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8
9 Attorneys for Defendant Nomad Village, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
11 **FOR THE COUNTY OF SANTA BARBARA**

12 ALMA ALFARO, et al.

13 Plaintiffs,

14 vs.

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16
17 NOMAD VILLAGE, INC., and DOES 1
18 through 50, inclusive,

19 Defendants.
20

Case No.: 1264917

21 **DECLARATION OF BRAND COOPER IN**
22 **OPPOSITION TO PLAINTIFFS' MOTION**
23 **AND MOTION FOR ATTORNEYS' FEES**
24 **AND COSTS**

25 [Assigned to Judge Denise De Bellefeuille,
26 Judge, Dept "SB6"]

27 DATE: November 12, 2009
28 TIME: 9:30 a.m.
DEPT: "SB6"

Trial Date: 8/13/09
Action Filed: 11/15/07

1 4. During my more than 30 years as a practicing attorney in California, an
2 extensive portion of my practice has involved the area of fee review and analysis,
3 representing hundreds of clients including, governmental entities, insurance
4 companies and plaintiffs. For more than 20 years I have handled and provided expert
5 opinion on numerous occasions involving fee dispute matters in both state and federal
6 courts and, in the last ten years, my practice has predominantly been involved in the
7 fee dispute practice area. I have qualified and testified as an expert on the
8 reasonableness of attorneys fees in Federal and State Courts and in arbitrations and
9 by way of declaration on more than 50 occasions.
10

11 **Lodestar Analysis Does Not Support Plaintiff's Attorney's Fees Claim**

12 5. In determining reasonable attorney's fees under California fee-shifting
13 statutes, the trial court's inquiry begins with a determination of the "lodestar" which is a
14 determination of the number of hours reasonably expended multiplied by the
15 reasonable hourly rate prevailing in the community for similar work. [PLCM Group, Inc.
16 v. Drexler, 22 Cal. 4th 1084, 1095 (2000); Shaffer v. Superior Court, 33 Cal. App. 4th
17 933, 1002 (1995)]. One such fee-shifting statute is California's Civil Code § 798.85
18 which, under California's Mobilehome Law, provides that the court, in its discretion
19 may award to the prevailing party reasonable attorney fees and costs. For reasons
20 set forth herein, in my opinion, the court should substantially reduce the fees claimed
21 by plaintiffs' counsel under the lodestar analysis and not award any multiplier.
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1 Plaintiffs' counsel claim they have spent 4,937.60 hours on this matter and seek
2 \$1,254,590.50 in lodestar fees. Plaintiffs' counsel seeks a multiplier of 2 and requests
3 this court to award the Endeman firm **\$2,509,180.00** in attorney's fees and **\$77,658.14**
4 in costs. Plaintiffs' motion for fees attempts to create the impression that this matter
5 was hotly litigated claiming that the defendant "fought plaintiffs tooth and nail at every
6 step of the litigation." In truth, this matter appears to be similar in nature and
7 complexity to a standard construction defect litigation which normally includes
8 inspections of the property, limited depositions of the plaintiffs, and extensive written
9 special interrogatories requesting detailed information related to the claimed damages.
10 Ironically, plaintiff's counsel brought a motion for protective order claiming that
11 contention interrogatories regarding the numerous claimed violations allaged in the
12 complaint were unduly burdensome and that plaintiffs should not be required to
13 respond to those interrogatories. This court denied the motion but did give plaintiffs
14 additional time to answer the interrogatories. Additionally, while there were a
15 substantial number of depositions taken in the case, the total amount of time actually
16 spent in deposition (for all the depositions combined) was actually 289.20 hours or
17 less than 6% of the total number of hours claimed to have been spent by plaintiffs'
18 counsel on this litigation. (Plaintiffs' counsel spent more time traveling to and from the
19 depositions than at the depositions themselves.)

24 9. I have reviewed the billing records submitted by plaintiffs' counsel to
25 support its motion for attorneys' fees in this case and, based upon my review thereof,
26 review of pleadings in this matter, and my knowledge and experience in the area of
27 fee review, I have found that a substantial portion of the fees being requested by
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1 plaintiff's counsel are unreasonable for a number of reasons including the following:

2 (A) The case was greatly overstaffed leading to unreasonable duplication of effort;

3 (B) A large number of the billing entries are extremely vague; (C) Approximately 55%

4 of the billing was block-billed; (D) The firm billed excessively for intra-office

5 conferencing and (E) Approximately 10% of the overall time billed by plaintiffs' counsel

6 was for travel between San Diego and Santa Barbara. I will discuss these billing

7 issues generally and then discuss specifically how and to what extent the Endeman

8 firm billings are unreasonable by categorizing and quantifying them.

9 OUR METHODOLOGY

10 10. We received the billing timesheets of Endeman and had them entered

11 into our Lauditors' database system which involves a specially-designed software from

12 which we can generate reports that allow us to examine the billings in a number of

13 useful ways. Our Phase I reports present the information on the billing statements in

14 a format different from and more understandable than the actual billing statements

15 themselves. These reports provide us with a great deal of objective information that

16 allow us to determine the most fundamental information about the manner and

17 method by which the matter was litigated and allow us to make the most rudimentary

18 determination of reasonableness such as whether or not the law firm appropriately

19 staffed the particular matter being reviewed. The database further categorizes the fee

20 billing entries by date order which allows us to determine what fees, if any, fall within

21 the category of pre-tender activity.

22 11. After generating our Phase I reports, we then prepare our Phase II

23 analysis which involves the categorization and quantification of all of the billing entries.

1 The quantification and categorization of tasks involve numerous time-consuming
2 tasks. In this case, for example, the overwhelming majority of the entries were “block-
3 billed,” i.e., numerous tasks were routinely recorded by one biller on a given date with
4 only a singular time entry. It was therefore necessary, for accuracy purposes for us to
5 breakup the entries and assign reasonable time values to each individual tasks. Once
6 the categorization and quantification process has been completed, a Phase II report is
7 generated which includes a recapitulation that provides a summary of the results of
8 the categorization and quantification process. Attached hereto as Exhibit “C” is our
9 Recapitulation Report setting forth a summary of the Edeman’s firm time by category
10 description along with the total hours and fees for each category.
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13 **General Billing Problems Related to Plaintiffs’ Counsel’s Billing Entries**

14 **A. Overstaffing:**

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16 12. The Endeman firm timesheets contain billings of 18 separate persons
17 including six partners, three associates, and nine paralegals. The case did not in our
18 opinion involve such complexity requiring that level of staffing. The case could have
19 and should have been easily handled by one partner, one associate, and one
20 paralegal with possibly a second occasional paralegal for particular projects. Much of
21 the time recorded by “paralegals” was not in reality paralegal work but rather
22 clerical/secretarial tasks such as indexing and organizing documents and files,
23 calendaring, and scheduling. The use of so many billers also led to inefficient and
24 duplicative billing. California courts have found that inefficient or duplicative efforts
25 results in padding of a bill and is not subject to compensation [Premier Medical
26 Management Systems, Inc. v. California Ins. Guarantee Assoc., (2008) 163 Cal. App.
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1 4th 550, 556]. In fact, California courts have found that an unreasonably inflated fee
2 request is a special circumstance that permits the trial court to reduce the award or
3 deny it entirely. [Ketchum v. Moses (2001) 24 Cal. 4th 1122; Christian Research
4 Institute v. Alnor, (2008) 165 Cal.App. 4th 1315].
5

6 13. As this court is no doubt aware, in connection with California fee-shifting
7 statutes, the California Supreme Court has promulgated guidelines which courts use
8 to calculate the amount of reasonable attorney's fees. Those guidelines require the
9 trial court first to determine the touchstone or lodestar figure for attorney's fees based
10 upon a careful consideration of the reasonable hours expended multiplied by the
11 reasonable hourly rate. Following the determination of the lodestar figure, the trial
12 court may then increase or decrease that figure by a multiplier depending upon which
13 a number of factors are involved in the lawsuit (Ketchum v. Moses, (2001) 24 Cal. 4th
14 1122). While a trial court has the discretion to determine the reasonable value of
15 these attorney's services, it is with the caveat that the exercise of that discretion must
16 be based on the lodestar adjustment method since the determination of the lodestar
17 figure is so fundamental in calculating the amount of the award. In summary,
18 inefficient or duplicative time spent by plaintiffs' counsel is by definition unreasonable
19 and therefore should not be used nor considered to calculate the lodestar attorney's
20 fees.
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24 **B. Vague and Ambiguous Billing:**

25 14. In addition to certain billings being highly duplicative of the services
26 performed by other billers, many of the billing entries are so vague and unclear as to
27 render the descriptions either meaningless or too general to determine what the biller
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1 in fact did. Examples of this are as follows: “review case,” “work on discovery,”
2 “discovery,” “legal research,” and “trial preparation.”

3
4 15. Vague and ambiguous billing entries are uniformly disallowed by the
5 courts in California and throughout the United States. If the description of the work is
6 vaguely described, the court will disallow it [Christian Research Institute v. Alnor,
7 (2008) 165 Cal.App. 4th 1315; Hess v. Ramona Unified School District, (S.D. Cal.
8 2008) 2008 U.S. Dist. LEXIS 102743; Mogck v. Unum Life Ins. Co., (S.D. Cal. 2003)
9 289 F. Supp. 2d 1181].

