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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **SHARRON LEFAY; JEFF WALL;**  
9 **SCOTT WALL,**

10 **Plaintiffs**

11 **v.**

12 **WILLIAM LEFAY; FRESNO POLICE**  
13 **OFFICER ERIC PANABAKER; FRESNO**  
14 **POLICE SGT. LEN GLEIM; FRESNO**  
15 **POLICE DET. JOHN GOMES; DOES 1**  
16 **TO 10.**

17 **Defendants**

**CASE NO. 1:13-CV-01362-AWI-MJS**

**ORDER ON APPLICATION FOR**  
**RECONSIDERATION REGARDING**  
**COURT'S ORDER GRANTING**  
**PLAINTIFFS ATTORNEY'S FEES**

**(Doc. No. 107)**

18 This matter involves Defendants' application for reconsideration of the February 13, 2015  
19 decision by the Magistrate Judge on Plaintiffs' motion for attorney's fees. In this decision, the  
20 Magistrate Judge awarded \$10,395.00 in attorney's fees to Plaintiffs after previously granting  
21 Defendants' motion to modify. For the reasons below, we deny Defendants' current motion for  
22 reconsideration and grant Plaintiffs' request that the fee award be increased by \$1,120 for the 3.2  
23 hours spent preparing their opposition to the present motion.

24 **DEFENDANTS' MOTION**

25 **Factual Background**

26 This case involves a 42 U.S.C. § 1983 civil rights action, with multiple supplemental state  
27 law claims, arising out of Defendants' actions in seeking and obtaining a medical commitment of  
28 Sharron Lefay against her will under California Welfare and Institutions Code section 5150. See

1 Doc. 17. A scheduling conference was held on the matter on December 13, 2013, and on  
2 December 16, 2013, a scheduling order was issued directing the parties to disclose expert  
3 witnesses on or before July 18, 2014, with supplementation, if any, of the disclosures to be made  
4 on or before August 18, 2014. See Doc. 15. The parties were ordered to complete all discovery  
5 by September 19, 2014. Id. Upon stipulation of the parties, the Magistrate Judge extended the  
6 expert designation date to August 18, 2014, and the supplemental designation deadline to  
7 September 1, 2014. See Doc. 30.

8 Plaintiffs fully complied with the expert disclosure requirements. See Doc. 65, 2:14-17.  
9 Defendants did not. Id. They timely identified their expert witnesses in accordance with the  
10 court's order, but they did not provide reports of those experts as required by Federal Rule of Civil  
11 Procedure 26(a)(2). Id. Plaintiffs objected to Defendants' failure to fully comply with Rule  
12 26(a)(2). On September 19, 2014, Defendants filed motions seeking an order modifying the  
13 scheduling order to allow additional time for expert disclosure and discovery of Defendants'  
14 experts. See Doc. 38, 40. On November 11, 2014, the Magistrate Judge provided Defendants  
15 with the relief they sought, but ordered that Defendants should pay Plaintiffs their reasonable  
16 attorney fees incurred in bringing and arguing these motions. See Doc. 65, 12:3-13. On February  
17 13, 2014, after additional briefing, the Magistrate Judge granted Plaintiffs' motion for attorney  
18 fees in the amount of \$10,395.00. See Doc. 106, 116. On March 3, 2015, Defendants filed the  
19 present motion seeking reconsideration of this ruling. See Doc. 108.

20 *Defendants' Argument*

21 The thrust of Defendants argument is that the granting of attorney fees against them was  
22 not warranted as they prevailed on the underlying motion to modify the schedule. Defendants  
23 further emphasize that they did not willfully disobey a court order, engage in bad faith, or  
24 gamesmanship; that modifying the scheduling order did not create a disruption of the court's  
25 docket; and that in granting the motion the court noted there had been innocent, good faith delays  
26 on both sides in the case.

27 In the alternative, Defendants request this court to reconsider the amount awarded for  
28 attorney's fees and challenge numerous individual entries in Plaintiffs' fee invoice. Defendants

1 argue that they did not present detailed argument to the Magistrate Judge regarding Plaintiffs'  
2 itemization of attorney's fees because they did not believe that the court would award attorney's  
3 fees. Thus, they focused their arguments on the fact that the fees were unreasonable as a whole.  
4 They also mention that they requested in their opposition to the motion for attorney's fees the  
5 opportunity to brief challenges to individual entries if the court in fact awarded fees.

