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

LAREN SALISBURY, et al.,	)	Case No.: 1:11-cv-01098 - LJO - JLT
	)	
Plaintiffs,	)	ORDER AWARDING MONETARY SANCTIONS
	)	AGAINST DEFENDANTS
v.	)	
	)	
ARTHUR E. HICKMAN, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

Laren Salisbury (“Plaintiff”) seeks sanctions against defendants Arthur Hickman, Jaqueline Hickman, Joseph Termini, and Umberto Crimini (collectively, “Defendants”) for failure to comply with the Court’s order to provide further discovery. (Docs. 40, 42). On March 18, 2013, the Court granted Plaintiff’s request for sanctions in part, finding monetary sanctions were appropriate. (Doc. 51 at 7).

In accordance with the Court’s order, Plaintiff’s counsel file a declaration reciting the costs and fees incurred (Doc. 50), to which Defendants filed a brief in opposition (Doc. 54). For the reasons set forth below, the Court will award sanctions in the amount of \$1,202.50.

**I. Imposition of Sanctions**

Pursuant to the Federal Rules of Civil Procedure, if a party “fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders.” Fed. R. Civ. P. 37(b). The Court must “order the disobedient party, the attorney advising that party, or both to pay

1 the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was  
2 substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P.  
3 37(b)(2)(C). Thus, the Ninth Circuit explained Rule 37 “authorizes the district court, in its discretion,  
4 to impose a wide range of sanctions when a party fails to comply with the rules of discovery or with  
5 court orders enforcing those rules.” *Wyle v. R. J. Reynolds Indus., Inc.*, 709 F.2d 857, 589 (9th Cir.  
6 1983) (citing *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976)).

7 Here, the Court has determined monetary sanctions are appropriate for Defendants’ failure to  
8 comply with the Court’s discovery order. (Doc. 51). Accordingly, the only issue remaining is the  
9 amount of sanctions to be imposed against Defendants. In determining the amount of monetary  
10 sanctions, the Court must be guided by a standard of reasonableness. *Leon v. IDX Sys. Corp.*, 464  
11 F.3d 951, 961 (9th Cir. 2006). The Ninth Circuit explained that recovery should not exceed “those  
12 expenses and fees that were reasonably necessary to resist the offending action.” *In re Yagman*, 796  
13 F.2d 1165, 1185, *amended by* 803 F.2d 1085 (9th Cir. 1986).

### 14 **III. Discussion and Analysis**

15 The Ninth Circuit utilizes a “lodestar” method to compute reasonable attorneys’ fees, which  
16 represents the number of hours reasonable expended multiplied by a reasonable hourly rate. *Camacho*  
17 *v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008); *Jordan v. Multnomah County*, 815 F.2d  
18 1258, 1262 (9th Cir. 1987). Adjustments from the lodestar are proper only in “rare” and “exceptional”  
19 cases, and must be supported by specific evidence in the record. *Jordan*, 815 F.2d at 1262.

#### 20 **A. Time expended by counsel**

21 The Court ordered Plaintiff’s counsel to submit a declaration of the attorneys’ fees incurred as  
22 a result of having to bring the motion for sanctions. (Doc. 49). In accordance with the Court’s order,  
23 Mark Roy submitted a declaration, asserting he “spent 6.7 hours in preparing the motion for sanctions  
24 and in preparing for and appearing at the hearing.” (Roy Decl. ¶ 3). Specifically, Mr. Roy seeks fees  
25 for the following time:

<i>DATE</i>	<i>DESCRIPTION</i>	<i>TIME</i>
2/25/13	Review, revise memorandum in support of motion	0.6
2/26/13	Additional research and revisions to memorandum in support of decision	0.8
3/8/13	Review defendants’ opposition to motion	0.3

1	3/10/13	Review discovery produced by defendants on 3/8/13 and prepare for hearing on motion	1.0
2	3/11/13	Prepare for hearing on motion	1.0
3	3/12/13	Additional review of discovery produced by defendants on 3/8/13 and of plaintiff's statement re status of discovery in dispute	1.0
4	3/13/13	Preparation of appearance at hearing on motion for sanctions	2.0

5 (Roy Decl. ¶ 3). Further, Mr. Roy asserted he “was assisted by GLBA Fair Housing Law Project staff  
6 attorney Erica S. Fessler,” who spent 1.9 hours to the motion, including 1.5 drafting the memorandum  
7 on February 22, 2013, and 0.4 hours reviewing and revising memorandum on February 26, 2013. (*Id.*  
8 at ¶¶ 5-6). Accordingly, Plaintiff’s counsel seek attorney fees for a total of 8.6 hours in conjunction  
9 with the motion for sanctions.

