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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. 2:14-cv-00828-GEB-AC

SUKHWINDER KAUR, individually and
as the successor in interest for
the Decedent PARMINDER SINGH
SHERGILL; KULBINDER KAUR SOHOTA;
SARABJIT SINGH SHERGILL,

**ORDER DENYING DEFENDANT'S
RECONSIDERATION MOTION AND
GRANTING PLAINTIFF
ADDITIONAL ATTORNEY'S FEES**

Plaintiffs,

v.

CITY OF LODI; CITY OF LODI POLICE
DEPARTMENT; MARK HELMS, in his
individual capacity as the Chief
of Police for the City of Lodi;
SCOTT BRATTON, in his individual
capacity as a City of Lodi Police
Officer; ADAM LOCKIE, in his
individual capacity as a City of
Lodi Police Officer;

Defendants.

Defendant Scott Bratton ("Defendant") seeks
reconsideration of the Magistrate Judge's Order filed on May 20,
2015 ("May 20th Order"), under Federal Rule of Civil Procedure
("Rule") 72(a) and Local Rule 303(c). Specifically, Defendant
seeks reconsideration of the Magistrate Judge's decision granting
Plaintiff Sukhwinder Kaur ("Plaintiff") attorney's fees as the
prevailing party on Defendant's motion to quash a subpoena issued

1 to non-party City of Manteca Police Department for Defendant's
2 personnel records. (Mem. P. & A. Supp. Mot. Reconsideration
3 ("Mot.") 1:2-5, ECF No. 79.) Defendant argues in the alternative
4 that "the [attorney's] fee[s] . . . be drastically reduced." (Id.
5 1:16-17.)

6 The Magistrate Judge denied Defendant's motion to quash
7 the subpoena in an order filed on March 16, 2015, and in the same
8 denial order required Defendant "to show cause . . . why the
9 court should not order him to pay [P]laintiff's attorney's fees,
10 pursuant to Fed R. Civ. P. 37(a)(5)[(B)], . . . for having to
11 [oppose Defendant's motion to quash the subpoena]."¹ (Order to
12 Show Cause 8:25-28, ECF No. 71.) The Magistrate Judge stated in
13 the May 20th Order granting Plaintiff attorney's fees:

14 The declarations of [D]efendant's attorneys
15 in opposition to the order to show cause
16 ("OSC") offer no facts or arguments to
17 address the concerns the undersigned
18 expressed in denying the [M]otion
19 Specifically, the court had already held, in
20 connection with discovery involving the City
21 of Lodi [D]efendants, that past training
22 records and other personnel records could not
23 categorically be ruled to be not relevant,
24 even if the chances of finding relevant
documents might diminish with time
Also, [Defendant] sought a blanket protective
order for City of Manteca personnel records,
even though the court had already rejected
[Defendant's] prior request for a blanket
protective order for City of Lodi personnel
records In addition, [Defendant]
failed to explain why he refused to produce a
single document even after [P]laintiff agreed

25 ¹ The Magistrate Judge's Order granting Plaintiff attorney's fees states:
26 "The order to show cause mistakenly referred to Fed. R. Civ. P. 37(a)(5)(A),
27 which governs attorney's fees for parties successfully moving to compel
28 discovery. However, the parties appear to have correctly argued the attorney's
fees under Fed. R. Civ. P. 37(a)(5)(B), which governs the award of attorney's
fees to the party successfully resisting the discovery motion, here, the
motion to quash [and for a protective order]." (Order to Show Cause 1:26-28
n.1, ECF No. 71.)

1 to accept redacted versions of some of those
2 documents.

3 (May 20th Order 2:2-14, ECF No. 76.) Defendant argues in his
4 reconsideration motion that he should not be ordered to pay
5 attorney's fees because his motion to quash was substantially
6 justified for the following reasons:

7 [T]he issue raised by [his] motion . . . was
8 distinct from any issue previously decided by
9 this court[;] [further, t]he documents
10 contained within [Defendant's] Manteca Police
11 Department personnel file contained much more
12 private and confidential information than
13 what was contained in his [City of] Lodi
14 file[;] [t]he only redaction that the
15 Plaintiff was willing to accept during meet
16 and confer was redaction of [Defendant's]
17 personal identifying information, his
18 family's contact information and social
19 security numbers [; and] Plaintiffs'
20 unwillingness to withdraw the request for
21 [certain documents it later conceded need not
22 be produced made] the motion . . . required.

