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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SIMMONE GRAHAM, aka SIMMONE)	Case No. 2:10-CV-2335 JAM-KJM
ADELYN CORAHAM,)	
)	ORDER GRANTING DEFENDANTS'
Plaintiff,)	CITY OF SOUTH LAKE TAHOE,
)	SOUTH LAKE TAHOE POLICE
v.)	DEPARTMENT, AND TERRY DANIELS
)	AMENDED MOTION FOR RULE 11
THE CITY OF SOUTH LAKE TAHOE,)	SANCTIONS
CITY OF SOUTH LAKE TAHOE POLICE)	
DEPARTMENT and TERRY DANIELS,)	
)	
Defendants.)	

This matter comes before the Court on Defendants' City of South Lake Tahoe, South Lake Tahoe Police Department, and Terry Daniels ("City Defendants") Motion for Rule 11 Sanctions (Doc. #43) against Plaintiff's counsel, including William O'Mara, Stephen Scheerer, and the O'Mara Law Firm, P.C. The City Defendants request that the sanctions take the form of an award of attorneys' fees in the amount of \$6,900.00. Plaintiff's counsel opposes the motion.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 19, 2011 and then rescheduled for June 1, 2011.

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Plaintiff's Complaint is predicated upon an incident which
3 occurred on August 31, 2008. The California Highway Patrol
4 ("CHP") stopped Plaintiff as she was driving and caused her to
5 undergo field sobriety testing. Plaintiff claims that she was
6 mistaken for an intoxicated person when she was actually suffering
7 from multiple sclerosis. Plaintiff was unable to successfully
8 pass field sobriety testing. She was arrested and taken into
9 custody at the El Dorado County jail located in the City of South
10 Lake Tahoe. Plaintiff claims she was denied her medication for
11 multiple sclerosis. Plaintiff sued eleven named defendants for
12 discrimination based on the ADA, 42 U.S.C. § 1983, and Civil Code
13 § 52.1, in addition to negligence and attorneys' fees. The Court
14 granted all of the defendants' motions to dismiss without leave to
15 amend (Doc. #44).

16 After being served with this lawsuit in late December 2010,
17 counsel for City Defendants claim they continually contacted the
18 O'Mara law firm requesting to be dismissed on the grounds that
19 the City Defendants had no involvement in the stop, arrest,
20 testing, or custody of Plaintiff. On January 31, 2011, counsel
21 for City Defendants, Nira Feeley, contacted counsel for
22 Plaintiff, Stephen Scheerer, via phone. Ms. Feeley requested
23 that the City Defendants be dismissed from the lawsuit. Ms.
24 Feeley provided Mr. Sheerer with a copy of the Declaration of
25 Kathy Bolinger, Police Records Supervisor, showing that the City
26 Defendants had no involvement in the incident giving rise to
27 Plaintiff's claim. On February 10, 2011, City Defendants served
28 Plaintiff's counsel with the motion for sanctions and on March

1 3, 2011 City Defendants filed the motion for sanctions with the
2 Court.

4 II. OPINION

5 1. Legal Standard

6 1. Rule 11 Sanctions

7 Rule 11 requires that pleadings and motions contain
8 allegations and factual contentions which "have evidentiary
9 support," and the claims and other legal contentions must be
10 "warranted by existing law or by a nonfrivolous argument." Fed.
11 R. Civ. P. 11 (b) (2)-(3). When, as here, a "complaint is the
12 primary focus of Rule 11 proceedings, a district court must
13 conduct a two-prong inquiry to determine (1) whether the
14 complaint is legally or factually baseless from an objective
15 perspective, and (2) if the attorney has conducted a reasonable
16 and competent inquiry before signing and filing it." Christian
17 v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002) (internal
18 quotations and citation omitted). The word "frivolous" is used
19 "to denote a filing that is both baseless and made without a
20 reasonable and competent inquiry." In re Keegan Management Co.,
21 Securities Litigation, 78 F.3d 431, 434 (9th Cir. 1996).

22 B. Claims for Relief

23 1. Rule 11 Sanctions

24 City Defendants argue that the Court should impose Rule 11
25 sanctions on Plaintiff's counsel because Plaintiff's counsel
26 failed to conduct a reasonable and factual inquiry before filing
27 the case and the Complaint only used the collective term
28 "Defendants" when describing the various allegations, thus

1 denying City Defendants the ability to ascertain the claims
2 against them. City Defendants also contend that Plaintiff's
3 counsel should be sanctioned because they maintained this
4 lawsuit against City Defendants after being made aware that City
5 Defendants had no involvement in the incident. Plaintiff's
6 counsel does not oppose City Defendants' arguments concerning
7 the frivolousness of the Complaint, but instead counters that
8 City Defendants failed to abide by the safe harbor rule. Though
9 the motion for sanctions was mailed on February 10, 2011,
10 Plaintiff's counsel claims it was not received until February
11 14, 2011. Since the motion for sanctions was filed on March 3,
12 2011, which is less than 21 days after the alleged receipt of
13 the motion, Plaintiff's counsel argues that City Defendants
14 failed to properly comply with the safe harbor rule.

