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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BNSF RAILWAY COMPANY,

CASE NO. 1:08-cv-01086-AWI-SMS

Plaintiff,

ORDER SETTING AMOUNT OF SANCTIONS
DUE FROM ATTORNEY JAMES B. HICKS

v.

SAN JOAQUIN VALLEY RAILROAD
COMPANY, et al.,

(Doc. 87)

Defendants.

On November 17, 2009, the Court granted, in part, Plaintiff's Motion for Sanctions against James B. Hicks, the former counsel for Defendants San Joaquin Valley Railroad Company and Tulare Valley Railroad Company, for his misconduct at the deposition of witness Charles Patterson. Doc. 87. The order imposed monetary sanctions consisting of attorney's fees and costs incurred by Plaintiff in preparing for and attending Patterson's initial deposition, its subsequent motion for sanctions, and Patterson's re-opened deposition. Thereafter, the Court received the declaration of Attorney Paul J. Hemming for attorneys' fees and costs with exhibits attached (Doc. 94); Defendant's response and objections to itemization of fees and costs re: sanctions motion with Hicks' declaration and exhibit (Doc. 98); and, Defendant's objections to BNSF's evidence re: sanctions (Doc. 99). At Mr. Hicks' request, the Court reserved entry of its order setting the sanctions amount pending resolution of the case. See Doc. 98.

1 **Calculating attorneys' fees.** To calculate an award of reasonable attorney fees, courts
2 use the lodestar approach set forth in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983),¹. This
3 approach requires the Court to first determine the hours reasonably spent on the litigation, then
4 multiply them by a reasonable hourly rate. *Id.* at 433-34. In determining the "lodestar" figure,
5 courts are to consider the following factors: (1) the time and labor required; (2) the novelty and
6 difficulty of the issues; (3) the skill required to perform the legal service properly; (4) the extent
7 to which the attorney's work on the case precluded other legal employment; (5) the customary
8 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or
9 circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation
10 and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the
11 professional relationship between the lawyer and the client; and (12) awards in similar cases.
12 *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006), quoting *McGrath v. County of*
13 *Nevada*, 67 F.3d 248, 252 n. 4 (9th Cir. 1995).

14 Although the lodestar fee is presumed to be reasonable, the Court may adjust it upward
15 or downward as necessary to determine a reasonable fee. *Blum v. Stenson*, 465 U.S. 886, 897
16 (1984); *Hensley*, 461 U.S. at 434. The moving party has the burden of producing sufficient
17 evidence that its hourly rates are reasonable. *Blum*, 465 U.S. at 896. A court has wide latitude in
18 determining the number of hours reasonably expended and may reduce the hours if the time
19 claimed is excessive, redundant, or otherwise unnecessary. *Cunningham v. County of Los*
20 *Angeles*, 879 F.2d 481, 484 (9th Cir. 1988), *cert. denied*, 493 U.S. 1035 (1990).

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26 ¹*Abrogated on other grounds by Texas State Teachers Ass'n v. Garland Independent School District*, 489
27 U.S. 782 (1989); *Passantino v. Johnson & Johnson Consumer Products, Inc.*, 212 F.3d 493, 518 (9th Cir. 2000).

1 In this case, Plaintiff requests an award of \$56,263.41, including \$48,421, attorneys' fees;
2 \$1000, Westlaw expenses; \$3051.89, travel expenses; and \$3790.52, fees for court reporter and
3 videographer. Plaintiff supports its request with the declaration of its attorney, Paul J. Hemming,
4 copies of billing statements prepared for Plaintiff, and a spreadsheet in which Mr. Hemming
5 adjusted billing entries to reflect only that work attributable to Mr. Patterson's depositions and
6 Plaintiff's motion for sanctions.
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8 In considering the twelve factors listed above, the Court finds that Plaintiff's attorneys,
9 Briggs and Morgan appropriately requested fees only for the period between June 1, 2009, the
10 date on which its attorneys began preparing for Patterson's initial deposition, through October
11 30, 2009, the date of the sanctions hearing. In general, the individual time entries reflect
12 appropriate use of time, without evidence of unnecessary duplication of effort or padding.
13 Plaintiff's attorneys appropriately prepared for the depositions, and appropriately researched and
14 argued the motion for sanctions to ensure both the legal soundness of the motion and zealous
15 advocacy on behalf of their client.
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18 Both of Plaintiff's attorneys have specific knowledge and experience in representing
19 railroad corporations, necessary attributes in litigation construing through rates for interline
20 railroad freight traffic. Mr. Thornton, who has represented Plaintiff since the 1970's, is a
21 nationally recognized expert in railroad and transportation law. Mr. Hemming's hourly billing
22 rate of \$250.00 and Mr. Thornton's hourly billing rate of \$300.00 were reasonable rates for
23 attorneys representing a large corporation in specialized litigation before this Court. The Court
24 specifically notes that Mr. Thornton's work in this case was billed at an amount significantly
25 lower than his typical hourly rate of \$580.00. Because Mr. Thornton billed a reduced billing rate,
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1 the Court rejects Mr. Hicks' contention that the billing rate of Mr. Hemming, who has less
2 experience than Mr. Thornton, was too high.

3 Having observed all three attorneys' tactics and demeanor throughout this case, the Court
4 fully understands Mr. Hemming's observation that "dealing with Hicks has been more costly
5 than dealing with any other opposing counsel." Doc. 94, ¶ 2 at 2. As noted in the original
6 sanctions order, Mr. Hicks engaged in repeated and unnecessary obstructive tactics and other
7 misbehavior in conjunction with the Patterson deposition and Plaintiff's subsequent motion for
8 sanctions against him. Mr. Hick's actions unnecessarily complicated the process, and
9 unnecessarily inflated the amount of time necessary, for Plaintiff to depose Mr. Patterson,
10 Defendant's designated corporate representative for numerous issues.

11 Having reviewed the November 17, 2009 order, the declaration of Plaintiff's counsel, and
12 the response and objections of Mr. Hicks, and having considered the facts and arguments in light
13 of applicable law, the Court hereby orders sanctions against Attorney James B. Hicks,
14 personally, be set in the amount of \$56,263.41, to be paid directly to Briggs and Morgan, P.A.,
15 within thirty (30) days of this order. In the event that Mr. Hicks fails to make timely payment of
16 the sanctions amount, this Court shall recommend that the District Judge impose further
17 sanctions, which may include, but shall not be limited to, citation for disciplinary action to the
18 State Bar of California and further monetary sanctions.

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24 IT IS SO ORDERED.

25 **Dated: December 7, 2012**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE