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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUSTAVO CORTES,

Plaintiff,

v.

KERN COUNTY SUPERINTENDENT
OF SCHOOLS, VALLEY OAKS
CHARTER SCHOOL - TEHACHAPI,

Defendant.

No. 1:18-cv-01355-NONE-JLT

ORDER GRANTING PLAINTIFF AN
EXTENSION OF TIME TO FILE MOTION
FOR ATTORNEY’S FEES AND GRANTING
IN PART THAT MOTION FOR
ATTORNEY’S FEES

(Doc. Nos. 25, 26)

Plaintiff Gustavo Cortes, on behalf of his minor daughter A.C., initiated this action on October 1, 2018 by filing a complaint for attorney’s fees as the prevailing party against defendant Kern County Superintendent of Schools-Valley Oaks Charter School Tehachapi. (Doc. No. 1.) Therein, based upon his allegation that the parties had settled a due process proceeding brought under 20 U.S.C. § 1415, the Individuals with Disabilities Education Act (“IDEA”), and that he was therefore the prevailing party, plaintiff moved for an award of attorney’s fees and costs. (*See id.*) As part of the settlement, the parties agreed that plaintiff is the prevailing party. (Doc. No. 16-5.) The only issue the parties were unable to agree upon was the amount of attorney’s fees owed to plaintiff’s counsel, the Law Office of Andrea Marcus (“Marcus”).

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1 On August 21, 2018, on the eve of the anticipated multi-day due process hearing, the
2 parties reached a settlement. (Doc. No. 16-5 at 10.) As part of the settlement, the parties agreed
3 that A.C.'s parents were the prevailing party for purposes of awarding reasonable attorney's fees.
4 (*Id.* at 6.) However, the settlement agreement did not include resolution of the amount of
5 plaintiff's attorney's fees. (*See id.*) The parties instead agreed to resolve the amount of
6 attorney's fees by way of motion before this federal court. (*See id.*)

7 Accordingly, on February 4, 2019, plaintiff filed a motion for attorney's fees and costs.
8 (Doc. No. 16.) Therein, plaintiff requested \$79,180 for services provided by attorney Marcus in
9 connection with the underlying administrative hearing and \$7,123.18 in costs. (Doc. No. 16-6.)
10 Thus, plaintiff sought a total award of \$86,303.18 in attorney's fees and costs, excluding interest.
11 (Doc. No. 17.)

12 On March 3, 2019, defendant filed an opposition to plaintiff's motion, seeking a
13 significant reduction in the amount of attorney's fees from that sought by plaintiff. (Doc. No.
14 19.) On August 26, 2019, the district judge awarded \$84,448.18 in attorney's fees and costs, plus
15 interest accruing from August 21, 2018 at the statutory rate. (Doc. No. 22 at 24.) Judgment was
16 entered on August 28, 2019, and thereafter, the case was closed. (Doc. No. 24.)

17 On December 24, 2019, plaintiff filed the pending: 1) request for a 104-day extension to
18 file a motion for attorney's fees for costs incurred in preparing the October 1, 2018 complaint for
19 attorney's fees and the February 4, 2019 motion for attorneys' fees and costs; and 2) a motion for
20 attorney's fees and costs incurred while preparing the February 4, 2019 motion for attorney's fees
21 and this pending motion for fees on fees. (Doc. Nos. 16–17, 19–20, 25, 26.) In her request for an
22 extension of time, attorney Marcus states that she “failed to timely file for attorneys’ fees and
23 costs” within 14 days after entry of judgment as required by Rule 54(d)(2)(B)(i) because the
24 “deadline was mistakenly left off the firm’s calendar.” (Doc. No. 25 at 3.) Attorney Marcus also
25 provided the following reasons through her sworn declaration for missing that deadline: 1)
26 attorney Marcus operates a solo-attorney firm; 2) her firm “unexpectedly lost the employee
27 responsible for calendaring pleading and litigation deadlines at the time the court entered
28 judgment for plaintiff” and therefore the deadline was not calendared; 3) significant emergencies

1 arose as two of her clients in an unrelated case, whom Marcus states are disabled and homeless
2 with significant mental health needs, “had stopped attending school and [had] been victimized by
3 sex-traffickers, and had been extensively interviewed by law enforcement officials”; 4) another
4 former client suffering from post-traumatic stress disorder threatened to commit suicide “by the
5 26th of August” and Marcus’s firm “was working to locate critical and safe alternative placement
6 options” for that client; and 5) these crises occurred in addition to attorney Marcus’s active
7 caseload that tends to be busier at the beginning of the school year, which was around the same
8 time the previously assigned judge entered judgment in this case. (*See id.* at 3–6.)

