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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES CORNELIUS JAMES,
Plaintiff,
v.
DEEPAK MEHTA, et al.,
Defendants.

NO. CIV. S-10-1171 LKK/DAD P

O R D E R

Plaintiff has filed a motion for reconsideration of Magistrate Judge Drozd's decision to approve payment of Dr. Loman-Hoerth at her customary hourly rate. See Pl's Mot., ECF No. 120; 04/19/2013 Minutes, ECF No. 110. For the reasons provided herein, the court DENIES Plaintiff's motion for reconsideration.

I. BACKGROUND

Plaintiff, a state prisoner at the California Medical Facility ("CMF"), is proceeding through counsel with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff claims, in part, that he was denied physical and occupational therapy prescribed by Dr.

1 Catherine Lomen-Hoerth, a medical provider at UCSF Medical Center
2 in San Francisco, in violation of his Eighth Amendment rights.
3 Pl's Second Am. Compl., ECF No. 19.

4 In another case filed in this district, Plaintiff brings
5 claims against the California Department of Corrections and
6 Rehabilitation ("CDCR"), pursuant to the Americans with
7 Disabilities Act and the Rehabilitation Act, for failing to provide
8 Plaintiff with access to prison activities and programs, including
9 physical therapy prescribed by Dr. Lomen-Hoerth. See James v.
10 Hubbard, et al., No. 2:08-cv-01857-RRC, at Fifth Am. Compl., ECF
11 No. 32.¹

12 Defendants noticed the deposition of Dr. Lomen-Hoerth for
13 April 23, 2013. Plaintiff requested that the deposition be
14 coordinated with the deposition of Dr. Lomen-Hoerth in Plaintiff's
15 other action filed in this district, James v. Hubbard, No. 2:08-cv-
16 01857-RRC, and served a cross-notice of deposition under both
17 cases.

18 On March 29, 2013, Plaintiff filed a Motion to Clarify
19 Deposition Procedures to "resolve . . . the issue of whether
20 federal practice allows for compensation in addition to the witness
21 fee of a treating doctor who has not been retained as an expert by
22 any party, and if so, what amount of compensation is appropriate."

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25 ¹ Plaintiff has filed a Notice of Related Cases for each of
26 his cases filed in this district and the parties refer to these two
cases as being related. The cases are not, in fact, related.

1 Pl's Mot., ECF No. 102.²

2 On April 12, 2013, the parties filed a Joint Statement re:
3 Discovery Disagreements, pursuant to Local Rule 251, to set forth
4 their respective positions as to the appropriate fee, and the
5 burden of payment, for Dr. Lomen-Hoerth's testimony. Joint
6 Statement, ECF No. 107.

7 Plaintiff noted that "[f]ederal courts are split on whether
8 a treating doctor may be compensated in addition to the witness fee
9 and mileage for deposition or trial testimony" and sought
10 clarification from the court as to "whether the doctor can receive
11 an hourly fee for providing deposition testimony" in "excess of the
12 appearance fee." Id. at 3-4. Plaintiff also requested "to incur
13 this cost from the Nonappropriated Fund under General Order 510."
14 Id. at 4; see also Pl's Mot., ECF No. 109.

15 Defendants contended that it was not "fair to have defendants
16 bear the entire cost of the deposition when it is plaintiff who
17 seeks to depose Dr. Lomen-Hoerth in the companion case" and that
18 "a reasonable resolution . . . would be for the parties to agree
19 to split the cost of Dr. Lomen-Hoerth's \$700 per hour fee with half
20 of the time being paid by the plaintiff and the other half of the
21 time being paid by the defendants." Id. at 5.

22 On April 19, 2013, following a hearing on the Motion to
23 Clarify Deposition Procedures, Magistrate Judge Drozd "approved
24

25 ² The parties agree that the U.C. Regents' standard
26 compensation is \$700 per hour for time spent giving a deposition,
pursuant to California Code of Civil Procedure § 2034.430.

1 payment of the customary hourly rate of Dr. Loman-Hoerth to acquire
2 testimony in the case" and determined that the "parties shall split
3 the cost." See 04/19/2013 Minutes, ECF No. 100.

4 On April 30, 2013, Magistrate Judge Drozd approved Plaintiff's
5 request to incur costs for Dr. Loman-Hoerth's compensation, in the
6 amount of \$700, from the Nonappropriated Fund. Order, ECF No. 121.

7 On May 3, 2013, Plaintiff filed the instant motion for
8 reconsideration of Magistrate Judge Drozd's decision to approve
9 payment of Dr. Loman-Hoerth at her customary hourly rate. Pl's
10 Mot., ECF No. 120.

11 **II. STANDARD FOR RECONSIDERATION**

12 Under Eastern District of California Local Rule 303(c), "A
13 party seeking reconsideration of a Magistrate Judge's ruling shall
14 file a request for reconsideration by a Judge. . . . Such request
15 shall specifically designate the ruling, or part thereof, objected
16 to and the basis for that objection."

17 Local Rule 303(f) provides that "[t]he standard that the
18 assigned Judge shall use in all such requests is the 'clearly
19 erroneous or contrary to law' standard set forth in 28 U.S.C. §
20 636(b)(1)(A)."

21 The latter statute provides:

22 Notwithstanding any provision of law to the
23 contrary . . . a judge may designate a magistrate
24 judge to hear and determine any pretrial matter
25 pending before the court, except [certain specified
26 matters]. A judge of the court may reconsider any
pretrial matter under this subparagraph (A) where
it has been shown that the magistrate judge's order
is clearly erroneous or contrary to law.

1 28 U.S.C. § 636(b)(1)(A).

2 An order is "clearly erroneous" if "although there is evidence
3 to support it, the reviewing court on the entire evidence is left
4 with the definite and firm conviction that a mistake has been
5 committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395,
6 68 S.Ct. 525, 92 L.Ed. 746 (1948). "[R]eview under the 'clearly
7 erroneous' standard is significantly deferential. . . ."
8 Concrete Pipe and Prods. v. Constr. Laborers Pension Trust, 508
9 U.S. 602, 622, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993). Under the
10 "contrary to law" standard, a district court may conduct
11 independent review of purely legal determinations by a magistrate
12 judge. Computer Economics, Inc. v. Gartner Group, Inc., 50
13 F.Supp.2d 980, 983 (S.D. Cal. 1999) (Whelan, J.). The movant's
14 mere disagreement with a ruling is not grounds for reconsideration.
15 United States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131
16 (E.D. Cal. 2001) (Wanger, J.).

17 **III. ANALYSIS**

18 Upon review of Plaintiff's arguments and the relevant legal
19 authorities, the court determines that Magistrate Judge Drozd's
20 decision to approve payment of Dr. Loman-Hoerth at her customary
21 hourly rate was neither "clearly erroneous" nor "contrary to
22 law."

23 The court therefore DENIES Plaintiff's motion to reconsider
24 the Magistrate Judge's ruling. See Pl's Mot., ECF No. 120.

25 IT IS SO ORDERED.

26 DATED: August 23, 2013.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT