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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
SOUTHERN DIVISION**

DONALD N. DAIEN,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. <u>1:09-cv-00022-REB</u>
)	
BEN YSURSA, in his official)	
capacity as Secretary of State of)	
Idaho,)	
)	
Defendant.)	
_____)	

**MEMORANDUM IN SUPPORT OF NADER AND DAIEN'S
MOTION FOR ATTORNEYS' FEES AND NON-TAXABLE COSTS**

COMES NOW Donald N. Daien ("Daien"), the Plaintiff in the above-referenced matter,
by and through their undersigned counsel of record, Daniel J. Treuden, and respectfully files this

memorandum in support of Daien's Motion for Attorneys' Fees and Non-Taxable Costs filed concurrently with this memorandum. Pursuant to Local Civ. R. 54.2(b), the motion and memorandum in support of this motion is required to be filed within fourteen days after judgment was entered. This Court granted Daien's motion to extend this deadline to fourteen days after the time to appeal has past. (Doc. 43.) Ben Ysursa's deadline to appeal the merits decision in this case past on June 4, 2010, and therefore, this motion is timely filed if filed on or before June 18, 2010.

Argument

1. **Eligibility and Standard of Review**

a. ***The Claims for Relief and Success on the Merits***

Judgment was entered in favor of Daien on May 5, 2010. (Doc. 42.) Daien is entitled to reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 because this was an action brought to enforce a provision of 42 U.S.C. § 1983. In turn, Section 1988 requires plaintiffs to be a "prevailing party" in order to be entitled to an award of attorneys' fees and costs.

Daien filed his complaint on January 21, 2009. (Doc. 1.) The case was a ballot-access case seeking declaratory and injunctive relief. *Id.* Daien, a past-supporter and current-supporter of Ralph Nader ("Nader"), who had circulated ballot-access petitions for Nader in past presidential campaigns, intends to circulate petitions for Nader or another candidate with similar beliefs, in the 2012 election cycle. (Doc. 1, ¶ 5.) Daien made two claims on the merits: first, that the statutory bar on non-residents from circulating ballot-access petitions in Idaho was unconstitutional, and second, that the number of signatures required to obtain access to the ballot was unconstitutionally high when compared to the ballot-access requirements of candidates seeking offices elected in statewide election districts. *Id.*

The complaint sought the following relief: (1) a declaration that the residency requirement for petition circulators and the requirement that independent candidates obtain a greater number of signatures than other independent statewide candidates violated the United States Constitution; (2) a preliminary and permanent injunction to enjoin and restrain Ysursa and his agents from enforcing that statutory schema; (3) an award for attorneys' costs and fees pursuant to 42 U.S.C. § 1988; and, (4) other equitable and further relief as the court deemed just and proper. *Id.*

Ysursa answered the Complaint on March 31, 2009, (Doc. 13), and the case proceeded to summary judgment before Magistrate Judge Bush after the parties' granted consent to proceed before the magistrate, (R. 19). The summary judgment was litigated in September and October of 2009 and a hearing was held before the Court on January 7, 2010. (R. 38.) Daien obtained complete relief on the requests for declaratory and injunctive relief. (Docs. 41 and 42.) The appellate court accepted both of Daien's claims on the merits. *Id.*

b. *The Lodestar Calculation*

An award for attorneys fees and costs is governed by 42 U.S.C. § 1988(b). In relevant part, § 1988(b) reads: "In any action or proceeding to enforce a provision of section[] . . . 1983 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except [in certain cases involving a judicial officer]." 42 U.S.C. § 1988(b). The district court has subject matter jurisdiction to determine the fee award in its entirety. The Supreme Court interpreted this statute in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and pursuant to that decision, Daien is a "prevailing party" and should ordinarily be awarded attorneys' fees because special circumstances do not exist that would render an award unjust. *Hensley*, 461 U.S. at 429.

