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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

YVONNE APELIAN, an individual,

Plaintiff,

v.

ALLSTATE INSURANCE
COMPANY; an Illinois corporation;
and DOES 1 through 50 inclusive,

Defendants.

Case No. LA CV 16-4977 GHK (PLAx)

**MEMORANDUM OPINION AND
ORDER IMPOSING SANCTIONS
AGAINST DEFENDANT ALLSTATE INS.
CO. AND DEFENDANT’S COUNSEL
SUZANNE BADAWI**

This matter arises pursuant to this Court’s September 30, 2016 Order to Show Cause (“OSC”). [Dkt. No. 16.] The issue is why sanctions should not be imposed against Allstate Insurance Company (“Defendant”) and Defendant’s counsel, Suzanne Badawi (“Ms. Badawi”) for: (1) failure to comply with the Court’s Settlement Order (“Settlement Order”) issued on September 19, 2016; and (2) failure to participate in good faith at a settlement conference.

On November 3, 2016, the Court held an OSC hearing (“OSC Hearing”), at which Peter H. Klee (“Mr. Klee”) and Ms. Badawi appeared, representing Defendant.

1 Bradford Lee Treusch (“Mr. Treusch”) and Keith A. Berlin (“Mr. Berlin”)
2 (collectively, “Plaintiff’s counsel”) appeared, representing Plaintiff.

3 The Court has reviewed: (1) Defendant’s and Ms. Badawi’s statements at the
4 September 30, 2016, settlement conference (“Settlement Conference”), [Dkt. No. 21];
5 (2) Defendant’s Response to the Court’s OSC (“Defendant’s Response”), [Dkt. No.
6 23]; (3) Ms. Badawi’s supplemental declaration to Defendant’s Response (“Badawi
7 Supplemental Declaration”), [Dkt. No. 25]; (4) Plaintiff’s counsel’s Reply to
8 Defendant’s Response (“Plaintiff’s Reply”), [Dkt. No. 26]; (5) Mr. Klee and Ms.
9 Badawi’s statements at the OSC Hearing, [Dkt. No. 44]; (6) Mr. Berlin and Mr.
10 Treusch’s declarations regarding attorneys’ fees and costs incurred in preparing for and
11 attending the Settlement Conference, [Dkt. Nos. 33, 33-2, 40]; and (7) the entire record
12 and circumstances here.

13 After careful deliberation, and for the reasons discussed below, the Court: (1)
14 issues sanctions in the amount of \$500.00 against Defendant and \$950.00 against Ms.
15 Badawi; and (2) awards reasonable attorneys’ fees and costs in the amount of
16 \$12,500.00 against Defendant and in favor of Plaintiff’s counsel.

17 I.

18 FACTUAL AND PROCEDURAL BACKGROUND

19 On September 12, 2016, this case was referred to this Court for the purpose of
20 conducting a settlement conference. [Dkt. No. 15.] The Court subsequently issued a
21 Settlement Order, which: (1) scheduled the Settlement Conference for September 30,
22 2016; and (2) ordered each party to submit its confidential mediation statement by e-
23 mail to the Court’s chambers no later than Friday, September 23, 2016. [Dkt. No. 16.]
24 The Settlement Order stated, in pertinent part, that the statements “**shall** contain the
25 following information:

26
27 A. A brief statement of the facts of the case, including each party’s claims
28 and defenses. The Brief shall include citations to the applicable statutory or
other grounds upon which claims or defenses are based. The Brief should

1 identify the major factual and legal issues in dispute, and cite any controlling
2 authorities.

3 B. An itemized statement of the monetary damages claimed and of any other
4 relief sought, including the evidentiary bases for the monetary damages and/or
5 other relief sought.

6 C. A summary of the proceedings to date, including any case management
7 dates/deadlines already set, as well as the estimated length of trial, and whether
8 a court or jury trial is contemplated. The Statement shall also set forth the
9 date(s) any party filed or intends to file any dispositive motion.

10 D. A history of past settlement discussions, offers and demands.

11 E. A forthright evaluation of the party's likelihood of prevailing on each of
12 his, her, or its claims and/or defenses.

13 F. The approximate amount of attorney's fees, time and costs expended to
14 date, and an estimate of the fees, time and costs to be expended for[:] (i) further
15 discovery; (ii) pretrial; and (iii) trial.

16 G. The party's evaluation of the terms on which the case could be settled
17 **reasonably and fairly**, taking into account the litigation position and settlement
18 position of the other side.

19 H. Any other relevant circumstances that counsel believe will assist the Court
20 in conducting the settlement conference."

21 [Dkt. No. 16 at 3-4 (emphases in original).]

