeals on behalf of defendants.

Notably, no specific hours or time entries are attacked or mentioned in the Opposition, to support Opposition contention that the lodestar base is too high – i.e. responding defendants did not meet their burden in that regard (defendants grossly oversimplify the complexity and burden undertaken by plaintiff attorneys – essentially suggesting that plaintiff attorneys merely drafted 3 briefs, an Answer, and a motion). [See *Premier Medical Mgmt Systems, Inc. v. Calif. Ins. Guar. Assn* (2008) 163 Cal App 4th 550, 564.]

Plaintiff attorneys clearly worked long and hard on this matter, for over 3 years, including through vigorous City appeals – tackling complex and novel issues.

Setting aside any standing concern on the part of defendants to make some of these arguments, it appears that both sides agree that the court has discretion, to identify source of payment of this request for attorney fees and costs, and that the court previously directed payment of the prior plaintiff attorney fee award from the Common Fund.

The court repeats its prior conclusion – i.e. to direct that this \$1,050,161.40 supplemental plaintiff attorney fee awarded here, be paid out of the Common Fund obtained (those that benefit, pay the cost of obtaining), in the interests of justice. [See *Collins v. City of Los Angeles* (2012) 205 Cal App 4th 140, 156, and *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal App 3d 102, 113.]

Finally, this court confirms that 2.11% interest accrues on 7/9/14 Judgment herein, based on Moving and Reply paper explanations (offset by any interest earned on the 'BPIF Fund' interest-bearing account), and the lack of any Opposition effort to address that request.

However, interest on post-Judgment attorney fee awards would logically accrue only from date of each attorney fee award (i.e. on 9/5/14 and this 1/29/16 date, respectively). Moving plaintiffs appear to

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request that interest on the attorney fee awards accrue retroactively, back to the original 7/9/14 Judgment date. Such treatment would be illogical, since would apply interest to attorney fee hours that had not yet been invested (in part), as of the original 7/9/14 Judgment date.

(b) The court authorizes allowable costs in the amounts as follows:

The \$1,394.77 cost figure that falls under the California Rule of Court § 8.278 (d) (1) authorized 'appellate cost' categories, are chargeable to the City's General Fund (pursuant to Reply reasoning). The additional \$716.64 in costs sought by plaintiff attorneys outside of the 'cost award' of the Appellate Court is ordered to be paid from the Common Fund, pursuant to *Rider v. County of San Diego* (1992) 11 Cal App 4th 1410, 1423.

(c) Notice is waived.