

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HILL-VU MOBILE HOME PARK, on)	
behalf of itself and all others similarly)	
situated, ED QUINN, on behalf of himself)	Case No. CV-2014-1520-OC
and all others similarly situated,)	
)	ORDER FOR AWARD OF PLAINTIFFS'
Plaintiffs,)	ATTORNEYS FEES AND
)	REIMBURSEMENT OF LITIGATION
vs,)	EXPENSES AND DENIAL OF
)	DEFENDANTS' REQUEST FOR COSTS
CITY OF POCA TELLO, an Idaho)	
municipality,)	
Defendant.)	

This matter comes before the Court on the Plaintiffs' Motion for an Award of Attorneys' Fees and reimbursement of Litigation Expenses. After having reviewed the relevant statutes and case law together with the oral and written argument, and other relevant filings submitted by the parties, the Court now issues this order.

BACKGROUND

For background in this case, the Court's Memorandum Decision Granting Defendant's Motion for Summary Judgment, issued November 10, 2015, and the Supreme Court decision on

appeal in this case are incorporated by reference.¹ In the present motion, Plaintiffs' counsel moved for an award from the Settlement Fund of attorneys' fees in the amount of 40% of the Settlement Fund, totaling \$1,800,000, for work undertaken from inception of the case, when Plaintiffs filed in 2013, through June 2019.² In addition, the Plaintiff requested reimbursement of all accrued litigation expenses in the amount of \$3,217.94 incurred over that period of time. This Court heard arguments by the parties on October 15, 2019. Following that hearing, the Court ordered Plaintiffs' counsel to file an hourly report of all work and costs per hour in this case by October 18, 2019. The Court then took the matter under advisement.

ANALYSIS

I. Plaintiffs' Request for Attorney Fees and Reimbursement of Litigation Expenses

Idaho Rule of Civil Procedure 77(h) provides:

“[I]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

- (1) a claim for an award must be made by motion under Rule 54, subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner;
- (2) a class member, or a party from whom payment is sought, may object to the motion;
- (3) the court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a);
- (4) the court may refer issues related to the amount of the award to a special master.”

“The calculation of reasonable attorney fees is within the discretion of the trial court.”³ In *City of McCall v. Seubert*, the court awarded \$135,000.00 for 756.58 hours of work, which

¹ *Hill-Vu Mobile Home Park v. City of Pocatello*, 162 Idaho 588, 402 P.3d 1041 (2017).

² See Plaintiff's Memorandum in Support of Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed July 29, 2019.

³ *City of McCall v. Seubert*, 142 Idaho 580, 588, 130 P.3d 1118, 1126 (2006); *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998) (quotation omitted).

CV-2014-1520

ORDER FOR AWARD OF PLAINTIFFS' ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES AND DENIAL OF DEFENDANTS' REQUEST FOR COSTS.

amounted to \$178.43 per hour.⁴ The City alleged that the rates were excessive for the McCall area and the judge should not have based the amount of fees on the “reputation of the law firm and the amount of the verdict.”⁵ In *Blum v. Stenson*, 465 U.S. 886 (1984), the U.S. Supreme Court indicated its view that the percentage method of computing fees was the proper approach in “common fund” cases where the fees are paid out of (not in addition to) the fund recovered. The Court in that case stated, “[U]nlike the calculation of attorney's fees under the ‘common fund doctrine,’ where a reasonable fee is based on a percentage of the fund bestowed on the class, a reasonable fee under 42 U.S.C.A. § 1988 reflects the amount of attorney time reasonably expended on the litigation.”⁶

“The percentage method stands in contrast to other courts who apply the ‘lodestar method,’ which calculates the fee award by multiplying the number of hours reasonably spent by a reasonable hourly rate and then enhancing that figure, if necessary, to account for the risks associated with the representation.”⁷ Ultimately, the 9th Circuit noted that 25% has been a proper benchmark figure, which can then be adjusted upward or downward to fit the individual circumstances of a case.⁸ If such an adjustment is warranted, however, it must be made clear by the district court how it arrives at the figure ultimately awarded.⁹

In this case, the Plaintiffs’ filed Affidavits, Declarations, and Memoranda in Support of their Motion which provided the Court with the information supporting its request pursuant to

⁴ *Id.*

⁵ *Id.*

⁶ *Blum v. Stenson*, 465 U.S. 886 (1984); *In re M.D.C. Holdings Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at *8 (S.D. Cal. Aug. 30, 1990).

⁷ *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268 (9th Cir.1989); *See Skelton v. General Motors Corp.*, 860 F.2d 250, 255 (7th Cir.1988) (lodestar enhanced for risk); *See Also Bebachick v. Washington Metro. Area Transit Comm’n*, 805 F.2d 396, 409 (D.C.Cir.1986) (lodestar enhanced to account for contingency of a common fund case); *cf. Brown*, 838 F.2d at 454–56 (10th Cir.) (fee calculated by percentage method deemed reasonable if consistent with lodestar coupled with any enhancements), *cert. denied*, 488 U.S. 822, 109 S.Ct. 66, 102 L.Ed.2d 43 (1988).

⁸ *See Mashburn v. National Healthcare, Inc.*, 684 F.Supp. 679, 692 (M.D.Ala.1988).

⁹ *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989); *Cf. Quesada*, 850 F.2d at 539 (9th Cir.1988) (in applying lodestar analysis, a court must articulate with sufficient clarity the manner in which it reaches its fee determination).

Idaho Rule of Civil Procedure 54 and the factors contained within. The Court, in exercise of its discretion, requested the Plaintiffs' submit additional information that provided an hourly report that would assist the Court in the calculation of an award. The Court explained that this information could be used in calculating a proper award by following the lodestar method in calculating the fee award.