9 In his motion for attorney’s fees filed on December 24, 2019, plaintiff seeks an additional
10 \$32,801.60 in attorney’s fees and costs in connection with his previously filed fees motion. (Doc.
11 No. 26-2 at 5.) Defendant filed its opposition to that motion on February 10, 2020. (Doc. No.
12 28.) Plaintiff filed his reply on February 12, 2020. (Doc. No. 29.) For the reasons explained
13 below, the court will grant plaintiff’s request for an extension of time to file the pending motion
14 for attorney’s fees and will also grant plaintiff’s motion for additional fees and costs in part.

15 DISCUSSION

16 A. Excusable Neglect

17 Plaintiff’s counsel acknowledges she failed to timely file a motion for attorney’s fees
18 under Rule 54. (Doc. No. 25 at 3.) However, attorney Marcus argues that she should be
19 permitted to proceed with the motion for fees based on her excusable neglect. (*Id.*) Defendant
20 argues that counsel’s inadvertence and ignorance of the rules do not constitute excusable neglect.
21 (Doc. No. 28 at 3, 6.)

22 Local Rule 293 provides that “[m]otions for awards of attorneys’ fees to prevailing parties
23 pursuant to statute shall be filed not later than twenty-eight (28) days after entry of final
24 judgment.” E.D. Cal. L.R. 293 (citing Fed. R. Civ. P. 54(d)). Rule 6(b)(2) of the Federal Rules
25 of Civil Procedure provides that a district court may, within its discretion, permit a party to file an
26 untimely motion, “when the failure to act was the result of excusable neglect.” Courts analyze
27 the following equitable factors in determining whether a missed deadline was a result of
28 excusable neglect: 1) the danger of prejudice to the opposing party; 2) the length of the delay and

1 its potential impact on judicial proceedings; 3) the reason for the delay, including whether it was
2 within the reasonable control of the movant; and 4) whether the movant acted in good faith.
3 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). The
4 Supreme Court has noted that “[a]lthough inadvertence, ignorance of the rules, or mistakes
5 construing the rules do not usually constitute ‘excusable’ neglect, it is clear that ‘excusable
6 neglect’ under Rule 6(b) is a somewhat ‘elastic concept’ and is not limited strictly to omissions
7 caused by circumstances beyond the control of the movant.” *Id.* at 392 (internal citations
8 omitted); *see also Kyle v. Campbell Soup Co.*, 28 F.3d 928, 931–32 (9th Cir. 1994); *Kroll v.*
9 *Kaiser Found. Health Plan Long Term Disability Plan*, No. 3:09-CV-01404-LB, 2011 WL
10 13240371, at *2–3 (N.D. Cal. Aug. 25, 2011) (recommending granting a delayed filing for
11 attorney’s fees despite counsel’s anticipated surgery and paralegal’s vacation, where there was no
12 evidence of prejudice, delay was only two days, and absence of evidence of bad faith), *adopted*
13 *by* No. 3:09-CV-01404-JSW (N.D. Cal. Oct. 26, 2011) (Doc. No. 134); *A.F. v. Hamamoto*, No.
14 CV 07-00278-JMS-KSC, 2007 WL 2684133, at *4–5 (D. Haw. Sept. 7, 2007) (allowing plaintiff
15 to file a belated attorney’s fee motion in IDEA case where there was no evidence of prejudice,
16 delay in filing the motion was one month, the reason for delay was counsel’s mistaken
17 assumption that fees issue could not be settled until the prevailing party issue was resolved, and
18 absence of evidence of bad faith). For the reasons explained below, the court finds plaintiff has
19 demonstrated excusable neglect in this case.

