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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ISAAC MILLER,

Plaintiff,

v.

STEVEN JOHN SCHMITZ, et al,

Defendants.

1:12-CV-00137-LJO-SAB

**ORDER ON MOTION FOR RELIEF
FROM JUDGMENT**
(Doc. 135)

INTRODUCTION

After a jury trial in this matter, Plaintiff Isaac Miller (“Plaintiff”) moved this Court for an award of attorney’s fees and costs pursuant to 42 U.S.C. § 1988(b). On February 18, 2014, this Court granted in part Plaintiff’s motion. Before the Court is Plaintiff’s motion for reconsideration of this Court’s award of attorney’s fees and costs to Plaintiff pursuant to Fed. R. Civ. P 59(e) and 60(b). For the reasons discussed below, the Court DENIES Plaintiff’s motion as to the billing records of Kevin Little and ORDERS Plaintiff’s counsel to submit a written verification as to the billing records of Alex Chechelnick and Lorena Garcia.

BACKGROUND

On January 29, 2012, Plaintiff brought this action for civil rights violations and expungement of his arrest record against Defendants Officer Steven John Schmitz (“Schmitz”), Ronald Silva (“Silva”) and the City of Hanford (“the City”) based on Plaintiff’s arrest and prosecution following an altercation that occurred on February 17, 2010.

Plaintiff and Defendants Schmitz and the City (collectively, “Defendants”) participated in a

1 jury trial on Plaintiff's claims for malicious prosecution and expungement of Plaintiff's arrest record.
2 On November 27, 2013, the jury returned a favorable verdict for Plaintiff as to both claims and
3 awarded Plaintiff \$500,000.00 in damages.

4 On December 30, 2013, Plaintiff filed a motion for attorney's fees and costs pursuant to 42
5 U.S.C. 1988(b). On February 18, 2014, this Court granted in part Plaintiff's motion.¹ Plaintiff filed
6 the instant motion for reconsideration of this Court's award of fees and costs on February 24, 2014.
7 Defendants filed an opposition on March 13, 2014, and Plaintiff filed a reply on March 20, 2014.

8 DISCUSSION

9 A. Legal Standard

10 Plaintiff moves this Court to reconsider its February 18, 2014 award of attorney's fees and
11 costs pursuant to Fed. R. Civ. P. 59(e) and 60(b).

12 A court may grant a motion for relief from a final judgment where "1) the motion is
13 necessary to correct manifest errors of law or fact upon which the judgment is based; 2) the moving
14 party presents newly discovered or previously unavailable evidence; 3) the motion is necessary to
15 prevent manifest injustice; or 4) there is an intervening change in controlling law." *Turner v.*
16 *Burlington Northern Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (internal citations,
17 quotations, emphasis omitted). *See also, Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5
18 F.3d 1255, 1263 (9th Cir. 1993) ("Reconsideration is appropriate if the district court (1) is presented
19 with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
20 or (3) if there is an intervening change in controlling law.") (internal citation omitted).

21 A district court may reconsider and reverse a previous decision for any reason it deems
22 sufficient, even in the absence of new evidence or an intervening change in or clarification of
23 controlling law. *Abada v. Charles Schwab & Co., Inc.*, 127 F.Supp.2d 1101, 1102 (S.D. Cal. 2000).
24 Nevertheless, a court should generally leave a previous decision undisturbed absent a showing of clear
25 error or manifest injustice. *Id.* Reconsideration is not a mechanism for parties to make new arguments
26 that could reasonably have been raised in their original briefs. *See, Kona Enters. v. Estate of Bishop,*

27 ¹ Due to an administrative error, the Court had neither reviewed nor did it know of the existence of Defendants' opposition
28 to Plaintiff's motion for fees or Plaintiff's reply when it issued its February 18, 2014 order. The Court issues this Order
having since reviewed the opposition and reply.

1 229 F.3d 887, 890 (9th Cir. 2000). Nor is it a mechanism for the parties “to ask the court to rethink
2 what the court has already thought through—rightly or wrongly.” *United States v. Rezzonico*, 32
3 F.Supp.2d 1112, 1116 (D. Ariz. 1998). “To succeed, a party must set forth facts or law of a strongly
4 convincing nature to induce the court to reverse its prior decision.” *United States v. Westlands Water*
5 *Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).