6 *Plaintiffs' Opposition*

7 Plaintiffs argue that to succeed Defendants have to show that the Magistrate Judge's ruling  
8 was clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).  
9 Defendants did not contest their noncompliance with Federal Rule of Civil Procedure 26(a)(2)(B)  
10 by failing to meet the deadline the motion to modify the schedule was based upon. Nor did  
11 Defendants dispute that the Magistrate Judge had legal authority to condition his granting the  
12 motion on an award of attorney's fees. Indeed, this is permitted by Federal Rule of Civil  
13 Procedure 37(c)(1)(A).

14 Instead, Plaintiffs assert, Defendants are challenging the Magistrate Judge's factual  
15 findings, which requires a showing that those findings were clearly erroneous. See 28 U.S.C. §  
16 636(b)(1)(A). Therefore, the argument that the Magistrate Judge's findings do not support his fee  
17 ruling fails because Defendants do not provide a copy of those findings, identify which findings in  
18 particular are alleged to be clearly erroneous, or make specific arguments as to why any particular  
19 findings were in fact clearly erroneous. Likewise, Defendants' challenge to the amount of the fees  
20 awarded and the time entries fails to mention any aspect of the Magistrate Judge's ruling. Thus,  
21 the Defendants' are arguing these issues as if de novo, instead of in accordance with the clearly  
22 erroneous standard.

23 Plaintiffs also emphasize that Defendants stated their decision not to challenge the amount  
24 of the fee award and various time entries was a calculated decision. But absent "exceptional  
25 circumstances," a district judge need not entertain arguments raised for the first time in a request  
26 for reconsideration of a magistrate judge's order or recommendation. Plaintiffs assert that  
27 Defendants' strategic decision to forego the argument does not constitute "exceptional  
28 circumstances."

1 In a footnote, Plaintiffs point out that since the actual ruling was made on the record on  
2 February 13, 2015, Defendants' reconsideration motion is untimely under 28 U.S.C. § 636(b) and  
3 Federal Rule of Civil Procedure 72(a) because the reconsideration motion was due on February  
4 27, 2015. Instead, it was filed March 3, 2015.

5 Last, Plaintiffs' counsel requests the amount of fees awarded by increased by \$1,120 for  
6 the 3.2 hours spent preparing their opposition to the present motion.

7 Legal Standard

8 Motions to reconsider are committed to the discretion of the trial court. Rodgers v. Watt,  
9 722 F.2d 456, 460 (9th Cir. 1983) (en banc); Combs v. Nick Garin Trucking, 825 F.2d 437, 441  
10 (D.C. Cir. 1987). To succeed, a party must set forth facts or law of a strongly convincing nature to  
11 induce the court to reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of  
12 Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), aff'd in part and rev'd in part on other  
13 grounds, 828 F.2d 514 (9th Cir. 1987). When filing a motion for reconsideration, Local Rule  
14 78-230(k) requires a party to show the "new or different facts or circumstances claimed to exist  
15 which did not exist or were not shown upon such prior motion, or what other grounds exist for the  
16 motion."

17 The court reviews a motion to reconsider a magistrate judge's ruling under the "clearly  
18 erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A) and Rule 72(a). "A  
19 finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on  
20 the entire evidence is left with the definite and firm conviction that a mistake has been  
21 committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); see also Anderson v.  
22 Equifax Info. Services LLC, 2007 WL 2412249, at \*1 (D. Or. 2007) ("Though Section  
23 636(b)(1)(A) has been interpreted to permit de novo review of the legal findings of a magistrate  
24 judge, magistrate judges are given broad discretion on discovery matters and should not be  
25 overruled absent a showing of clear abuse of discretion.").

26 Discussion

27 As previously mentioned, Defendants bring two core grounds for reconsideration of the  
28 Magistrate Judge's attorney's fees ruling in this matter: (1) that the attorney's fees ruling as a

1 whole was improper because they prevailed on the underlying motion and (2) that, in the  
2 alternative, the amount of the attorney’s fees awarded should have been less as individual times  
3 entries were erroneous.

4 1. Attorney’s Fees Ruling

5 As to the first ground, a district court must defer to a magistrate judge's non-dispositive  
6 order unless it is “clearly erroneous or contrary to law.” Grimes v. City & County of San  
7 Francisco, 951 F.2d 236, 241 (9th Cir. 1991) (quoting Fed. R. Civ. P. 72(a)). The Magistrate  
8 Judge's February 13, 2015 attorney’s fee order was neither clearly erroneous nor contrary to law.  
9 In his oral judgment, the Magistrate Judge ruled that:

10 “I saw that there was a question as to – well, there was a question as to the –  
11 whether the Court had made a clerical error and, in fact, it intended to award fees to  
12 the defense as they prevailed on the motion.