“The amount of the fee [is] determined on the facts of each case.” *Id.* The Supreme Court recognized the general rule that where a plaintiff obtains complete relief, as Daien did in this case, the plaintiff is entitled to a full attorney’s fee award without reduction. “Excessive, redundant, or otherwise unnecessary” hours should be excluded. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley*, 461 U.S. at 434). “We hold that the extent of a plaintiff’s success is a crucial factor in determining the proper amount of an award of attorney’s fees under 42 U.S.C. § 1988.” *Hensley*, 461 U.S. at 440. “Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” *Id.* at 435.

In turn, a fully compensatory fee is calculated by first “multiplying the number of hours reasonably expended on the litigation [by] a reasonable hourly rate.” *Blum v. Stenson*, 465 U.S. 886, 888 (1984) (citing *Hensley*, 461 U.S. 424). The analysis centers on two considerations: first, whether the hours expended were reasonable, and second, whether the hourly rate is reasonable. Reasonable hourly rates are determined by “prevailing market rates in the relevant community.” *Blum*, 465 U.S. at 895. When determining fees earned in a district court case, “the relevant community is the forum in which the district court sits.” *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). This initial calculation is called a “lodestar.” (As Daien discusses below, however, the use of Boise or Idaho as the relevant community does not accurately reflect the proper hourly rate in this instance.)

After the lodestar is calculated by multiplying the reasonable hours by the reasonable hourly rate, the court “may adjust the lodestar upward or downward using a ‘multiplier’ based on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen*, 214 F.3d at 1045 (citing *Blum*, 465 U.S. at 898-901). As the *Van Gerwen* court held, “[t]he lodestar amount is

presumptively the reasonable fee amount, and thus a multiplier may be used to adjust the lodestar amount upward or downward only in rare and exceptional cases, supported by both specific evidence on the record and detailed findings by the lower courts that the lodestar amount is unreasonably low or unreasonably high.” *Van Gerwen*, 214 F.3d at 1045 (internal quotations omitted). Daien suggests that no such adjustments should be made because Daien wholly prevailed on his claims and there are no factors existing that will not be considered in determining the reasonable hours and reasonable hourly rate. *See also Perdue v. Kenny A.*, 130 S.Ct. 1662 (2010) (holding that only in the rarest of circumstances should a multiplier be allowed).

c. *The Relevant Community for the Lodestar Analysis*

As set forth above, the Ninth Circuit has held that “the relevant community is the forum in which the district court sits.” *Barjon*, 132 F.3d at 500. This rule, however, was developed and drawn from prior case law, *see Blum v. Stenson*, 465 U.S. 886, 895 (1984) (discussing the legislative history of 42 U.S.C. § 1988). The rule was developed during a time before the internet, instant communication, electronic filing and court dockets, and before it was accepted and common for law firms to market to the national marketplace. The law is behind the times, and should be extended to consider this fact, especially in a case like this one in which Daien, as an Arizona resident, is not a natural participant in the Boise or Idaho marketplace. It is only natural for Daien to seek the counsel of attorneys he has done work with before, with whom he has complete confidence, and with whom he knows has a complete mastery this area of the law, rather than be forced to interview new attorneys thousands of miles away from his residence looking for counsel to put his trust in. This situation must be recognized when considering the “relevant market.” Indeed, in situations like the one before this court, the market is national. *See*

Casey v. City of Cabool, Montana, 12 F.3d 799, 805 (8th Cir. 1993) (“The relevant market for attorneys in a matter such as this [referring to a civil rights case] may extend beyond the local geographic community. ‘A national market or a market for a particular legal specialization may provide the appropriate market.’”) (quoting *Hendrickson v. Branstad*, 740 F.Supp. 636, 642 (N.D. Iowa 1990)).

In this situation, there are two factors that warrant a finding that a national market is appropriate. First, Daien is not part of the Boise marketplace and should not be forced to scour the Idaho market for attorneys when he already knows and has been represented by someone in that particular area of the law. Second, Daien’s attorneys, the Bernhoft Law Firm have extensive experience in this area of the law, and their level of expertise provides a national reputation in the community of independent candidates, minor political parties, and their supporters. (These qualifications are outlined at pages 13-14, *infra*.) For this reason, Daien’s initial position is that the proper market for determine the lodestar is the national marketplace, and the rates requested are well within the national market for civil rights litigation.