22 The Settlement Order stated in all capital letters and in bold: "**THE PARTIES**
23 **AND LEAD COUNSEL SHALL STRICTLY FOLLOW THESE**
24 **INSTRUCTIONS OR OTHERWISE SANCTIONS MAY BE IMPOSED.**" [Dkt.
25 No. 16 at 1 (emphasis in original).]

26 Plaintiff timely e-mailed its confidential mediation statement to the Court's
27 chambers.

28 Defendant, however, submitted its confidential mediation statement two days
past the deadline, on September 25, 2016, at 10:07 p.m. In her e-mail to the Court,

1 Ms. Badawi wrote, "I attempted to send [Defendant's] confidential mediation
2 statement from my hotel on Friday, but had some wifi issues, so I wanted to make sure
3 it went through today from my home system." Defendant's mediation statement was
4 also substantially incomplete; by the Court's count, Defendant failed to meet seven out
5 of the eight requirements listed in the Settlement Order, including basic information,
6 such as past settlement offers.

7 On September 29, 2016, the Court made pre-mediation calls to both Plaintiff's
8 counsel and Ms. Badawi. During this call, Ms. Badawi did not disclose that Defendant
9 was unwilling to settle. [Dkt. No. 21 at 5-6.]

10 On September 30, 2016, at the Settlement Conference, Defendant expressed for
11 the first time that it: (1) intended to propound additional discovery; and (2) was
12 unwilling to make any offer other than a waiver of costs.¹ [Dkt. No. 21 at 5.] The
13 Court expressed its intention to issue an OSC why Defendant and Ms. Badawi should
14 not be sanctioned for: (1) failure to comply with the Settlement Order issued on
15 September 19, 2016; and (2) failure to participate in good faith.² [Dkt. No. 21 at 7, 10;
16 Dkt. No. 24.]

17 Subsequently, after giving both Ms. Badawi and Plaintiff's counsel an
18 opportunity to be heard regarding the matter, the Court: (1) awarded reasonable
19 attorneys' fees and costs in the amount of \$12,500 to Plaintiff's counsel, based on their
20 representations regarding preparation for and attendance at the Settlement Conference;

21
22 ¹ Initially, during the Court's private caucus with Defendant and Ms. Badawi, Defendant was
23 unwilling to negotiate *at all*, including offering any waiver of costs. [Dkt. No. 21 at 5-6.] Notably, at
24 the OSC Hearing, Ms. Badawi did not deny that Defendant took this position in the private caucus,
25 and Mr. Klee professed ignorance about this issue. [Dkt. No. 44 at 26-27.]

26 ² Although the Court based its OSC, in part, on Defendant's failure to comply with the
27 Settlement Order, the Court elected "not to highlight the particular deficiencies [in open court] to
28 [protect] confidential settlement discussions." [Dkt. No. 21 at 10.] Now however, given that
29 Defendant and Ms. Badawi freely summarized some of their confidential settlement discussions with
30 the Court in their filings, and in open session at the Settlement Conference and OSC Hearing, the
31 Court addresses the issues raised in Defendant's Response, [Dkt. No. 23], and the Badawi
32 Supplemental Declaration, [Dkt. No. 25], including any other discussions affirmatively raised by
33 Defendant and Ms. Badawi.

1 and (2) issued an OSC why Defendant and Ms. Badawi should not be sanctioned in the
2 amount of \$1,000 each. [Dkt. No. 24.] With respect to the attorneys' fees, the Court
3 asked Ms. Badawi how long Defendant would need to make such a payment, and after
4 conferring with Defendant, Ms. Badawi responded, "Fourteen days, Your Honor."
5 [Dkt. No. 21 at 34-35.] The Court then scheduled the OSC Hearing for November 3,
6 2016. [*Id.* at 33; Dkt. No. 24.]

7 At the November 3rd OSC Hearing, the Court provided Mr. Klee, Ms. Badawi,
8 and Plaintiff's counsel the opportunity to be heard on the OSC. [Dkt. No. 44 at 4-5,
9 53, 56, 63.] Also, the Court noted that Defendant had not remitted the previously
10 ordered attorneys' fees, even though more than fourteen (14) calendar days had passed.
11 [*Id.* at 28-35.] The Court further ordered Plaintiff's counsel to submit a summary of
12 attorneys' fees and costs incurred in preparing for and attending the Settlement
13 Conference. [*Id.* at 69-70; Dkt. No. 32 at 2.]

14 At the conclusion of the OSC Hearing, Plaintiff's counsel articulated Plaintiff's
15 desire to withdraw from the case because she did not have the "physical or emotional
16 stamina to move forward with this case." [Dkt. No. 44 at 59.] Specifically, Plaintiff's
17 counsel noted that Plaintiff: (1) was 80 years old; and (2) had indicated that she could
18 not continue litigating in light of the numerous discovery requests that Defendant had
19 propounded after the Settlement Conference. [*Id.* at 58-60.]