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11 **C. Block-Billed Entries:**

12 16. Of the 4,937.60 hours submitted by the plaintiffs’ firm in this matter,
13 2798.70 hours involve the practice of block-billing. “Blocked-billing” refers to the
14 practice of grouping multiple task descriptions together under a single time charge,
15 rather than describing each task and the actual time associated with that task
16 separately. A typical example is when a timekeeper list all of the tasks performed on a
17 matter on a particular day in one time entry thereby obscuring the actual time of each
18 task contained within such an entry. (Attached hereto as Exhibit “D” is a summary of
19 the block-billed entries identified in the Endeman firm timesheet submitted to this
20 court. These are not all of the blocked-billed entries representing 55% of the total
21 billing but only those entries which he has not recommended be deducted for other
22 reasons. This comes to 1,290.70 hours totaling fees in the amount of \$390,885.00. In
23 our opinion, the court should consider a reduction of 10% to 20% of fees or
24 \$39,088.50 to \$78,177.00.) It is my opinion that block-billing is an unfair billing
25 practice as it is a practice which, either by design or effect, avoids accountability and,
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1 accordingly (because of the pressure on lawyers to perform financially) avoidably
2 results in an inflation of the time.

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4 17. On January 29, 2003, the California State Bar issued an arbitration
5 advisory from its committee on mandatory fee arbitration entitled "Detecting Attorney
6 Bill Padding." The State Bar Advisory commented on several billing practices that the
7 committee suggested bill padding. One of those practices identified by the committee
8 was "block-billing." Regarding the practice of block-billing, the committee made the
9 following finding:
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11 If one amount of time is shown for working on more than one
12 discrete task, this is called "blocked-billing" or "lumping time."
13 This is almost never allowed by federal courts. This practice
14 hides accountability and may increase time by 10% to 30%.
15 The larger the "block" the more care should be exercised.

16 18. Referring to this advisory on block-billing, the United States Court of
17 Appeals for the Ninth Circuit issued an opinion in Welch v. Metropolitan Life
18 Insurance Company, 450 F. 3d 942 (2007) upholding a 20% reduction of fees for
19 those hours that were billed in a block format. Courts have generally held that fee
20 awards should be reduced for block billing as it tends to inflate the claims and
21 interferes with the ability to determine what time was actually spent on any given task
22 [Bell v. Vista Unified School District, (2000) 82 Cal.App. 4th 672, 689; Oklahoma
23 National Gas Co. v. Apache Corp., 355 F. Supp. 2d 1246, 1263-1264 (N.D. Oklahoma
24 2004).
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26 **D. Excessive Intra-Office Conferencing:**

27 19. We have isolated 80.70 hours totaling fees in the amount \$19,905.00 for
28 Endeman billers participating in case management meetings. This time was billed in

1 connection with what were apparently weekly staff meetings by the Endeman
2 regarding the status of their active cases. Typically, Endeman billers would then bill a
3 .10 to .20 (although partner Allen routinely billed .50) for these weekly staff meetings
4 purportedly attributable to discussing the status of this action. In fact, for some of the
5 Endeman billers, these entries were mainly, if not exclusively, all they ever billed on
6 the case - simply for attending the weekly staff meeting [for example, see the time
7 entries of paralegal Sadaf Tojzoy].
8

9 **Specific Analysis of Billing Entries**

10 **Paralegal Billers**

11 **(1) Ann Andrews – Paralegal (53.50 hours - \$8,025.00)**

12 20. Ann Andrews is represented to be a paralegal with the Endeman law
13 firm who billed 53.50 hours (at the rate of \$150 per hour) for a nine day period
14 between June 18, 2008 and June 27, 2008 for what appears to be a project of typing
15 the special interrogatory responses of the plaintiffs. For example, on June 19, 2008,
16 she billed 8 hours described as “special interrogatories typing.” Clerical or secretarial
17 tasks even though billed by a “paralegal” or even an attorney are not recoverable.
18 The United States Supreme Court has noted that purely clerical or secretarial tasks
19 should not be billed at a paralegal rate regardless of who performs them. The court
20 further noted that the dollar value of such non-legal work is not enhanced just because
21 a lawyer or a paralegal does it. [Missouri v. Jenkins, 49 U.S. 274, 288 m.10; Davis v.
22 City & International Association of Black Firefighters, San Francisco Chapter, 976 F.
23 2d 1536, 1543 (9th Cir. 1992)]. These clerical tasks performed by “paralegal” Andrews
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1 are not a reasonably billed paralegal function and therefore, in our opinion, her time
2 and fees should be disallowed in its entirety

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4 **(2) Courtney Abrams – Paralegal (5.50 hours - \$825.00)**

5 21. Paralegal Courtney Abrams billed a total of 5.50 hours (at \$150 per
6 hour) on the case between August 6, 2009 and August 9, 2009. Ms. Abrams had two
7 billing entries the first of which was to “help Maria with filing” and for one-half hour and
8 a second billing entry for 5 hours described as “work on trial prep.” Assisting in filing is
9 a clerical task that should not be billed or recoverable at a paralegal rate [Missouri v.
10 Jenkins, supra]. The 5 hours billed by Ms. Abrams for “trial prep” is so vaguely
11 described that no objective third-party and have any idea what task was being
12 performed and therefore should be disallowed. (Christian Research Institute v. Alnor,
13 supra; Hess v. Ramona Unified School District, supra.] Thus, it appears that none of
14 the time billed by paralegal Abrams was reasonable and therefore should be
15 disallowed in its entirety.
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18 **(3) Erika Rodriguez – Paralegal (4.80 hours - \$720.00)**