Alternatively, Daien should be entitled to a national relevant community, and consequently, recover the hourly rates set forth in the attached affidavits because they constitute the hourly rates that the Bernhoft Law Firm charges new clients in their Milwaukee, Wisconsin and Los Angeles, California offices, because it was unlikely that Boise attorneys would have or could have agreed to work for Daien on the same contingency fee terms that the Bernhoft Law Firm extended to Daien. “[R]ates outside the forum may be used ‘if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle properly the case.’” *Barjon*, 132 F.3d at 500 (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992)). In this case,

local counsel Christ T. Troupis could not perform in any greater capacity than he already did because he “was involved in several other substantial cases that prevented me from taking on Mr. Daien’s representation as lead counsel.” (Aff. of Christ T. Troupis, ¶ 3) (hereinafter “Troupis Aff.”). Furthermore, Atty. Troupis “could not have undertaken [Daien’s] representation as principal or sole counsel at any time during the pendency of this case. As a sole practitioner, I can only take on one or two cases of this type at a time.” *Id.*

Atty. Troupis also has substantial experience in the local market and commented that local firms are generally unwilling to handle complex civil rights cases involving complex constitutional issues on a contingency fee bases, *id.*, ¶ 5, and that he did “not believe that Mr. Daien could have located an Idaho law firm with the necessary expertise and available staff that would have been willing to undertake his representation in this case on a contingent fee basis.” *Id.*, ¶ 6. To that end, The Bernhoft Law Firm was Daien’s only option. *Id.* Therefore, as Daien’s alternative position, because of a lack of opportunity to find counsel willing to take the case on a contingency fee basis in the Boise market, a national hourly rate should be considered.

For the foregoing reasons, the proper relevant community for this litigation should be considered a national relevant community rather than merely using Boise as the relevant community.

2. Entitlement

a. *Prevailing Parties and Complete Success*

In this case, Daien achieved a complete success. Daien made two claims on the merits and this Court accepted both of them when it entered summary judgment in Daien’s favor. (Doc. 42.) Daien achieved the “excellent results” referred to in *Hensley* and consequently deserve a

“fully compensatory fee.” *Hensley*, 461 U.S. at 435. Indeed, Daien is the “prevailing party” in this litigation.

b. *Fees for Preparing this Motion and Memorandum.*

Daien is also entitled to fees for filing this motion and memorandum. Furthermore, should a hearing be required in this matter, Daien would be entitled to a fee award for the time spent and costs incurred related to that hearing. “[W]e have held attorney’s fees may be awarded for time spent litigating the fee issue in Title VII cases.” *Kinney v. Int’l Brotherhood of Electrical Workers*, 939 F.2d 690, 695 (9th Cir. 1991) (citing *Manhart v. City of Los Angeles, Dept. of Water and Power*, 652 F.2d 904, 909 (9th Cir. 1981)) (judgment vacated on other grounds). “As we said in *Manhart*, ‘[i]t would be inconsistent to dilute an award of fees by refusing to compensate an attorney for time spent to establish a reasonable fee.’” *Kinney*, 939 F.2d at 695 (quoting *Manhart*, 652 F.2d at 909). *See also Southeast Legal Defense Group v. Adams*, 657 F.2d 1118, 1126 (9th Cir. 1981) (applying the same rule to fees sought under 42 U.S.C. § 1988). Therefore, Daien is entitled to the fees necessary to prepare this memorandum and motion, and for all fees necessary to litigate any reply brief or hearing in this fee-related litigation.

