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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD HAYES ALBEE,

Plaintiff,

v.

CONTINENTAL TIRE NORTH  
AMERICA, INC., An Ohio  
Corporation, and FORD  
MOTOR COMPANY, INC., a  
Delaware Corporation,

Defendants.

NO. CIV. S-09-1145 LKK/EFB

O R D E R

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Pending before the court is a motion by plaintiff for reconsideration of this court's January 21, 2011 order granting sanctions against plaintiff's attorney for a last-minute cancellation of a scheduled deposition. Plaintiff also objects to the amount in sanctions requested by defendant Continental Tire North America ("CTNA"). For the reasons stated below, plaintiff's motion for reconsideration, ECF No. 176, is GRANTED in part and DENIED in part. The court GRANTS defendants request fees and costs from plaintiff in the amount of \$2331.58.

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**I. Background**

On January 21, 2011, this court issued an order denying Defendant Ford Motor Company's motion for summary judgment. In that order, the court also granted in part defendant CTNA's motion for sanctions against plaintiff's counsel for failing to attend a deposition that plaintiff had noticed. Plaintiff had argued that he was justified in failing to attend the deposition after defendant stated that it did not have documents responsive to a request by plaintiff. Without the documents, plaintiff argued, the deposition would have been futile. Although plaintiff had requested the documents several times over the preceding months, Plaintiff did not directly inform defendant that the deposition was contingent on the production of documents. The court held that an award of reasonable costs and fees was appropriate pursuant to Fed. R. Civ. P. 30(g)(1), but that CTNA had not provided sufficient detail to support the amount requested. The court ordered CTNA to submit an affidavit to the court that itemized the costs and fees requested. CTNA timely submitted its affidavit. ECF No. 175. Plaintiff now moves for reconsideration of the award of sanctions. ECF No. 176. Plaintiff also objects to the amount sought by defendant. ECF No. 177. The court addresses these motions in turn.

**II. Plaintiff's Motion for Reconsideration**

\_\_\_\_ Plaintiff moves for reconsideration of this court's January 21, 2010 order granting sanctions against plaintiff's counsel for a last-minute cancellation of a scheduled deposition that plaintiff had noticed. Plaintiff bases its motion for reconsideration on an

1 assertion that this court's order relied upon inaccurate factual  
2 allegations made by CTNA. Specifically, plaintiff argues that CTNA  
3 misrepresented the date it notified plaintiff's attorney that CTNA  
4 could not produce the requested documents. Plaintiff provides  
5 evidence that his attorney was notified that defendant could not  
6 produce the documents on November 17, 2011, the evening before the  
7 deposition, and not on November 16, 2011, as stated in defendant's  
8 motion for sanctions. Pl.'s Mot. to Reconsider 2. Defendant  
9 concedes that there was a typographical error in its motion for  
10 sanctions, and that it did not notify plaintiff until November 17.  
11 However, the court agrees with defendant that the date is  
12 irrelevant, since this court based its grant of sanctions on the  
13 fact that plaintiff never informed defendant that the deposition  
14 was contingent on the production of documents. Order, ECF No. 173  
15 at 15.

16 At the hearing held on this motion on February 28, 2011, the  
17 court granted plaintiff's motion for reconsideration, noting that  
18 common sense should have dictated to the defendant that the  
19 deposition would have been futile without the requested documents.  
20 The categories of testimony to be given at the deposition-Ford's  
21 inspections and evaluations of tire facilities-were closely related  
22 to the documents requested. Upon further consideration, however,  
23 the court concludes that it is appropriate for the plaintiff to pay  
24 for half of defendant CTNA's reasonable fees and costs for the  
25 cancelled deposition. Plaintiff's conduct in cancelling the  
26 deposition was not the highest in professional conduct, but

1 defendant's failure to apply common sense under the circumstances  
2 was also a cause of the costs and fees incurred. The court  
3 concludes that plaintiff and defendant CTNA are each responsible  
4 for one-half of the reasonable costs and fees incurred as a result  
5 of the cancelled deposition.