10 Defendants opposed the request for fees by filing a declaration of James Braze. (Doc. 54).  
11 According to Mr. Braze, “the time spent by Attorney Fessler should be enough to prepare the motion.”  
12 (Braze Decl. ¶ 9). He argues that “the dates of the work performed did not correspond with the court’s  
13 records.” (*Id.*) Specifically, Mr. Braze notes:

14 The court’s records indicate that motions for sanctions were filed on February 20, 2013  
15 and February 22, 2013. Attorney Fessler is charging 1.9 hours for time spent February  
16 22, 2013 and February 26, 2013. Attorney Roy is charging 1.4 hours for time spent on  
February 25, 2013 and February 26, 2013.

17 (*Id.*) Thus, Defendants contend: “If the Court is to award monetary sanctions, it should consider that  
18 the declaration of counsel does not accurately reflect the work done in this case based on the court’s  
19 records.” (Braze Decl. ¶ 13). In addition, Defendants urge the Court to “reduce the award of monetary  
20 sanctions for duplicative work and work not required to file this motion.” (*Id.*)

21 Notably, Plaintiffs did not file the motions for sanctions on February 20 and 22 as Mr. Braze  
22 argues, but rather filed only the *Notice* of Motion (Doc. 40) an Amended Notice of Motion (Doc. 42).  
23 The memorandum in support of the motion was not filed until February 27, 2013. (Doc. 45). Thus,  
24 there are not inconsistencies with the dates upon which work was performed and the dates upon which  
25 documents were filed with the Court. However, the time expended by counsel to review the discovery  
26 provided by Defendant is irrelevant to the motion for sanctions, because review of the documents was  
27 required whether the motion for sanctions was filed. Accordingly, time will be reduced by 2.0 hours.  
28 Further, the time expended by Mrs. Fessler to “[r]eview and revise memorandum in support of [the]

1 motion” on February 26, 2013, should not be awarded, given that Mr. Roy also spent 0.8 hours for  
2 “[a]dditional research and revisions” on February 26, 2013. Thus, the number of hours reasonably  
3 expended by Plaintiff’s counsel in conjunction with the motion for sanctions totals 6.2 hours.

4 **B. Hourly rates requested**

5 Mr. Roy asserts “[t]he current rate for GBLA supervising attorneys with [his] level of  
6 experience (5 years) is \$200.00 per hour.” (Roy Decl. ¶ 4). The rate for staff attorneys with Mrs.  
7 Fessler’s level of experience is \$175.00 per hour. (*Id.* at ¶ 7). Mr. Braze appears to believe that the  
8 \$200.00 per hour fee is unreasonable because he has “been practicing law for thirty-five (35) years and  
9 [his] hourly rate in this matter is One Hundred Sixty-Five Dollars (\$165.00).” (Braze Decl. ¶ 14).  
10 Therefore, Defendants assert any sanctions should be based on the \$175- hourly rate of staff attorneys.  
11 (*Id.* at ¶ 15).

12 A reasonable hourly rate is one “in line with those prevailing in the community for similar  
13 services of lawyers of reasonably comparable skill and reputation.” *Jordan*, 815 F.2d at 1263. The  
14 “relevant legal community” in the lodestar calculation is generally the forum in which the district court  
15 sits. *Jadwin v. County of Kern*, 767 F. Supp. 2d 1069 (E.D. Cal. 2011) (where a case is tried in the  
16 Eastern District of California, Fresno Division, “[t]he Eastern District of California, Fresno Division, is  
17 the appropriate forum to establish the lodestar hourly rate”). The Court’s review of attorney fee awards  
18 in this District with comparable experience demonstrates the fee request for Mr. Roy is reasonable.  
19 *See, e.g., Foster Poultry Farms, Inc. v. Suntrust Bank*, 2005 WL 2089813 (E.D. Cal. 2005) (concluding  
20 that \$250 per hour was “an average prevailing billing rate in the Fresno area for associates out of law  
21 school less than five (5) years”). Accordingly, the hourly rates asserted by Mr. Roy and Ms. Fessler are  
22 reasonable.

23 **IV. Conclusion and Order**

24 Based upon the foregoing, the Court finds monetary sanctions in the amount of \$1,202.50.  
25 This amount represents 4.7 hours of Mr. Roy’s time at the rate of \$200 per hour, and 1.5 hours of Mrs.  
26 Fessler’s time at the rate of \$175 per hour. These sanctions are imposed on Defendants only for their  
27 failure to provide discovery in compliance with the Court’s order, and their counsel. Once again,  
28 Defendants are cautioned that continued failure to participate in the discovery process may result in

1 terminating sanctions. *See* Fed R. Civ. P. 37(b)(2)(A)(v); *Valley Engineers, Inc. v. Electric Engin. Co.*,  
2 158 F.3d 1051, 1056-57 (9th Cir. 1998).

3 Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 4 1. Monetary sanctions in the amount of **\$1,202.50** are imposed against Defendants; and
- 5 2. This amount SHALL be paid to Plaintiff's counsel on or before April 22, 2013.

6  
7 IT IS SO ORDERED.

8 Dated: April 1, 2013

/s/ Jennifer L. Thurston  
9 UNITED STATES MAGISTRATE JUDGE