

**FILED**  
MAY 13 2015  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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**REDACTED VERSION**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAI CORPORATION,  
Plaintiff,

v.

INTEGRATED SCIENCE SOLUTIONS,  
INC., et al.,  
Defendants.

Case No. 06-cv-05349-JCS

**ORDER GRANTING MOTION FOR  
JUDICIAL RELIEF FOR PLAINTIFF'S  
BREACH OF SETTLEMENT  
AGREEMENT**

Re: Docket No. 319

~~FILED UNDER SEAL~~

United States District Court  
Northern District of California

**I. INTRODUCTION**

On January 6, 2010, Plaintiff PAI Corporation ("PAI") and Defendants Integrated Science Solutions, Inc. ("ISSi") and Defendant Cecelia McCloy ("McCloy") entered into a settlement agreement ("the Settlement Agreement") that resolved all of the claims in this action. Accordingly, on February 10, 2010, the Court entered an order of dismissal of this action, pursuant to the stipulation of the parties, retaining jurisdiction to enforce the terms of the Settlement Agreement. Defendants McCloy and ISSi now bring a Motion for Judicial Relief for Plaintiff's Breach of Settlement Agreement ("the Motion"). A hearing on the Motion was held on Friday, March 20, 2015 at 9:30 a.m.<sup>1</sup> McCloy and ISSi filed supplemental materials in support of the Motion on March 27, 2015. For the reasons stated below, the Motion is GRANTED.

<sup>1</sup> The parties have consented to the jurisdiction of the undersigned magistrate judge pursuant to 28 U.S.C. § 636(c).

1 **II. BACKGROUND**

2 **A. Procedural Background**

3 In August 2006, PAI initiated this action against ISSi and McCloy. PAI is a Tennessee  
4 corporation that was founded in 1983 by Doan Phung, an expert in nuclear engineering and  
5 environmental sciences. Complaint at 1, 3. PAI generated most of its revenues by bidding for  
6 governmental safety and environmental services projects from various government agencies,  
7 including NASA. *Id.* ISSi is a California corporation that was founded by Cecelia McCloy, a  
8 citizen of California, in March 1999. Complaint at 4. The dispute arose out of a NASA contract  
9 (“the OSIHMES Contract”) on which PAI was prime contractor and ISSi was subcontractor, with  
10 Cecelia McCloy acting as program manager. *See* Docket No. 101 at 2. PAI asserted claims for,  
11 *inter alia*, breach of contract, breach of fiduciary duty, misappropriation of trade secrets and  
12 negligent and intentional interference with the OSIHMES Contract. ISSi and McCloy asserted  
13 counterclaims for breach of the subcontract, libel and slander. *See* Docket No. 9.

14 Following an eight-day jury trial, on October 29, 2008, a verdict was entered in favor of  
15 Plaintiff PAI Corporation. Docket No. 212. The jury found in favor of PAI and awarded  
16 \$2,130,845 in damages, but the Court subsequently granted in part Defendants’ motion for  
17 judgment as a matter of law (“JMOL Motion”), finding that there was insufficient evidence to  
18 support the jury’s verdict on some of Plaintiff’s claims. Docket No. 280. The Court also ordered  
19 a new trial on damages because the verdict did not allocate damages for specific claims. *Id.* PAI  
20 appealed the JMOL Order, but the Ninth Circuit rejected the appeal, finding it did not have  
21 jurisdiction because the JMOL Order was not a final appealable order. Docket No. 298. The  
22 Court then set a new trial for March 2010. Docket No. 299. Before the new trial was held,  
23 however, the parties entered into a settlement agreement, dated January 6, 2010. *See* Declaration  
24 of Patricia A. Meagher in Support of Defendant and Counterclaimant Integrated Science Solution,  
25 Inc.’s and Defendant Cecelia McCloy’s Motion for Judicial Relief for Plaintiff’s Breach of  
26 Settlement Agreement (“Meagher Motion Decl.”), Ex. A (Settlement Agreement). A stipulated  
27 dismissal was entered on February 10, 2010 under which the Court retained jurisdiction to enforce  
28 the terms of the Settlement Agreement. Docket No. 312.

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**B. The Settlement Agreement**

In the Settlement Agreement, ISSi and McCloy agreed to pay to PAI a total sum of

[REDACTED] with the first [REDACTED]

[REDACTED] Meagher Motion Decl., Ex. A ¶ 1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

...