23 (Mot. 1:12-9:15.) Plaintiff rejoins:

24 [As t]he Magistrate Judge found in the order
25 denying Defendant's motion[,]. . . .
26 Defendant's withholding of clearly and, in
27 some cases admittedly, relevant discovery was
28 not supported by any legal authority
29 Defendant [also] produced no authority
30 supporting his position that he could
31 unilaterally withhold personnel records from
32 discovery [Further,] . . . any
33 deficiency in the meet and confer process was
34 a product of Defendant's failure to comply
35 with [h]is obligation under the Rules
36 [requiring Defendant, as the moving party, to
37 meet and confer prior to initiating a
38 discovery motion].

39 (Pl.'s Opp'n to Def.'s Mot. Reconsideration ("Opp'n") 4:23-
40 8:17.)²

41 ² Defendant filed a reply to Plaintiff's opposition to Defendant's
42 reconsideration motion, which Plaintiff "requests . . . be stricken and
43 disregarded," (Pl.'s Obj. and Req. Strike Def.'s Reply Brief 2:14-16, ECF No.

1 Local Rule 303(f) prescribes: "The standard that the
2 assigned Judge shall use in [reconsideration of a Magistrate
3 Judge's ruling under Local Rule 303(c)] is the 'clearly erroneous
4 or contrary to law' standard set forth in 28 U.S.C. §
5 636(b)(1)(A)." "A [M]agistrate [J]udge's factual findings are
6 'clearly erroneous' when the district court is left with the
7 definite and firm conviction that a mistake has been committed."
8 Mackey v. Frazier Park Pub. Util. Dist., No. 1:12-CV-00116-LJO-
9 JLT, 2012 WL 5304758, at *2 (E.D. Cal. Oct. 25, 2012) (quoting
10 Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1014 (9th
11 Cir. 1997). "An order 'is contrary to law when it fails to apply
12 or misapplies relevant statutes, case law, or rules of
13 procedure.'" Id. (quoting Knutson v. Blue Cross & Blue Shield of
14 Minn., 254 F.R.D. 553, 556 (D. Minn. 2008)).

15 Defendant has not shown the Magistrate Judge's grant of
16 attorney's fees was clearly erroneous or contrary to law.
17 Therefore, this portion of Defendant's reconsideration motion is
18 denied.

19 Defendant also argues: "[E]ven if this [C]ourt finds
20 that [Defendant] was not substantially justified in bringing [his
21 motion to quash,] the fee entries submitted by the
22 Plaintiff[']s[] attorneys are not reasonable and should be
23 drastically reduced." (Mot. 1:15-17.) Specifically, Defendant
24 argues Plaintiff's attorneys' "rates are excessive," and "the

25
26 85), arguing: "[b]oth the Federal Rules of Civil Procedure and the Eastern
27 District of California's Local Rules do not authorize the filing of a reply to
28 an opposition to objections to a [M]agistrate [J]udge's ruling." (Id. 1:22-24)
(emphasis in original). However, Plaintiff has not shown that Local Rule 303
negates the portion of Local Rule 230(d) that authorizes a reply brief to be
filed. Therefore, this request is denied.

1 number of . . . hours [billed by Plaintiff's attorneys are]
2 grossly excessive and unreasonable." (Id. 12:11-13:18.) However,
3 Defendant has not shown that this argument in his motion was
4 presented to the Magistrate Judge. A reconsideration motion
5 should not be used for a party to make a new argument that was
6 not presented to the Magistrate Judge. See In re Galena
7 Biopharma, Inc. Derivative Litig., No. 3:14-CV-382-SI LEAD, 2014
8 WL 5494890, at *1 (D. Or. Oct. 30, 2014) (stating: "Raising
9 arguments or providing evidence in a motion for reconsideration
10 that could have been included when litigating the original motion
11 are not proper grounds for reconsideration.") (citing Shalit v.
12 Coppe, 182 F.3d 1124, 1132 (9th Cir. 1999)). Therefore, this
13 portion of Defendant's reconsideration motion is denied.

14 Plaintiff argues she "is entitled to a further award of
15 attorney's fees incurred in the process of responding to
16 Defendant's meritless objections to the Magistrate Judge's
17 Order." (Opp'n 20:2-4.) Specifically, Plaintiff argues:

18 The Magistrate Judge found that Defendant's
19 [motion to quash was] not substantially
20 justified Therefore, it follows that
21 Defendant's continued resistance and
22 subsequent involvement of the District Court
23 in the instant motion for reconsideration is
24 similarly unjustified.

25 (Id. 19:27-20:2.)