20 1. Prejudice

21 Plaintiff argues that defendant has not suffered any prejudice as a result of the late filing
22 of its motion because, as a result of that delay, defendant has been able to retain the money owed
23 to plaintiff for a significant time. (Doc. No. 25 at 7.) In opposition, defendant argues that it is
24 prejudiced because defendant is not only responding to the motion itself, but also to the lateness
25 motion, which requires more time and investment on the part of defense counsel. (Doc. No. 28 at
26 4.) Defendant further argues that it has been prejudiced by the delay because opposing the
27 motion after such a delay has required re-reviewing the case materials to refresh its recollection.
28 (*Id.*)

1 While the court recognizes *some* prejudice to defendant in requiring it to oppose a request
2 for an extension, any such prejudice appears to be minimal in this case. Defendant’s argument
3 that it must refresh its recollection of the case history is unpersuasive, especially where defendant,
4 in opposition, “limit[s] the procedural history to the facts relevant to the instant Motion and
5 Opposition.” (Doc. No. 28 at 2.) No extensive review of the case history was necessary for
6 purposes of opposing the pending motion. Moreover, defendant did not appear to expend time
7 responding to both motions, as its opposition only addresses plaintiff’s late filing of the motion
8 for attorney’s fees, but not the motion for attorney’s fees itself. (*See generally id.*) Therefore,
9 this factor weighs in favor of a finding of excusable neglect.

10 2. Length of Delay and Potential Impact on Judicial Proceedings

11 The length of delay in bringing the pending motion here was 90 days.¹ Defendant cites to
12 a prior decision in which the undersigned denied the defendants’ motion for attorneys’ fees that
13 was delayed by 30 days in a civil rights case. *Sameer v. Khera*, No. 1:17-cv-01748-DAD-EPG,
14 2019 U.S. Dist. LEXIS 66537, at *6–7 (E.D. Cal. Apr. 18, 2019). *Sameer* involved a case
15 brought by a plaintiff proceeding *pro se* that was dismissed with prejudice because the allegations
16 of the complaint were deemed to be frivolous by the court. *See id.* at *4 (noting that the *pro se*
17 plaintiff had alleged massive conspiracy involving more than 30 defendants, including her ex-
18 husband, all attorneys involved in her divorce proceedings, multiple judges, and many others).
19 Moreover, *Sameer* involved *defendants* filing for attorney’s fees, not a prevailing plaintiff. *See*
20 *generally id.* Therefore, the cited *Sameer* is distinguishable.

21 The court recognizes that plaintiff’s 90-day delay in filing its motion for additional fees
22 constitutes an extended delay. *See Hamamoto*, No. CV 07-00278-JMS-KSC, 2007 WL 2684133,
23 at *4–5 (allowing plaintiff to file a belated attorney’s fee petition where the delay was one
24 month). However, the court will also examine and consider the remaining factors to determine
25 whether excusable neglect exists in this case. *See id.* (allowing plaintiff to file belated attorney’s

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27 ¹ Plaintiff seeks a 104-day extension to file his motion for attorney’s fees based on the 14-day
28 deadline in Rule 54. However, the applicable rule is Local Rule 293, which provides for a 28-day
deadline after entry of final judgment. E.D. Cal. L.R. 293 (citing Fed. R. Civ. P. 54(d)).
Therefore, the court construes plaintiff’s request as one seeking a 90-day extension of time.

1 fee petition where there was no evidence of prejudice, the reason for the delay was counsel’s
2 mistaken assumption that fees issue could not be settled until prevailing party issue was resolved,
3 and absence of evidence of bad faith).

4 3. Reason for Delay

5 As indicated above, in her request for an extension, attorney Marcus states that she “failed
6 to timely file for attorneys’ fees and costs” within 14 days after entry of judgment as required by
7 Rule 54(d)(2)(B)(i) because the “deadline was mistakenly left off the firm’s calendar.” (Doc. No.
8 25 at 3.) Attorney Marcus sets forth the following reasons through her sworn declaration for
9 missing the deadline: 1) Attorney Marcus operates a solo-attorney firm; 2) her firm
10 “unexpectedly lost the employee responsible for calendaring pleading and litigation deadlines at
11 the time the court entered judgment for plaintiff,” and therefore, the deadline was not calendared;
12 3) significant emergencies arose as two of her clients in an unrelated case, whom attorney Marcus
13 states are disabled and homeless and suffer with significant mental health needs, “had stopped
14 attending school and [had] been victimized by sex-traffickers, and had been extensively
15 interviewed by law enforcement officials; 4) another former client suffering from post-traumatic
16 stress disorder threatened to commit suicide “by the 26th of August” and Marcus’s firm “was
17 working to locate critical and safe alternative placement options”; and 5) these crises occurred in
18 addition to attorney Marcus’s active caseload that tends to be busier at the beginning of the school
19 year, which was around the same time the previously assigned district judge entered judgment.
20 (*See id.* at 3–6.)