15 "The safe harbor provision gives an attorney the
16 opportunity to withdraw or correct a challenged filing by
17 requiring a party filing a Rule 11 motion to serve the motion 21
18 days before filing the motion." Retail Flooring Dealers of
19 America, Inc. v. Beaulieu of America, LLC, 339 F.3d 1146, 1150
20 (9th Cir. 2003); see Fed. R. Civ. P. 11(c)(1)(A). Federal Rules
21 of Civil Procedure 5(b)(2)(C) states that service may be made by
22 "mailing [a paper] to the person's last known address - in which
23 event service is complete upon mailing." The Court finds that
24 since City Defendants mailed the Motion for Rule 11 Sanctions to
25 Plaintiff's counsel on February 10, 2011 (Doc. #43, Exh. A), and
26 waited 22 days to file the motion on March 3, 2011, City
27 Defendants properly complied with the safe harbor rule.

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1 Furthermore, the Court finds that Plaintiff's action
2 against City Defendants was frivolous. The Complaint consisted
3 of vague and indiscernible allegations against City Defendants.
4 The allegations against City Defendants were baseless as City
5 Police records show that Plaintiff was not stopped, arrested,
6 tested or taken into City Defendants' custody. See Declaration
7 of Kathy Bolinger, Police Records Supervisor, City of South Lake
8 Tahoe, Exh. B. The fact that City Defendants have no connection
9 to the incident in Plaintiff's Complaint demonstrates that
10 Plaintiff's counsel failed to comply with their duty to
11 investigate. Even if Plaintiff's counsel had limited time to
12 investigate prior to filing the Complaint, they should have
13 dismissed City Defendants from the suit after being contacted by
14 City Defendants' counsel and being shown evidence that City
15 Defendants had no involvement in the incident giving rise to
16 Plaintiff's claims. Accordingly, the Court finds that the
17 allegations concerning City Defendants are frivolous and it
18 GRANTS City Defendants' Motion for Sanctions.

19 C. Sanctions in the Form of Attorneys' Fees

20 City Defendants request sanctions in the form of attorneys'
21 fees and ask for \$6,900.00. Plaintiff's counsel does not contest
22 that attorneys' fees are an appropriate sanction but instead asks
23 the Court to reduce the fees based on an unsupported theory in
24 which attorneys' fees are to be calculated based on the attorneys'
25 salaries and what they earn per hour. Plaintiff's counsel also
26 disputes billing items pertaining to Michelle Beckwith and various
27 phone calls.
28

1 Rule 11 allows payment to the movant of part or all of the
2 reasonable attorney's fees and other expenses directly resulting
3 from the violation. Fed. R. Civ. P. § 11 (c) (4). The Court finds
4 that in order to deter repetition of the conduct promulgated by
5 Plaintiff's counsel in bringing this frivolous lawsuit, and in
6 order to restore City Defendants to the position they were in prior
7 to defending this lawsuit, attorneys' fees and costs are the proper
8 form of sanctions.

9 The Ninth Circuit has held that an attorney's hourly rate is
10 reasonable where it is within the range of salaries of attorneys of
11 comparable experience. Winterrowd v. American General Annuity
12 Insurance Co., 556 F.3d 815, 826-27 (9th Cir. 2009). In
13 Winterrowd, the court stated that a district court is within its
14 discretion in setting an associate attorney's reasonable hourly
15 rate at \$300 because such rate was well supported by evidence of
16 market rates. Id. Here, the Court finds that the rates for
17 Patrick Enright, City Attorney, at \$250 per hour, and Nira Feeley,
18 Deputy City Attorney, at \$195 per hour, are reasonable and within
19 the range of salaries for attorneys with comparable experience.

20 The Court has reviewed the City Attorneys' timesheets and
21 finds the billing items reasonable. With respect to Plaintiff's
22 counsels' argument that they cannot ascertain the identity of
23 Michelle Beckwith, such confusion would have been resolved if
24 Plaintiff's counsel had read City Defendants' Motion to Dismiss in
25 which Michelle Beckwith, Risk Management Coordinator for the City
26 of South Lake Tahoe, submitted a declaration in support of the
27 motion for dismissal. Accordingly, the Court GRANTS City
28 Defendants' fee motion and orders Plaintiff's counsel, including

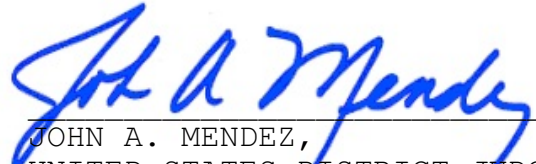
1 William O'Mara, Stephen Scheerer, and the O'Mara Law Firm, P.C.,
2 pursuant to Rule 11 of the Federal Rules of Civil Procedure, to pay
3 \$6,900.00 to City Defendants.

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5 III. ORDER

6 For the reasons set forth above,
7 City Defendants' Motion for Rule 11 Sanctions is GRANTED
8 and Plaintiff's counsel, including William O'Mara, Stephen
9 Scheerer, and the O'Mara Law Firm, P.C., jointly and severally,
10 are ordered to pay \$6,900.00 in fees to City Defendants within
11 ten (10) days of the date of this Order.

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13 IT IS SO ORDERED.

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15 Dated: May 24, 2011

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18 JOHN A. MENDEZ,
19 UNITED STATES DISTRICT JUDGE
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