20 In a Supplemental Declaration, Plaintiff's counsel explained that Defendant
21 propounded: (1) three sets of Requests for Production of Documents; (2) two sets of
22 interrogatories; (3) one Subpoena to Produce Documents; and (4) three Notices of
23 Videotaped Depositions. [Dkt. No. 40 at 7-8.] Not stopping there, prior to the OSC
24 Hearing, Ms. Badawi had sent an e-mail to Plaintiff's counsel stating that she was also
25 planning on deposing Plaintiff's children on January 10, 2017 and January 11, 2017.
26 [Dkt. No. 40 at 8.]

27 Plaintiff elected to dismiss the action with prejudice, in exchange for a
28 withdrawal of all pending discovery requests and Defendant's waiver of costs. [*Id.* at

1 71-75.] The parties also stipulated that the Court would reserve jurisdiction over the
2 issue of the attorneys' fees and costs, and any order arising out of the Court's OSC.

3 [*Id.* at 74-75.] The parties' agreement was memorialized in a written joint stipulation,
4 which was filed on November 4, 2016. [Dkt. No. 31.]

5 On November 9, 2016, Plaintiff's counsel submitted their declarations regarding
6 attorneys' fees, and therein: (1) specified their usual hourly billing rate; and
7 (2) provided a chart detailing the hours spent preparing for and attending the
8 Settlement Conference. [Dkt. No. 33.] According to the declarations, Plaintiff's
9 counsel expended 57 hours total, at an hourly rate of approximately \$500. [*See id.* at
10 2; Dkt. No. 33-2 at 2.]

11 On November 21, 2016, Defendant and Ms. Badawi filed their response to
12 Plaintiff's declarations regarding attorneys' fees and costs, and objected to Plaintiff's
13 counsel's figures. [Dkt. No. 36.]

14 II.

15 DISCUSSION

16 A. Sanctions

17 1. Legal Standard

18 Rule 16(f) of the Federal Rules of Civil Procedure confers authority upon
19 federal courts to impose sanctions or other reasonable expenses, including attorney's
20 fees, if a party or its attorney is "substantially unprepared to participate — or does not
21 participate in good faith — in the conference"; or "fails to obey a scheduling or other
22 pretrial order." Fed. R. Civ. P. Rule 16(f)(1). A settlement conference order is a
23 pretrial order within the meaning of Rule 16(f). *See Pitman v. Brinker Int'l, Inc.*, 216
24 F.R.D. 481, 486-87 (D. Ariz. July 8, 2003), *amended on reconsideration in part*,
25 *Pitman v. Brinker Int'l*, 2003 WL 23353478 (D. Ariz. Oct. 3, 2003) ("A magistrate
26 judge has legal authority to impose sanctions for violations of its orders.") (citing Fed.
27 R. Civ. P. 16(f)).
28

1 Litigants have an “unflagging duty to comply with clearly communicated case-
2 management orders.” *Martin Family Trust v. Heco/Nostalgia Enterprises Co.*, 186
3 F.R.D. 601, 604 (E.D. Cal. June 9, 1999) (citing *Rosario-Diaz v. Gonzalez*, 140 F.3d
4 312, 315 (1st Cir. 1998)). The Ninth Circuit has continuously upheld the imposition of
5 sanctions pursuant to Rule 16 for a party or its counsel’s failure to comply with a
6 court’s settlement order. *See, e.g., Lucas Auto Eng’g, Inc. v. Bridgestone/Firestone,*
7 *Inc.*, 275 F.3d 762, 769 (9th Cir. 2001); *Official Airline Guides, Inc. v. Goss*, 6 F.3d
8 1385, 1396 (9th Cir. 1993); *Ayers v. City of Richmond*, 895 F.2d 1267, 1270 (9th Cir.
9 1990).

10 2. Analysis

11 Defendant and Ms. Badawi assert that sanctions are unwarranted for three
12 reasons:

13 1. “[Defendant] and its counsel should not be sanctioned \$1,000 [each]
14 based on undefined deficiencies in [Defendant’s] confidential mediation statement or
15 because [Defendant] failed to share the confidential statement or its contents with
16 [P]laintiff’s counsel prior to the [S]ettlement [C]onference,” [Dkt. No. 23 at 2];

17 2. “[Defendant] and its counsel cannot be sanctioned for coming to the
18 [S]ettlement [C]onference with an offer only for a waiver of costs, and not moving
19 from that offer at the [S]ettlement [C]onference when pressed by the judge and
20 [P]laintiff’s attorneys,” *id.*; and

21 3. “[Defendant] and its counsel should not be sanctioned \$1,000 [each]
22 because [Defendant’s] counsel arrived 5 to 10 minutes late to the [S]ettlement
23 [C]onference, with a legitimate and reasonable explanation,” *id.*

24 The Court addresses each argument in turn.
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1 a. Defendant and Ms. Badawi's Failure to Comply With Court
2 Orders Warrants Sanctions

3 First, Defendant argues that it "should not be sanctioned for any variance
4 between the listed items and its mediation statement." [*Id.* at 12.]

5 However, the attempts to excuse Defendant and Ms. Badawi's noncompliance
6 with the Settlement Order as "inadvertent" and "unintentional" are unavailing, and do
7 not show why the Court should not impose sanctions. [Dkt. No. 44 at 6, 8, 18, 42, 53.]

8 i. *Deficiencies in Defendant's Mediation Statement*

9 As a threshold matter, the Settlement Order plainly stated that the parties "shall
10 strictly follow these instructions or otherwise sanctions may be imposed." [*See* Dkt.
11 No. 16 at 1.] Yet, Ms. Badawi unilaterally omitted mandatory and pertinent
12 information. By the Court's count, Defendant's mediation statement failed to provide
13 the following *seven* out of eight categories³ that were required by the Settlement Order:

- 14 • *Each party's* claims and defenses;
- 15 • An itemized statement of the monetary damages claimed and of any other
16 relief sought, including the evidentiary bases for the monetary damages
17 and/or other relief sought;
- 18 • A summary of the proceedings to date, including any case management
19 dates/deadlines already set, as well as the estimated length of trial, and
20 whether a court or jury trial is contemplated, as well as the date(s) any
21 party filed or intends to file any dispositive motion;
- 22 • A history of past settlement discussions, offers and demands;
- 23 • The approximate amount of attorneys' fees, time and costs expended to
24 date, and an estimate of the fees, time and costs to be expended for further
25 discovery, pretrial, and trial;
- 26

27 ³ During the OSC Hearing, the Court noted that, under a charitable calculation, only six out of
28 the eight categories were omitted. [Dkt. No. 44 at 54.] But the Court underscored that Ms. Badawi
and Defendant *actually* omitted seven categories. [*Id.* (emphasis added).]

- 1 • The party's evaluation of the terms on which the case could be settled
2 reasonably and fairly; and
- 3 • Any other relevant circumstances that counsel believe will assist the Court
4 in conducting the settlement conference.

5 [See Dkt. No. 16 at 3-4 (emphasis added)]; Dkt. No. 23 at 3 (Ms. Badawi admitting
6 that Defendant's mediation statement described only "[Defendant's] position regarding
7 the facts and law . . .").]

8 There appears to be no meaningful disagreement about Defendant's non-
9 compliance. At the Settlement Conference, Ms. Badawi admitted in open court that
10 Defendant's mediation statement "[did not] provide every item that [the Court]
11 ordered." [Dkt. No. 21 at 23.] Also, Mr. Klee conceded at the OSC Hearing, in an
12 understatement, that Ms. Badawi "may have not been completely compliant." [See *id.*
13 at 44.] Rather, in response to the Court's inquiries about the numerous and substantial
14 deficiencies in Defendant's mediation statement, Mr. Klee repeatedly dismissed such
15 deficiencies as "technical violations." [Dkt. No. 44 at 41, 52.]

16 But violations of a court's order "are neither technical nor trivial." *Martin*
17 *Family Trust*, 186 F.R.D. at 603. This Court's Settlement Order "is not a frivolous
18 piece of paper, idly entered, which can be cavalierly disregarded by counsel without
19 peril." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)
20 (internal quotations and citations omitted). Indeed, "[d]isregard of [an] order would
21 undermine the court's ability to control its docket, disrupt the agreed-upon course of
22 the litigation, and reward the indolent and the cavalier." *Id.*

23 To highlight one obvious point, if Defendant and its counsel had complied with
24 the requirements of the Settlement Order — for example, including Defendant's
25 evaluation of the terms on which the case could be settled reasonably and fairly, and
26 any other relevant circumstances that Defendant's counsel believed would assist the
27 Court — this "futile" and "wasteful" episode could have been avoided. *See, e.g.*,
28 *Pitman*, 216 F.R.D. at 486-87 ("Defendant did not notify the Court before hand that a

1 settlement conference at this time would be a futile act, thereby wasting the limited
2 time, financial resources and energies of the Court and [p]laintiff on June 10, 2013.”).

3 Two other aspects of Defendant’s non-compliance with the Settlement Order
4 merit brief elaboration here.

5 First, Ms. Badawi initially asserted that she “did not include information about
6 the history of settlement negotiations between the parties in Defendant’s statement
7 because “[Defendant’s] counsel had *already seen* that [P]laintiff had communicated
8 the parties’ settlement history to the Court and [Ms. Badawi] did not disagree with the
9 history as stated by [P]laintiff.” [Dkt. No. 23 at 3-4 (emphasis added).] Then directly
10 contradicting herself, Ms. Badawi withdrew this alleged justification in her
11 Supplemental Declaration, and “clarif[ied] that [she] received [Plaintiff’s] statement
12 after submitting [Defendant’s].” [Dkt. No. 25 at 3.] Therefore, at a minimum, Ms.
13 Badawi offers no legitimate reason for why the history of past settlement discussions
14 was omitted from Defendant’s mediation statement. *See also* L.R. 16-15.5(a) (“The
15 parties shall submit in writing to the settlement judge . . . the party’s settlement
16 position, including the last offer or demand made by that party and a separate
17 statement of the offer or demand the party is prepared to make at the settlement
18 conference.”).

19 But worse, the primary thrust of Ms. Badawi’s original explanation for failure to
20 comply with the Court’s order was precisely that she had reviewed Plaintiff’s
21 mediation statement beforehand. [Dkt. No. 23 at 3-4.] It was a false statement, and a
22 material one. As such, the Court raised this concern at the OSC Hearing. In response,
23 Mr. Klee contended that Ms. Badawi should be commended for coming forward with
24 her “clarification.” [Dkt. No. 44 at 10.] But the Court questions whether an attorney
25 with nearly 20 years of experience should have made a false statement of such
26 magnitude in the first instance, particularly in a declaration sworn under penalty of
27 perjury and presented to the Court to avoid sanctions, or per chance other motives were
28 at work.

1 Second, during the OSC Hearing, Mr. Klee often claimed he “d[id]n’t recall” or
2 did not “know . . . specifically” whether Defendant’s mediation statement included: (1)
3 a summary of the proceedings to date, including case management deadlines and
4 estimated length of trial; (2) the date that Defendant intended to file any dispositive
5 motions; or (3) the parties’ evaluation of the terms on which the case could settle
6 reasonably and fairly. [See Dkt. No. 44 at 20-21.] In the same vein of Ms. Badawi’s
7 false testimony, the Court would have expected Mr. Klee to be familiar with the
8 requirements of the Settlement Order and the contents (or the lack thereof) of
9 Defendant’s mediation statement. Hence, his lack of recollection rang hollow,
10 charitably put.

11 In the end, the Court cannot find that Defendant’s mediation statement
12 “complied with the Court’s order and reasonably communicated [Defendant’s]
13 position,” as Ms. Badawi claims in Defendant’s Response. [Dkt. No. 23 at 4.] In light
14 of the deficiencies, both quantitatively and qualitatively, in Defendant’s mediation
15 statement, sanctions are warranted.

16 *ii. Late Submission of Defendant’s Mediation Statement*

17 Next, Ms. Badawi failed to submit Defendant’s mediation statement by the
18 deadline set forth in the Settlement Order: “[o]n or before [Friday,] September 23,
19 2016.” [See Dkt. No. 16 at 3 (emphasis in original).] Specifically, the Court did not
20 receive Defendant’s mediation statement until Sunday, September 25, 2016, at 10:07
21 p.m. because, according to Ms. Badawi, she had “Wi-Fi problems in her hotel, and . . .
22 to make sure the Court got [the statement], she re-e-mailed it on Sunday.” [Dkt. No.
23 44 at 22.]

24 Interestingly, Ms. Badawi “did not contact the Court at all other than to re-e-
25 mail the [mediation statement] on Sunday to make sure . . . it would be received by the
26 Court.” [Dkt. No. 44 at 13-14.] Thus, the Court received no notice regarding the
27 delayed mediation statement.
28

1 Even if Defendant and Ms. Badawi's failure to comply with the Settlement
2 Order was "inadvertent" and "unintentional," which the Court could indulgently
3 assume, this Court has the authority under Federal Rule of Civil Procedure 16(f) to
4 impose sanctions. *See, e.g., Lucas*, 275 F.3d at 769 (upholding imposition of sanctions
5 pursuant to the Federal Rules of Civil Procedure 16 and the local rules of the Central
6 District of California for counsel's unintentional noncompliance of a settlement
7 conference order); *Ayers*, 895 F.2d at 1270 (finding that district court acted within its
8 authority when it sanctioned counsel for failing to appear at a scheduled settlement
9 conference because "the date had 'slipped by him'"). If a court "sets a reasonable due
10 date, parties should not be allowed casually to flout it or painlessly to escape the
11 foreseeable consequences of noncompliance." *Mendez v. Banco Popular de Puerto*
12 *Rico*, 900 F.2d 4, 7 (1st Cir. 1990).

13 Accordingly, the Court finds that Defendant's failure to submit a timely
14 mediation statement supports the imposition of sanctions.

15 b. Defendant and Ms. Badawi Failed to Participate in
16 Settlement Discussions in Good Faith, Warranting Sanctions

17 Further, Defendant and Ms. Badawi argue that a court "cannot force a
18 settlement, sanction a party for refusing to make a settlement offer at all, or use
19 'pressure tactics' to coerce a settlement." [Dkt. No. 23 at 9.]

20 There is no dispute that a court may not force a party to settle. But the instant
21 inquiry is not whether the parties settled, or did not settle, *but procedurally* whether
22 Defendant and Ms. Badawi failed to participate in good faith during the Settlement
23 Conference.

24 A settlement conference in federal court involves a significant amount of time
25 and resources on behalf of the parties and the Court. As such, if a party intends not to
26 meaningfully participate, it has an obligation to inform the opposing party and the
27 Court. A settlement conference is not intended to be a futile exercise. Or, as one court
28 cogently summed up, "if a party has no intention of settling, and therefore cannot

1 participate in settlement discussions in good faith, they have an obligation to inform
2 the Court as soon as practically possible.” *Hansen v. State Farm Mut. Auto. Co.*, 2013
3 WL 1385639, at *1 (D. Nev. Apr. 3, 2013).

4 Here, as Ms. Badawi admitted, neither she nor Defendant communicated that
5 Defendant was unwilling to settle for anything other than a waiver of costs prior to the
6 Settlement Conference. [See Dkt. No. 21 at 5-6, 7-8.] Such failure to notify either the
7 opposing party or the Court before the scheduled Settlement Conference unnecessarily
8 expended “limited time, financial resources[,] and energies of the Court and Plaintiff,”
9 *Pitman*, 216 F.R.D. at 486-87, and hindered the possibility of preparing for and
10 conducting a “[m]eaningful and productive settlement conference[], [which is] vital to
11 the judicial process,” *Painters Joint Comm. v. J.L. Walleo*, 2013 WL 3930485, at *3
12 (D. Nev. July 26, 2013) (citation omitted).

13 Another revealing indication that Defendant and Ms. Badawi attended the
14 Settlement Conference in less than good faith was Mr. Klee’s later affirmation that,
15 regardless of the deficiencies and omissions in Defendant’s mediation statement, “the
16 case [would] not . . . settle” under any circumstances. [See Dkt. No. 44 at 44-45.] Put
17 another way, Plaintiff, her counsel, and the Court were all there for naught, while
18 Defendant and Ms. Badawi engaged in a pretense (and, thus unsurprisingly, Defendant
19 and Ms. Badawi paid no heed in connection with the requirements of Defendant’s
20 mediation statement, its timely submission, etc.). [See *id.* at 49-50, 51-52 (“I don’t
21 think there is much the Court could have done to accomplish a settlement under the
22 circumstances of this case . . .”).]

23 Accordingly, neither Defendant nor Ms. Badawi was prepared to participate in
24 good faith at the Settlement Conference, which warrants sanctions. See *Hansen*, 2013
25 WL 1385639, at *3 (sanctioning counsel who “could not have been prepared to
26 participate in good faith, because he knew his client would not settle the case before
27 the settlement conference even began”).

1 c. Misrepresentations Regarding Ms. Badawi's Dilatory Arrival
2 Warrant Sanctions

3 Finally, Ms. Badawi argues that she should not be sanctioned for arriving "5 to
4 10 minutes late" to the Settlement Conference. [Dkt. No. 23 at 10.]

5 As the Court already emphasized, Ms. Badawi's tardiness is the "least
6 important" factor in the Court's imposition of sanctions. [See Dkt. No. 44 at 35-36.]
7 However, Ms. Badawi's repeated, self-serving, and *false* testimony that she arrived
8 only five to ten minutes late, [see Dkt. No. 23 at 2, 5; Dkt. No. 23-1 at 5, 6, 20] —
9 which was contradicted by the start time of the transcript, Plaintiff's counsel's
10 observation, and ultimately by video surveillance provided by the United States
11 Marshals Office, [see Dkt. No. 44 at 38] — is unbecoming of an officer of the court.
12 To be clear, it is not Ms. Badawi's late arrival per se, but rather the subsequent
13 misrepresentations regarding her late arrival, that cause the Court concern and
14 discomfort. Whether purposeful or merely negligent, this factor likewise supports the
15 imposition of sanctions.

16 d. Defendant and Ms. Badawi's Conduct as a Whole Warrants
17 Sanctions

18 During the OSC Hearing, the Court noted its strong reluctance in censuring any
19 party or his, her, or its counsel. Albeit, in light of Defendant and Ms. Badawi's: (1)
20 failure to comply with the Settlement Order; (2) failure to participate in settlement
21 discussions in good faith; and (3) at best, unsatisfactory explanations that are
22 inconsistent with the facts,⁴ the Court is forced to take corrective action here. See
23 *Dunaway v. Estate of Aiken*, 2011 WL 6211228, at *2 (S.D. Ind. Dec. 14, 2011)
24 ("[P]arties who attend settlement conferences owe it to each other and the court to take
25 these conferences seriously.").