21 Defendant argues that “inadvertence or oversight of counsel does not constitute ‘excusable
22 neglect’ that might justify an extension.” (Doc. No. 28 at 6.) In a footnote, defendant also argues
23 “litigants are bound by the conduct of their attorneys, absent egregious circumstances (which are
24 not present here).” The court disagrees and instead finds persuasive the significant client
25 emergencies and unexpected employee departure that occurred at approximately the same time
26 judgment was entered in this case. *Cf. TSI USA LLC v. Uber Techs., Inc.*, No. 17-cv-03536-HSG,
27 2020 WL 60208, at *2 (N.D. Cal. Jan. 6, 2020) (finding reason for plaintiff’s delay significant
28 where plaintiff’s counsel experienced family emergency); *In re Nemea*, No. 1:12-cv-02048-LJO-

1 SKO, 2013 WL 2244405, at *6 (E.D. Cal. May 21, 2013) (finding persuasive reason for delay
2 where attorney “suffered medical problems and traveled for a family emergency” and attorney’s
3 “office experienced internet connection problems that contributed to the delay”). Therefore,
4 consideration of this factor weighs in favor of a finding of excusable neglect.

5 4. Good Faith

6 Based on the circumstances presented here, the court also finds that plaintiff has acted in
7 good faith throughout the parties’ negotiations with respect to attorney’s fees. Nothing in the
8 record suggests bad faith in connection with the instant motions or at any other point in this case.
9 Plaintiff began his efforts to obtain attorney’s fees from defendant approximately two weeks after
10 the parties’ settlement as to the merits of plaintiff’s claims was reached. (Doc. No. 16 at 17.) On
11 September 6, 2018, plaintiff requested \$91,303.18 in attorney’s fees.² (*Id.* at 16.) On September
12 11, 2018, defendant offered \$7,500. (*Id.* at 17.) While plaintiff delayed by 90 days in filing a
13 supplemental request for attorney’s fees in connection with his initial attorney’s fees motion, the
14 reasons for the delay suggest that the late filing was the result of significant client emergencies
15 and an unanticipated employee departure, “not the product of a deliberate attempt to violate the
16 rules or to cause harm to the opposing party.” *Kroll*, No. 3:09-CV-01404-LB, 2011 WL
17 13240371, at *3. There is no evidence before the court that plaintiff has acted in bad faith in this
18 case.

19 Therefore, considering all of the *Pioneer* factors, the court finds that plaintiff’s delayed
20 filing of the motion for attorney’s fees in connection with the original fee motion was the result of
21 counsel’s excusable neglect. Accordingly, the court will grant plaintiff an extension to file the
22 motion for attorney’s fees and will now turn to address the reasonableness of the requested
23 attorney’s fees.

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27 ² Plaintiff quickly took responsibility for the \$5,000 expert invoice that was inadvertently
28 included in plaintiff’s initial request for attorney’s fees, thereby reducing the amount sought by
plaintiff to \$86,303.18. (Doc. No. 16 at 16–17 n.1.)

