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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

This matter is before the undersigned for the adjudication of the payments owed to Special Master Winston Krone for services incurred prior to the transfer of this case to the Northern District of California, which took place on June 6, 2018. ECF Nos. 368 (order directing the Special Master to submit an invoice for outstanding fees in light of case transfer) and 317 (process for adjudicating special master fees). The court has received defendant’s objections, with the June 8, 2018 invoice submitted to defendant by the Special Master attached. ECF No. 371. For the reasons now explained, the CDE is responsible for \$12,250.00 in fees to the Special Master.

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1 I. BACKGROUND

2 On July 2, 2015, the court appointed Winston Krone as Special Master in this action “for  
3 the limited purpose of facilitating the parties’ development of an electronic discovery protocol.”  
4 ECF No. 116 at 2. The court concluded that the Special Master’s compensation for that task  
5 should be paid by defendant, the California Department of Education (CDE). In a minute order  
6 filed October 16, 2015, the court lifted a stay on discovery, authorized the parties to notice and  
7 file discovery motions, and authorized the assigned Magistrate Judge to “seek all appropriate  
8 assistance” from the Special Master in resolution of those motions and extended his appointment  
9 accordingly. ECF No. 124. In an order filed November 3, 2015, the court approved the  
10 electronic discovery protocol and directed CDE to meet and confer with the Special Master “to  
11 confirm whether the CDE has backups of the CASEMIS database,” “on the production  
12 of email files, file servers, and network shares of custodians marked ‘priority’ by plaintiffs on  
13 September 14, 2015,” and regarding “the use of deduplication procedures to avoid duplicate  
14 review for attorney-client privilege.” ECF No. 127 at 2. The order also provided that “[u]ntil the  
15 Special Master determines the plaintiff has established a secure hosting environment and the court  
16 receives and approves his certification to that effect, the CDE will not be required to produce  
17 student data subject to protection under the Family Educational Rights and Privacy Act  
18 (FERPA).” ECF No. 127 at 3.

19 On December 1, 2015, the court issued an order stating that the CDE may object to any  
20 item in the Special Master’s invoices. ECF No. 132 at 2. On January 25, 2016, the court set forth  
21 procedures for objecting to the Special Master’s invoices. ECF No. 149. In its January 25, 2016  
22 order, the court stated that costs for time spent by the Special Master on tasks arising from the  
23 granting of a discovery motion shall be paid by the party whose conduct required the court order.  
24 ECF No. 149 at 3. On April 4, 2016 the court ordered the parties to “restrict their  
25 communications with [the Special Master] to discussions about the production of email and  
26 network files,” but that he would continue to fulfill his role “by assisting as an independent  
27 technical expert, including by assisting the assigned Magistrate Judge in any discovery matter she  
28 deems requires his assistance.” ECF No. 170 at 2. On September 12, 2016, the Court noted its

1 expectation that the circumstances in which the Special Master would meet with one party outside  
2 the presence of the other “will be extremely rare, and will take place only with notice to the other  
3 party and with prior court approval.” ECF No. 248.

4 The Special Master submitted an invoice to the CDE on November 11, 2015 for  
5 \$23,678.88, 28 which the CDE paid in full. ECF No. 371 at 2. The Special Master subsequently  
6 submitted two invoices on February 6, 2017 totaling \$14,262.50. Id. The February 6, 2017  
7 invoice to the CDE was for \$13,300.00, and the February 6, 2017 invoice to the Plaintiff was for  
8 \$962.50. Id. On February 21, 2017, the CDE filed timely objections in camera to the February 6,  
9 2017 invoice. ECF No. 317 at 1. On April 19, 2017, the Court ordered the CDE to pay the  
10 invoice without considering the CDE’s objections. ECF Nos. 301-302. That same day, the CDE  
11 sought reconsideration of this order approving the Special Master’s fees. ECF No. 309. On June  
12 25, 2017, the court granted reconsideration and acknowledged that it had not considered the  
13 CDE’s timely objections to the Special Master’s fees due to a failure in its system for lodging  
14 objections. ECF No. 317. The court instituted a new objections system and ordered the Special  
15 Master to resubmit his invoice to the CDE. ECF No. 317. Thereafter, the CDE would have  
16 fourteen days to file any objections. Id.