Here, Plaintiffs' counsel states that the fee in this case is contingent, that it is acceptable for class action work and is reasonable in light of all the circumstances of the case. The Plaintiff goes on to argue that the fee requested is more than reasonable in light of counsel's prior class action litigation, experience with complex litigation, the risk associated with the issues in this case, the time and labor required to adequately represent the client, and the results achieved.¹⁰ Additionally, the Plaintiff argues that as they created a common fund for the benefit of a class, they are entitled to be reimbursed for their litigation expenses that are reasonable, necessary and directly related to the prosecution of the action.¹¹

The Court notes that the pendency of this case has exceeded five years and recognizes how the novelty and complex legal and factual issues presented in this case created a risk and need for skilled and experienced counsel. Nonetheless, the Court takes into consideration all of the payments the City's ratepayers paid into the PILOT program and what amount is necessary to insure that those ratepayers receive a full return of those funds. As such, this Court has taken the number of hours reasonably spent and multiplied it by a reasonable hourly rate, and enhanced that figure as is necessary to account for the risks associated with the representation.

¹⁰ There were three primary attorneys who worked on the case for the Plaintiff, all capable counsel.

¹¹ See *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Omnision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters."); See Plaintiff's Memorandum in Support of Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed July 29, 2019.

Additionally, the Court acknowledges that counsel did achieve the results ultimately desired by their client, and in doing so expended a reasonable amount of time in labor to achieve such goals. The work done here by Plaintiffs' counsel was excellent and deserves to be adequately compensated, but the ratepayers also deserve a full return of the amount they were required to improperly pay in PILOT funds.

Lastly, the Plaintiff argues that they also are entitled to reimbursement of the unawarded costs and fees to the Plaintiffs, including the Building Contractors, in the amount of approximately \$71,000.00 from the prior case. The Plaintiff argues that they are entitled to the reimbursement based on the language in the fee agreement entered into by the original class representative and counsel as it was the predicate for the current case. However, the Court is not required to abide by that agreement and ultimately finds that in original case the requesting party was not entirely the prevailing party, they did not seek fees and costs and that time, nor did they appeal the failure to award costs and fees. As such, the Court denies the Plaintiffs' request for reimbursement of the unawarded costs and fees in the prior case.

II. Defendants' Request for Incurred and Future Costs.

Defendants filed a request asking the Court to enter an Order awarding it \$19,748.56 in incurred costs and future costs for administering the settlement to class members who have not yet submitted a written claim.¹² The Court heard oral argument from the parties on the matter, with the Plaintiff's having no objection.

I.R.C.P. 54(d)(1)(D) provides that additional costs "may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred." In *City of McCall v. Seubert* on cross-appeal, the defendant and intervenors appeal the trial court's denial of their

¹² See Defendant's Memorandum of Costs, filed September 30, 2019; Affidavit of Andrea Henderson in Support of Memorandum of Costs, filed September 30, 2019.

CV-2014-1520

ORDER FOR AWARD OF PLAINTIFFS' ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES AND DENIAL OF DEFENDANTS' REQUEST FOR COSTS.

claim for discretionary costs.¹³ “The grant or denial of discretionary costs is ‘committed to the sound discretion of the trial court,’ and will only be reviewed by an appellate court for an abuse of that discretion.”¹⁴ It is the responsibility of the trial court to make express findings as to why a party's discretionary costs should or should not be allowed.¹⁵ The trial court in *Seubert* denied the defendant and intervenors' request for discretionary costs, concluding that although the costs were for the most part reasonable and necessary, the costs were not exceptional.¹⁶

“In *Seubert*, the Court holding that the trial court's denial of expert fees was not an abuse of discretion where “the trial court considered the nature of [the] case as a class action and its effect on numerous Idaho businesses and found that although expert witnesses were necessary and their fees reasonable, the costs were not exceptional for a class action suit.”¹⁷ A court may evaluate whether costs are exceptional within the context of the nature of the case.”¹⁸ “Discretionary costs may include “long distance phone calls, photocopying, faxes, travel expenses” and additional costs for expert witnesses.”¹⁹

Here, the Defendant is asking for costs that were incurred with mailings to class members, publishing notifications in the Idaho State Journal, and mailing and postage costs for anticipated settlement checks. Here, the costs requested are necessary as they a natural consequence of class action litigation. Additionally, the costs requested are not exceptional costs as they are and will be reasonably incurred within the context of the nature of this type of case.

¹³ *City of McCall v. Seubert*, 142 Idaho 580, 588, 130 P.3d 1118, 1126 (2006); *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998) (quotation omitted).

¹⁴ *Id.*

¹⁵ *Id.*; I.R.C.P. 54(d)(1)(D).

¹⁶ *City of McCall v. Seubert*, 142 Idaho at 588, 130 P.3d at 1126.

¹⁷ *City of McCall v. Seubert*, 142 Idaho 580, 588, 130 P.3d 1118, 1126 (2006)

¹⁸ *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005); *City of McCall v. Seubert*, 142 Idaho 580, 588, 130 P.3d 1118, 1126 (2006).

¹⁹ *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005); *Auto. Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d 965, 971 (1993); *Bailey v. Sanford*, 139 Idaho 744, 755, 86 P.3d 458, 469 (2004) (citing *Turner v. Willis*, 116 Idaho 682, 686, 778 P.2d 804, 808 (1989)).

CONCLUSION

Thus, after considering the request this Court awards the Plaintiffs' \$1,100,000.00 in Attorney Fees and \$3,217.94 for the reimbursement of litigation expenses, for a total of \$1,103,217.94. The Defendants request for discretionary costs is denied.

IT IS SO ORDERED.

Signed: 11/6/2019 08:38 AM



STEPHEN S. DUNN
District Judge