1 **B. Attorney’s Fees**

2 “In any action or proceeding brought under [the IDEA], the court, in its discretion, may
3 award reasonable attorneys’ fees as part of the costs . . . to a prevailing party who is the parent of
4 a child with a disability.” 20 U.S.C. § 1415(i)(3)(B)(i)(I); *Aguirre v. Los Angeles Unified Sch.*
5 *Dist.*, 461 F.3d 1114, 1117 (9th Cir. 2006). An award of attorney’s fees pursuant to the IDEA is
6 “governed by standards set forth by the Supreme Court” in *Hensley v. Eckerhart*, 461 U.S. 424
7 (1983). *Aguirre*, 561 F.3d at 1121. A court may award additional fees for time reasonably
8 devoted to obtaining attorney’s fees. *See T.B. v. San Diego Unified Sch. Dist.*, 293 F. Supp. 3d
9 1177, 1195 (S.D. Cal. 2018); *see also Blixseth v. Yellowstone Mountain Club, LLC*, 854 F.3d 626,
10 629 (9th Cir. 2017) “[C]ourts have uniformly held that time spent establishing the entitlement to
11 and amount of the fee is compensable under federal fee-shifting provisions”; *Camacho v.*
12 *Bridgeport Fin.*, 523 F.3d 973, 982 (9th Cir. 2008) (holding that fees-on-fees must be calculated
13 using the lodestar method).³

14 The Ninth Circuit has recognized under the IDEA both “the spirit and purpose of allowing
15 attorney’s fees in cases where parents have been forced to litigate for years against school
16 districts to obtain all or even part of what the Individuals with Disabilities Education Act [.]”
17 *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006). “[T]he district
18 court has discretion in determining the amount of a fee award.” *Hensley*, 461 U.S. at 437.

19 The court must first determine a reasonable fee by multiplying “the number of hours
20 reasonably expended on the litigation” by “a reasonable hourly rate.” *Id.* “The district court also

21 ³ In the undersigned’s experience, fees for the attorney time expended in litigating the amount of
22 fees to be awarded are properly sought in a single motion and are then addressed by the court in a
23 single order. By the time a reply brief in support of a motion for attorney’s fees is filed, the
24 moving party knows how much time has been expended on the motion and may update the fee
25 request. Any time anticipated to be spent preparing for and appearing at a hearing on the motion,
26 if any, can be estimated and sought at that time. *See McNeil v. District of Columbia*, 342 F. Supp.
27 3d 156, 162, 165–66 (D.D.C. 2018) (in an IDEA action, awarding both merits based attorney’s
28 fees and fees on fees in one order); *see also Schultz v. Ichimoto*, No. 1:08-cv-526-OWW-SMS,
2010 WL 3504781, at *12 (E.D. Cal. Sept. 7, 2010) (awarding attorney’s fees for litigating the
merits as well as fees on fees in a single order); *Jones v. Cnty. of Sacramento*, No. CIV S-09-1025
DAD, 2011 WL 3584332, at *21 (E.D. Cal. Aug. 12, 2011) (same). For future reference, this is
certainly the preferred practice and avoids serial motions as have been brought and now ruled
upon in this case.

1 should exclude from this initial fee calculation hours that were not reasonably expended.” *Id.* at
2 434 (internal quotation marks omitted). After calculating this lodestar amount, the court can
3 further adjust the lodestar calculation by considering the following nonexhaustive factors:

4 (1) the time and labor required, (2) the novelty and difficulty of the
5 questions involved, (3) the skill requisite to perform the legal service
6 properly, (4) the preclusion of other employment by the attorney due
7 to acceptance of the case, (5) the customary fee, (6) whether the fee
8 is fixed or contingent, (7) time limitations imposed by the client or
9 the circumstances, (8) the amount involved and the results obtained,
10 (9) the experience, reputation, and ability of the attorneys, (10) the
11 ‘undesirability’ of the case, (11) the nature and length of the
12 professional relationship with the client, and (12) awards in similar
13 cases.

14 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *abrogated on other grounds by*
15 *City of Burlington v. Dague*, 505 U.S. 557 (1992); *see also Chalmers v. City of Los Angeles*, 796
16 F.2d 1205, 1211 (9th Cir. 1986).

17 “[T]he fee applicant bears the burden of establishing entitlement to an award and
18 documenting the appropriate hours expended and hourly rates.” *Hensley*, 461 U.S. at 437. “The
19 party opposing the fee application has a burden of rebuttal that requires submission of evidence to
20 the district court challenging the accuracy and reasonableness of the . . . facts asserted by the
21 prevailing party in its submitted affidavits.” *Camacho*, 523 F.3d at 982.

22 1. Plaintiff is the Prevailing Party

23 Here, the parties do not dispute that plaintiff is the prevailing party. The parties’
24 settlement agreement states: “KCSOS-VOCS agrees that Parents are the prevailing party in OAH
25 Case No. 2018050310 for the purposes of awarding reasonable attorney’s fees and costs under 20
26 U.S.C. section 1415(i)(3)(8) and 34 C.F.R. section 300.517(a)(1).” (Doc. No. 16-5.) Therefore,
27 the court finds that plaintiff is the prevailing party for purposes of determining attorney’s fees.

28 2. Hourly Rates

The previously assigned district judge granted an attorney’s fees award to attorney Marcus
with an hourly rate of \$500 and the paralegal rate at \$150. (Doc. No. 22 at 5–7.) Defendant does
not dispute the hourly rate with respect to this motion for fees on fees. (*See generally* Doc. No.

1 28.) Therefore, for the reasons explained in the August 26, 2019 order, this court will adopt the
2 \$500 hourly rate for attorney Marcus.

3 On the other hand, plaintiff does not include any justification for the \$25 increase in the
4 hourly rate for attorney Marcus's paralegal since the original application. (*See generally* Doc.
5 No. 26.) When plaintiff filed his February 4, 2019 motion for attorney's fees, which included
6 billing entries up until August 21, 2018, the paralegal's rate was \$150. (Doc. No. 16-6.) Indeed,
7 plaintiff's own proposed order indicates that this court has awarded Marcus's paralegal an hourly
8 rate of \$150. (Doc. No. 27 at 9.) However, the invoice submitted with the pending fee motion
9 shows that the paralegal's hourly rate increased to \$175 beginning as early as February 4, 2019.
10 (Doc. No. 26-2 at 3.) Defendant has not disputed this increase. (*See generally* Doc. No. 28.)

11 Nonetheless, plaintiff has not set forth any justifications for the \$25 increase in the
12 paralegal's hourly rate between August 21, 2018 and February 4, 2019, nor will the court
13 speculate in that regard. Moreover, the court has located no decision granting in excess of a \$150
14 hourly rate for paralegals working on IDEA litigation in California. *See, e.g., T.B.*, 293 F. Supp.
15 3d at 1191 (awarding paralegal hourly rates between \$115 and \$145); *J.H. ex rel. Neal v.*
16 *Riverside Cnty. Office of Educ.*, No. 2:14-cv-804-MWF, 2016 WL 11515717, at *4 (C.D. Cal.
17 Mar. 8, 2016) (awarding \$125 paralegal hourly rate). Accordingly, the court will adopt the
18 previously awarded \$150 hourly rate for attorney Marcus's paralegal as it did in the August 26,
19 2019 order.⁴ (Doc. No. 22 at 5–7.)

20 3. Number of Hours to be Awarded

21 The party seeking the award of fees has the burden of establishing that the fees requested
22 are reasonable. *See Hensley*, 461 U.S. at 434, 437. Thus, a “fee applicant bears the burden of
23 documenting the appropriate hours expended in the litigation and must submit evidence in
24 support of those hours worked.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992).

25 The court has an independent duty to review the evidence to determine the reasonableness
26 of the hours requested in each case. *See Hensley*, 461 U.S. at 433, 436–37; *Tehachapi Unified*

27 _____
28 ⁴ The court expresses no opinion as to whether a \$175 paralegal rate might be reasonable under
different circumstances or based on a more complete record.

1 *Sch. Dist. v. K.M.*, No. 1:16-cv-01942-DAD-JLT, 2019 WL 331153, at *7 (E.D. Cal. Jan. 25,
2 2019). A court “may not uncritically accept a fee request,” but must review the time billed and
3 determine whether it is reasonable in light of the work performed and the context of the case. *See*
4 *Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1079 (C.D. Cal. 2002); *see also McGrath v.*
5 *Cnty. of Nevada*, 67 F.3d 248, 254 n.5 (9th Cir. 1995) (the court may not adopt representations
6 regarding the reasonableness of time expended without reviewing the record). A court may
7 reduce the requested award where documentation of the attorney time expended is inadequate.
8 *See Hensley*, 461 U.S. at 433. “[H]ours that were not ‘reasonably expended’” should be excluded
9 from an award, including “hours that are excessive, redundant, or otherwise unnecessary.” *Id.* at
10 434. The court has discretion in determining whether the number of hours was reasonably
11 expended. *Cunningham v. Los Angeles*, 879 F.2d 481, 484–85 (9th Cir. 1988).