19 22. Once again, purported paralegal Erika Rodriguez performed tasks that
20 were not paralegal in nature. Of the 4.80 hours billed by Ms. Rodriguez, she billed
21 1.80 hours acting as a translator, 1.50 indexing documents, and an additional 1.50
22 hours performing the secretarial function of calling the clients to cancel a meeting.
23 None of these tasks are typical functions of a litigation paralegal and therefore it is not
24 reasonable for the Endeman law firm to seek recovery of attorney fees for Ms.
25 Rodriguez’ time billed for purported paralegal functions. In our opinion, none of this
26 time is reasonably reimbursed for paralegal work
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1 **(4) Maria Introna – Paralegal (232.40 hours - \$34,860.00)**

2 23. There are a number of billing issues related to the services performed by
3 paralegal Introna. The first issue is that her first three entries totaling 0.90 hours have
4 no description. Additionally, of the 232.40 hours billed by Ms. Introna, 168.30 hours
5 are simply referenced as “trial preparation” without any further description.
6 Additionally, she billed for attending the weekly case management meetings at the
7 Endeman firm. She attributed a 0.10 related to the Alfaro v. Nomad Village lawsuit on
8 45 occasions for such meetings for a total of 4.50 hours. This matter was not in our
9 opinion complex in nature so as to necessitate weekly case management meetings.
10 We therefore do not believe that, if such meetings occurred, there would be any
11 reasonable value imparted to this case for such time. There was no description by any
12 of the billers as to what the nature of the meetings were about and in the absence of
13 some specificity, these entries appear to be unreasonable intraoffice conferencing
14 billing among the “legal team.”
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18 24. The balance of Ms. Introna’s time appears to have been for indexing
19 documents which is clerical/secretarial in nature and searching for “lodging for trial
20 plus office space” which is administrative in nature and should be considered as part
21 of the firm’s overhead. Ms. Introna billed extensively for indexing documents,
22 organizing documents, scanning documents, and scheduling depositions, all of which
23 tasks once again are secretarial/clerical in nature. The filing, organizing and indexing
24 of documents are normally tasks that do not require the reading and understanding of
25 the contents of the documents. These are secretarial/clerical tasks that are not
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1 reasonably billed as paralegal tasks as the skill involved is not commensurate with the
2 rate of \$150 per hour.

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4 25. Lastly, in April and May 2008, Ms. Introna billed approximately 10 hours
5 described as "review discovery responses." This time appears not only to be vague
6 and unclear as to what was done and why but unreasonable in that simply reviewing
7 discovery responses by a paralegal would ordinarily serve no particular purpose. She
8 did not bill for summarizing the discovery responses or performing any meaningful
9 tasks in relationship to simply reviewing the responses. In summary, for the various
10 reasons set forth herein, paralegal Introna's billings are not reasonable and therefore
11 are not, in our opinion, recoverable.
12

13 **(5) Melissa Lipe – Paralegal (6.70 hours \$1,050.00)**

14 26. Ms. Lipe billed a total of 6.70 hours during the period of May, 2007 all of
15 which time was incurred months prior to the filing of the lawsuit. The task performed
16 by Ms. Lipe appears to be mainly clerical and secretarial with regard to organizing files
17 and updating binders and checklists. However, Ms. Lipe did appear to write a letter to
18 the title company requesting a title report and following up with the title company
19 regarding receiving a property profile report. Additionally, on August 29, 2007, she
20 billed 1.90 hours conferencing with the paralegal Barajas and attorney Reich
21 regarding managers and rental agreements and follow up with resident plaintiff Jerrie
22 Taylor regarding those agreements. Therefore, 2.20 hours of the 6.70 hours billed by
23 Ms. Lipe appear to be reasonable paralegal tasks which at the hourly rate of \$150.00
24 per hour total \$330.00.
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1 **(6) Michelle Soria – Paralegal (221.60 hours - \$33,240.00)**

2 27. Paralegal Michelle Soria billed her first entry in this case on April 2, 2006
3 more than 1 ½ years prior to the time that the Endeman firm filed the complaint in this
4 action. She continuously billed on this matter up through and including August 24,
5 2009. She billed a total of 221.60 hours at the rate of \$150 per hour totaling fees in
6 the amount of \$33,240.00. A review her timesheet entries shows that, for months on
7 end, she primarily was billing for a case management meetings with an occasional
8 task of organizing and scanning documents which latter task is clerical in nature and
9 not recoverable as a paralegal task. (For example, see Ms. Soria’s time from June 9,
10 2008 through July 20, 2009). Following that time period in August 2009 Ms. Soria
11 billed for “trial preparation” and one entry for 4.60 hours simply identified as “mock
12 trial”. We will discuss the mock trial below but we believe the billings for this exercise
13 were unreasonable and unnecessary.
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17 28. Paralegal Soria billed time in connection with two particular projects.
18 First, between April 2, 2006 and September 5, 2007, Ms. Soria billed a total of 52.30
19 hours “summarizing questionnaires.” While these entries are arguably vague, it would
20 appear that she was summarizing questionnaires submitted to prospective
21 clients/tenants of Nomad Village. Nevertheless, there is no showing that the clients
22 contacted and whose questionnaires were summarized were the ones that signed up
23 with the Endeman firm and prevailed in the case. These entries have been included in
24 our category below labeled as “solicitation of clients”. Additionally, between April 25,
25 2008 and June 4, 2008, Ms. Soria billed a total of 42.30 hours described as “client
26 interviews” with “discovery.” We are aware that defendant had served extensive
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1 special interrogatories to the plaintiffs during this time period and presume that Ms.
2 Soria was working with the plaintiffs in gathering the information to prepare the
3 responses to the special interrogatories. In summary, in our opinion of the 221.60
4 hours billed by Ms. Soria, in our opinion, 42.30 hours were sufficiently described and
5 were reasonable paralegal tasks. At the hourly rate \$150.00 per hour, the fees for this
6 time totals \$6,345.00.
7