[REDACTED]

[REDACTED]

[REDACTED]

...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1           **C. The Motion**

2           In the Motion, ISSi and McCloy contend PAI has breached the terms of the Settlement  
3 Agreement by closing out the OSIHMES contract with NASA without giving ISSi notice that the  
4 contract was being closed out or including the final invoices for ISSi's unreimbursed indirect costs  
5 on the OSIHMES contract, resulting in a loss of at least \$254,077.69. Motion at 2-3; Reply at 1.  
6 According to ISSi, the OSIHMES Contract "was a cost reimbursement contract, meaning that  
7 NASA paid PAI (and ISSi as PAI's subcontractor) for the actual costs incurred in performing the  
8 contract work (rather than a fixed price)." *Id.* ISSi further states that "[t]he actual costs incurred  
9 by ISSi in performing the subcontract were submitted by ISSi to PAI by invoice, and PAI in turn,  
10 would mark-up and incorporate the ISSi invoices into its own invoices and submit to NASA for  
11 reimbursement on a regular basis." *Id.*<sup>2</sup> Final invoices, such as the invoices at issue here, "are  
12 generally paid as part of NASA's contract close-out procedures which are set forth in federal  
13 regulations including Federal Acquisition Regulation ("FAR") 4.804, 48 C.F.R. §4.804, and  
14 NASA FAR Supplement Part 1804.804, 48 C.F.R. §1804.804." Motion at 4. ISSi asserts that  
15 "[b]ecause of backlog, contract closeout may occur years after completion of the actual contract  
16 work." *Id.*

17           ISSi's final invoices under the OSIHMES Contract, which ISSi contends are included in  
18 the [REDACTED] [REDACTED] [REDACTED] [REDACTED] are Invoices 931, 932 and 933.  
19 Declaration of Carlin Gill in Support of Defendant and Counterclaimant Integrated Science  
20 Solution, Inc.'s and Defendant Cecelia McCloy's Motion ("Gill Decl.") ¶ 3 ([REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED] referred to Invoice 933); Supplemental Declaration of Cecelia  
22 McCloy in Support of ISSi's and McCloy's Reply to PAI Corp.'s Opposition to ISSi's and  
23 McCloy's Motion for Judicial Relief for Breach of Settlement Agreement ("McCloy Supp. Decl.")  
24

25 <sup>2</sup> In a footnote, ISSi explains further:

26           Specifically, the invoices included actual direct costs that were incurred during the billing  
27 period and estimated indirect costs. Indirect costs were billed on an estimated basis, to be  
reconciled with actual indirect costs after government audit.

28 Motion at 3 n. 1.

1 ¶ 3 ( [REDACTED] )  
2 [REDACTED] The largest invoice, Invoice 933,  
3 was for \$254,077.69. Invoice 931 was for \$8,530.71 and Invoice 932 was for \$5,635. At the  
4 Motion hearing, ISSi and McCloy stipulated that they would drop their claims for all amounts  
5 other than the amount sought in Invoice 933 for the purposes of the instant Motion.

6 According to McCloy, the amount in Invoice 933 represented the difference between the  
7 provisional (estimated) indirect cost rates that were billed by ISSi during performance of the  
8 OSIHMES Contract and the "actual or final indirect costs [that] were established, as required by  
9 the regulations, by the NASA Contracting Officer after audit by [Defense Contract Audit Agency  
10 ("DCAA")." McCloy Supp. Decl. ¶¶ 3, 5. Evidence offered by ISSi indicates that it sent Invoice  
11 933 (as well as Invoices 931 and 932) to PAI in April 2009 with a request that it be "forwarded to  
12 NASA for payment prior to Contract close-out." See Supplemental Declaration of Carlin Gill in  
13 Support of ISSi's and McCloy's Reply to PAI Corp.'s Opposition to ISSi's and McCloy's Motion  
14 for Judicial Relief for Breach of Settlement Agreement ("Gill Supp. Decl."), Ex. 3 (letter, with  
15 Invoices 931-933 attached, from ISSi to PAI CEO Doan Phung and Accounting Supervisor Bruce  
16 Williams, dated April 30, 2009, stating "[w]e understand that PAI Corporation has not yet  
17 submitted its final invoice to NASA on [the OSIHMES Contract] and that the Contract has yet to  
18 be closed out"). A letter in response from PAI, dated July 30, 2009, stated that the invoices were  
19 "noncompliant with the contract" and asked ISSi to resubmit the "closeout accounting" according  
20 to detailed instructions from PAI. *Id.*, Ex. 4. A letter dated August 12, 2009 from ISSi to PAI  
21 indicates that the invoices were resubmitted to PAI and that they reflected that PAI owed ISSi a  
22 total of \$264,094.20 plus interest. *Id.* Ex. 5. At the Motion hearing, PAI represented that Invoice  
23 933 was forwarded to NASA in 2009, before the parties entered into the Settlement Agreement.  
24 As discussed below, however, PAI's accounting supervisor told ISSi in December 2014 that  
25 Invoice 933 was *not* submitted to NASA with PAI's close-out paperwork.

