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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKIE L. CHIPMAN,

Plaintiff,

v.

MARCIA F. NELSON, M.D., ENLOE
MEDICAL CENTER, JOSEPH M.
MATTHEWS, M.D., GERARD R.
VALCARENGHI, M.D., DALE J.
WILMS, M.D., DINESH VERMA, M.D.,
ATTILA KASZA, M.D., JANE
STANSELL, DIRK POTTER, JULIE
CLARK-MARTIN, BRENDA
BOGGSHARGIS, KINDRED HOSPITAL
SACRAMENTO, EVA LEW, M.D.,
MARK AVDOLAVIC, M.D., and DOES 1
through 25,

Defendants.

No. 2:11-cv-2770-TLN-EFB PS

ORDER

This case was before the court on May 18, 2016, for hearing on plaintiff’s motions to
compel former defendants Dirk Potter and Jane Stansell and non-party Bertha Murrilo’s
compliance with subpoenas (ECF Nos. 473, 477, 482), and defendant THC Orange County, Inc.
dba Kindred Hospital Sacramento’s (“Kindred”) motion to compel responses to discovery

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1 requests (ECF No. 483).¹ Attorney Wendy Green appeared on behalf of Dirk Potter and attorney
2 William Munoz appeared on behalf of Jane Stansell; plaintiff appeared pro se.

3 For the reasons stated on the record, plaintiff's motions to compel (ECF No. 473, 477,
4 482) are denied and Kindred's motion to compel (ECF No. 483) is granted. By no later than June
5 29, 2016, plaintiff shall provide completed responses to Kindred's Special Interrogatories, Set 1;
6 Form Interrogatories; and Requests for Production of Documents, Set 1.

7 Furthermore, as stated on the record, plaintiff is ordered to pay Dirk Potter, Jane Stansell,
8 and Kindred the reasonable expenses incurred in litigating the motions to compel. *See* Fed. R.
9 Civ. P. 37(a)(5)(A) (if a motion to compel is granted, the court must require the party whose
10 conduct necessitated the motion to pay the movant's reasonable expenses incurred in making the
11 motion); Fed. R. Civ. P. 37(a)(5)(B) (if a motion to compel is denied, the court must require the
12 movant to pay the reasonable expenses incurred in opposing the motion). Counsel for Potter,
13 Stansell, and Kindred have each submitted a declaration detailing the purported expenses
14 incurred. ECF Nos. 504, 505, 514. The court addresses the reasonableness of each party's
15 request for fees below.²

16 I. Standard for Assessing Fees

17 In assessing the reasonableness of a request for attorney's fees, courts use the lodestar
18 method. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). In applying the lodestar
19 method, "a district court must start by determining how many hours were reasonably expended on
20 the litigation, and then multiply those hours by the prevailing local rate for an attorney of the skill
21 required to perform the litigation." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.

22 ¹ The court also heard defendants Mark Avdalovic's and Eva Lew's motion for summary
23 judgment. ECF No. 481. That motion will be addressed in separate findings and
24 recommendations.

25 ² Following the hearing, plaintiff submitted a declaration objecting to the court awarding
26 Potter, Stansell, and Kindred the reasonable expenses they incurred in litigating the discovery
27 motions. ECF No. 515. Aside from her general objection to an award of fees, plaintiff provides
28 no basis for denying reasonable fees to these parties. Although she argues that having to
reimburse Potter, Stansell, and Kindred their expenses will create an "undue hardship" (*id.* at 3),
her conclusory statement is insufficient to show that "other circumstances make an award of
expenses unjust." Fed. R. Civ. P. 37(a)(5)(A) and (B).

1 2008). “In addition to computing a reasonable number of hours, the district court must determine
2 a reasonable hourly rate to use for attorneys and paralegals in computing the lodestar amount.”
3 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). “The Supreme Court has
4 consistently held that reasonable fees ‘are to be calculated according to the prevailing market
5 rates in the relevant community.’” *Van Skike v. Dir. Off. Of Workers’ Comp. Programs*, 557 F.3d
6 1041, 1046 (9th Cir. 2009).

