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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN HILL CONCERNED  
PARENTS ASSOCIATION, an  
unincorporated association, and  
CONCERNED PARENTS  
ASSOCIATION, an unincorporated  
association,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION and DOES 1 through 5,

Defendants.

No. 2:11-cv-03471-KJM-AC

ORDER

In an order filed July 2, 2015, the court appointed Winston Krone as Special Master in this action “for the limited purpose of facilitating the parties’ development of an electronic discovery protocol.” ECF No. 116 at 2. The court concluded that the Special Master’s compensation for that task should be paid by the California Department of Education (CDE). In a minute order filed October 16, 2015, the court lifted a stay on discovery, authorized the parties to notice and file discovery motions, and authorized the assigned Magistrate Judge to “seek all appropriate assistance” from the Special Master in resolution of those motions and extended his appointment accordingly. ECF No. 124. Finally, in an order filed November 3, 2015, the court

1 approved the electronic discovery protocol and directed CDE to meet and confer with the Special  
2 Master “to confirm whether the CDE has backups of the CASEMIS database”, “on the production  
3 of email files, file servers, and network shares of custodians marked ‘priority’ by plaintiffs on  
4 September 14, 2015”, and on “the use of deduplication procedures to avoid duplicate review for  
5 attorney-client privilege.” ECF No. 127 at 2. The order also provided that “[u]ntil the Special  
6 Master determines the plaintiff has established a secure hosting environment and the court  
7 receives and approves his certification to that effect, the CDE will not be required to produce  
8 student data subject to protection under the Family Educational Rights and Privacy Act  
9 (FERPA).” ECF No. 127 at 3.

10 The Special Master forwarded to the court an invoice of his fees incurred between August  
11 4, 2015 and October 18, 2015. After receiving comments from the parties concerning the invoice,  
12 by order filed January 14, 2016, the court directed CDE to pay the full amount of the invoice  
13 within 14 days. ECF No. 147. The court has now received a second invoice from Special Master  
14 Krone for services rendered between November 10, 2015 and December 22, 2015. To date, the  
15 court has not addressed the procedure for compensation of the Special Master for the tasks  
16 required by the November 3, 2015 order and authorized by the October 16, 2105 minute order.  
17 That is the purpose of this order.

18 The standards relevant to fixing the compensation of a Special Master are fully set forth in  
19 the court’s July 2, 2015 order, ECF No. 116 at 2-5, and need not be repeated here. After  
20 consideration of those standards and relevant comments of the parties submitted in response to  
21 the court’s December 1, 2015 order, ECF No. 132, the court has determined that the Special  
22 Master’s compensation should be allocated as follows:

23 For the tasks required by the court’s November 3, 2015 order, plaintiffs shall bear the  
24 costs of time spent by the Special Master determining whether plaintiffs have established a secure  
25 hosting environment, and CDE shall bear the costs of time spent by the Special Master on the  
26 other tasks required by that order.

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1           The costs for time spent, if any, by the Special Master on tasks requested by the assigned  
2 Magistrate Judge in accordance with the court's October 16, 2015 minute order shall be allocated  
3 using the standards set forth in Federal Rule of Civil Procedure 37(a)(5)(A) and (C) for payment  
4 of expenses of a discovery motion. Specifically, any costs for time spent by the Special Master  
5 on tasks that arise as the result of a court order granting a discovery motion shall be borne by the  
6 party or party's attorney whose conduct required the court order or, as appropriate, apportioned  
7 between the parties if the exceptions in Federal Rule of Civil Procedure 37 (a)(5)(A)(i)-(iii) or the  
8 provisions of Federal Rule of Civil Procedure (37)(a)(5)(C) apply to a particular order.

9           Good cause appearing, the court will direct the Special Master to resubmit to this court his  
10 January 9, 2016 invoice using the foregoing criteria to identify which party, in his estimation,  
11 should bear the costs of each item contained in the invoice. The Special Master shall serve a copy  
12 of the January 9, 2016 invoice, as modified, on the parties to this action; service may be by e-  
13 mail. The parties shall have fourteen days to file objections with the Magistrate Judge to the  
14 proposed allocation of costs contained in the modified invoice. Each party shall bear its own  
15 costs of such objections, if any.

16           Going forward, the Special Master shall include the same identification information in any  
17 invoice submitted to the court for payment in this matter. To the extent the Special Master seeks  
18 compensation for time spent on tasks requested by the assigned Magistrate Judge, the  
19 apportionment of costs contained in his invoice shall be viewed as a recommendation that may be  
20 adopted or modified by the Magistrate Judge as appropriate.

21           The matter of payment of all future invoices, with the exception of the invoice for services  
22 rendered between November 10, 2015 and December 22, 2015, is hereby referred to the assigned  
23 Magistrate Judge. The Special Master shall submit all future invoices to the Magistrate Judge and  
24 serve a copy on all parties. The parties shall have fourteen days to object to the proposed  
25 allocation of costs contained in any invoice. Each party shall bear its own costs of such  
26 objections, if any.

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IT IS HEREBY ORDERED that payment of the Special Master commencing with his invoice dated January 9, 2016 and going forward shall be made in accordance with the provisions of this order.

DATED: January 22, 2016.

  
UNITED STATES DISTRICT JUDGE