Here, the fees requested in this motion are related to the merits of the case and do not yet include the fees for establishing Daien’s entitlement to the fee award. Furthermore, Daien will not be entitled to fees related to the preparation and hearing of this motion until he prevails on the merits of this motion, something impossible to determine until the Court issues its fee award. Daien, therefore, anticipates filing a supplemental memorandum either (1) after the Court issues

an order on this motion (assuming Daien prevails), or (2) just prior to the Court's decision if the Court would prefer to handle these issues now.¹

3. Reasonableness of Requested Award

As discussed above, the issue to be decided by the district court is determining the proper lodestar. The analysis centers on two considerations: first, whether the hours expended were reasonable, and second, whether the hourly rate is reasonable. *See Van Gerwen*, 214 F.3d at 1045. Furthermore, "[t]he lodestar is presumptively the reasonable fee amount." *Id.*

a. *The Time Spent and Expenses Incurred Were Reasonable.*

The time spent and expenses incurred were reasonable in all respects. First, Treuden has reviewed the invoices and has eliminated duplicative, unnecessary, or excessive time. (Decl. of Daniel J. Treuden, ¶ 6) (hereinafter "Treuden Decl."). Second, Atty. Robert Barnes ("Barnes") managed the case with the assistance of Daniel J. Treuden ("Treuden") in the beginning of the case, but when time came to litigate summary judgment, Treuden took over at a substantially lesser hourly rate.

The expenses incurred were also reasonable. All of the costs are the actual costs incurred. This includes the costs for Westlaw legal research. The Wisconsin ethical rules governing expenses do not allow Wisconsin attorneys to mark-up costs as an independent profit margin. (Treuden Decl., ¶ 8.) Because this Firm is considered a "small firm" under Westlaw's definitions, Westlaw provides unlimited access to certain databases in their system for a fixed monthly price. (Treuden Decl., ¶ 9.) Westlaw also keeps track of our research time as the Firm performs it for each client and provides our Firm with a statement allocating the fixed monthly

¹ It is possible that an Order on the merits of this motion will encourage a settlement of any supplemental motion for fees since the Court will have ruled on the proper lodestar, and by its ruling will have given guidance to the parties on how the Court will interpret a supplemental motion.

price based on the time spent for each client we perform research for in a given month. (Treuden Decl., ¶ 10.) For example, should a particular client constitute 10% of the research time in a given month, Westlaw will provide a statement showing 10% of the monthly price as attributed to that client. *Id.* Westlaw limits that allocation, however, to the standard Westlaw rates such that no client will ever be billed for more than the standard Westlaw rates. (Treuden Decl., ¶ 11.) By using this system, the Firm saves its clients substantial research expenses. (Treuden Decl., ¶ 12.)

Because there is no doubt Daien obtained an excellent result, Daien should be entitled to compensation for all of the hours and all expenses set forth in this motion and memorandum. “Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” *Hensley*, 461 U.S. at 435. Daien’s attorneys did not spend time researching issues not relevant to the case, nor did their counsel raise frivolous issues on appeal. They exhibited discretion in their billing and based on all of these factors, the hours expended and expenses incurred are reasonable.

b. *The Hourly Rates Are Reasonable.*

The hourly rates are reasonable given Bernhoft, Barnes, and Treuden’s comparable skill to litigators in Constitutional and legally complex cases. Daien are entitled to a reasonable fee.

1. *The Contracts.*

The contract between Daien and his attorneys was a contingent fee contract. (Treuden Decl., ¶ 13.) Under the contract, the legal fees and costs were contingent on two things: first, prevailing in the litigation, and second, recovering fees and costs in the litigation. *Id.* The contract also assigns the fee award to the attorneys. *Id.*

2. *The Hourly Rates.*

As to a reasonable hourly rate, the consideration is governed by “prevailing market rates in the relevant community.” *Blum*, 465 U.S. at 895. When determining district court fees, “the relevant community is the forum in which the district court sits.” *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). Furthermore, “a court may also award rates at an attorney’s current rate where appropriate to compensate for the lengthy delay in receiving payment.” *Bell v. Clackamas County*, 341 F.3d 858, 868 (9th Cir. 2003). The application of current rates remedies the delay in payment an attorney in a civil rights case must face. *See id.*; *see also Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) (an hourly rate only will “represent the prevailing rate for clients who typically pay their bills promptly and since court-awarded fees normally are received long after legal services are rendered, and thus a percentage adjustment to reflect delay in receipt of payment may be appropriate.”) The Supreme Court approved of the same. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989). Therefore, the court should award the current hourly rate of the attorneys and consider the *current* prevailing rates for attorneys of comparable skill in the relevant community when determining the appropriateness of an attorney’s hourly rate.