26 Plaintiff attaches a declaration from each of her
27 attorneys in support of her fees request. Plaintiff's attorney
28 Mark E. Merin avers he is "the sole proprietor of the Law Office
of Mark E. Merin[;]" has "four decades" of "extensive experience
in civil rights litigation . . . [;] charge[s] a fee of \$450/hour
for [his] work[;]" and worked 1.5 hours on the opposition. (Decl.

1 Mark E. Merin Supp. Pl.'s Opp'n Def.'s Mot. Reconsideration ¶¶ 3-
2 5, ECF No. 83-1.) Plaintiff's attorney Paul H. Masuhara avers:
3 he "ha[s] been employed by the Law Office of Mark E. Merin since
4 2008, initially as a legal assistant and most recently as an
5 associate attorney upon admission to the California State Bar in
6 2013[;]" "[t]he Law Office of Mark E. Merin bills [his] work at
7 an hourly rate of \$250[;]" and he worked 14.75 hours "preparing"
8 the opposition to Defendant's reconsideration motion. (Decl. Paul
9 H. Masuhara Supp. Pl.'s Opp'n Def.'s Mot. Reconsideration ¶¶ 5-6,
10 ECF No. 83-2.)

11 "Reasonable attorney[']s fees are . . . calculated
12 based on the traditional 'lodestar' method. Under the lodestar
13 method, the [c]ourt determines a reasonable fee by multiplying
14 the number of hours reasonably expended on the litigation by a
15 reasonable hourly rate." Marrocco v. Hill, 291 F.R.D. 586, 587-88
16 (D. Nev. 2013) (internal citations omitted). The reasonable
17 hourly rate is "calculated according to the prevailing market
18 rates in the relevant legal community, and the general rule is
19 that the rates of attorneys practicing in the forum district,
20 here the Eastern District of California-Sacramento, are used."
21 Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992)
22 (citation omitted). "Within this geographic community, the
23 district court should 'tak[e] into consideration the experience,
24 skill, and reputation of the attorney" Gonzalez, 729 F.3d
25 at 1205-06 (first alteration in original) (quoting Dang v. Cross,
26 422 F.3d 800, 813 (9th Cir. 2005)). **"The fee applicant has the**
27 **burden of producing satisfactory evidence, in addition to the**
28 **affidavits of its counsel, that the requested rates are in line**

1 with those prevailing in the community for similar services of
2 lawyers of reasonably comparable skill and reputation"

3 Johnson v. Multnomah Cnt., 815 F.2d 1258, 1262-63 (9th Cir. 1987)
4 (emphasis added).

5 Plaintiff provides authority evincing that the hourly
6 rate sought for Merin is reasonable. (See Opp'n 13:9-14:5)
7 (citing cases). However, Plaintiff has not met her "burden of
8 producing satisfactory evidence, in addition to [Masuhara's]
9 affidavit[] . . . , that [his] requested rate[is] in line with
10 those prevailing in the community for similar services of lawyers
11 of reasonably comparable skill and reputation." Johnson, 815 F.2d
12 at 1262 (emphasis added). Therefore, Plaintiff is only entitled
13 to fees for Merin's work on the opposition to Defendant's
14 reconsideration motion.

15 Plaintiff has also shown that the amount of time Merin
16 spent preparing the opposition to Defendant's reconsideration
17 motion is reasonable. Specifically, Plaintiff has shown that
18 Merin reasonably billed .5 hours "review[ing] Defendant['s] . . .
19 reconsideration [motion]" and discussing it with co-counsel, and
20 one hour "review[ing], comment[ing on] and revis[ing the] draft
21 [of the] opposition." (Merin. Decl. ¶ 5.) Therefore, Defendant
22 shall pay Plaintiff \$675, which reflects 1.5 hours of Merin's
23 work billed at \$450/hour, within ten days from the date on which
24 this Order is filed.

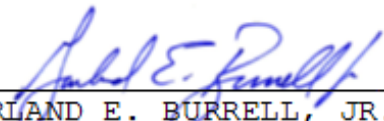
25 I. CONCLUSION

26 For the stated reasons, Defendant's reconsideration
27 motion and his alternative request for a reduction of the
28 attorney's fees awarded by the Magistrate Judge are DENIED.

1 Plaintiff's request for additional attorney's fees incurred in
2 opposing Defendant's reconsideration motion is GRANTED in part.
3 Further, Defendant shall pay Plaintiff \$675 within ten days from
4 the date on which this Order is filed.

5 Dated: September 2, 2015

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GARLAND E. BURRELL, JR.
Senior United States District Judge