26 It is undisputed that at the time the parties entered into the Settlement Agreement, in  
27 [REDACTED] NASA had not yet begun the close-out of the OSIHMES Contract and that NASA  
28 did not close out the contract until May 2014. See Gill Decl., Ex. B (email from Bruce Williams

1 of PAI to Carlin Gill dated December 22, 2014 stating that "NASA closed the contract in May of  
2 this year"). Yet ISSi never received any notification from PAI that NASA was going forward with  
3 the close-out process, it asserts; nor did PAI forward to ISSi any correspondence from NASA in  
4 connection with the close-out. Motion at 4.

5 When ISSi's Chief Financial Officer, Carlin Gill, contacted PAI, on September 29, 2014,  
6 to inquire about the status of the OSIHMES Contract close-out, she received the following  
7 response, dated December 17, 2014, from PAI's Accounting Supervisor, Bruce Williams:

8 The only amount that I am authorized to pay ISSi is the retained fee  
9 amount of \$5,634.78 that remains on our books as being owed to  
10 ISSi. If you could please get the attached filled in (with ISSi  
11 address, contract #, signatures), and send it back to me, I can send  
12 you out a check for this retained fee amount before the end of the  
13 year, to address on your e-mail below.

14 Gill Decl., Ex. B. Gill sent a follow-up email, dated December 19, 2014, stating that ISSi  
15 assumed the OSIHMES contract had not been closed out because PAI had not forwarded any  
16 correspondence from NASA and asking for confirmation that this assumption was correct. *Id.*

17 [REDACTED]

18 [REDACTED] On December 21, 2014, Williams sent Gill an email stating that the contract had  
19 "indeed been closed out" and, after a request for further clarification, sent Gill an email on  
20 December 22, 2014, stating as follows:

21 NASA closed the contract in May of this year. Since PAI stopped  
22 bidding on gov't business in mid 2012 and ended its last contract  
23 Dec 31, 2012, we have had very little activity and I have just been  
24 helping out a few hours a month to transact what little business is  
25 necessary. That is why it has taken so long to approach you about  
26 paying ISSi their retained fee. We would like to go into 2015  
27 without liabilities hanging on, so would like to pay this to you  
28 before the end of this year.

29 No, neither I nor our majority owner, Thu-le Doan (who is running  
30 things now since Mr. Phung is mostly retired), were aware of your  
31 invoice #933 when I filled out the closeout paperwork and she  
32 signed it. Since it has been so many years and I had not seen any  
33 communication from ISSi about the contract for many years, I  
34 thought there was nothing still hanging.

35 *Id.*

36 ISSi and McCloy assert that by failing to forward correspondence from NASA informing

1 PAI of the contract close-out and failing to include Invoice 933 in the close-out paperwork it  
2 submitted to NASA in 2014, [REDACTED]  
3 [REDACTED] Motion at 2; Reply at  
4 2-3. As a result of the breach, ISSi and McCloy ask the Court to award: 1) sanctions under the  
5 Court's inherent power, in the amount of [REDACTED] the basis that PAI's breach of the Settlement  
6 Agreement also violated the Court's February 10, 2010 order dismissing the case pursuant to the  
7 Settlement Agreement; 2) damages in the amount of [REDACTED] because ISSi has now lost the  
8 opportunity to obtain payment on Invoice 933; 3) an order relieving McCloy and ISSi of any  
9 further obligation to make payments under the Settlement Agreement, or at least suspending that  
10 obligation until further order of the Court; and 4) an award of fees and costs incurred in  
11 connection with the instant motion.<sup>3</sup>