13 And let me assure you it was not a clerical error. The Court did exactly  
14 what it intended to do and for the reasons I’ll discuss here.

15 There was a question as to the authority for the fee award. Federal Rule of  
16 Civil Procedure 13(c)(1) was cited in the order. It was clearly, I think, clearly set  
17 forth as the basis for the fee award. And from a logical standpoint, I don’t have the  
18 statute right in front of me, but basically it provides that the Court has the authority  
19 to award fees in addition to or separate from any other relief that it arises, words to  
20 that effect, or it awards, words to that effect.

21 In this case, it seems like – it still seems like, to the Court anyway, of course  
22 I’m going to justify what I did. But it seems like a perfectly logical thing to do.  
23 It’s clearly authorized under the clear wording of Federal Rule of Civil Procedure  
24 37(c)(1)(A).

25 In this case, the defendants failed to comply with a court order. There was  
26 no question but that there was a failure. The Court’s already so found. The Court  
27 was asked to give them relief from that failure. The Court did. But found that the  
28 – in effect, that the plaintiff should not be penalized as a result of the defendants’  
failure to comply with the Court order.”

Doc. 116, 6:1-7:2.

There is no dispute that defendants did not comply with Federal Rule of Civil Procedure  
26(a)(2)(B) when they failed to meet the deadline their motion to modify the schedule was based  
upon. The court granted them relief, but awarded attorney’s fees against them to ameliorate the  
prejudice suffered by Plaintiffs. Federal Rule of Civil Procedure 37(c)(1)(A) explicitly gives the  
court authority to award expenses, including attorney’s fees, where a party fails to make a  
disclosure required by Rule 26. Accordingly, the Magistrate Judge’s attorney’s fee order was  
neither clearly erroneous nor contrary to law.

1           2.       Individual Time Entries

2           Defendants now also challenge for the first time the accuracy of the individual time entries.  
3           Because Defendants could have originally presented this argument to the Magistrate Judge, they  
4           have improperly raised it for the first time in the instant motion for reconsideration. See Jones v.  
5           Sweeney, 2008 WL 3892111, at \*2 (E.D.Cal. Aug.21, 2008) (Ishii, C.J.) (“Motions for  
6           reconsideration and objections to a Magistrate Judge's order are not the place for a party to make a  
7           new argument and raise facts not addressed in his original brief.” (citing Zimmerman v. City of  
8           Oakland, 255 F.3d 734, 740 (9th Cir. 2001); Rosenfeld v. U.S. Dep't of Justice, 57 F.3d 803, 811  
9           (9th Cir. 1995); Nw. Acceptance Corp. v. Lynnwood Equip., Inc., 841 F.2d 918, 925–26 (9th Cir.  
10          1988))). Absent “exceptional circumstances,” a district judge need not entertain arguments raised  
11          for the first time in a request for reconsideration of a magistrate judge’s order or recommendation.  
12          See Sarkist v. Graham Packaging Co., 2014 U.S. Dis. LEXIS 159972 (E.D. Cal. 2014).

13          Defendants state that they did not present detailed argument to the Magistrate Judge regarding  
14          Plaintiffs’ itemization of attorney’s fees because they did not believe that the court would award  
15          attorney’s fees. They also mention that they requested in their opposition to the motion for  
16          attorney’s fees the opportunity to brief challenges to individual entries if the court in fact awarded  
17          fees. However, the court finds that this strategic decision to forego the argument to the Magistrate  
18          Judge does not constitute “exceptional circumstances.” Accordingly, this claim fails.

19               3.       Additional Costs

20          Plaintiffs’ counsel requests the amount of fees awarded be increased by \$1,120 for the 3.2  
21          hours spent preparing their opposition to the present motion. “It’s now well established that time  
22          spent in preparing fee applications under 42 U.S.C. § 1988 is compensable.” Anderson v.  
23          Director, OWCP, 91 F.3d 1322, 1325 (9th Cir. 1996). This court does not find merit in  
24          Defendants’ current motion and accordingly finds it appropriate to increase the amount of the fees  
25          awarded by \$1,120 for the 3.2 hours Plaintiffs spent preparing their opposition.

**ORDER**

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' application for reconsideration regarding court's order granting Plaintiffs' attorney's fees is DENIED; and
2. Plaintiffs' request for an increase in the amount of attorney's fees by \$1,120 for the 3.2 hours spent preparing their opposition to this motion is GRANTED.

IT IS SO ORDERED.

Dated: May 8, 2015

  
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SENIOR DISTRICT JUDGE