6 **B. Analysis**

7 Plaintiff makes three main arguments in support of his motion. First, he argues that defense
8 counsel’s total number of hours expended on this case constitutes “newly discovered evidence” such
9 that the Court’s fee award should be reconsidered. Second, he argues that the Court committed errors
10 of law in reducing Alex Chechelnik and Lorena Garcia’s hours in conjunction with those of lead
11 counsel Kevin Little, in declining to award attorney’s fees for preparing a bill of costs, and in the
12 analysis resulting in this Court’s reduction of Little’s hours. Finally, Plaintiff argues that the reduction
13 of fees is prejudicial to solo practitioners.

14 1. **Defense Counsel’s Hours**

15 Plaintiff submits evidence that defense counsel recorded 1,189.40 total hours of work on this
16 case and argues that this proves Plaintiff’s counsel’s submitted total hours of 1,373.96 are reasonable.
17 The Ninth Circuit has made clear that, “[a]lthough opposing counsel’s billing records may be relevant
18 to determining whether the prevailing party spent a reasonable number of hours on the case, those
19 records are not dispositive.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013)
20 (citing *Democratic Party of Wash. v. Reed*, 388 F.3d 1281, 1287 (9th Cir.2004)). “Therefore, the
21 district court has the discretion not to rely on them.” *Id.* (citing *Ferland v. Conrad Credit Corp.*, 244
22 F.3d 1145, 1151 (9th Cir. 2001)).

23 Here, the submitted evidence as to defense counsel’s hours has limited relevance to
24 determining the reasonableness of Plaintiff’s counsel’s hours. First, the submitted evidence only
25 shows the total number of hours recorded by seven individuals and their combined total of 1,189.40
26 hours. There is no indication of what activities defense counsel performed in accumulating those hours
27 or the distribution of those hours over time. Further, defense counsel’s records indicate that the bulk of
28 the hours recorded are split fairly evenly between one experienced senior attorney and one junior

1 attorney with fewer than two years of experience at the time this case began. Whereas the senior
2 defense attorney recorded 589.30 hours of work on this case, the senior attorney for Plaintiff submitted
3 records of 1,149.71 hours of work on this case. For these reasons, Plaintiff’s argument that defense
4 counsel’s billing records constitute “new evidence” such that this Court’s prior judgment must be
5 reconsidered is unpersuasive.

6 **2. Claimed Errors**

7 **i. Bill of Costs**

8 This Court declined to award attorney’s fees for the preparation of a bill of costs because the
9 activity was clerical in nature and did not involve the practice of law. Plaintiff argues that preparing a
10 bill of costs requires applying law, such as Fed. R. Civ. P. 54(d), to facts and is therefore a
11 “quintessential legal task.” (Doc. 166 p. 8). However, as relevant to a bill of costs, Rule 54(d)
12 requires a motion for attorney’s fees to “state the amount sought or provide a fair estimate of it.”
13 Therefore, applying Rule 54(d) to the facts involves the “gathering of receipts and totaling their sum,”
14 which, as Plaintiff recognizes, is a non-recoverable clerical task. *Id.* Plaintiff further argues that “[a]
15 bill of costs has to be verified by an attorney, so it obviously is not a merely clerical endeavor.” (Doc.
16 166 p. 8). This argument is likewise unpersuasive. For example, attorneys regularly verify expense
17 reports for incidental expenses incurred while working on a case. Preparing an expense report also
18 involves the clerical task of “gathering of receipts and totaling their sum,” which, again, is not
19 recoverable as attorney’s fees. *Id.* Accordingly, Plaintiff fails to show that this Court’s declination to
20 award attorney’s fees for preparing a bill of costs constitutes “clear error or manifest injustice.”
21 *Abada*, 127 F.Supp.2d at 1102.

22 **ii. Reduction to Plaintiff’s Lead Counsel’s Hours**

23 Plaintiff argues that the Court made a manifest error in reducing the hours of lead counsel
24 Kevin Little. When assessing a heavy billing record, “the district court has the authority to make
25 across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure as
26 a practical means of trimming the fat from a fee application.” *Gates v. Deukmejian*, 987 F.2d 1392,
27 1399 (9th Cir. 1992) (internal quotation omitted). “[W]hen a district court decides that a percentage
28 cut (to either the lodestar or the number of hours) is warranted, it must ‘set forth a concise but clear

1 explanation of its reasons for choosing a given percentage reduction.” *Gonzalez*, 729 F.3d at 1203
2 (citing *Gates*, 987 F.2d at 1400). In assessing Little’s recorded hours, this Court considered attorney’s
3 fees claimed and awarded by federal courts in similar cases that proceeded to trial, Little’s
4 impracticable billing during the trial, the fact that this case involved only typical civil rights claims
5 rather than any novel, complex, or particularly difficult legal issues, the lack of complex or protracted
6 motions work, and Little’s twenty-plus years of experience in civil rights litigation.

7 Plaintiff argues that the cases this Court considered are different from the instant case in
8 some way and are therefore “rather unhelpful.” (Doc. 166 p. 10-12). Instead, Plaintiff argues that this
9 Court should consider an assortment of mostly unpublished cases where the prevailing party’s counsel
10 recorded more than 1,000 hours of work.² *Id.* Plaintiff fails to demonstrate that the Court “committed
11 clear error.” *ACandS, Inc.*, 5 F.3d at 1263.

12 Plaintiff also takes issue with this Court’s assessment of Little’s billing during the trial. The
13 Court noted that Little twice billed over 24 hours for one day of work, billed over 70 hours in a three-
14 day period, and also billed over 22 hours each day for several other days during trial. *See, Alvarado v.*
15 *FedEx Corp.*, C 04-0098 SI, 2011 WL 4708133 at * 17 (N.D. Cal. Sept. 30, 2011) (imposing a 40%
16 across-the-board reduction due to inflation of hours, including “repeated billing for excessively long
17 days of 18 hours or more, including one entry for 22.85 hours in a single day and one entry for 23.85
18 hours in a single day”). After the Court pointed this out in the February 18, 2014 Order, Plaintiff’s
19 counsel continues to defend his billing and insists that the Court erred in deeming such billing
20 excessive. “Counsel for the prevailing party is expected to exercise good billing judgment by making

21 ² Plaintiff cited only two published cases to show that the total number of hours recorded is consistent with fee awards by
22 federal courts in similar civil rights cases.

23 In *Mendez v. County of San Bernadino*, the Ninth Circuit overturned the district court’s complete denial of
24 attorney’s fees to the prevailing party and did not make any finding on whether the prevailing party should be awarded the
25 entire 2,144 hours recorded by counsel in the case. 540 F.3d 1109, 1125-30. Rather, the Ninth Circuit instructed that, “[o]n
26 remand, the district court should determine a reasonable attorney’s fee for Mendez utilizing the customary lodestar
27 method.” *Id.* at 1129. In addition, the Ninth Circuit noted that, “Mendez also agreed to write off additional time and costs
28 so as to reduce or eliminate any remaining disputes over the number of hours.” *Id.* at 1128.

29 In, *Cotton v. City of Eureka*, the prevailing plaintiffs’ counsel won \$4.5 million in compensatory damages and
30 \$75,000 in punitive damages for the plaintiffs. 889 F.Supp.2d 1154. Even with the large monetary verdict, the court in
31 *Cotton* reduced the hours of one of the plaintiff’s attorneys for billing excessively high hours in one day, where the attorney
32 billed more than 18 hours per day on multiple days. *Id.* at 1178. Further, In contrast to Plaintiff’s counsel here, when the
33 court in *Cotton* raised the concern of excessively high hours with the plaintiff’s counsel at a hearing, counsel agreed that the
34 hours should be reduced. *Id.* at 1179.