8 **(7) Raelynn Pili – Paralegal (140.50 hours - \$21,075.00)**
9

10 29. A review of the timesheet entries of paralegal Pili's time will easily
11 demonstrate that most of her time was not reasonably incurred. Most of her entries
12 simply involved her attendance at the Endeman firm's weekly case management
13 meeting. As stated earlier, this case was not complex requiring a legal team approach
14 of 18 billers and a legal team approach strategy to litigating the case. Therefore, it
15 would appear this billing was unnecessary as the entries contain no description of
16 what was discussed or its necessity. In our opinion the mere mention of the case at
17 the generic weekly firm case management meetings (involving all the cases of the
18 Endeman firm) does not justify the proliferating billing by everyone in the firm on the
19 case.
20

21 30. In addition, paralegal Pili was one of the Endeman legal team who
22 generically billed for "trial prep" in August 2009. We have identified a total of 46.30
23 hours falling within this vague category which should be disallowed [Christian
24 Research Institute v. Alnor, supra] and which we have included in the category of
25 "Trial Preparation". Additionally, Ms. Pili performed a clerical/secretarial tasks such as
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1 calling plaintiffs to remind them of a May 19, 2008 meeting, scanning documents,
2 indexing documents, and organizing documents in binders.

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4 31. Ms. Pili did perform certain tasks which, although somewhat vaguely
5 described, appear to be reasonably billed paralegal tasks. For example, between
6 January 28, 2009 and February 3, 2009, Ms. Pili assisted in preparing documents to
7 be included into a mediation booklet. We have identified a total of 27.40 hours billed
8 in connection with this project totaling fees in the amount \$4,110.00 which our opinion
9 are reasonable.
10

11 **(8) Sadaf Tajzoy – Paralegal (1.10 hours - \$165.00)**

12 32. Between December 7, 2007 and April 21, 2008, paralegal Tajzoy billed
13 11 entries for 0.10 hours each totaling 1.1 hours to attend the case management
14 meetings of the Endeman firm. Other than bill for attending the case management
15 meeting of the Endeman firm (at which apparently the status of this case was
16 mentioned), paralegal Tajzoy performed no other task in connection with the action.
17 Therefore, his time billed on this case (**\$165.00**) is duplicative and unnecessary and
18 therefore is unreasonable and should not be reimbursed.
19

20 **(9) Yesenia Barajas – Paralegal (1,195.10 hours - \$179,265.00)**

21 33. As we discussed earlier, we believe it was reasonable to have had the case
22 staffed with one associate, one partner and one paralegal. It appears that paralegal
23 Barajas logged in the most number of hours of all personnel on the case. Although
24 some of the work performed by paralegal Barajas represents true paralegal work
25 (attending site inspections, obtaining discovery from clients) much of the time is
26 vaguely described or does not represent paralegal work. The overwhelming majority of
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1 the hours logged in by Barajas are accompanied by descriptions which are vague,
2 ambiguous and do not allow for a determination of exactly what she was doing. For
3 example a large number of entries are simply described as "work on discovery" (168.4
4 hours) with no further explanation of what discovery was performed. It also appears
5 that a large number of hours billed by paralegal Barajas were for scheduling
6 depositions – a secretarial function (not a paralegal function) that should not be billed
7 or, (assuming the argument is made that the volume of the scheduling was beyond the
8 capacity of a secretary), at the very least, this work is only deserving of a clerical rate
9 of \$35 per hour. We calculate that hours billed by paralegal Barajas for scheduling
10 amount to 98.2 hours representing fees of **\$14,730.00** which should not be
11 reimbursed.
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14 34. Several months prior to the filing of the complaint, it appears that
15 paralegal Barajas billed 97.9 hours for telephone soliciting of clients and later another
16 61.6 hours preparing fee agreements and rejection letters to these clients. We do not
17 believe this time should be reimbursed as it represents non-legal and administrative
18 work for the benefit of the law firm's retention but not legal work on the case which had
19 not yet commenced. Furthermore, we have no way of knowing what portion of the
20 clients solicited declined the representation and/or were rejected and therefore this
21 work would not fall within the reimbursement allowed under the fee shifting statutes for
22 those plaintiffs who were actually signed up and prevailed by settlement. We
23 understand there are 150 spaces in the trailer park and that only 36 of the spaces
24 retained the Endeman firm and only 29 spaces are represented in the settlement.
25 These hours amount to 159.5 hours and charges of **\$23,925.00** which, in our opinion,
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1 should not be allowed. We have placed these billings in our category below labeled as
2 "solicitation of clients".