17 On June 6, 2018, the Court transferred this case to the Northern District of California and  
18 ordered the Special Master to submit within fourteen days all outstanding invoices in accordance  
19 with ECF No. 317. On June 8, 2018, the Special Master resubmitted the same invoice that he had  
20 originally served on February 6, 2017 and to which the CDE had timely objected. ECF No. 371,  
21 Ex. A. The CDE objects to payment of the invoice. Id.

## 22 II. ANALYSIS

23 The standards relevant to fixing the compensation of a Special Master are fully set forth in  
24 the court’s July 2, 2015 order, ECF No. 116 at 2-5, and need not be repeated here. The CDE  
25 objects to the Special Master fees on five grounds: (1) the total amount billed to date by the  
26 Special Master is triple the amount originally budgeted; (2) the invoice includes “block” billing,  
27 which reduces transparency; (3) none of the entries were for tasks arising from the granting of a  
28 discovery motion; (4) the invoice does not provide sufficient detail to evaluate the Special

1 Master's recommended apportionment of costs and whether the tasks are within the scope of the  
2 duties outlined in ECF No. 116, as narrowed by ECF No. 170; and (5) the entries reflect the  
3 Special Master's work as the court's technical advisor that should not be billed to the CDE. ECF  
4 No. 371 at 3.

5 A. Projected Budget Was Not Binding, Excess Hours Spent Was Result of Party Conduct

6 The CDE's first objection, that the Special Master's hours exceeded the initial projected  
7 budget, does not withstand scrutiny. Although the court considered the Special Master's  
8 anticipated protocol as part of his appointment, the court did not adopt it as a binding or limiting  
9 budget. ECF No. 116 at 2. As the CDE is well aware, discovery in this matter became  
10 increasingly complex and protracted as the case progressed due at least in part to the conduct of  
11 the CDE. At no time did the court indicate that the Special Master was bound by his initially  
12 proposed protocol in the event that the circumstances of the case required more of his time than  
13 anticipated. The fact that the Special Master exceeded his proposed initial costs because of the  
14 circumstances of the case is not grounds for eliminating or reducing CDE's responsibility to pay  
15 the invoice.

16 B. The Special Master Did Not Improperly Block Bill

17 The Special Master's invoice is not impermissibly block billed. In the ordinary course of  
18 evaluating attorney's fees, a district court may make targeted reductions to an award if the fee  
19 applicant "block billed," meaning the applicant combined multiple tasks per billed hour, making  
20 it impossible to evaluate reasonableness. Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th  
21 Cir. 2007). The CDE points to several entries in which the Special Master did, in fact, list more  
22 than one discrete task per line billed. ECF No. 371 at 4, 13-15. The undersigned has reviewed  
23 each of these entries, and concludes that their reasonableness can be readily evaluated despite the  
24 multiple listed tasks per line item. Indeed, although the entries combine distinct tasks, the billed  
25 items are generally related. For example, the February 26, 2016 bill reflects review of the  
26 discovery protocol, preparation for a phone call with Judge Mueller, and a phone call with Judge  
27 Mueller. ECF No. 371 at 14. Again, a thorough review of the Special Master's invoice reveals  
28 that the court can determine its reasonableness despite some instances of block billing. The court

1 declines to make any reductions to the fees owed based on block billing.

2 C. The CDE's Fee Responsibility is Not Limited to Discovery Orders

3 The court rejects the argument that none of the Special Master fees are associated with a  
4 discovery motion, and therefore the court should not order the CDE to pay the fees. ECF No. 371  
5 at 5. The CDE argues that in its July 25, 2016 order, the court stated that costs for time spent by  
6 the Special Master on tasks arising from the granting of a discovery motion shall be paid by the  
7 party whose conduct required the order. ECF No. 149 at 3. The CDE goes on to argue that none  
8 of the Special Master's fees arose from such an order, and because the CDE already paid for the  
9 fees arising from the creation of the discovery protocol (ECF No. 116 at 4), the CDE cannot be  
10 assigned further fees. ECF No. 371.

11 First, it is not at all clear that none of the items billed were the result of work created by  
12 motions to compel granted against the CDE. Indeed, the CDE had no fewer than four discovery  
13 orders entered against it following the July 25, 2016 order. ECF Nos. 150, 229, 287, and 333.  
14 The CDE's conclusory one-sentence argument on this point is unconvincing. ECF No. 371 at 5.  
15 Second, it is not necessary for the court to conclude that billed items resulted from discovery  
16 orders because the court's January 25, 2016 order did not conclude that the CDE would *only* be  
17 responsible for bills if its conduct necessitated entry of a discovery order against it. ECF No. 149  
18 at 3. Indeed, that order specifically states that "[f]or the tasks required by the court's November  
19 3, 2015 order [setting out the discovery protocol], plaintiffs shall bear the costs of time spent by  
20 the Special Master determining whether plaintiffs have established a secure hosting environment,  
21 and CDE shall bear the costs of time spent by the Special Master on *the other tasks required by*  
22 *that order.*" ECF No. 149 at 2 (emphasis added). Thus, the CDE's argument on this point does  
23 not merit a fee reduction.