7 II. Dirk Potter

8 Mr. Potter seeks an award of fees in the amount of \$2,682.00 for 14.9 hours of work
9 performed by attorney Wendy Green at a rate of \$180 per hour, plus \$6.35 in costs. The court
10 finds Ms. Green’s hourly rate is more than reasonable for legal work performed in this district.
11 However, the 14.9 hours of work performed by counsel includes the performance of tasks that
12 were not directly related to opposing plaintiff’s motion to compel. Ms. Green seeks
13 reimbursement for work related to reviewing plaintiff’s subpoena and preparing objections, work
14 performed prior to plaintiff filling her motion to compel. Under Rule 37, Ms. Green, on behalf of
15 her client, may recover the reasonable fees incurred in opposing plaintiff’s motion to compel. *See*
16 *Fed. R. Civ. P. 37(a)(5)(B)* (If a motion to compel is denied, the court must require the movant to
17 pay the party “who opposed the motion its reasonable expenses *incurred in opposing the motion*”)
18 (emphasis added). Thus, some courts have awarded fees for successful litigation of a motion to
19 compel but refused to award fees for the tasks of preparing the underlying discovery request or
20 reviewing and responding to an underlying subpoena or discovery request. *Alutiiq International*
21 *Solutions, LLC v. Lyon*, 2012 WL 4182026 (D. Nev. Sept. 17, 2012); *Catapult Communications,*
22 *Corp. v. Foster*, 2009 WL 2707040 (N.D. Ill., Aug. 25, 2009). Whether an award for those tasks
23 is ever compensable under the rule is not clear. While a reasonable argument can be made that
24 the task involved in initially responding to a subpoena or discovery demand that has since been
25 determined to be improper or harassing was work necessarily incurred in opposing a motion to
26 compel,³ there is little guidance in the caselaw. In any event, the court exercises its discretion

27 ³ One could hardly prepare an opposition to a motion to compel compliance with an
28 inappropriate discovery demand without timely reviewing and responding to it.

1 here to limit the fee award to only those hours involved in the actual litigation of the plaintiff's
2 motion. In doing so, the court is fashioning a discovery sanction that both deters future discovery
3 abuses in this case as well as reimburses defendant for some of the costs incurred as a result of
4 those abuses. Thus, the court reduces Mr. Potter's total hours by 5.5 hours for all work performed
5 prior to plaintiff filing her motion to compel. *See* ECF No. 504-1 at 2.

6 Mr. Potter is awarded \$1,692 for 9.4 hours of work performed at a rate of \$180 per hour.
7 The court also finds that Mr. Potter's request for \$6.35 in costs for parking fees during the hearing
8 on the motion to compel is reasonable. Accordingly, plaintiff shall reimburse Mr. Potter in the
9 amount of \$1,698.35 for the reasonable expenses incurred in opposing her motion to compel.

10 III. Jane Stansell

11 Ms. Stansell seeks fees based on 5.1 hours of work by attorney William Munoz at a rate of
12 \$240 per hour, 4 hours of work by attorney Robert Lucas at a rate of \$210 per hour, and 4.5 by
13 attorney Heather Barnes at a rate of \$210 per hour, for a total of \$3,009. While the hourly rates
14 are reasonable for comparable legal services performed in this district, Ms. Stansell's counsel also
15 seeks reimbursement for expenses that are not directly related to opposing plaintiff's motion.

16 Mr. Munoz's declaration indicates that Mr. Lucas spent 4.0 corresponding with Ms.
17 Stansell regarding the subpoena, preparing objections, and researching "the issues involving the
18 attorney-client privilege and attorney work product." ECF No. 514. As with Mr. Potter, while
19 these tasks relate to the underlying discovery requests, and in a generalized way relate to work
20 done in opposition to plaintiff's motion to compel, they were not performed directly in opposition
21 to the motion. Accordingly, the court similarly exercises its discretion to reduce the amount of
22 the award by \$840 for the work performed by Mr. Lucas. Accordingly, plaintiff shall reimburse
23 Ms. Stansell in the amount of \$2,169 for the reasonable expenses incurred in opposing her motion
24 to compel.

25 IV. Kindred

26 Kindred Hospital requests that it be awarded attorney's fees in the amount of \$1,760. The
27 declaration of Kathleen Humphrey, Kindred's counsel, indicates that she spent a total of 8 hours
28 preparing the motion, reviewing plaintiff's opposition and preparing a reply, and attending the

1 hearing. She also provides that her hourly billing rate is \$220 per hour. The hourly rate and
2 number of hours expended are reasonable. Accordingly, plaintiff shall reimburse Kindred in the
3 amount of \$1,760 for the reasonable expenses incurred in bringing its motion to compel.

4 V. Conclusion

5 Accordingly, it is hereby ORDERED that:

6 1. Plaintiff's motions to compel former defendants Dirk Potter and Jane Stansell and non-
7 party Bertha Murrilo's compliance with subpoenas (ECF Nos. 473, 477, 482) are denied.

8 2. Defendant Kindred's motion to compel plaintiff to provide responses to discovery
9 requests (ECF No. 483) is granted.

10 3. By no later than June 29, 2016, plaintiff shall provide completed responses to
11 Kindred's Special Interrogatories, Set 1; Form Interrogatories; and Requests for Production of
12 Documents, Set 1.

13 4. Within 30 days of the date of this order, plaintiff shall:

14 a. reimburse former defendant Dirk Potter in the amount of \$1,698.35 for the
15 reasonable expenses incurred in opposing her motion to compel.

16 b. reimburse former defendant Jane Stansell in the amount of \$2,169 for the
17 reasonable expenses incurred in opposing plaintiff's motion to compel.

18 c. reimburse defendant Kindred in the amount of \$1,760 for the reasonable
19 expenses incurred in bringing its motion to compel.

20 DATED: June 14, 2016.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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