

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN ADKINS,

Plaintiff,

No. C 18-05982 WHA

v.

FACEBOOK, INC.,

Defendant.

**ORDER APPOINTING
SPECIAL MASTER**

A companion order found class counsel entitled to reasonable attorney’s fees.

1. Under Rules 53 and 54, the Court appoints **ATTORNEY ELLEN EAGEN** as the special master to determine the reasonable value of services rendered herein by class counsel (and class counsel only). By special accommodation of the Court, Attorney Eagen has agreed to provide this service at the reduced rate of \$300 per hour. By **MAY 14 AT NOON**, each side shall submit a statement with any objection to the appointment, including any suggestions for alternative candidates or other requests to be heard. If neither side objects, then the Court will proceed with the appointment described herein.

2. Plaintiff’s counsel shall provide the special master with an itemized accounting for unreimbursed expenses listed as “Travel” and “Expert Witness Fees.” Travel must be broken down into at least the following categories: air transportation, ground travel, meals,

1 and lodging. Non-working travel time must be distinguished from working travel time.
 2 Counsel may include additional categories, if necessary. Within each category, each expense
 3 must be listed with the date, description, and cost. Professional fees may be broken down into
 4 separate categories if counsel deems appropriate. The date, description, and cost for each
 5 expense incurred, such as the fee paid to an expert to produce an expert report on a specific
 6 issue, must be listed for all professional fees.

7 3. Counsel must also provide the special master a detailed declaration, organized by
 8 discrete projects, breaking down all attorney and paralegal time sought to be recovered. For
 9 each project, there must be a detailed description of the work, giving the date, hours expended,
 10 attorney name, and task for each work entry, in chronological order. A “project” means a
 11 deposition, a motion, a witness interview, and so forth. It does not mean generalized
 12 statements like “trial preparation” or “attended trial.” It includes discrete items like “prepare
 13 supplemental trial brief on issue X.” The following is an example of time collected by a
 14 project.

PROJECT: ABC DEPOSITION (2 DAYS IN FRESNO)

Date	Time-keeper	Description	Hours x	Rate =	Fee
01-08-20	XYZ	Assemble and photocopy exhibits for use in deposition.	2.0	\$100	\$200
01-09-20	RST	Review evidence and prepare to examine ABC at deposition.	4.5	\$200	\$900
01-10-20	XYZ	Research issue of work-product privilege asserted by deponent.	1.5	\$100	\$150
01-11-20	RST	Prepare for and take deposition.	8.5	\$100	\$1,700
01-12-20	RST	Prepare for and take deposition.	7.0	\$200	\$1,400
	Project Total:		23.5		\$4,350

24 4. All entries for a given project must be presented chronologically one after the
 25 other, *i.e.*, uninterrupted by other projects, so that the timeline for each project can be readily
 26 grasped. Entries can be rounded to the nearest quarter-hour and should be net of write-down
 27 for inefficiency or other cause. Please show the sub-totals for hours and fees per project, as in
 28 the example above, and show grand totals for all projects combined at the end. Include only

1 entries for which compensation is sought, *i.e.*, after application of “billing judgment.” For
2 each project, the declaration must further state, in percentage terms, the proportion of the
3 project directed at issues for which fees are awardable and must justify the percentage. This
4 percentage should then be applied against the project total to isolate the recoverable portion (a
5 step not shown in the example above).

6 5. A separate summary chart of total time and fees sought per individual timekeeper
7 (not broken down by project) should also be shown at the end of the declaration. This cross-
8 tabulation will help illuminate all timekeepers’ respective workloads and roles in the overall
9 case.