26
27
28 ⁴ This includes the spurious explanation, (see Section III.E., *infra*), for why Defendant failed to remit attorneys' fees, as ordered by the Court on September 30, 2016, [Dkt. No. 24].

1 In fact, in light of the multiple violations, evasive responses, and disingenuous
2 explanations proffered at the OSC Hearing and contained in Defendant and Ms.
3 Badawi's written submissions, the Court contemplated alternative or additional
4 sanctions (*i.e.*, increasing the sanctions amount, or referring the matter to the State Bar
5 of California). However, in the exercise of clemency, the Court elects to impose only
6 monetary sanctions, and in an amount less than originally contemplated. The Court
7 genuinely hopes that, as a result, Defendant and Ms. Badawi will uphold the highest
8 standards of candor and integrity moving forward, and follow the letter, and spirit of,
9 the Court's orders.

10 **B. Attorneys' Fees and Costs**

11 Defendant and Ms. Badawi argue that Plaintiff's counsel should not be awarded
12 a reimbursement of \$12,500 in attorneys' fees and costs incurred in preparing for and
13 attending the Settlement Conference because: (1) it is unfair to award such fees and
14 costs in preparation for a court-ordered settlement conference; (2) the number of hours
15 claimed by Plaintiff's counsel are "excessive and unreasonable"; (3) Plaintiff's counsel
16 did not provide an explanation as to why it took two experienced lawyers to prepare a
17 mediation statement and attend the Settlement Conference; and (4) the amount of time
18 Plaintiff's counsel collectively spent traveling to and from, and attending, the
19 Settlement Conference was "excessive and unreasonable." [Dkt. No. 36 at 5-7.]

20 **1. Legal Standard**

21 District courts in this circuit generally have broad discretion in determining the
22 reasonableness of fees. *See Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992).
23 "[I]n most cases, the lodestar figure is presumptively a reasonable fee award[.]"
24 *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). As a rule,
25 the lodestar amount is calculated "by taking the number of hours reasonably expended
26 on the litigation and multiplying it by a reasonable hourly rate." *Fischer v. SJB-P.B.*,
27 214 F.3d 1115, 1119 (9th Cir. 2000) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433
28 (1983)).

1 After a lodestar is calculated, the court may “enhance or reduce the lodestar
2 figure based on an evaluation of the *Kerr* factors that are not already subsumed in the
3 initial lodestar calculation.” *Id.* (citations omitted); *see also Stetson v. Grissom*, 821
4 F.3d 1157, 1166-67 (9th Cir. 2016) (discussing the lodestar method and *Kerr* factors in
5 calculating attorneys’ fees). These factors include: (1) the time and labor required; (2)
6 the novelty and difficulty of the questions involved; (3) the skill requisite to perform
7 the legal service properly; (4) the preclusion of other employment by the attorney due
8 to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or
9 contingent; (7) time limitations imposed by the client or the circumstances; (8) the
10 amount involved and the results obtained; (9) the experience, reputation, and ability of
11 the attorneys; (10) the undesirability of the case⁵; (11) the nature and length of the
12 professional relationship with the client; and (12) awards in similar cases. *Kerr v.*
13 *Screen Extra Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951
14 (1976), *abrogated on other grounds by City of Burlington v. Dague*, 505 U.S. 557
15 (1992). “Among the subsumed factors presumably taken into account in either the
16 reasonable hours component or the reasonable rate component of the lodestar
17 calculation are: ‘(1) the novelty and complexity of the issues, (2) the special skill and
18 experience of counsel, (3) the quality of representation, . . . [and] (4) the results
19 obtained[.]’” *Morales v. City of San Rafael*, 96 F.3d 359, 364 (9th Cir. 1996), *opinion*
20 *amended on denial of reh’g*, 108 F.3d 981 (9th Cir. 1997).

21 2. Analysis

22 a. Lodestar Calculation

23 During the Settlement Conference, the Court inquired of Plaintiff’s counsel:
24 (1) the number of hours they spent preparing for, traveling to and from, and attending
25 the Settlement Conference; and (2) their customary hourly rate of \$500. [Dkt. No. 21

26
27 ⁵ The United States Supreme Court has cast some doubt as to the relevance of this factor in
28 calculating attorneys’ fees. *See City of Burlington v. Dague*, 505 U.S. 557, 561-64 (1992); *see also*
Davis v. City & Cty. of San Francisco, 976 F.2d 1536, 1546 n. 4 (9th Cir.1992), *vacated in part on*
other grounds, 984 F.2d 345 (9th Cir.1993).

