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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

Before the court is plaintiffs’ request for reconsideration of the magistrate judge’s order denying plaintiffs’ request for attorneys’ fees. *See* February 2, 2017 Order (2017 Order), ECF No. 287; Pls.’ Request for Reconsideration (Request), ECF No. 288. The magistrate judge denied plaintiffs’ request “with leave to renew using Sacramento rates,” 2017 Order at 20, and plaintiffs here argue their request for fees should not be so geographically limited, Request at 4–6. Defendant California Department of Education (CDE) opposes. *Opp’n*, ECF No. 289. For the reasons explained below, the court DENIES the request for reconsideration. Because the court’s determination necessarily resolves a portion of another pending request for reconsideration involving attorneys’ fees, the court denies that request as well.

1 I. BACKGROUND

2 A. The Magistrate Judge’s February 2, 2017 Order

3 On February 2, 2017, the magistrate judge granted plaintiffs’ motion to compel but
4 denied plaintiffs’ request for associated attorneys’ fees. 2017 Order at 16–20. The magistrate
5 judge found plaintiffs were entitled to reasonable attorneys’ fees incurred in making the motion to
6 compel, but denied the request for fees because they were based on San Francisco rates. *Id.* at
7 19–20 (“[T]he undersigned has already determined that local, Sacramento rates are appropriate
8 for attorneys’ fees in this case.”). Because the magistrate judge expressly referenced the
9 magistrate judge’s August 17, 2016 order addressing these issues, the court briefly turns to that
10 ruling.

11 B. The Magistrate Judge’s August 17, 2016 Order

12 The magistrate judge’s prior order found that because plaintiffs were partially
13 successful in pursuing another motion to compel, limited sanctions against defendant were
14 warranted under Federal Rule of Civil Procedure 37(a)(5). *See* August 17, 2016 Order (2016
15 Order) at 17–18, ECF No. 229. The magistrate judge apportioned the sanctions attributable to the
16 successful portion of the motion to compel, *id.* at 21, but granted plaintiffs only a fraction of their
17 associated attorneys’ fee request, *id.* at 21–24. The magistrate judge explained “[t]he general rule
18 is that the rates of attorneys practicing in the forum district, here the Eastern District of California
19 – Sacramento, are used” and “the party seeking fees at a non-local rate must make a showing to
20 overcome this ‘presumption.’” *Id.* (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir.
21 1992); *Barjon v. Dalton*, 132 F.3d 496, 501 (9th Cir. 1997)). Although plaintiffs offered evidence
22 that they had reached out to attorneys in three regions, the magistrate judge concluded plaintiffs
23 failed to make the necessary showing to overcome the presumption of Sacramento rates. *Id.* at
24 22–23. As the magistrate judge explained, plaintiffs’ declarations did not clearly address whether
25 plaintiffs approached Sacramento area attorneys or whether those attorneys were unavailable. *Id.*
26 Finding Sacramento rates applied, the magistrate judge reduced plaintiffs’ request by one half.
27 *Id.* at 24 (reducing rates from \$155,628.96 to \$77,814.48).

1 II. STANDARD

2 Federal Rule of Civil Procedure 72(a) provides that district judges consider
3 timely objections to nondispositive pretrial orders issued by magistrate judges and to “modify or
4 set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P.
5 72(a); *see also* Local Rule 303(f); 28 U.S.C. § 636(b)(1)(A). The “contrary to law” standard
6 permits independent review of purely legal determinations by a magistrate judge. *See, e.g.,*
7 *Brooks v. Motsenbocker Advanced Developments, Inc.*, 2008 WL 3049983, at *1 (S.D. Cal. Aug.
8 1, 2008) (citing *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 91 (3d Cir. 1992)). The “clearly
9 erroneous” standard applies to the magistrate judge’s factual determinations and discretionary
10 decisions. *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 748 (9th Cir. 1990). “A finding is ‘clearly
11 erroneous’ when although there is evidence to support it, the reviewing [body] on the entire
12 evidence is left with the definite and firm conviction that a mistake has been committed.”
13 *Concrete Pipe and Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622 (1993) (quoting
14 *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). “[R]eview under the
15 ‘clearly erroneous’ standard is significantly deferential” *Id.* at 623.

16 “To succeed [on a motion for reconsideration], a party must set forth facts or law
17 of a strongly convincing nature to induce the court to reverse its prior decision.” *Enriquez v. City*
18 *of Fresno*, No. CV F 10–0581 AWI DLB, 2011 WL 1087149, at *1, at *3 (E.D. Cal. Mar. 23,
19 2011). Furthermore, when filing a motion for reconsideration, a party must show “what new or
20 different facts or circumstances are claimed to exist which did not exist or were not shown upon
21 such prior motion, or what other grounds exist for the motion.” Local Rule 230(j)(3). “A motion
22 for reconsideration ‘may not be used to raise arguments or present evidence for the first time
23 when they could reasonably have been raised earlier in the litigation.’” *Marlyn Nutraceuticals,*
24 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting *Kona Enters.,*
25 *Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

1 III. DISCUSSION

2 Plaintiffs here ask for reconsideration of the magistrate judge’s February 2017
3 order denying plaintiffs’ request for attorneys’ fees “with leave to renew using Sacramento rates.”
4 *See* Request at 4–6.

5 Initially, plaintiffs do not argue the magistrate judge misapprehended the law. *Id.*
6 Indeed, the Ninth Circuit has repeatedly made clear that, even in cases of statewide litigation, the
7 presumptively reasonable rates are those of the forum district unless local counsel is “unavailable,
8 either because they are unwilling or unable to perform because they lack the degree of
9 experience, expertise, or specialization required to handle properly the case.” *Gates*, 987 F.2d at
10 1405 (affirming use of San Francisco rates given plaintiffs’ substantial evidence of unavailability
11 of sophisticated counsel in Sacramento necessary to lead the case); *cf. Barjon*, 132 F.3d at 501
12 (affirming district court’s use of local rates where “evidence suggests the availability of qualified
13 local counsel”); *see also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)
14 (remanding case where district court did not consider prevailing rates of forum district or
15 community shown to be comparable to it). The magistrate judge’s order is therefore not subject
16 to the “contrary to law” de novo review, but instead to the significantly deferential “clearly
17 erroneous” standard. *Concrete Pipe and Prods.*, 508 U.S. at 622–23.

18 Plaintiffs argue the magistrate judge committed clear error by concluding
19 plaintiffs’ evidence did not establish unavailability of local counsel. Request at 4–7. Plaintiffs
20 point to evidence they offered in support of an earlier request for attorneys’ fees, including a San
21 Francisco lawyer’s declaration that emphasized the complex nature of this case. Request at 2–3
22 (citing Bien Decl. ¶ 16, ECF No. 206-8); *see also* Sagy Decl. ¶ 43, ECF No. ECF No. 274-1
23 (incorporating prior declarations). Even assuming the need for sophisticated counsel, it was not
24 clearly erroneous for the magistrate judge to conclude plaintiffs failed to show such an attorney
25 was unavailable in this district. The evidence supports the magistrate judge’s determinations that
26 plaintiffs did not show they had specifically sought representation in Sacramento or, even
27 assuming they had, that local counsel was unavailable. *See* Bien Decl.; McNulty Decl. ¶ 4, ECF
28 No. 206-9; Sagy Sanctions Decl. ¶¶ 3, 8, ECF No. 206-2. As the magistrate judge explained, this

1 evidence groups together law firms and advocacy groups across three different regions and
2 nowhere indicates the unavailability of legal representation in Sacramento. *See* McNulty Decl. ¶
3 4. Because the magistrate judge’s determinations were not clearly erroneous, the magistrate
4 judge’s denial of the plaintiffs’ request “with leave to renew using Sacramento rates” was
5 appropriate.

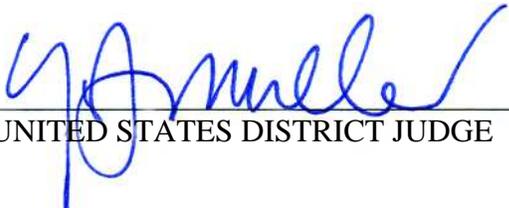
6 IV. CONCLUSION

7 The court DENIES plaintiffs’ request for reconsideration of the magistrate judge’s
8 February 2, 2017 order. This resolves ECF No. 288.

9 Regarding the parties’ prior requests for reconsideration of the magistrate judge’s
10 August 17, 2016 order, *see* ECF Nos. 236, 239–40, the court will address these requests
11 separately with one exception here. Plaintiffs’ prior request asked for reconsideration of the
12 magistrate judge’s adoption of Sacramento rates in calculating sanctions at that time under Rule
13 37(a)(5). ECF No. 236 at 6, 22–23. The court finds the magistrate judge’s determination in that
14 2016 order was not clearly erroneous or contrary to law, and so DENIES that portion of plaintiffs’
15 request. The court will fully resolve the remaining portions of ECF No. 236 in an order to follow.

16 IT IS SO ORDERED.

17 DATED: April 18, 2017.

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20 UNITED STATES DISTRICT JUDGE
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