



1 Plaintiff's motions to amend the scheduling order and to withdraw responses to requests for  
2 admissions. (Doc. 68). According to the declaration, attorneys at the firm spent a total of 4.9 hours  
3 in preparing the relevant portion of the summary judgment motion, 5.6 hours opposing the ex parte  
4 application for an order shortening time, 8.3 hours opposing the motions to amend the scheduling  
5 order and to withdraw responses to request for admissions, 1 hour preparing for and attending the  
6 hearing on Plaintiff's motions and 1.5 hours reviewing time submittals and preparing the requested  
7 declaration. Declaration of Athena B. Troy ("Troy Dec.") ¶¶ 6-10. In total, Defendants' counsel  
8 spent 21.3 hours because of Plaintiff's untimely responses to the request for admissions. At an  
9 hourly rate of \$160, this amounts to \$3,408.00. Troy Dec. ¶11.

10 On December 8, 2010, Plaintiff filed an opposition to Defendants' attorney fees. Plaintiff  
11 raises two main arguments: (1) the award of attorney's fees was improper; and (2) the requested fees  
12 are unsupported and unreasonable. These arguments lack merit.

13 *Propriety of Attorney Fee Award*

14 Plaintiff contends that the request for attorney fees should be denied because he succeeded in  
15 having both of his motions granted. Citing [Federal Rule of Civil Procedure 11](#), Plaintiff asserts that  
16 a court may award attorney fees to the *prevailing party* incurred in presenting or opposing a motion.  
17 [Fed. R. Civ. P. 11\(c\)\(2\)](#)(emphasis added).<sup>1</sup> Inherent in Plaintiff's argument is the suggestion that not  
18 only does the Court lack authority to award fees to Defendants, but that the conduct of Plaintiff's  
19 counsel does not warrant such a sanction.

20 Given his counsel's complete disregard for the plain reading of the Federal Rules of Civil  
21 Procedure and the deadlines in the Scheduling Order, Plaintiff's objection to a fee award is absurd.  
22 Plaintiff did not timely respond to the request for admissions. He did not timely move for  
23 withdrawal of the admissions. His counsel admitted ignorance of the applicable procedural rule. He  
24 delayed seeking leave of court to modify the scheduling order. Although the Court granted  
25 Plaintiff's subsequent motion to amend the Scheduling Order under [Federal Rule of Civil Procedure](#)

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27 <sup>1</sup>[Federal Rule of Civil Procedure 11](#) does not apply to disclosures and discovery requests, responses, objections and  
28 motions under [Rules 26 through 37](#).

1 [16](#), it was not based on any diligence by Plaintiff’s counsel. [Johnson v. Mammoth Recreations, Inc.,](#)  
2 [975 F.2d 604, 609 \(9th Cir. 1992\)](#) ([Rule 16\(b\)](#))’ s “good cause” standard primarily considers the  
3 diligence of the party seeking the amendment; “carelessness is not compatible with a finding of  
4 diligence”). Rather, the Court elevated the general purpose of seeing that the case is tried on its  
5 merits over Plaintiff’s procedural failures. In other words the Court granted the motion because the  
6 damage that would otherwise have been done to Plaintiff’s case by reason of his counsel’s multiple  
7 errors was too great. Plaintiff conveniently ignores that his counsel’s failures forced Defendants to  
8 incur the requested attorneys’ fees.

9 Plaintiff’s contention that the Court lacked authority to award fees is equally absurd.  
10 Plaintiff failed to comply with the Scheduling Order and related discovery deadlines. [Federal Rule](#)  
11 [of Civil Procedure 16\(f\)](#) authorizes the imposition of fees and costs where a party fails to obey a  
12 scheduling or other pretrial order. A party or its attorney may be ordered to pay the reasonable  
13 expenses, including attorney’s fees, because of any non-compliance with [Rule 16. Fed. R. Civ. P.](#)  
14 [16\(f\)\(2\)](#). Further, [Federal Rule of Civil Procedure 37\(b\)](#) authorizes sanctions for failure to comply  
15 with discovery orders. Both parties and counsel may be held liable for expenses, including  
16 attorney’s fees, caused by the failure to comply with discovery orders. [Fed. R. Civ. P. 37\(b\)\(2\)\(C\)](#);  
17 see also [Fed. R. Civ. P. 37\(c\)\(1\)\(A\), \(C\)](#).

18 Based on the above, the award of attorney’s fees was not improper.

19 *Requested Fees*

20 Plaintiff alternatively contends that the requested fees are unreasonable and should be  
21 reduced. To support this contention, Plaintiff first asserts that fees should be reduced because  
22 Defendants did not submit documentation or time entries to support the fee request. Ninth Circuit  
23 precedent has clearly established that an award of attorney’s fees may be based on the affidavits of  
24 counsel, so long as they are sufficiently detailed to enable the court to consider the factors necessary  
25 in setting the fees. [Henry v. Gill Industries, Inc., 983 F.2d 943, 946 \(9th Cir. 1993\)](#) (district court  
26 did not commit error in awarding attorney’s fees for failure to engage in discovery based on  
27 declarations and affidavits of counsel). Here, the declaration of Defendants’ counsel is sufficiently  
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1 detailed. It discloses the nature of the services rendered in connection with the relevant motions  
2 regarding the deemed admissions, the amount of attorney time consumed and the billing rate.  
3 Plaintiff's concern regarding unnecessary hours is unfounded given the limited scope of the fee  
4 award, i.e., time incurred as the result of Plaintiff's untimely admissions.

5 Plaintiff next asserts that Defendants' fees are excessive. Plaintiff posits that Defendants'  
6 21.3 hours should be reduced to 6.5 hours. In reaching this figure, Plaintiff provides his suggestion  
7 as to what is "reasonable" based on the length and substance of the briefs filed by Defendants.  
8 Plaintiff's estimates are mere conjecture and speculation. There is no indication that the requested  
9 rates are inconsistent with prevailing rates in the community. Moreover, the Court is satisfied that  
10 the fees requested are reasonable and justified. There were multiple motions at issue and the  
11 challenged briefs were directed at potentially dispositive matters, namely Plaintiff's admissions.

12 **ORDER**

13 Based on the above, Plaintiff's objections are **OVERRULED**. The Court imposes sanctions  
14 against Plaintiff's counsel in the amount of **\$3,408.00**. Sanctions must be paid to Defendants'  
15 counsel within twenty (20) days of the date of service of this order.

16 Failure to comply with this order may result in additional sanctions.

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18 IT IS SO ORDERED.

19 **Dated: December 10, 2010**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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