24 D. The Special Master's Invoice is Sufficiently Detailed, With Two Exceptions

25 The CDE takes issue with several entries in the Special Master's invoice for insufficient  
26 detail. Upon independent review the court finds the invoice adequate overall, but agrees with the  
27 CDE on two points. First, the second listed February 26 and February 28, 2016 bills should have  
28 been charged to the plaintiff because they appear to be related to the establishment of a secure

1 environment. ECF No. 371 at 6-7, 14. As stated above, plaintiffs are responsible for the Special  
2 Master's fees related to the establishment of a secure hosting environment for data. ECF No. 149  
3 at 2. These billing entries, in the amount of \$350.00 and \$525.00, should have been directed to  
4 the plaintiff in accordance with the court's January 25, 2016 order. Id. Second, two bills for e-  
5 mail communications between the Special Master and plaintiffs on January 8 and January 9 of  
6 2016 regarding a "proposed order" should have either been billed to plaintiffs or, in the  
7 alternative, are too vague for the court to determine that a bill to CDE is appropriate. ECF No.  
8 317 at 13. These entries, each totaling \$87.50, must be deducted from the CDE's bill.  
9 Accordingly, a total of \$1,050.00 will be deducted from the total amount owed to the Special  
10 Master by CDE.

11 The CDE's remaining objections in this category are not well taken. The CDE argues that  
12 certain billed entries each reflecting e-mailing with the CDE are duplicates, but there is no  
13 evidence to support that the Special Master simply did not email the CDE on two separate  
14 occasions. ECF No. 371 at 6. In the absence of evidence, the court will not assume an error. The  
15 court also declines to accept the CDE's objection to the Special Master's billing for his  
16 colleague's attendance at a meeting; it is apparent that the colleague was assisting the Special  
17 Master in his duties and the court will not assume over-billing in the absence of any evidence. Id.  
18 at 7. Finally, the court will not deduct a billing entry for the Special Master's communication  
19 with plaintiff's counsel regarding the format of a production; it is apparent from the description in  
20 the bill that the CDE's production itself necessitated this contact. Id. at 8.

21 E. The CDE is Responsible For The Special Master's Communication With The Court

22 Upon an independent review of the billing entries, the court determines that invoice items  
23 related to the Special Master's coordination with the court are properly charged to CDE. The  
24 CDE objects to paying for time entries associated with conversations between the court and the  
25 special master on the grounds that they fall outside of the scope of the Special Master's role as  
26 described in ECF No. 116, and are insufficiently detailed to determine whether they are within the  
27 scope of the court's order at ECF No. 170. A particularized review of the invoice indicates that  
28 the Special Master's communication with the court falls under the CDE's responsibility for "costs

1 of time spent by the Special Master on the other tasks required by [the November 3, 2015 order]”  
2 as discussed above. ECF No. 149 at 2. It is in line with the court’s previous orders that the CDE  
3 should bear responsibility for the time the Special Master spent informing the court of the  
4 progress and difficulties regarding the extremely complex and protracted electronic discovery  
5 issues in this case. Thus, the court declines to reduce the CDE’s obligation to pay the Special  
6 Master invoice based on this argument.

7 III. CONCLUSION

8 In accordance with the above, IT IS HEREBY ORDERED that:

- 9 1. Defendants shall forward the amount of \$12,250 (\$13,300-\$1,050) to the Clerk of the  
10 Court within 30 days of this order;  
11 2. Upon receipt of the funds, the Clerk of the Court shall disburse the amount of \$12,250  
12 to Kivu Consulting Inc. at the following address:

13 Kivu Consulting, Inc.  
14 Attn: Winston Krone, Esq.  
15 44 Montgomery Street  
16 Suite 700  
17 San Francisco, CA 94104.

- 18 3. The Clerk of the Court is directed to serve a copy of this order on the  
19 Financial Department of the Court.

20 DATED: August 22, 2018

21   
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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