3 **(10) Donald Lincoln – Partner (3.1 hours - \$1,085)**

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5 35. Partner Donald Lincoln submitted four billing entries: (1) One hour for
6 discussing the case - he does not state who he discussed the case with and (2) Two
7 entries for 1.5 hours for discussing with a paralegal the law firm office and housing
8 accommodations for the upcoming trial (administrative) and (3) One hour for
9 discussing the settlement in August of 2008. We believe this billing which amounts to
10 \$1,085 was either unnecessary as it did not appear to advance the case and/or it
11 related to the law firm's administrative problem (not legal work) of getting facilities for
12 the trial – this would not have been necessary if local counsel had been hired.
13

14 **(11) George Kaelin- Partner (46.3 hours - \$16,205)**

15
16 36. Partner George Kaelin recorded 25 billing entries which are almost
17 completely vague and nebulous. He does not appear to have worked on the case in
18 any consistent or meaningful manner. He appears to be a transient biller or one whose
19 entries or contributions do not appear to have any apparent value in the case. His time
20 is described as "depo issues" 1.0 hrs or "discovery issues" 2.9 hrs. or "work on trial
21 issues" 2.0 hrs. These entries have no credibility as they do not inform the potential
22 payor of the bill anything allowing for accountability. We have included these entries in
23 the vague and ambiguous section (below) which should not be allowed.
24

25 **(12) James Allen – Partner (215.9 hours - \$75,565.00)**

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27 37. Mr. Allen's time reflects that he, too, was a sporadic and occasional
28 biller. His entries are also almost entirely vague and ambiguous. Most of his entries

1 (67 entries of the total of 106 entries) are nebulously described only as "case review"
2 or "case mgmt mtg". He billed 25.5 hours charging fees of \$8,925.00 with the only
3 descriptor being: "case review" or "review case". Likewise, he billed 20.4 hours and
4 fees of \$7,140.00 with the descriptor of "case mgmt mtg". It does not appear he
5 attended any depositions, site inspections, nor was involved in any discovery. He
6 does not describe any discernable work other than meeting with undescribed clients
7 (presumably to solicit the firm's retention) once in May of 2007 several months before
8 the case was filed. It appears that one or more of these clients were rejected by the
9 firm shortly thereafter. He also met with clients once on December 11, 2007 (for 7
10 hours) and then attended three separate settlement conferences - one in May of 2008
11 and two in March of 2009. All of these conferences were attended by other partners in
12 the firm. In summary it appears to us that only seven hours of Mr. Allen's time
13 appears to be reasonable and necessary.
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17 **(13) Kenneth Turek - Partner (258.70 hours - \$90,545.00)**

18 38. This partner was brought in to the case for the first time in January of
19 2009 for the purpose of attended three depositions between February 2 and February
20 4, 2009. Although he billed 89.2 hours for preparing for and taking these depositions,
21 we believe these amounts are excessive and represent substantial preparation time
22 for his getting up to speed and learning the issues in the case. The depositions
23 actually took 12.0 hours to take. This catch up time approximately 60 hours appears to
24 be unnecessary billing since partner Henry Heater and associate Linda Reich (who
25 together had attended almost all the depositions) were not attending any other
26 depositions on these days. Mr. Turek also attended two mediations which were also
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1 attended by other partners. One of these mediations was attended by James Allen
2 whose time we have disallowed as duplicative. He billed 8.2 hours for this mediation
3 which appears reasonable. He also worked on responses on motions in limine (13.9
4 hours) which time appears to be reasonable. The remainder of his entries are largely
5 vague such as “attention trial prep matters” or “attention re trial issues” or “attention re
6 discovery issues”.

8 **(14) Patrick Calhoon – Associate (277.10 - \$62,347.50)**

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10 39. Endeman associate Patrick Calhoon began billing on this matter in April
11 2008. He was assigned to prepare a Motion for Protective Order whereby the plaintiffs
12 claimed that an extensive set of special interrogatories was so burdensome that
13 plaintiffs should not be required to answer them. The special interrogatories were
14 simply contention interrogatories premised upon the hundreds of allegations set forth
15 in the complaint. The complaint itself appears to be a template which the Endeman
16 uses in other of its cases. There were accordingly a number of allegations made that
17 simply do not apply to the Nomad Village Mobile Home Park¹. It appears to me there
18 was no substantial justification for bringing the motion since the discovery requested
19 was clearly warranted and tailored to the specific allegations. At the very least the
20 Plaintiffs should not be rewarded for having filed this motion which does not appear to
21 be well-taken. This motion was denied by this court. In my opinion, the position taken
22 by the plaintiffs in bringing this motion was unreasonable and therefore the 23.70
23 hours billed by Calhoon and charges of **\$5,332.50** were also unreasonable. He
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27 ¹ For example, the complaint alleged that the park improperly failed to maintain/remove a playground for children.
28 In fact, this was previously a senior mobile home park and no playground had ever existed. The Complaint also
alleged that a common trash area was not properly maintained when in fact the Park picked up each of the resident's
trash and had no common trash area.