### 6 **III. Attorney's Fees Calculations**

7 \_\_\_\_\_In response to this court's order, defendant CTNA submitted  
8 a declaration from its attorney, Anthony F. Latiolait with an  
9 explanation of attorney's fees incurred as a result of the last-  
10 minute cancellation of the deposition. CTNA requests that the  
11 court award reasonable expenses of \$6725.65 for the following:

- 12 1) \$950.65 in travel costs (including airfare, 2 night hotel  
13 stay, and 2 day car rental fees);
- 14 2) seven hours of attorney time spent traveling to Ohio;
- 15 3) five hours of attorney time spent preparing witness for  
16 deposition;<sup>1</sup>
- 17 4) one hour of attorney time spent driving to and from the  
18 deposition location and waiting at the deposition location;
- 19 5) seven hours of attorney time spent traveling back to Los  
20 Angeles from Ohio.

21 Dec. of Latiolait. The declaration states an hourly rate for this  
22 type of work at \$275.00, totaling the fees to \$5775.00 in addition  
23 to the \$950.65 in travel expenses.

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25 <sup>1</sup> Latiolait's declaration actually states "Five (6) hours of  
26 attorney time spent meeting with and preparing the company  
representative for his scheduled deposition." The court construes  
this to mean five (5), and not six (6) hours.

1 Plaintiff has filed an objection to the amount of attorney  
2 fees sought by CTNA. Plaintiff objects on three bases. First,  
3 plaintiff argues that Latiolait fails to state whether "he was  
4 accomplishing billable work unrelated to the scheduled deposition"  
5 during his seven hour flight from Los Angeles to Akron. Second,  
6 plaintiff argues that six hours in deposition preparation is  
7 excessive because CTNA had no documents to produce and therefore  
8 there were no documents to review, nor any reason to prepare for  
9 the deposition. Further, he argues that Latiolait did not state the  
10 date when this preparation occurred. Third, plaintiff argues there  
11 was no reason for Mr. Latiolait to go to Akron on November 16  
12 instead of November 17, a day before the scheduled deposition and  
13 thus asks this court to reduce the hotel and rental car bills by  
14 half. Pl.'s Obj., ECF No. 177.

15 Fed. R. Civ. P. 30(g) (1) allows a party to recover "reasonable  
16 expenses, including attorneys fees, when the party noticing a  
17 deposition fails to attend and proceed with the deposition." See  
18 Detsch & Co. V. American Products Co., 141 F.2d 662 (9th Cir.  
19 1944). The court finds that it is reasonable to reduce the hourly  
20 rate for travel time to half of the hourly rate for attorney fees.  
21 See, e.g. Watkins v. Fordice, 7 F.3d 453, 459 (5th Cir.  
22 1993) (affirming a reduction by half of the hourly rate for time  
23 billed for travel, where the Voting Rights Act provided for  
24 "reasonable fees" to be awarded to the prevailing party.). In this  
25 case, defendant has requested fees for fifteen hours of travel time  
26 (seven hours each way of flight time, plus one hour of driving

1 time). This travel time accounts for \$4125 of the requested fees.  
2 The court reduces this amount by one-half, or \$2062.50. The court  
3 also construes Latiolait's ambiguous declaration to mean that Mr.  
4 Latiolait spent five, and not six hours preparing the witness for  
5 the deposition. The court therefore reduces the amount of fees  
6 requested by \$275, equivalent to fees for one hour of work. Thus,  
7 the total amount in reasonable fees and costs is \$4388.15.  
8 Plaintiff's reasonable share of that about is \$2331.58

9 **IV. Conclusion**


10 The court ORDERS as follows:

11 [1] Plaintiff's motion for reconsideration,  
12 ECF No. 176 is GRANTED in part and  
13 DENIED in part.

14 [2] Plaintiff SHALL pay defendant CTNA \$2331.58 within  
15 thirty (30) days of the issuance of this order.

16 IT IS SO ORDERED.

17 DATED: March 16, 2011.

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21 LAWRENCE K. KARLTON  
22 SENIOR JUDGE  
23 UNITED STATES DISTRICT COURT  
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