12 In connection with the damages requested, ISSi and McCloy assert that there is a high  
13 likelihood that if Invoice 933 had been submitted to NASA during the close out process, it would  
14 have been paid. Reply at 6-7. First, as stated in the McCloy Supplemental Declaration, "all ISSi  
15 subcontract invoices for costs incurred under the OSIHMES contract were, with minor  
16 adjustments, reimbursed." McCloy Supp. Decl. ¶ 8. Second, "DCAA audited ISSi's indirect costs  
17 for the period in which ISSi performed subcontract work under the OSIHMES contract and, based  
18 on the DCAA audit, ISSi's indirect cost rates were finalized and ISSi was entitled to  
19 reimbursement of an additional \$254,077.69." *Id.*

20 **D. PAI's Opposition**

21 In its Opposition brief, PAI accuses ISSi and McCloy of "dropp[ing] the ball" and "merely  
22 looking for an excuse to repudiate the [REDACTED] Settlement Agreement." Opposition at 1.  
23 PAI cites the language in the [REDACTED]  
24 stating that it [REDACTED] *Id.* at 2.  
25 Nor did PAI have any obligation to even present ISSi's claim to NASA, PAI contends. *Id.* PAI  
26

27 <sup>3</sup> In the Motion, ISSi and McCloy also asked the Court to order PAI to release the retained fee  
28 amount of \$5,634.78, which appears to correspond to Invoice 932. At the Motion hearing,  
however, they stipulated that they would limit their request for damages to Invoice 933.

1 also asserts it never received any notice from ISSi that it intended to pursue the [REDACTED]  
2 [REDACTED] [REDACTED] *Id.* at 4. In particular, in a declaration offered in support of PAI's  
3 opposition brief, Doan Phung states as follows:

4 From the time the parties executed the Settlement Agreement in  
5 January of 2010, until about two months ago, PAI had received  
6 absolutely no communication or notice from ISSi that ISSi  
7 intended to pursue the [REDACTED] [REDACTED] [REDACTED]. During the  
8 entire period of approximately five (5) years, ISSi had never once  
9 mentioned to PAI that ISSi intended to pursue said [REDACTED].  
10 Nor has ISSi ever asked, even to this day, that PAI cooperate  
11 or facilitate in any way with respect to any effort by ISSi to pursue  
12 reimbursement from NASA.

13 Declaration of Doan Phung in Opposition to ISSi's and McCloy's Motion for Judicial Relief for  
14 Breach of Settlement Agreement ("Phung Decl.") ¶ 12. Phung further states that Williams was not  
15 "made aware of, and did not know about the specific terms of the Settlement Agreement." *Id.* ¶  
16 19. Similarly, Phung represents that "Mr. Williams was not aware of ISSi's Invoice 933 when he  
17 completed the closeout paperwork for PAI." *Id.* ¶ 16. PAI does not offer a declaration by  
18 Williams in support of these representations, however.

19 PAI also asserts that it did not violate the terms of the [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] Opposition at 6. PAI relies on Phung's statement  
22 that he does not "recall any correspondence PAI exchanged with NASA regarding said  
23 [reimbursement] claim and, thus, PAI has nothing it was required to send to ISSi." Phung Decl. ¶  
24 17.

25 PAI further asserts that even if the Court were to find that the Settlement Agreement was  
26 breached, the Court should deny all of the remedies requested by ISSi and McCloy. First, PAI  
27 argues that ISSi has not established the amount of its damages because NASA would likely have  
28 rejected ISSi's claim. Opposition at 7-8. PAI cites Phung's statement that "[p]rior to the  
Settlement Agreement, PAI had repeatedly rejected ISSi's claim due to, among other reasons,  
exceeding contract rate ceiling and refusing to sign certification of cost fidelity . . . [and] NASA  
would very likely have rejected said claim on similar grounds." Phung Decl. ¶ 18. Phung further  
states that "at the time of PAI's closeout, NASA had run out of funds for the contract and had very



1 little left to pay.” *Id.*

2 Second, PAI argues that contempt sanctions are unavailable because the [REDACTED]  
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
4 [REDACTED] [REDACTED] Opposition at 8-9 (citing Fed. R. Civ. P 65(d), *Consumer Gas & Oil,*  
5 *Inc. v. Farmland Industries, Inc.*, 84 F.3d 367, 371 (10th Cir. 1996); *D. Patrick, Inc. v. Ford*  
6 *Motor Co.*, 8 F.3d 455, 460 (7th Cir. 1993)).

7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 Finally, PAI asserts that ISSi and McCloy should not receive an award of attorneys’ fees  
12 but instead, that PAI’s fees should be awarded, in the amount of \$14,700. *Id.* at 10 (citing  
13 Declaration of Anna Nguyen).<sup>4</sup>

14 **III. ANALYSIS**

15 **A. Whether PAI Violated the Terms of the Settlement Agreement**

16 ISSi and McCloy claim that PAI breached the Settlement Agreement by failing to submit  
17 Invoice 933 with its close-out paperwork or to notify ISSi when the close-out of the OSIHMES  
18 contract occurred, thereby depriving ISSi and McCloy of the opportunity to pursue the [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 The Settlement Agreement is a contract and therefore, is evaluated under California law  
22 governing contract interpretation. *Miller v. Fairchild Industries, Inc.*, 797 F.2d 727 , 733 (9th Cir.  
23 1986). In interpreting the terms of a contract, a court must consider the parties’ objective intent  
24 when they entered into the contract. *See* Cal. Civ.Code § 1636. “Because California law  
25 recognizes that the words of a written instrument often lack a clear meaning apart from the context  
26 in which the words are written, courts may preliminarily consider any extrinsic evidence offered

27 \_\_\_\_\_  
28 <sup>4</sup> No declaration by Ms. Nguyen in support of PAI’s request for attorneys’ fees appears on the docket for this case.

1 by the parties.” *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1015 (9th Cir. 2012)  
2 (citations and quotations omitted). “If the court decides, after consideration of this evidence, that  
3 the language of a contract, in the light of all the circumstances, is fairly susceptible of either one of  
4 the two interpretations contended for, extrinsic evidence relevant to prove either of such meanings  
5 is admissible.” *Id.* (citations and quotations omitted).

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED] Finally, it is undisputed that the final invoices that  
20 are the subject of ISSi’s claims could only be pursued through PAI, the prime contractor, and  
21 would not have been addressed until NASA closed out the contract. [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 **B. Request for Damages and Fees and Costs Based on Alleged Breach of Contract**  
27 Under California law, “[f]or breach of an obligation arising from contract, the measure of  
28 damages . . . is the amount that will compensate the party aggrieved for all the detriment

1 proximately caused thereby, or which, in the ordinary course of things, would be likely to result  
2 therefrom. Cal. Civ. Code § 3300. "The damages awarded should, insofar as possible, place the  
3 injured party in the same position it would have held had the contract properly been performed,  
4 but such damages may not exceed the benefit which it would have received had the promisor  
5 performed." *Brandon & Tibbs v. George Kevorkian Accountancy Corp.*, 226 Cal.App.3d 442, 468  
6 (1990). "Where the fact of damages is certain, the amount of damages need not be calculated with  
7 absolute certainty." *GHK Associates v. Mayer Group, Inc.*, 224 Cal.App.3d 856, 873 (1990)  
8 (citing *Channell v. Anthony*, 58 Cal.App.3d 290, 317 (1976)). Further, "[i]t is well established  
9 that one whose wrongful conduct has rendered difficult the ascertainment of damages cannot  
10 complain because the court must make an estimate of damages rather than an exact computation."  
11 *Ramona Manor Convalescent Hospital v. Care Enterprises*, 177 Cal. App. 3d 1120, 1140 (1986)  
12 (quoting *Pacific Scientific Co. v. Glassey*, 245 Cal.App.2d 831, 842 (1966)).

13 Here, ISSi and McCloy ask the Court to award the amount sought in Invoice 933 of  
14 \$254,077.69. They contend PAI's failure to abide by the terms of the Settlement Agreement  
15 caused damage in this amount because they were thereby deprived of seeking reimbursement from  
16 NASA and there is evidence that NASA would have paid the full amount, namely, the fact that  
17 DCAA had already approved the actual indirect costs requested and that NASA had paid ISSi's  
18 past invoices. Phung contends NASA would likely have rejected the request but provides few  
19 details. He also asserts that NASA's funds for the contract had run out but again, provides few  
20 details. The Court concludes that the evidence provided by ISSi and McCloy is sufficient to  
21 support the conclusion that ISSi would very likely have received at least some reimbursement for  
22 Invoice 933, even if it might have been subjected to a downward adjustment. Further, because the  
23 fact of damages is sufficiently certain, ISSi and McCloy should not be penalized for the  
24 uncertainty that has resulted from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
25 [REDACTED] Accordingly, the Court finds that ISSi and McCloy are entitled to \$254,077.69 in  
26 damages, that is, the amount sought in Invoice 933.