1 thereafter billed 9.8 hours assisting in the preparation of plaintiffs responses to the
2 special interrogatories which we considerable reasonable.

3
4 40. Mr. Calhoun additionally billed 121.1 hours in connection with preparing
5 for and attending 17 depositions which we do not considerable to be unreasonable. He
6 also billed 5.8 hours in connection with preparing responses to motions in limine. In
7 total, we consider 136.7 hours of Mr. Calhoun's time totaling \$30,757.50 in fees to be
8 reasonable. The remainder of his time falls within unnecessary intraoffice conferencing
9 and unreasonably vague entries such as "discovery" or "discovery review."

10
11 **(15) Mock Trial**

12 41. In total, all Endeman firm billers billed a total of 28.60 hours totaling fees
13 in the amount of **\$9,590.00** related to attending an internal mock trial. A mock trial is in
14 essence a pretend exercise whereby the lawyers (usually in connection with an
15 outside consultant) attempt to determine the reaction of jurors to the presentation of
16 the evidence. Such an exercise is normally performed in capital and death penalty
17 criminal cases and civil cases with extremely high exposure. We believe such
18 exercises are convenient and sometimes of benefit in very serious high exposure
19 cases (and to young and inexperienced lawyers) but these exercises are the
20 quintessence of what is unnecessary billing. In our opinion, the mock trial to assist the
21 two Endeman trial attorneys, partners Henry Heater and David Semelsberger, (each of
22 whom had in excess of 25 years experience in handling this type of matter) was
23 unnecessary as this case did not warrant such an exercise and such a convenience
24 should not be shifted to the defendants.
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1 **(16) Travel Billings**

2 42. As we discussed earlier, we do not believe it is reasonable to hire a
3 lawyer to litigate in an area which is geographically distant from the location of the
4 litigation venue and site of the events which are the subject matter of the litigation.
5 This practice unnecessarily increases the cost of litigation. There is no reason we
6 perceive as to why another law firm located closer to Santa Barbara could have
7 handled this matter. The result was that each trip to any court appearance, deposition
8 or site inspection necessitated an additional 7 to 8 hours coming from and returning to
9 San Diego. We have isolated the travel time billed by the Endeman and this alone
10 amounts to 434.70 hours and fees of **\$125,805.00**. This is time spent in a car and for
11 which there was no measurable benefit to the client and which could have been
12 avoided had a local firm been engaged.
13

14 **(17) Vague, Ambiguous and Unexplained Entries**

15 43. By far the largest number of objectionable entries are those which are
16 vague, ambiguous or unexplained. These are the type of entries which are uniformly
17 rejected by courts when application is made for fees under fee-shifting statutes (see
18 authorities cited above). These types of entries are rejected since they avoid
19 accountability by the law firm. Vaguely described entries provide a vehicle for abuse
20 for with vague entries one can simply write entries day after day using nebulous
21 descriptors as “work on discovery” or “trial preparation” and expect payment *even*
22 *though no work was ever performed* and without any degree of accountability. It is for
23 this reason that these entries are rejected.
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1 44. When an attorney and his client seek to collect fees from another party a
2 reasonableness standard prevails which requires specificity to protect against this
3 flagrant abuse. Attorneys who handle work on behalf of plaintiffs under fee-shifting
4 statutes know that to collect attorneys fees they must comply with such specificity. We
5 have assembled all of the vague entries into two categories: (1) Vague and
6 Unexplained and (2) Trial Preparation. The vague and unexplained category amounts
7 to 624.10 hours and charges of \$158,872.50. The Trial Preparation category
8 represents 952.80 hours and charges of \$228,975.00. All totaled, these two
9 categories represent **1,576.90 hours and \$387,847.50** (or almost 32% of all billings).
10 We find the submission of this high a percentage of vague billings to be an
11 extraordinary figure based on our experience. This signals to us that the firm has
12 either a practice of intentionally writing nebulous descriptions or it simply did not
13 prepare contemporaneous time records yet later sought to recreate them after the
14 case had settled. In either case the firm should not expect to saddle the defendant
15 with responsibility for such irresponsible or speculative claims. For the reasons we
16 have set forth above, we believe these billings should be disallowed as the Endeman
17 firm has simply failed to meet its burden of proof.

18 45. While it is unfair for the firm to have described the work performed prior
19 to trial simply as "trial preparation" and even though such descriptions should be
20 disallowed, we believe an allowance should be made for a reasonable amount of trial
21 preparation for those billers who were actually preparing to try the case. We have
22 therefore determined that billers Henry Heater, David Semelsberger and Yesenia
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1 Barajas were planning on trying the lawsuit. Their trial preparation time amounts to
2 613.20 hours and fees of \$165,300.00 which we recommend be reimbursed.

3
4 **(18) Clerical Billings**

5 46. We have calculated that the Endeman firm billed 218.20 hours and
6 charges of **\$34,325.00** in charges for clerical work by paralegals. This consists of
7 bates numbering, organizing files, calendaring dates, scanning and indexing
8 documents. This is not paralegal work but rather is clerical/secretarial work and should
9 not be reimbursed. As stated earlier, the United States Supreme Court has noted that
10 purely clerical or secretarial tasks should not be billed at a paralegal rate regardless of
11 who performs them. The court further noted that the dollar value of such non-legal
12 work is not enhanced just because a lawyer or a paralegal does it. [Missouri v.
13 Jenkins, 49 U.S. 274, 288 m.10; Davis v. City & International Association of Black
14 Firefighters, San Francisco Chapter, 976 F. 2d 1536, 1543 (9th Cir. 1992)]. At the very
15 least, these billings should be reimbursed only at a rate commensurate with the skill
16 required which, in my opinion, is \$35.00 per hour.

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19 **(19) Case Status/Management Meetings**

20 47. As we have described above the case management meetings which
21 almost every biller recorded time to on this case were weekly generic meetings for all
22 the cases in the Endeman firm. The entries submitted for these meetings contain no
23 description of what was discussed or its necessity. In our opinion the mere mention of
24 the case at the generic weekly firm case management meetings (involving all the
25 cases of the Endeman firm) does not justify this billing which we believe to be
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1 unnecessary. As we calculate, the firm billed 80.70 hours and **\$19,905.00** for these
2 meetings.

3 **(20) Deposition Scheduling**

4 48. The Endeman firm billed 121.45 hours and fees of **\$21,485** for
5 scheduling of depositions. Most of this work was billed at \$150 per hour. This is
6 secretarial work and should not be billed at all. If it can be justified, it should only be
7 billed at a rate commensurate with the skill involved - \$35.00 per hour.
8

9 **(21) No Description/Illegible or No Time Entries**

10 49. We found there were 52.15 hours which contained either no description,
11 were illegible or contained no hours. These charges amount to **\$11,682.50** and are in
12 our opinion unreasonable.
13

14 **(22) Solicitation of Clients**

15 50. There were substantial hours billed for soliciting potential clients,
16 preparing retention agreements and rejection letters. These hours amount to 237.4
17 hours and charges of **\$36,600.00**. We do not believe this time should be reimbursed
18 as it represents non-legal and administrative work for the benefit of the law firm's
19 retention but not legal work on the case which had not yet commenced. There is no
20 showing as to whether these billings relate to actual clients retained or merely all the
21 potential clients contacted. We do not know what portion of the time relates to clients
22 solicited who declined the representation and/or were rejected. Such time would not
23 fall within the reimbursement allowed under the fee shifting statutes for those plaintiffs
24 who were actually signed up and prevailed by settlement.
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CONCLUSION

Fee Recapitulation	
Total Fees	\$1,254,592.50
Administrative Tasks	-\$4,840.00
Clerical Tasks	-\$34,325.00
Case Management and Case Status Meetings	-\$19,905.00
Deposition Scheduling	-\$21,485.00
Duplicative Time	-\$21,175.00
Mock Trial	-\$9,765.00
Motion for Protective Order	-\$15,495.00
No Hours, No Timesheets, and Illegible Description	-\$11,682.50
Solicitation of Clients	-\$36,600.00
Turek Catch-Up Time	-\$18,865.00
Trial Preparation	-\$228,975.00
Travel	-\$125,700.00
Vague or Unexplained Entry	-\$158,872.50
Adjusted Fees	\$546,907.50
Reasonable "Trial Preparation"	\$165,300.00
Total Reasonable Fees	\$712,207.50

51. It is our opinion that a reasonable range of fees and costs for the litigation of this matter should have been \$650,000 to \$700,000. As we have explained, the fee application in this matter is greatly overstated due primarily to too many billers who do not appear to have been consistently involved in the matter who submitted billing entries that are purposely vague and ambiguous and for which there is no accountability.

52. This analysis does not take into consideration an adjustment for inflation of the billings caused by block-billing which we believe this court should make. Furthermore, this analysis does not take into account an allocation that should occur due to the fact that 10% of the plaintiffs for whom the services were rendered settled their cases before trial (5% of the plaintiffs for whom the services were rendered settled out of the case well before trial and another 5% of the plaintiffs settled before

1 trial). We believe that it is appropriate that the court make an allocation to reduce the
2 fees allowed for services rendered on behalf of this group of plaintiffs.
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4 I declare under penalty of perjury that the foregoing is true and correct to the best
5 of my knowledge.

6 Executed this 29th day of October 2009, at Pasadena, California.

7
8 By: 
9 Brand Cooper

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