

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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 4
 5 DEANNA L. FREITAG,

6 Plaintiff,

7 v.

8 CALIFORNIA DEPARTMENT OF
 9 CORRECTIONS, et al.,

10 Defendants.

NO. C00-2278 TEH

ORDER RE: PARTIES'
SEPTEMBER 30, 2011 JOINT
STATEMENT RE: ATTORNEYS'
FEES AND COSTS

11
 12 On September 7, 2011, this Court granted in part and denied in part the parties'
 13 motions for de novo review of Magistrate Judge Bernard Zimmerman's July 11, 2011 report
 14 and recommendation on Plaintiff's most recent motion for attorneys' fees and costs. The
 15 Court ordered that:

16 Plaintiff's counsel shall not receive any fees for claimed work on
 17 monitoring retaliation. Plaintiff's counsel shall be paid
 18 \$11,460.00, less 25%, for a total of \$8,595.00, for work on
 19 monitoring the remedial plan for the period of October 1, 2008, to
 September 30, 2010. Defendants shall pay this amount to
 Plaintiff's counsel no later than **October 7, 2011**.

20 Plaintiff is entitled to fees incurred in seeking fees for this period,
 21 as well as costs. However, as discussed above, the Court cannot
 22 determine a reasonable amount based on Plaintiff's submissions
 23 and orders the parties to meet and confer. If they cannot reach
 24 agreement by **September 30, 2011**, then they shall submit a joint
 filing on that date that includes an itemized list of the claimed
 fees and costs, a discussion of whether the previous settlement
 encompassed any of the fees or costs claimed on this motion, and
 any objections from Defendants.

25 Sept. 7, 2011 Order at 9. Predictably, the parties were unable to reach agreement on the
 26 outstanding fees and costs. After carefully considering the parties' remaining disputes as set
 27 forth in their timely filed joint statement, the Court orders Defendants to pay Plaintiff's
 28 counsel an additional \$20,041.97 for the reasons set forth below.

1 **DISCUSSION**

2 **I. Fees on Fees**

3 In the joint statement, Defendants argue that the fee award for time spent on claiming
4 fees should be reduced by 9.95 hours and should be further reduced by 50% “to reflect
5 plaintiff’s limited degree of success on her motion for attorney fees.” Sept. 30, 2011 Joint
6 Statement at 6. However, Plaintiff contends – without rebuttal from Defendants – that
7 Defendants challenged only 2.70 hours during the meet-and-confer process. Accordingly,
8 the Court rejects Defendants’ remaining challenges to the number of claimed hours as
9 untimely. Likewise, the Court will not entertain Defendants’ new argument that Plaintiff’s
10 fee award should be reduced by an additional 50%.

11 As to the disputed 2.70 hours, Plaintiff appears to be correct that the assigned
12 magistrate judge scheduled the settlement conference without having consulted the parties.
13 Nonetheless, 2.70 hours is an unreasonable amount of time to have spent on rescheduling the
14 assigned date.¹ For example, Plaintiff’s counsel claims to have spent a combined 0.60 hours
15 (36 minutes) receiving and reviewing two e-filing notices containing the parties’ one-
16 paragraph stipulation and one-paragraph order. This is not credible. These hours are either
17 padded or completely unreasonable, particularly since the same attorney reportedly
18 “Draft[ed] and Review[ed] and Revise[d]” the stipulation in only 0.20 hours (12 minutes).
19 See Ex. 2 to Sept. 30, 2011 Joint Statement at 3. Similarly, it either did not take or should
20 not have taken 1.10 hours to correspond via electronic mail over a matter as simple as
21 rescheduling a single date. See *id.* The Court concludes that a reasonable attorney would
22 have spent no more than 0.50 hours on this task, and Plaintiff’s claimed fees are therefore
23 reduced by 2.20 hours, or \$693.00 based on attorney Harrell’s \$315 hourly billing rate.
24 Thus, Plaintiff’s award for fees on fees is reduced from the requested \$26,858.75 to
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27 ¹Plaintiff’s counsel appears to have initially exercised billing judgment in writing off
28 0.60 of the 2.70 hours allegedly spent on this task. See Ex. 2 to Sept. 30, 2011 Joint
Statement at 3 (“NO CHARGE” next to last entry). However, in the joint statement, counsel
claims the full 2.70 hours. Sept. 30, 2011 Joint Statement at 3.

1 \$26,165.75. Less the 25% sanction recommended by Judge Zimmerman and adopted by this
2 Court, the amount of fees on fees that Defendants must pay Plaintiff is \$19,624.31.

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4 **II. Costs**

5 Plaintiff reduced her demand for costs from \$1028.18 in the original motion to
6 \$556.88 in the joint statement. Defendants offered to pay this amount as part of their overall
7 settlement offer and do not argue that any of the claimed costs are unreasonable or otherwise
8 should not be awarded. Accordingly, the Court awards the full amount of costs now claimed
9 by Plaintiff. Less the 25% sanction recommended by Judge Zimmerman and adopted by this
10 Court, the amount Defendants must pay Plaintiff for costs is \$417.66.

11
12 **CONCLUSION**

13 Defendants shall pay Plaintiff's counsel an additional \$20,041.97, as discussed above,
14 no later than **November 7, 2011**. The Court also takes this opportunity to remind the parties
15 that "[a] request for attorney's fees should not result in a second major litigation." *Hensley v.*
16 *Eckerhart*, 461 U.S. 424, 437 (1983). The parties have lost sight of this admonition, and the
17 Court may consider appointing a special master, whose fees shall be paid by the parties, to
18 resolve any future fee disputes that the parties cannot resolve by meeting and conferring in
19 good faith.

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21 **IT IS SO ORDERED.**

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23 Dated: 10/06/11



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25 THELTON E. HENDERSON, JUDGE
26 UNITED STATES DISTRICT COURT
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