27 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
28 [REDACTED] [REDACTED] See Docket No. 335. Therefore, the Court offsets this amount against

1 the damages owed by PAI on Invoice 933, with the remaining \$128,077.69 to be included as part  
2 of the Court's award against PAI on the instant motion. [REDACTED]

3 [REDACTED]

4 **C. Request for Sanctions Based on Alleged Violation of Court Order**

5 Federal courts have "inherent" power to impose sanctions against both attorneys and  
6 parties for "bad faith" conduct in litigation or "willful disobedience" of a court order. *Roadway*  
7 *Express, Inc. v. Piper*, 447 U.S. 752, 766-767 (1980). However, a "judge's mere awareness and  
8 approval of the terms of the settlement agreement do not suffice to make them part of his order."  
9 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (1994). The Order cited by  
10 ISSi and McCloy as a basis for imposing sanctions merely dismissed the action pursuant to the  
11 stipulation of the parties. Therefore, the Court declines to impose sanctions under its inherent  
12 authority.

13 **D. Request for Award of Attorney Fees**

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 In a supplemental declaration filed after the Motion hearing, ISSi and McCloy request  
19 attorneys' fees for a total of 52.85 hours of work by Ms. Meagher, at a rate of \$385/hour. See  
20 Declaration of Patricia A. Meagher in Support of Defendants' Request for Attorneys' Fees and  
21 Expenses ("Second Supp. Meagher Decl.") ¶¶ 6,9. This includes 30.2 hours spent on the Motion  
22 and an additional 22.65 hours spent on the Reply brief and the additional materials requested by  
23 the Court following the hearing. *Id.* ¶¶ 6,7. They have also provided timesheets documenting  
24 their time, information about Ms. Meagher's qualifications and a declaration by Richard Pearl,  
25 who is frequently called upon to opine about the reasonableness of attorneys' fees, stating that the  
26 rate range for an attorney with the level of experience of Ms. Meagher is between \$640 and \$875  
27 an hour. *Id.*, Exs. AB, C & E.

28 The Court finds that the hourly rate requested by Ms. Meagher is reasonable based on the

1 materials supplied by Plaintiffs following the Motion hearing. Based on the timesheets ISSi and  
2 McCloy have provided, the Court also finds that the requested time is reasonable with the  
3 following exception: in her original declaration, Ms. Meager stated that she incurred a total of 21  
4 hours in preparing the Motion, *see Meagher Decl.*, ¶ 5, whereas she states in her supplemental  
5 materials that she spent 30.20 hours on the Motion. *Second Supp. Meagher Decl.*, ¶ 6. While the  
6 Court asked ISSi and McCloy to provide additional materials in support of their fee request, it did  
7 not permit them to revise upward the amount sought for time already incurred before the Motion  
8 hearing. Therefore, the Court reduces the requested hours by 9.20 hours, for a total of 43.65  
9 hours, giving rise to attorneys' fees in the amount of \$16,805.25.

10 ISSi and McCloy also request \$53.31 in expenses, which includes \$11.83 for delivery of  
11 motion papers to chambers, \$12.97 for a conference call between Ms. McCloy and ISSi executives  
12 to discuss the Motion, \$14.07 for computerized research and \$14.44 for delivery of reply papers to  
13 chambers. *Second Supp. Meagher Decl.*, ¶ 10 & Ex. D. The Court finds that these expenses are  
14 reasonable and awards them in full.

15 **IV. CONCLUSION**

16 For the reasons stated above, the Motion is GRANTED. ISSi and McCloy are excused  
17 from making any further payments to PAI under the Settlement Agreement and are entitled to  
18 payment by PAI of an additional \$128,077.69 in damages on this Motion. ISSi and McCloy are  
19 also awarded \$16,805.25 in attorneys' fees and \$53.31 in costs. Therefore, judgment is entered in  
20 favor of ISSi and McCloy in the amount of \$144,936.25.

21 **IT IS SO ORDERED.**

22  
23 Dated: April 7, 2015

24   
25 \_\_\_\_\_  
26 JOSEPH C. SPERO  
27 United States Magistrate Judge  
28