

1 necessary. The burden is on Gould to show that he is entitled to the fees he seeks. See
2 *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984); *Harris v. Maricopa Cty. Sup. Ct.*, 631 F.3d
3 963, 971-71 (9th Cir. 2011). For reasons discussed below, the Court finds that litigating this
4 case reasonably required 58.54 hours.

5 **Discussion**

6 **Hours Reasonably Expended**

7 Gould claims that his attorney, Mary Mitchell, spent 67.19 hours over the course of
8 almost two years litigating this routine disability case. The Commissioner challenges the
9 reasonableness of hours billed throughout the litigation and argues that only 28.31 hours
10 were reasonably expended.

11 First, the Commissioner argues that 2.73 hours billed involved clerical work that
12 should have been subsumed in firm overhead rather than billed at attorney rates. (Dkt. No.
13 33 at 3:3-4:7.) The identified hours involve reviewing phone calls to Court personnel (which
14 should and in some cases must be placed by attorneys, not staff), phone calls to the
15 Assistant U.S. Attorney, and review of communications from the Court. Communications
16 between attorneys, and from attorneys to the Court are ordinarily not delegated. And in many
17 cases, counsel are not allowed to delegate them to staff. See Chambers Standing Order in
18 Civil Cases, ¶ 14 (requiring that counsel personally call chambers, rather than allowing their
19 staff to do it). Even if some of the document review were delegated, staff would still have
20 needed to communicate the information to counsel, which would have saved little or no time.
21 The Court finds all 2.73 hours were reasonably expended.

22 Second, the Commissioner argues that only 4 of a total of 17.71 hours of
23 communication between Mitchell and Gould were necessary in this case, despite its nearly
24 two years in litigation. (Dkt. No. 33 at 7:4-7.) The Commissioner identifies a list of billing
25 entries she claims were unreasonable communications, but she provides no reasoning and
26 cites no authority to support her characterization. (Dkt. No. 33 at 7:4-7.)

27 The number of hours Mitchell spent communicating with Gould was not facially
28 unreasonable. California Rules of Professional Conduct require attorneys to “keep a client

1 reasonably informed about significant developments relating to the employment or
2 representation, including promptly complying with reasonable requests for information[.]”²
3 Cal. R. Prof. Conduct 3-500. Mitchell billed a total of 17.1 hours for client communications
4 over the course of approximately 95 weeks of litigation. In other words, Mitchell spent an
5 average of fewer than 11 minutes each week in communication with Gould about the case.
6 If changes and developments in litigation make attorney-client communication necessary,
7 11 minutes each week is not unreasonable. However, the Court’s experience suggests, and
8 the case record confirms, that much of the time spent communicating in this case was not
9 reasonably necessary.

10 The few significant developments in this case occurred at lengthy intervals. The
11 docket and itemized billing entries indicate that this case required Mitchell to file a complaint
12 and a motion for summary judgment, negotiate remand, and file a motion for attorney’s fees.
13 The relatively few litigation requirements and related case developments occurred over
14 twenty-two months. The billing entries involving attorney-client communications reference
15 “case status,” “case time lines,” and “case issues,” (Dkt. No. 32-4 at 1-7), though frequently
16 no developments had occurred that might have required such communications.³

17 Mitchell’s justifications for spending “extra hours” on this case seem to concede that
18 some of the communications were not reasonably necessary. (Dkt. No. 32-2 at 3:25-27
19 (“[Gould] was extremely anxious due to mental disorders and required extraordinary
20 attention, correspondence and communication[.]”).) But any mental disorders Gould was
21 suffering from either were not found to be related to his accident or disability, or were slight.
22 See AR at 364 (psychologist’s report, concluding “I cannot state with reasonable medical
23 probability that [the stress of Gould’s accident and resulting injuries] has led to a post-
24 accident mental disorder/disability as a result of his physical injuries.”) and 454–57

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26 ² The Local Rules for the Southern District of California adopt the standards of
27 professional conduct required of members of the State Bar of California. Civ. Local Rule
28 83.4.