As mentioned above, Daien is requesting the Court consider the national market rather than solely the Boise, Idaho community. In that instance, Bernhoft, Barnes, DeVries, and Treuden’s (collectively, the “Firm Attorneys”) respective rates are reasonable. The Firm Attorneys regularly practice throughout the country and maintain an office in Los Angeles, California. (Treuden Decl., ¶ 15.) The average market rates for similar clients and litigation are much higher than the \$250-\$450 hourly rates requested for the Firm’s attorneys. (Treuden Decl.,

¶ 16.) Indeed, these are the lower range of civil rates the Firm Attorneys request with their hourly paying clients. *Id.*

Alternatively, Atty. Alan B. Ellis, another local attorney in Boise marketplace knows that rates in civil federal court cases range from \$200 to \$250 per hour, (Aff. of Allen B. Ellis, ¶ 2), but that he knows of larger firms that charge more for complex litigation work, *id.*, ¶ 3. Indeed, several recent cases support just such a higher rate. Critically, the Idaho Supreme Court affirmed a trial court fee award, where the trial court found that the prevailing rates for trial litigators in the Boise area was between \$250 and \$400 per hour. *See Bates v. Seldin*, 203 P.3d 702, 707 (Idaho 2009). That finding did not involve the most complex federal litigation, but only the going rate for trial work in Boise, *id.*, nor work performed in a specialized area of law and on a contingency fee basis for a non-resident client. Idaho's Supreme Court previously approved fees averaging \$500 per hour for work performed on a contingent risk basis as a reasonable fee. *See Parsons v. Mutual Enumclaw Ins. Co.*, 152 P.3d 614, 619 (Idaho 2007) (awarding a \$20,000 fee for "thirty to forty hours," recognizing the amount as one-third of the total recovery consistent to the contingency fee contract). The rate sought here is well within the \$250 to \$500 hourly fee range for work done on a contingency fee basis, with the higher end of that rate reflecting the specialized area of work, the contingency nature of the work, and the non-resident domicile of the client.

Finally, whether the court adopts the national market or the Boise market, the court should consider the wise rule established in the Seventh Circuit, that the district court should start with the hourly rates the attorneys actually charge their clients as the presumptive proper hourly rate, only adjusting that rate for specific reasons. *Grusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993) (comprehensively discussing at pages 1149-51 why the rates lawyers

actually charge their clients is the best measure of the lawyer's value in hourly rate terms). Indeed, "[a] judge who departs from this presumptive rate must have some reason other than the ability to identify a different average rate in the community." *Id.* at 1151. This sits well with the U.S. Supreme Court's holding in *Perdue* when it held in a case rejecting fee enhancements in almost all situations that fee enhancements are likely appropriate when "the hourly rate is determined by a formula that takes into account only a single factor (such as years since admission to the bar) or perhaps only a few similar factors." *Perdue*, 130 S.Ct. at 1674. But the market rate is the presumptively appropriate rate because what a busy lawyer charges in the open market takes into account his experience, reputation, skill, and expertise in particular areas of law. *Grusman*, 986 F.2d at 1149-51. For this reason, and under any of the above-referenced alternative arguments, the hourly rates requested are presumptively reasonable, and no adjustment is warranted.

The Ninth Circuit also has its rule regarding the proper hourly rate to consider.

