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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 COREY MITCHELL,

12 Plaintiff,

13 v.

14 CHAVEZ and SHELDON,

15 Defendants.
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No. 1:13-cv-01324-DAD-EPG

ORDER DIRECTING PLAINTIFF TO FILE
MOTION FOR ATTORNEYS' FEES AND
SETTING BRIEFING SCHEDULE

17 Following the first phase of a bifurcated trial, the jury returned a verdict in favor of
18 plaintiff in all respects. Prior to commencement of the punitive damages phase of the trial, the
19 parties settled the case. (Doc. Nos. 167–68.) Thereafter, the parties submitted a stipulation on
20 November 7, 2017 requesting that the case be dismissed with prejudice pursuant to Rule
21 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. (Doc. No. 177.) The stipulation also
22 indicated the parties agreed to have the court retain jurisdiction over enforcement of the
23 settlement agreement, including “to determine the issue of attorney fees and costs.”¹ (*Id.*) On
24 November 28, 2017, the court rejected the parties’ stipulation, because its terms appeared
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27 ¹ The parties did not, however, reached any agreement in their settlement about whether plaintiff
28 is a “prevailing party” entitled to receive attorneys’ fees under 42 U.S.C. § 1988. (Doc. No. 183-
1 at ¶¶ 4–5.)

1 internally inconsistent.² (Doc. No. 179.) The court directed the parties to file status reports
2 within fourteen days advising whether a motion for attorney’s fees and costs would be filed, and
3 addressing any other matter they believed appropriate to the expeditious resolution of this case.
4 (*Id.*) The parties filed status reports on December 11, 2017. (Doc. Nos. 183, 184.) Defendant
5 Sheldon objected to plaintiff’s status report on December 13, 2017. (Doc. No. 185.) Plaintiff
6 responded to the objections on December 14, 2017. (Doc. No. 186.)

7 In his submissions to the court, plaintiff argues that he is entitled to an award of attorneys’
8 fees, and that the court should enter an order dismissing the case and retaining jurisdiction to hear
9 an attorneys’ fee motion to be filed within fourteen days of the dismissal and entry of judgment.³
10 (Doc. No. 184 at 9.) Alternatively, plaintiff indicates that an order setting a time for the filing of
11 the attorneys’ fee motion prior to dismissal would be acceptable. (*Id.*) Defendants suggest that
12 the court should simply dismiss this action without hearing a motion for attorneys’ fees and
13 apparently without retaining jurisdiction to do so. Defendants base this suggestion on the grounds
14 that plaintiff “has delayed in the filing of a Motion for Attorney Fees” and has “unfairly
15 exploited” his opportunity to advise the court when such a motion would be filed. (Doc. No.
16 185.)

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19 ² A court may retain jurisdiction to enforce a settlement agreement only if it does so explicitly by
20 order. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994); *O’Connor v.*
21 *Colvin*, 70 F.3d 530, 532 (9th Cir. 1995) (“[E]ven a district court’s expressed intention to retain
jurisdiction is insufficient to confer jurisdiction if that intention is not expressed in the order of
dismissal.”).

22 ³ Motions for attorneys’ fees must typically be filed within fourteen days of judgment. Fed. R.
23 Civ. P. 54(d)(2)(B)(i). Some courts do not permit the filing of motions for attorneys’ fees prior to
24 the entry of judgment. *See Martinez v. Colvin*, No. 14cv3043 BTM(WVG), 2017 WL 766665, at
25 *2 (S.D. Cal. Feb. 27, 2017); *Waikoloa Dev. Co. v. Hilton Resorts Corp.*, No. 13-00402 DKW-
26 BMK, 2014 WL 4449895, at *1 (D. Haw. Sept. 9, 2014); *Valenzuela v. Cochise County*, No. CV-
27 12-00463-TUC-CKJ, 2014 WL 2584824, at *2 (D. Ariz. June 10, 2014); *Holy Trinity Greek*
28 *Orthodox Church v. Church Mut. Ins. Co.*, No. CIV-04-1700-PHX-SMM, 2006 WL 1889542, at
*2 (D. Ariz. July 6, 2006). *But see FAS Techs., Ltd. v. Dainippon Screen Mfg., Co., Ltd.*, No. C
00-01879-CRB, 2001 WL 1159776, at *6 (N.D. Cal. Sept. 21, 2001) (noting opposing party had
cited no authority “which requires a party to wait until judgment is actually issued to file and have
heard a motion for fees”).

1 Plaintiff is hereby directed to file any motion for attorneys' fees he wishes to pursue by no
2 later than January 9, 2018⁴, to be noticed for hearing on February 6, 2018 or as soon thereafter as
3 it may be convenient for the court to hear the matter. Opposition from defendants will be due by
4 January 23, 2018 and may include argument as to why plaintiff should be precluded from moving
5 for an award of attorneys' fees on any grounds. Should plaintiff wish to file a reply, it must be
6 submitted by January 30, 2018.

7 IT IS SO ORDERED.

8 Dated: **December 20, 2017**


UNITED STATES DISTRICT JUDGE

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28 ⁴ Any failure to do so within the time provided by this order will be deemed a waiver of the
issue.