1 at 17.] Plaintiff's counsel estimated that they collectively spent approximately 25
2 hours in preparing for the Settlement Conference, and a total of 32 or 33 hours when
3 taking into account travel time. [Dkt. No. 21 at 16-19.] Then, the Court considered
4 each of Plaintiff's counsel's years of experience, as well as the latest report regarding
5 the hourly rates of comparable lawyers in the community for similar services, and
6 determined that a \$500 hourly rate "is reasonable in a bad-faith insurance claim
7 currently pending in the United States District Court[.]" [See *id.* at 16-17]; see also
8 *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) ("[T]he critical inquiry in determining
9 reasonableness is now generally recognized as the appropriate hourly rate[,] [a]nd the
10 rates charged in private representations may afford relevant comparisons."). Thus,
11 taking all of the aforementioned factors into account, the Court was inclined to award a
12 reimbursement of \$15,000 in attorneys' fees and costs to Plaintiff's counsel. [Dkt. No.
13 21 at 16-20.]

14 However, after affording Defendant and Ms. Badawi an ample opportunity to
15 challenge the reasonableness of the hours and hourly rate claimed, as well as Plaintiff's
16 counsel to respond, the Court reduced the award to \$12,500. [*Id.* at 26.] Despite this
17 reduction, Defendant failed to remit payment. [Dkt. No. 44 at 28.] In response to the
18 Court's inquiries as to why payment had not yet been made, Mr. Klee disingenuously
19 argued that there was no deadline to remit payment, even though the Court had
20 previously confirmed with Ms. Badawi that fourteen days was sufficient time to
21 reimburse Plaintiff's counsel. [Dkt. No. 44 at 30; see Dkt. No. 21 at 34-35.]

22 Pursuant to the Court's order on November 3, 2016, Plaintiff's counsel
23 submitted declarations, discussing the reasonableness of their hours. [Dkt. No. 33.]
24 After review of the declarations provided, Defendant's response, and supporting case
25 law regarding the prevailing market rate, the Court maintains that a \$500 hourly rate is
26 reasonable for the reasons given at the Settlement Conference. See, e.g., *Whealen v.*
27 *Hartford Life & Acc. Ins. Co.*, 2009 WL 4063166, at *6 (C.D. Cal. Nov. 20, 2009)
28 (finding hourly rate of \$550 to be reasonable for an attorney in an ERISA action to

1 recover unpaid disability benefits); *Browne v. Am. Honda Motor Co., Inc.*, 2010 WL
2 9499073, at *7 (C.D. Cal. Oct. 5, 2010) (finding hourly rate of \$550 to be reasonable
3 for an attorney of over twenty years of experience who had worked on several large
4 class action cases). Also, while the Court was perhaps too thrifty in its earlier
5 calculation of the number of hours expended by Plaintiff's counsel for preparing and
6 attending the Settlement Conference, and in hindsight Plaintiff's counsel surely
7 devoted more time to the matter than 25 hours, on balance, the Court elects to stay true
8 to its original determination. *See Kerr*, 526 F.2d at 70; *Morales*, 96 F.3d at 364.

9 Accordingly, the Court calculates the appropriate amount of attorneys' fees to be
10 \$12,500, based on: (1) Plaintiff's counsel's reasonably expending 25 hours to prepare
11 for and attend the Settlement Conference; and (2) an hourly rate of \$500.

12 **IV.**

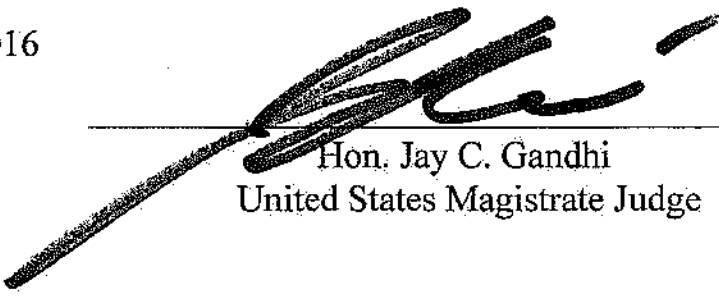
13 **CONCLUSION**

14 For the foregoing reasons, the Court hereby **ORDERS** the following:

- 15 1. Defendant shall pay attorneys' fees in the amount of \$12,500.00 to
16 Plaintiff's counsel **no later than January 10, 2017**;
- 17 2. Defendant shall pay sanctions in the amount of \$500.00 to the
18 Clerk of Court **no later than January 10, 2017**; and
- 19 3. Ms. Badawi shall pay sanctions in the amount of \$950.00 to the
20 Clerk of the Court **no later than January 10, 2017**.

21
22 *It is so ordered.*

23
24 DATED: December 20, 2016

25
26 
27 Hon. Jay C. Gandhi
28 United States Magistrate Judge