

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

3
4 JASON T. GUTOWSKI,

No. C 12-6056 CW

5 Plaintiff,

ORDER GRANTING
PLAINTIFF'S MOTION
FOR ATTORNEYS'
FEES AND COSTS

6 v.

7 MCKESSON CORP. and ELI LILLY &
8 CO.,

9 Defendants.
10 _____/

11 In its Order of February 25, 2013, the Court granted
12 Plaintiff Jason Gutowski's Motion to Remand and Motion for
13 Attorney's Fees. However, Plaintiff had failed to produce any
14 billing records, affidavits or other documentation supporting his
15 motion for fees and costs. The Court ordered Plaintiff to submit
16 a supplemental brief with supporting documentation to address his
17 requests for fees and costs. Plaintiff now moves for an award of
18 \$6,774.40 in fees and costs. Defendant Eli Lilly & Company
19 opposes the motion. Having considered the papers filed by the
20 parties, the Court takes the matter under submission on the papers
21 and GRANTS Plaintiff's motion.

22 LEGAL STANDARD

23 In the Ninth Circuit, reasonable attorneys' fees are
24 determined by first calculating the "lodestar." Jordan v.
25 Multnomah County, 815 F.2d 1258, 1262 (9th Cir. 1987). "The
26 'lodestar' is calculated by multiplying the number of hours the
27 prevailing party reasonably expended on the litigation by a
28

1 reasonable hourly rate." Morales v. City of San Rafael, 96 F.3d
2 359, 363 (9th Cir. 1996).

3 "The party seeking an award of fees should submit evidence
4 supporting the hours worked and rates claimed." Hensley v.
5 Eckerhart, 461 U.S. 424, 433 (1983). The court may adjust these
6 hours down if it believes the documentation to be inadequate, if
7 the hours were duplicative, or if the hours were either excessive
8 or unnecessary. Chalmers v. City of Los Angeles, 796 F.2d 1205,
9 1210 (9th Cir. 1986).

10 In establishing the reasonable hourly rate, the district
11 court should take into account (1) the novelty and complexity of
12 the issues, (2) the special skill and experience of counsel,
13 (3) the quality of representation, (4) the results obtained and
14 (5) the contingent nature of the fee agreement. City of
15 Burlington v. Dague, 505 U.S. 557, 562-63 (1992). These factors
16 are subsumed in the initial lodestar calculation, and should not
17 serve as independent bases for adjusting fee awards. Morales, 96
18 F.3d at 363-64. Reasonable fees are generally calculated
19 according to the prevailing market rates in the forum district.
20 Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992).

21 The Supreme Court has recognized that, while it is
22 appropriate for the district court to exercise its discretion in
23 determining an award of attorney's fees, it remains important for
24 the court to provide "a concise but clear explanation of its
25 reasons for the fee award." Hensley, 461 U.S. at 437; Hall v.
26 Bolger, 768 F.2d 1148, 1151 (9th Cir. 1985) (in computing an
27 award, the district court should provide a "detailed account of
28 how it arrives at appropriate figures for 'the number of hours

1 reasonably expended' and 'a reasonable hourly rate'") (quoting
2 Blum v. Stenson, 465 U.S. 886, 898 (1984)).

3 The party seeking an award of attorneys' fees bears the
4 burden of producing "satisfactory evidence -- in addition to the
5 attorney's own affidavits -- that the requested rates are in line
6 with those prevailing in the community for similar services by
7 lawyers of reasonably comparable skill, experience and
8 reputation." Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980
9 (9th Cir. 2008).

10 DISCUSSION

11 I. Reasonable Hours

12 The parties dispute the hours claimed by Plaintiff's counsel,
13 attorney Andrew S. Williams. Plaintiff states that Williams
14 manually documented his time and expended a total of 11.6 hours
15 researching, writing and filing the three pleadings. Williams
16 Aff. ¶ 10. In determining the appropriate number of hours to be
17 included in a lodestar calculation, the district court should
18 exclude hours "that are excessive, redundant, or otherwise
19 unnecessary." Hensley, 461 U.S. at 434. Defendant argues the
20 amount of hours Plaintiff is seeking is excessive and asserts that
21 4.15 hours would be more reasonable. Def. Opp. 1:22-23,3:3.

22 Defendant argues that Plaintiff spent an excessive amount of
23 time researching rulings that were not essential to Plaintiff's
24 motions. Def. Opp. 1:26-27,2:1-3. However, it is reasonable to
25 assume that an attorney would diligently research relevant case
26 law and that not all cases would ultimately be cited. Defendant
27 also argues without citation that Plaintiff's counsel excessively
28 billed administrative work for Plaintiff's Motion to Remand and

1 Reply Brief. Def. Opp. 2:14-16. The Court disagrees. Defendant
2 takes out of context the statement that Plaintiff "spent a great
3 deal of time formatting, and filing documents." Def. Opp. 2:3-4.

