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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY PRASAD, et al.,
Plaintiff,
v.
COUNTY OF SUTTER, et al.,
Defendants.

No. 2:12-cv-00592 TLN JFM

ORDER

On June 12, 2013, a hearing on plaintiffs’ amended motion to compel (ECF No. 84) was held. Following the hearing, the court permitted defendants to file a letter brief addressing plaintiffs’ request for reasonable expenses, pursuant to Fed. R. Civ. P. 37(a)(5), within seven days of the date of the order. ECF No. 91. The court also permitted plaintiffs to file a reply letter brief within seven days thereafter. Id. Upon consideration of the hearing, as well as an examination of the parties’ initial filings, subsequent letter briefs, and supporting documents, the court orders plaintiffs’ request for reasonable expenses is granted and plaintiffs shall be awarded reasonable expenses in the amount of \$18,022.50.

Federal Rule of Civil Procedure 37(a)(5) provides that if a motion to compel is granted, or if the requested discovery is provided after the motion was filed, the court must require the party whose conduct necessitated the filing of the motion to pay reasonable expenses including attorney’s fees. Fed. R. Civ. P. Rule 37(a)(5). However, the court must not order payment if the nondisclosure was substantially justified or if other circumstances make an award unjust. Id.

1 Plaintiffs seek expenses in the amount of \$18,022.50 to cover the cost of bringing their
2 motion to compel. ECF No. 97. Plaintiffs' expenses include telephone calls and correspondence,
3 drafting a meet and confer letter, and preparing both the amended motion to compel and the joint
4 statement. Id. at 3. Defendants set forth a number of objections to plaintiffs' request, each of
5 which will be addressed in turn.

6 First, defendants argue that "only two matters were actually matters which needed
7 resolution by this court: the scope and/or privacy of inmates [sic] names . . . and personnel
8 records of the Sutter County defendants." ECF No. 92 at 1. Defendants also argue that "any
9 award would be unjust given the various circumstances surrounding the variety of documents
10 included in [plaintiffs'] motion. Id. at 3. Rule 37(a)(5)(A) provides for an award of reasonable
11 expenses if a motion to compel is granted "or if the disclosure or requested discovery is provided
12 after the motion was filed." Fed. R. Civ. P. 37(a)(5)(A) (emphasis added). While the parties
13 confirmed, both in their joint statement and during the hearing on plaintiffs' amended motion to
14 compel, that a number of disputed issues had been resolved, that alone does not relieve
15 defendants from payment of reasonable fees under Rule 37(a)(5). Here, the resolution of
16 plaintiffs' disputes did not occur until after plaintiffs filed their motion to compel and amended
17 motion to compel. Thus, Rule 37(a)(5)(A) provides for an award of reasonable expenses because
18 defendants' disclosure of the requested information was provided after plaintiffs' motion was
19 filed.

20 Second, defendants argue that the failure to respond to discovery requests have not
21 prejudiced plaintiffs. ECF No. 92 at 1. However, the court finds that plaintiffs have been
22 prejudiced by, at the very least, having to conduct depositions without documents relevant to
23 plaintiffs' claims. See ECF No. 97 at 2; see also ECF No. 87-2 at 38-39 (e-mail to defense
24 counsel requesting personnel files in advance of noticed depositions).

25 Third, defendants argue that plaintiffs did not "attempt to narrow the request in light of the
26 pending motion to dismiss." ECF No. 92 at 1. However, filing a motion to dismiss does not
27 function as an automatic stay of an action, including any outstanding discovery requests.
28 Defendants were therefore not substantially justified in failing to respond to plaintiffs' discovery

1 requests which were served six months prior to the filing of defendants' motion to dismiss.
2 Moreover, defendants did not request a stay of the proceedings when they initially filed a motion
3 to dismiss on December 26, 2012. Rather, defendants waited until plaintiffs filed their motion to
4 compel to raise the issue of a stay pending the outcome of the motion to dismiss in an effort to
5 justify their failure to respond to outstanding discovery requests. In any event, the court has
6 already denied defendants' request for a protective order staying the discovery proceedings,
7 noting the approaching September 6, 2013, deadline for expert witness disclosures. ECF No. 91
8 at 1.

9 Fourth, defendants argue that they were substantially justified in not disclosing the names
10 of inmates housed in cells MAX-2 and MAX-3 because the identification was only recently
11 clarified by plaintiffs on June 3, 2013. ECF No. 92 at 2. Defendants also argue that they were
12 "substantially justified in limiting its own exposure to liability from third parties." Id.
13 Defendants were served with plaintiffs' initial request on July 13, 2012. ECF No. 87-1 at 9-10.
14 The request sought the identification of "ANY and ALL inmates celled in the same housing pod,
15 unit, OR cell as NATHAN PRASAD." Id. While defendants attempt to argue that the
16 identification was only recently clarified on June 3, 2013, plaintiffs' counsel addressed this issue
17 in a letter to defense counsel dated March 7, 2013. ECF No. 87-2 at 11-12. The letter clarifies a
18 conversation between the parties that took place on February 27, 2013. Id. In this letter,
19 plaintiffs' counsel explained the request by stating that "at a minimum, this would encompass any
20 inmates housed in any of the three 'tanks' or cells that appear to be located on the same hallway
21 where Nathan Prasad was housed." Id. Thus, defendants are incorrect in asserting that this
22 matter was only clarified in June. Rather, plaintiffs clarified their request with defendants as
23 early as February 27, 2013. The court also finds that defendants' general claim of privacy does
24 not substantially justify their failure to respond to plaintiffs' discovery request. The court finds
25 the privacy argument particularly unpersuasive given the fact that defendants failed to respond to
26 a protective order sent by plaintiffs on March 7, 2013. ECF No. 87-2 at 2. Defendants cannot
27 neglect to review or enter into a protective order then use the absence of a protective order to
28 support their failure to respond to discovery requests. Therefore, defendants were not

1 substantially justified in failing to disclose the names of inmates housed in cells located on the
2 same hallway as Mr. Prasad.

3 Finally, defendants argue that plaintiffs' hourly rate must be that of the "prevailing market
4 rate for the Sacramento community" and that "any hours must be parsed out or reduced for
5 matters not reasonably included." ECF No. 92 at 3-4. The court finds both of these arguments
6 unavailing, and will address them separately below.

7 Regarding the hourly rate, generally, an award should be a reasonable fee according to the
8 relevant legal community. Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992). However,
9 San Francisco rates, which are outside the district in which the court sits, are permitted if
10 "Sacramento attorneys with adequate expertise were unavailable." Gates, 987 F.2d at 1406.
11 "[P]laintiffs must only prove the unavailability of counsel within the local forum in order to
12 justify the use of outside counsel." Barjon v. Dalton, 132 F.3d 496, 501 (9th Cir. 1997) (citing
13 Gates, 987 F.2d at 1405) (emphasis omitted). Moreover, "Gates allows proof of either
14 unwillingness *or* inability due to lack of experience, expertise, or specialization." Barjon, 132
15 F.3d at 501 (emphasis original); see also South Yuba River Citizens League and Friends of River
16 v. National Marine Fisheries Service, No. CIV. S-06-2845 LKK/JFM, 2012 WL 1038131, at *6
17 (E.D. Cal. Mar. 27, 2012) (concluding "that the lack of experience, expertise, or specialization
18 requirement applies only to the inquiry of whether local firms are able to perform the work, and
19 not whether they are willing"). Here, plaintiffs seek an hourly rate of \$445.00 for their principal
20 counsel, Kathryn Mantoan. This rate is consistent with the San Francisco, not the Sacramento,
21 legal community. In support of their request, plaintiffs explain that local counsel was unwilling
22 to represent them in this action (Prasad Decl. ¶2, ECF No. 97-3 at 2) and "[t]here are very few
23 lawyers or law firms with the specialized knowledge, experience and resources to bring a civil
24 rights case of this type" (White Decl. ¶ 15, ECF No. 97-2 at 6). The court finds plaintiffs have
25 met their burden of establishing unavailability by showing both an unwillingness of local counsel
26 and a limited availability of qualified local counsel.¹ Gates, 987 F.2d at 1405; Barjon, 132 F.3d at

27 ¹ Defendants did not provide evidence that might counter this finding, such as potentially
28 available firms in the Sacramento area.

1 501. Therefore, the court finds the relevant community is San Francisco.

2 Regarding the reasonableness of plaintiffs' rate, a reasonable hourly rate is defined as the
3 "rate prevailing in the community for similar work performed by attorneys of comparable skill,
4 experience, and reputation." Barjon, 132 F.3d at 501 (internal quotation marks omitted). "To
5 inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to
6 produce satisfactory evidence-in addition to the attorney's own affidavits-that the requested rates
7 are in line with those prevailing in the community for similar services by lawyers of reasonably
8 comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984).
9 In support of their requested hourly rate of \$445.00 for Ms. Mantoan's work on the motion to
10 compel, plaintiffs provided the National Law Journal's December 2012 annual survey of law firm
11 billing rates covering rates from 2011. The annual survey includes the rates of some San
12 Francisco law firms. ECF No. 97-1 at 47. Plaintiffs also provided Ms. Mantoan's resume which
13 indicates her skills and experience in the relevant area of law since her admission to the
14 California bar in 2005. Id. at 24. The court finds plaintiffs have met their burden of establishing
15 the requested rate is comparable to those prevailing in the San Francisco community.² Blum, 465
16 U.S. at 895 n.11; see also L.H. v. Schwarzenegger, 645 F.Supp.2d 888, 895 (E.D. Cal. 2009)
17 (finding fees requested for plaintiffs' law firm reasonable, and noting the rates were awarded to
18 some of the attorneys in other prison litigation cases). Therefore, defendants' argument for a
19 reduced hourly rate fails.

20 Regarding defendants' argument for a reduction of billed hours, plaintiffs submitted a
21 summary of the hours worked on the motion to compel, and reduced the number of hours used in
22 calculating the total amount requested. See ECF No. 97-1 at 11-15. A review of the billing
23 summary shows that plaintiffs requested reimbursement for only Ms. Mantoan's work, and have
24 omitted all other attorney and paralegal billing charges as well as any related costs. Id. The court
25 finds the hours of work plaintiffs submitted for reimbursement were reasonably expended, and
26 pertain only to plaintiffs' motion to compel. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

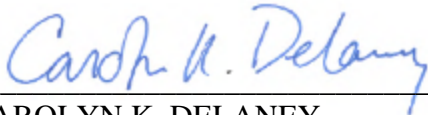
27 ² Defendants also failed to submit any evidence indicating what the court might consider to be a
28 reasonable hourly rate given the circumstances of the case. See Gates, 987 F.2d at 1397-98.

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Therefore, defendants' argument for a reduction of hours also fails.

Accordingly, IT IS HEREBY ORDERED that plaintiffs are awarded reasonable expenses under Federal Rule of Civil Procedure 37(a) in the amount of \$18,022.50 against defendants.

Dated: July 17, 2013



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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