28 ³ For example, billing entries indicate twenty-three attorney-client communications
between July 2, 2007 and February 28, 2008, despite the complete lack of activity on the
docket and only two non-communication billing entries for document review.

1 (psychiatrist's report, finding slight psychological limitations due to depression).
2 Furthermore, Gould's documentation does not establish a link between any mental disorders
3 and the extra time devoted to communication. The lack of detail in the billing entry
4 descriptions makes it impossible to state with certainty the number of hours of
5 communication reasonably necessary in this case. Mitchell's explanation may show *why* she
6 communicated so often with Gould, but it does not show why all those hours were
7 reasonably necessary.

8 Gould has not carried his burden with regard to the number of hours devoted to
9 client communications. Clearly some were necessary, but he has not adequately
10 documented the percent or number. Based on the record, the limited billing entry
11 descriptions, and its own experience, the Court finds that eight hours were reasonably
12 expended on attorney-client communication in this case. The Court will therefore deduct 9.1
13 hours from Gould's total.

14 Third, the Commissioner argues that only 22 out of 39.06 hours billed reviewing the
15 transcript and drafting the motion for summary judgment were reasonable. Mitchell reviewed
16 the 612 page transcript and record, (Dkt. No. 33 at 8:13), in 21.55 hours, expending
17 approximately 2 minutes per page. Such a use of time is reasonable. Likewise, Mitchell
18 spent 17.51 hours preparing a motion for summary judgment that included "6 separate
19 issues," totaling, "30 pages of concentrated legal argument." (Dkt. No. 32-2 at 4:6-7). Again,
20 Mitchell's expenditure was reasonable. The fact that the Commissioner ultimately moved
21 to remand the case does not make it unreasonable for Mitchell to have spent time on
22 multiple issues. On the contrary, it was arguably the strength of Mitchell's motion that
23 convinced the Commissioner to remand the case. Thus the Court finds that Mitchell
24 reasonably expended 39.06 hours reviewing the record and drafting the motion for summary
25 judgment.

26 Finally, the Commissioner argues that the 8.83 hours billed preparing the motion for
27 attorney's fees was unreasonable and should be reduced to 4 hours. The Commissioner
28 does not deny that time spent on a fees application is compensable, see *Clark v. City of Los*

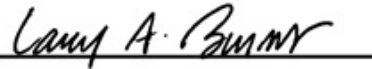
1 Angeles, 803 F.2d 987, 992 (9th Cir. 1986), but she alleges that “Plaintiff’s counsel
2 indiscriminately billed for all of her time (and possibly more)[,]” (Dkt. No. 33 at 9:11-12), and
3 cites a Seventh Circuit decision to argue that a requested fee should, “bear a rational relation
4 to the number of hours spent litigating the merits of the case.” *Spegon v. Catholic Bishop*,
5 175 F.3d 544, 554 (7th Cir. 1999). The Court finds no support for the Commissioner’s
6 characterization of Mitchell’s billing practices as possibly dishonest. Mitchell’s itemized
7 billing entry descriptions pertaining to the motion for attorney’s fees indicate reasonably
8 necessary work accomplished in a reasonable number of hours. (Dkt. No. 32-4 at 6-7.)
9 Likewise, the Court has already found that Mitchell reasonably spent 47.06 hours litigating
10 the merits of this case. The Court finds that the 8.83 hours Mitchell spent preparing the
11 motion for attorneys fees was also reasonable.

12 **Conclusion**

13 For these reasons, the Court finds that Mitchell reasonably expended 58.54 hours
14 litigating this case. The Court **GRANTS** in part Gould’s motion for attorney’s fees, and
15 **AWARDS** \$10,068.88 in attorney’s fees.

16 **IT IS SO ORDERED.**

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18 DATED: July 14, 2017

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20 **HONORABLE LARRY ALAN BURNS**
21 United States District Judge
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