4 Further, Defendant contends that Plaintiff's counsel should
5 not be entitled to fees incurred with respect to work done on the
6 fee motion. Def. Opp. 2:10-16. However, the Ninth Circuit has
7 held that "time spent in establishing the entitlement to and
8 amount of the fee is compensable." Camacho, 523 F.3d at 981.
9 Here, the Court granted Plaintiff's fee motion and required
10 Plaintiff to submit supplemental briefings. The Court finds that
11 Plaintiff is entitled to compensation for all reasonable time
12 expended on the supplemental briefing.

13 The Court finds that the time of 11.6 hours requested by the
14 Plaintiff's counsel is not unreasonable.

15 II. Reasonable Hourly Rate

16 The parties dispute the reasonable hourly rate for the
17 services of Plaintiff's counsel. "Determining an appropriate
18 'market rate' for the services of a lawyer is inherently
19 difficult." Blum, 465 U.S. at 895 n. 11. The established
20 standard when determining a reasonable hourly rate is the "rate
21 prevailing in the community for similar work performed by
22 attorneys of comparable skill, experience, and reputation."
23 Barjon v. Dalton, 132 F.3d 496, 502 (9th Cir. 1997). "Generally,
24 the relevant community is the forum in which the district court
25 sits." Id. at 500. For purposes of Plaintiff's Fee Motion, the
26 "relevant community" is the Northern District of California.

27 Plaintiff's counsel does not bill clients by the hour.
28 Williams Aff. ¶ 8. However, to determine an appropriate hourly

1 rate, Plaintiff's counsel consulted numerous sources and gauged an
2 appropriate fee by taking into account his experience and firm
3 size, the location of the proceeding and the nature of the
4 proceeding to establish an equitable hourly fee. Williams Aff.

5 ¶ 8. Plaintiff asserts that an hourly rate of \$584 is a
6 reasonable market rate for attorneys with like experience from
7 comparable firms in San Francisco. In support of this, Plaintiff
8 submits the affidavit of counsel, a 2012 survey of hourly rates
9 charged by attorneys in a variety of categories as reported by a
10 legal recruiting firm, and a 2008 National Law Journal survey of
11 select law firms' hourly billing rates. Williams Aff. ¶ 9.

12 According to the 2012 survey relied upon by Plaintiff, in 2012 the
13 average hourly billing rate for attorneys practicing in San
14 Francisco was \$622 and the average billing rate for partners with
15 twenty years of experience was \$602. Williams Aff. ¶ 9. Both
16 figures are higher than the \$584 hourly rate requested by
17 Plaintiff.

18 Defendant argues that the trial experience of Plaintiff's
19 counsel should not be factored in determining an hourly rate for
20 his services because his experience is immaterial to drafting the
21 Motion to Remand and Reply Brief. Def. Opp. 2:19-20. The Court
22 finds Defendant's argument unpersuasive and Defendant does not
23 provide any legal guidance in support of this contention.

24 Defendant also argues that in the 2012 survey that Plaintiff
25 provided, the average billing rate for a firm the size of
26 Plaintiff's counsel is \$442 per hour. Def. Opp. 2:22-24.

27 Defendant believes that this \$442 billing rate is excessive for
28 the nature of Plaintiff's work in general, but for the purposes of

1 Plaintiff's fee motion, Defendant views it to be more reasonable
2 than Plaintiff's \$584 requested hourly billing rate. Def. Opp.
3 2:24-27.

4 The Court disagrees. Defendant's analysis only focuses on a
5 single factor while Plaintiff takes an inclusive approach
6 factoring in counsel's experience and firm size, and the location
7 and nature of the proceeding. Williams Aff. ¶ 8. The Court finds
8 the latter method to be more useful in determining an hourly rate
9 for attorneys of comparable skill in the relevant community and
10 finds Plaintiff's \$584 requested rate to be reasonable.

11 CONCLUSION

12 For the foregoing reasons, the Court GRANTS Plaintiff's
13 Motion for Attorney's Fees and awards Plaintiff \$6,774.40 (\$584 x
14 11.6 hours) in fees and costs incurred. Defendant shall pay this
15 amount forthwith. The Clerk shall close the file.

16 IT IS SO ORDERED.

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18 Dated: 6/25/2013

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CLAUDIA WILKEN
United States District Judge