In considering the customary fee in a civil rights case governed by § 1988, the court must pay particular attention to the intent of Congress in passing § 1988. The Ninth Circuit has recognized the importance of the Senate Report which accompanied the enactment of Public Law 94-559, § 2 (Oct. 19, 1976), 90 Stat. 2641, which became 42 U.S.C. § 1988, see *American Constitutional Party v. Munro*, 650 F.2d 184 (9th Cir.1981) at p. 187 and notes 6-9. The Supreme Court repeatedly referred to that report in *Hensley v. Eckerhart*, supra, 461 U.S. 424 (1983), 103 S.Ct. at 1933, 1939, 1940 and note 7. The Senate Report, S.Rep. No. 94-1011, 94th Cong., 2d Sess., reprinted in [1976] U.S.Code Cong. & Admin.News 5908, indicates that Congress intended that courts award, generally, the highest rate charged in the area for complex antitrust and commercial litigation: "It is intended that the amount of fees awarded under S. 2278 [42 U.S.C. § 1988] be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases . . ." S.Rep. at 6, [1976] U.S. Code Cong. & Admin. News at 5913 (emphasis added). **Thus, Congress has indicated that in cases under § 1988 the highest rate charged to private clients for complex federal cases in a particular legal market should presumptively apply.**

Martino, 568 F.Supp. at 850 (emphasis added).

Bernhoft and Barnes charged \$450 per hour for this case, Treuden charged \$350, and DeVries charged \$250. (Treuden Decl., ¶ 14.) Bernhoft's, Barnes' and Treuden's respective current billing rates for new clients in complex or particularly difficult matters are: \$750 for Bernhoft and Barnes, \$495 an hour for Treuden and \$395 for DeVries. (Treuden Decl., ¶ 16.)

Barnes and Bernhoft both graduated from Wisconsin Law School and obtained their licenses in 2001. (Decl. of Robert E. Barnes, ¶ 3; Decl. of Robert G. Bernhoft, ¶ 8) (hereinafter "Barnes Decl." and "Bernhoft Decl.," respectively). Since that time, both Bernhoft and Barnes have demonstrated a high level of skill and have obtained a vast array of experience in complex civil and criminal cases. (Barnes Decl., ¶ 4.) Both Bernhoft and Barnes regularly appear in courts across the country. (Bernhoft Decl., ¶¶ 9-10; Barnes Decl., ¶ 5.)

Bernhoft, Barnes, and Treuden have also represented and currently represent several other "third-party" candidates in their attempts to gain ballot access. (Barnes Decl., ¶ 6; Treuden Decl., ¶ 19.) Barnes, Bernhoft, and Treuden employ more than ten years of experience in political third party issues dating to their pre-law school political involvement. (Barnes Decl., ¶ 6; Bernhoft Decl., ¶ 6; Treuden Decl., ¶ 20.)

The Bernhoft Firm set precedent in this area of Constitutionally protected speech dating to 2002. *See Frami v. Ponto*, 255 F.Supp.2d 962 (W.D. Wis. 2003). In ballot-access-related litigation, the Bernhoft firm first represented Nader in Wisconsin wherein, for only the third time in the last century, the Wisconsin Supreme Court entertained an original action in a ballot-access case and Nader was awarded a place on the ballot. (Bernhoft Decl., ¶ 5.) Treuden graduated from Marquette Law School in 2008. (Treuden Decl., ¶ 3.) He was licensed in Wisconsin in January of 2009 and in California very recently in April of 2010. *Id.* Prior to that, Treuden

worked intimately with Barnes and Bernhoft on all of the Firm's ballot-access-related litigation. (Treuden Decl., ¶ 19.)

For all of these reasons, comparing Bernhoft and Barnes' experience to the national market rates for attorneys' fees warrant a finding that Daien is entitled to the hourly fees requested.

4. Supporting Documentation

Enclosed with this memorandum are the declarations and documents required by Local Civ. R. 54.2. Those documents include the task-based itemized statements of fees and expenses, and the declarations of counsel. Taxable costs have been taxed in the traditional manner, these costs will not be double-counted in the fee award because they were not included in the Prebill. (Treuden Decl., ¶ 21.) Furthermore, upon review of the costs incurred during this litigation, \$66.03 of the Westlaw costs that were erroneously billed to Daien's account, but related to another matter. *Id.* Local Counsel fees are valued at \$6,575.

WHEREFORE, for all of the foregoing reasons, Daien respectfully requests an award of \$96,419.66, and additionally an award of fees and costs for litigating this motion to be determined after litigation over the fee award for the merits litigation is decided.

Dated at Honolulu, Hawaii on this the 18th day of June, 2010.

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