35 Neither of these cases lends much support to Plaintiff’s argument.

1 a good faith effort to exclude hours that are excessive, redundant, or otherwise unnecessary.” *Cortes v.*
2 *Metro. Life Ins. Co.*, 380 F. Supp. 2d 1125, 1132 (C.D. Cal. 2005) (citing *Hensley v. Eckerhart*, 461
3 U.S. 424, 434 (1983)). Such billing by Little “indicates a gross lack of billing judgment,” and
4 Plaintiff’s counsel’s subsequent conduct suggests not only failure but also refusal to fulfill counsel’s
5 duty. *Metro Data Sys., Inc. v. Durango Sys., Inc.*, 597 F. Supp. 244, 247 (D. Ariz. 1984).

6 Plaintiff further argues that the Court improperly considered Little’s extensive experience in
7 civil rights litigation in conjunction with this case involving only typical civil rights claims without any
8 novel, complex, or difficult legal issues in assessing the reasonableness of Little’s recorded hours.
9 Plaintiff provides no authorities for this argument. Further, Plaintiff apparently agrees that this case in
10 fact did involve only typical civil rights claims without any novel, complex, or difficult legal issues.

11 A motion for reconsideration is not a mechanism for the parties “to ask the court to rethink
12 what the court has already thought through—rightly or wrongly.” *Rezzonico*, 32 F.Supp.2d at 1116.
13 “To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to
14 reverse its prior decision.” *Westlands Water Dist.*, 134 F.Supp.2d at 1131. Plaintiff has failed to do so
15 with respect to this Court’s assessment of Little’s recorded hours.

16 **iii. Chechnik and Garcia’s Hours**

17 Chechnik had been admitted to the bar for nine months when this case began, and Garcia is
18 a legal assistant, while Little is an experienced attorney with his own practice. This Court perceived
19 Chechnik and Garcia as working under Little’s supervision on this case. To the extent that that is
20 inaccurate, or that Chechnik and Garcia recorded and submitted their hours worked in this case
21 without supervision or approval from Little, the Court agrees that Chechnik and Garcia’s hours
22 should be assessed separately from those of Plaintiff’s lead counsel for reasonableness.

23 **3. Prejudice to Civil Rights and/or Solo Practitioners**

24 Plaintiff argues that this Court’s award of attorney’s fees and costs is prejudicial and
25 “relegates plaintiffs’ civil rights counsel to the status of second class citizens of the legal
26 community[.]” (Doc. 166 p. 15). Plaintiff fails to show how this Court’s award of \$201,871.36 to two
27 solo practitioners with “no employees or support staff” as overhead costs is prejudicial or discourages
28 capable counsel from taking on civil rights cases. *Id.* Plaintiff’s counsel’s disappointment in the

1 award is insufficient to render it prejudicial, manifestly unjust, or clearly erroneous. *Turner*, 338 F.3d
2 at 1063. Rather, this Court’s assessment of Plaintiff’s counsel’s billing hours reinforces the Supreme
3 Court’s admonition that “[c]ounsel for the prevailing party is expected to exercise good billing
4 judgment by making a good faith effort to exclude hours that are excessive, redundant, or otherwise
5 unnecessary.” *Cortes*, 380 F. Supp. 2d at 1132 (citing *Hensley*, 461 U.S. at 434).

6 **CONCLUSION AND ORDER**

7 For the reasons discussed above, the Court

- 8 1. DENIES Plaintiff Isaac Miller’s motion for relief from judgment as to the
9 February 18, 2014 award of attorney’s fees and costs as to Plaintiff’s lead counsel
10 Kevin Little; and
11 2. ORDERS Plaintiff’s counsel to file no later than May 2, 2014 a written
12 verification that Alex Chechelnick and Lorena Garcia submitted their billing
13 records in this case without supervision or approval from Kevin Little. If
14 Plaintiff’s counsel fails to file such verification in accordance with this Court’s
15 order, this Court DENIES in its entirety Plaintiff’s motion for relief from
16 judgment as to the February 18, 2014 award.

17 IT IS SO ORDERED.

18 Dated: April 28, 2014

/s/ Lawrence J. O’Neill
19 UNITED STATES DISTRICT JUDGE

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