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IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PUBLIC.RESOURCE.ORG., a California non-
profit organization,

Plaintiff,

v.

UNITED STATES INTERNAL REVENUE
SERVICE,

Defendant.

Case No. 13-cv-02789-WHO

**DEFENDANT’S SUR-REPLY IN
OPPOSITION TO PLAINTIFF’S
MOTION FOR ATTORNEYS’ FEES AND
COSTS**

Date: September 16, 2015
Time: 2:00 p.m.
Place: Courtroom 2, 17th Floor

Defendant United States Internal Revenue Service (the “IRS”) responds to Plaintiff Public.Resource.Org’s (“Public.Resource’s”) reply to address Plaintiff’s request for \$24,787.50 in fees on fees. Public.Resource’s first introduced evidence about its fees-on-fees request with a supplemental declaration attached to its reply. Such a request is unwarranted and excessive, and should be denied¹ or, in the alternative, substantially reduced.

¹ The IRS respectfully refers the Court to its response in opposition to Public.Resource’s motion for attorneys’ fees and costs for its arguments that the request for fees on fees should be denied. See Dkt. No. 92.

1 should, therefore, be reduced accordingly (by at least 33%, i.e., proportionally). *See Elec.*
2 *Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56 (D.D.C. 2013) (a court
3 may reduce the fees based on the relative pages of the document allotted to that claim).

4 Moreover, closer scrutiny of the submitted billing entries reveals hours spent revising and
5 editing opposing counsel's "spreadsheet of fees and costs." Dkt. No. 94-2 at 3-4 (1.7 hours on
6 7/16/15 for, *inter alia*, "further edits to spreadsheet"; 5.7 hours on 7/17/15 for, *inter alia*,
7 "updating of fees spreadsheet"; 0.5 hours on 7/28/15 to "revise time sheet"; 3.8 hours on 8/17/15
8 to, *inter alia*, "review billing statements"; 2.7 hours on 8/18/15 to, *inter alia*, "update fees
9 information"). Given that counsel presumably kept records for their work in the ordinary course
10 of their business, the Court should assume that "no substantial time was needed to compile or
11 review those records." *Prison Legal News*, 2010 WL 2095223, at *4. In fact, virtually identical
12 billing records to those ultimately filed by Public.Resource were provided to the IRS in March
13 2015, so the amount of time claimed to review entries seems unreasonable.

14 The Court should also reduce the time taken by Public.Resource's counsel to draft the
15 initial supporting declarations in this matter given counsel's admitted familiarity with fee
16 litigation. *See* Dkt. No. 94-2 at 2-3 (5.7 hours on 7/17/15 to, *inter alia*, "draft[]" Burke and
17 Olson declarations"); Dkt. 91-1 (Burke Decl.) ¶ 7 (noting fee litigation successes of firm and
18 himself). These standard declarations are very straightforward and substantially biographical.
19 *See* Dkt. Nos. 91-1 & -4. Indeed, it appears that Mr. Olson submitted a similar declaration late
20 last year in support of counsel's firm's request for fees in a state court case, *Los Angeles Times*
21 *Communications LLC v. University of California Board of Regents*. (Alameda County Super. Ct.
21 No. RG12632350, entry at 10/31/14.) Further, counsel only took 0.4 hours to draft the
22 supplemental declaration submitted with Public.Resource's reply. Dkt. No. 94-2 at 4 (entry for
23 8/18/15).