12 Defendant has not argued for a reduction in any of attorney Marcus’s claimed hours. (*See*
13 *generally* Doc. No. 28.) Rather, defendant argues solely that an extension of time for the filing of
14 this fees motion should not be granted. (*See id.*) Nevertheless, the court must independently
15 review the reasonableness of the hours counsel seeks to be compensated for by way of the
16 pending motion. *See Hensley*, 461 U.S. at 433, 436–37.

17 In the pending motion, attorney Marcus includes time entries related to: 1) the October 1,
18 2018 complaint for attorney’s fees; 2) discovery efforts; 3) preparation and participation in the
19 January 3, 2019 scheduling conference; 4) the February 4, 2019 motion for attorney’s fees; 5) the
20 request for an extension to file a motion for attorney’s fees; and 6) the December 24, 2019 motion
21 for attorney’s fees. (*See generally* Doc. No. 26-2.)

22 In the undersigned’s view, attorney Marcus should only now recover for services rendered
23 with respect to the October 2018 and February 2019 fee petitions, and the pending motion for
24 attorney’s fees. Therefore, as indicated in the table below, the court will deduct all attorney time
25 entries unrelated to the preparation of the complaint and motions for attorney’s fees.

26 Moreover, attorney Marcus should not recover for time expended on discovery efforts in
27 this case because the court’s Scheduling Order stated that the “parties have waived their right to
28 discovery.” (Doc. No. 14 at 1.) Plaintiff also indicated in his proposed order that time expended

1 on discovery was not applicable to this matter and should therefore be deducted. (Doc. No. 27-1
2 at 8.) Attorney Marcus is thus not entitled to an award of any attorney’s fees related to discovery
3 efforts.

4 Further, several of attorney Marcus’s time entries are too vague for the court to determine
5 whether the time reflected in those entries was reasonably expended. For example, counsel
6 submits the following entries: “Drafted Motion for Attorney’s Fees for prevailing party –
7 utilizing prior motion as template” (1.8 hours) and “Final review of Motion for Fees and Leave to
8 File untimely” (0.7 hours). (Doc. No. 26-2 at 5.) The court is unable to determine from such
9 entries how much time was spent on which sections of the motion for attorney’s fees, the
10 proposed order, and the request for leave to file an untimely motion. Moreover, the court has
11 reviewed plaintiff’s 14-page proposed order for the pending motion and deems it to be excessive
12 when compared to what was necessary in this case. *See Hensley*, 461 U.S. at 434 (“[H]ours that
13 were not ‘reasonably expended’” should be excluded from an award, including “hours that are
14 excessive, redundant, or otherwise unnecessary.”). Therefore, the court concludes that attorney
15 Marcus has not met her burden of demonstrating that certain time entries reflected in her billing
16 records are reasonable. Accordingly, the court will deduct the insufficiently detailed billing
17 entries from plaintiff’s fee award as indicated in the table below. *See id.* at 433 (holding that the
18 court may reduce requested award where documentation of the attorney time expended is
19 inadequate).

20 Lastly, attorney Marcus seeks fees for services rendered in connection with filing the
21 filing of plaintiff’s request for a 90-day extension to file a motion the motion for fees on fees.
22 (Doc. No. 26-2 at 5.) While this court has found excusable neglect in allowing plaintiff to file a
23 delayed motion for attorney’s fees, the court will not grant attorney Marcus’s fee application to
24 the extent it seeks to recoup fees related to researching and drafting a request for an extension of
25 time to seek those fees. Attorney Marcus would not have been entitled to such fees had she filed
26 a timely motion for attorney’s fees. There is no reason for counsel to now benefit from that
27 delayed filing.