10 6. The declaration must also set forth (a) the qualifications, experience and role of
11 each attorney or paralegal for whom fees are sought; (b) the normal rate ordinarily charged for
12 each in the relevant time period; (c) how the rates were comparable to prevailing rates in the
13 community for like-skilled professionals; and (d) proof that “billing judgment” was exercised.
14 On the latter point, as before, the declaration should describe adjustments made to eliminate
15 duplication, excess, associate-turnover expense, and so forth. These adjustments need not be
16 itemized but totals for the amount deleted per timekeeper should be stated. The declaration
17 must identify the records used to compile the entries and, specifically, state whether and the
18 extent to which the records were contemporaneous versus retroactively prepared. It must state
19 the extent to which any entries include estimates (and what any estimates were based on).
20 Estimates and/or use of retroactively-made records may or may not be allowed, depending on
21 the facts and circumstances.

22 7. Ordinarily, no more than one attorney and one paralegal need be present at a
23 deposition; more will normally be deemed excessive. Ordinarily, no more than one attorney
24 need attend a law-and-motion hearing; more will normally be deemed excessive. To allow for
25 symmetry, however, the award will take into account the staffing used by the opposing party.

26 8. The special master shall review the briefs and declarations by the parties, hear
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argument, and then determine a reasonable amount to award, including any fees on fees. The special master shall also determine the extent to which any discovery should be permitted — with the caution that further discovery should be the exception and not the rule.

9. Except for any supplementation allowed by the special master, the foregoing submissions shall be the entire record for this dispute. There will be no further briefing unless allowed by the special master. After the special master’s appointment, any further submissions solely for the special master’s use should not be filed with the Court.

IT IS SO ORDERED.

Dated:

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN ADKINS,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

No. C 18-05982 WHA

**ACCEPTANCE OF
SPECIAL MASTER
APPOINTMENT**

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1. By signing below, **ATTORNEY EAGEN IS HEREBY ACCEPTS APPOINTMENT AS SPECIAL MASTER** to determine, with all reasonable diligence, the reasonable amount of attorney's fees and costs which Facebook shall pay to class counsel. She shall have all powers set forth in Federal Rule of Civil Procedure 53(c) with respect to this dispute but shall not revisit prior rulings in this case.
 2. The procedure set forth in the prior order is incorporated into and deemed a part of this order. Attorney Eagen may set a briefing and argument schedule as she deems appropriate. The parties shall provide the special master with electronic text searchable copies of all documents relevant to this dispute and shall provide print copies (such as a tabbed binder for attorney-billing records) to an appropriate address as Attorney Eagen shall request.

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3. By **AUGUST 27 AT NOON**, the special master shall file a written report and recommendation that includes her proposed findings and the recommended award of attorney’s fees and costs to which class counsel is entitled. Her report should identify all amounts disallowed and state whether the amounts disallowed qualify for treble deduction, per the order granting the motion for fees.

4. Any objections to or motions regarding the special master’s report and recommendation must be filed by **SEPTEMBER 10 AT NOON**, to be heard on the normal 35-day track, and shall not exceed **25 PAGES** in length. The response to any such objection or motion shall be due **SEVEN DAYS** from the filing thereof and shall also not exceed **25 PAGES** in length. No reply briefing, please.

5. The Court will then review and consider any timely objections to or motions regarding the special master’s report and recommendation pursuant to Rule 53(f). The objecting party must file a declaration submitting to the Court a complete appendix of relevant communications with the special master. An order will follow.

6. Ex parte communications with the special master should be avoided if possible. Any objection to an ex parte communication or motion to disqualify must be filed within **SEVEN CALENDAR DAYS** of discovery.

7. Objections to this order shall be filed by **MAY 14 AT NOON**. Any proposed modification to this order must be promptly raised in a joint letter brief, not to exceed **THREE PAGES** in length, to be filed only after the parties have met and conferred — either in person or telephonically — under the special master’s supervision.

8. Attorney Eagen shall please indicate her acceptance of this appointment as special master by signing and filing the below statement:

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I accept this appointment and reference:

ELLEN EAGEN
SPECIAL MASTER

IT IS SO ORDERED.

Dated:

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE