

1 *Discussion*

2 The attorneys' fees lodestar paradigm set forth in Hensley v. Eckerhart, 461 U.S. 424,
3 447-448 (1983), requires the assessment of a reasonable hourly rate for a reasonable number of
4 hours expended on a case, or as in this case, a legal task or tasks. Because the sanctions order did
5 not find defendants 100% unjustified in their discovery responses, the court ordered that
6 attorneys' fees/costs sanctions be reduced by 50%.

7 1. Basis of Plaintiff's Counsels' Hourly Rate

8 Only one discovery motion is at issue here, that set forth in the Joint Statement, ECF No.
9 73. Plaintiff found defendant's initial responses to be deficient—primarily in defendant's
10 strongly held views that only a handful of other candle flameover incidents should be the subject
11 of discovery. As the sanctions order points out, defendant was disingenuous in its persistent
12 burden argument regarding the discovery of other incidents. Plaintiff had to depose at least one
13 of the discovery declarants to set the record straight. It appears that the parties did attempt to
14 work out differences, so that time is added to the sanctions equation. A hearing was held on May
15 17, 2918, ECF No. 67; plaintiff's counsel flew in from Chicago, IL.

16 Plaintiff's primary litigation counsel claims an hourly rate of \$450.00 for himself and
17 \$345 for his associate. Local counsel (Darby) seeks reimbursement at \$350.00 per hour. Counsel
18 supports these requests by pointing out the fact that the client is actually charged the listed
19 amounts in this case;¹ hence the rate is quintessentially the "market rate;" he points to general
20 informational studies suggesting that his rate is commonplace, and finally, counsel relies on an
21 opinion in 2009 by the undersigned in another case awarding \$350.00 an hour. Counsel
22 references the rate of plaintiff's former counsel in this case, a local attorney, who charged
23 plaintiff at the rate of *\$650 per hour*.

24 _____
25 ¹ Defendant argues that the client in this case did not pay any fees for counsel's work. Rather,
26 the company with which plaintiff has some association (Tons per Hour or TPR), either because of
27 her long-term relationship with the company's president, or her work, or both, has paid the fees.
28 However, Mr. Stanner demonstrates that money used to pay the fees was a "draw" by plaintiff
from the company, i.e., it was her money paying the fees the same as if she were an employee
using wages to pay attorneys' fees. The undersigned will find that plaintiff paid the fees in this
case.

1 Defendant objects. Citing a 2015 study of Sacramento attorneys' fees, defendant suggests
2 that the appropriate rate for the primary or partner attorneys are \$327 per hour and associate
3 attorneys at \$250 per hour, or at best, the \$350 per hour that Mr. Darby charges. However, the
4 study is general in the sense of it apparently taking into account the billings of counsel
5 performing any litigation task, for either a plaintiff or a defendant. As plaintiff points out,
6 defense counsel in this case did not advertise their rates.

7 Here we go again. The "market rate" in attorneys' fees, when it comes to having the other
8 side pay attorneys' fees to the opposing client, is generally an economic fiction which has to be
9 laboriously "found" in each and every case. Nor does the case law suggest a good reason why a
10 person or entity facing attorneys' fees, the non-client, should be more heavily assessed in one
11 case than another, simply because the prevailing attorney charges his clients more than someone
12 else, all other factors being equal. The day will come when the law will recognize in sanctions
13 situations a set hourly fee, perhaps with a locality equalizer, similar to that in Equal Access to
14 Justice Act cases or Prisoner Litigation Reform Act cases. But that day is not yet here; thus, the
15 undersigned starts out on the problematic path of finding an hourly rate for this case.

16 It is generally true that fees in the locale of the litigation presumptively should be applied.
17 An exception exists for cases where local counsel were not available to take the case. The irony
18 here is that plaintiff did once have local counsel, who as defendant argues early on, became
19 discouraged with the case, *but who was being paid more than Chicago counsel*. Plaintiff then
20 retained counsel from afar (Chicago) who has experience in product liability matters.

21 If this case simply involved plaintiff's incident and injury, the undersigned would apply
22 the forum's, i.e., Sacramento, California's rates. However, the specter of punitive damages,
23 which generally requires evidence of a pattern of malfeasance or misfeasance, has greatly
24 enhanced the volume of discovery. Indeed, it is obvious to everyone in this case that the issue
25 garnering the most attention is that plaintiff seeks exemplary damages because of an alleged years
26 long pattern of ignoring dangerous candle flashovers. Such an argument requires evidence of the
27 universe of candle flashover mishaps. The point here is that such discovery requires more
28 expertise (and perseverance) to complete and to get the job done correctly and the need for that

1 perseverance was quite evident in this case. It is unknown whether *experienced* Sacramento
2 litigation counsel, who the court presumes are available for cases such as this one, would charge
3 at the general rate posited by defendant. It has been the undersigned’s experience that the market
4 rate requested by such counsel meets or exceeds that requested by Mr. Stanner.

5 The court recognizes the arguments of both sides, and accordingly settles on a
6 compromise figure. Mr Stanner will be reimbursed at the rate of \$400 per hour, his associate at
7 \$300 per hour, and Mr. Darby at \$350 (if he is to be reimbursed at all).

8 2. Reasonable Hours Expended

9 (a) Mr. Darby’s Participation

10 Mr. Darby is either an employee of the facial fee payer, TPH, or an independently retained
11 corporate counsel for TPH. He has general recollections regarding assisting in discovery work,
12 but no specifics—as to time or substance. Given that this counsel was on the side of the
13 requesting party, and not the side actually producing the discovery (which often requires a good
14 bit of work if done properly), and given that the only fees recoverable involve the discovery
15 dispute, one in which Mr. Stanner was the driving force, the undersigned will assess no awardable
16 fees for whatever work Mr. Darby performed.

17 (b) Block Billing

18 Defendant, citing Welch v. Metro. Life Ins., 480 F.3d 942, 948 (9th Cir. 2007), takes issue
19 with plaintiff’s counsel’ practice of block billing, i.e., setting forth a number of tasks in a case,
20 those tasks being related or unrelated, and giving a sum of hours for the block. Defendant has a
21 point -- to a point -- on this issue.

22 Plaintiff realizes such, and has given an estimate of the time spent in the discovery
23 practice related to the “flashover” discovery. However, post-hoc estimates lack reliability, as
24 counsel could estimate any figure, and the opposing party would be in the dark as to how the
25 estimate was discerned. Nevertheless, the undersigned does not find that the upper end of block
26 billing reductions (30%) should be found here. The 50% reduction to be applied has some
27 relevance to the block billing issue, i.e., the court has already determined that one-half of all
28 discovery time is non-compensable. Nor is the undersigned going to flyspeck each and every

1 billing to determine whether a block was more related to the discovery at issue, or less. Given an
2 overarching view of the billings, the undersigned will deduct an extra 10% of the Stanner firm's
3 hours to deal with the block billing issue.

4 (c). Quarter Hour Billing

5 Given the reductions thus far, the undersigned does not believe it correct to make another
6 omnibus percentage reduction in the amount of hours billed.

7 (d). Hours Billed for Travelling

8 Billing attorneys' fees for travelling is a matter of some dispute in the federal courts in
9 California. Some courts view such a requests as seeking only the expenses of travel, see
10 Chalmers v. City of Los Angeles, 796 F.2d 1205, 1216 (n.7) (9th Cir. 1980). Other courts allow
11 actual attorneys' fees for travelling if the seeking attorney proves that he actually charges his time
12 for travelling, see Spalding Laboratories, Inc v. Arizona Biological Control, Inc., 2008 WL
13 2227501*5 (C.D.Cal. 2008) *citing* Davis v. City and County of San Fransisco, 976 F.2d 1536,
14 1543 (9th Cir. 1992). Other courts say permitting full travel fees is the customary practice of that
15 district, see Cotton v. City of Eureka, Cal., 889 F. Supp. 2nd 1154, 1177 (N.D. Cal. 2012). See
16 also Hall v. City of Fairfield, 2014 WL 1286001 *13 (E.D. Cal. 2014); but see Sanford v. Thrifty
17 Payless, 2005 WL 2562712 *3 (E.D. Cal. 2005) (no fees for travel).

18 The equities for travel fees is mixed. On the one hand, identical sanctions motions may
19 well be inflated if travel is allowed in one case, but is not needed in another. There is always
20 some doubt that far-away counsel is needed to be retained for a personal injury matter. On the
21 other hand, out-of-town counsel may be hard pressed to represent their clients diligently if they
22 know they will have to simply eat their fees for travel. In this case, plaintiff was originally
23 represented by local counsel (who seemed not to be up to the task), and only then represented by
24 Chicago counsel who has been more than diligent, and fashioned a colorable case where initially
25 that result was far from clear.

26 The scale tips in plaintiff's favor in this case, and no deductions will be made for travel.

27 With respect to other billing judgment attacks by defendant, the undersigned does not find
28 that further deductions are warranted. It did take plaintiff a bit of time to ferret out the real facts

1 about the somewhat surprising number of flashover incidents, and defendants were not
2 forthcoming. As the sanctions motion and court order points out, it was rather like pulling teeth.

3 Finally, after reading plaintiff's counsel's supplemental declaration and Reply Brief, the
4 undersigned accepts plaintiff's counsel's representation that the attorneys' fees, facially paid by
5 plaintiff's company, Tons per Hour (or the company of her long time partner) were actually paid
6 for by plaintiff herself (or her family). See also, footnote 1.

7 (e). Summary of Compensable Hours & Award

8 William Darby—0 hours

9 Daniel Stanner—89.75 hours claimed—80.75 hours allowed (deduction rounded to the
10 nearest whole number)

11 Jacob Berger—34.25 hours claimed—31.25 hours allowed (deduction is again rounded)

12 Daniel Stanner's Recovery—80.75 hours X \$400 per hour = \$32,300

13 Jacob Berger's Recovery 31.25 X \$300 per hour = \$9,375

14 Total before 50% reduction-- \$41, 675.00

15 Total after 50% reduction-- \$20, 837.50

16 Costs are awarded in the amount of \$2,377.38 are additionally awarded.

17 *Conclusion*

18 Defendant shall pay \$20, 837.50 in fees and \$2, 377.38 in costs within 21 days of the filed
19 date of this order.

20 IT IS SO ORDERED.

21 Dated: September 24, 2018

22 /s/ Gregory G. Hollows
23 UNITED STATES MAGISTRATE JUDGE
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