28 ////

1 For these reasons, the court will deduct the following time entries from the pending
 2 motion in awarding attorney's fees:

3

4 **Time Entries (Doc. No. 26-2)**

Date	Performed By	Description	Time
12/21/18	Paralegal	Drafted Initial Disclosures (.5); reviewed evidence to prepare for initial disclosures (.4)	0.9
12/21/18	Marcus	Drafted Request for Interrogatories (.8); Drafted Request for Admissions (.9); reviewed settlement and correspondence to prepare for Written Discovery (.5)	2.2
8/26/19	Marcus	Reviewed & analysis of Decision (.8); consult re: interest & decision (.2)	1.0
12/20/19	Marcus	Receipt of notice from Lisa Coffman Staff Attorney to Chief Judge Lawrence J. O'Neill, re CD's left at Court from case – realized Fees were never filed for/not put on calendar – timeline missed – research re motion to accept late motion for fees	1.5
12/20/19	Marcus	Research Rule 60 re: timelines for filing attorneys fees	0.2
12/21/19	Marcus	File review and drafting of Request of Leave, to include OAH cases & background of unintentional neglect	1.7
12/21/19	Marcus	Drafted Motion for Attorney's Fees for prevailing party – utilization prior motion as template ⁵	1.8
12/23/19	Marcus	Drafting: review and update for Request for Leave for late filing	2.3
12/23/19	Paralegal	Review and edit draft of Request for Leave of late filing for Attorneys Fees and costs (1) and motion for fees (.4)	1.4
12/24/19	Marcus	Final review of Motion for Fees ⁶ and Leave to File untimely	0.7
		Marcus Reduction 11.4 x \$500	\$5,700
		Paralegal Reduction 2.3 x \$150	\$345
		Total Deduction from Award	\$6,045

21 Overall, the court will reduce plaintiff's attorney's fees for attorney Marcus's services by
 22 \$5,700. As noted above, the court will further reduce the amount to be awarded by \$345 for the
 23 paralegal's services. Therefore, the total reduction will be \$6,045. Aside from the above noted
 24 entries, the court has reviewed the remaining billing entries and finds that they are reasonable.
 25 No further deductions are found to be necessary or appropriate.

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27 ⁵ This vague time entry does not delineate how much time was spent drafting each document.

28 ⁶ See n.5.

1 **C. Costs**

2 “Plaintiffs are entitled to their . . . costs as part of an award of fees Even though not
3 normally taxable as costs, out-of-pocket expenses incurred by an attorney which would normally
4 be charged to a fee paying client are recoverable as attorney’s fees.” *Chalmers*, 796 F.2d at 1216.
5 Plaintiff now seeks reimbursement for an additional \$49.10 in costs related to sending the instant
6 motions via overnight mail to the previously assigned district judge. (Doc. No. 26-2 at 5.)
7 Defendant does not contest these costs. (*See generally* Doc. No. 28.) Because Local Rule 133(f)
8 requires courtesy copies to be delivered to chambers by the next business day, the court concludes
9 that plaintiff is entitled to a total of \$49.10 in reimbursements for costs.

10 **SUMMARY OF CALCULATIONS⁷**

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Name	Amended Rate	Awarded Hours	Awarded Hours Total
Marcus	\$500	47.1	\$23,550
Paralegal	\$150	18.5	\$2,775
Costs			\$49.10
TOTAL			\$26,374.10

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17 **CONCLUSION**

18 For the reasons set forth above,

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- 20 1. Plaintiff’s request for an extension to file the motion for attorney’s fees is granted
(Doc. No. 25).
 - 21 2. Plaintiff’s motion for attorney’s fees is granted in part (Doc. No. 26).
 - 22 a. The court will award to plaintiff \$26,325 in fees and \$49.10 in costs.
 - 23 b. Therefore, the total award to plaintiff is \$26,374.10.
- 24

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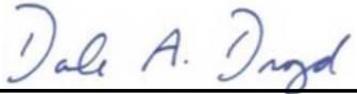
27 ⁷ For the ease of calculating fees in future filings, the court requests that plaintiff’s counsel
28 include the total number of hours and fees for each billing employee, separately (e.g., “total
number of attorney hours: 100, total number of paralegal hours: 100”).

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3. Pursuant to the settlement agreement of the parties (Doc. No. 16-5 at 6), defendant shall pay attorney Marcus the awarded fees on fees and costs within thirty (30) days of this Order.
4. No further motion for attorney's fees will be entertained in this action.

IT IS SO ORDERED.

Dated: September 11, 2020


UNITED STATES DISTRICT JUDGE