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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM C. FUESS,

Defendant.

Case No.: 15cv1148-BEN (RBB)

**ORDER AWARDING COSTS AND
ATTORNEY’S FEES [ECF NOS. 15,
20]**

On July 12, 2016, Plaintiff the United States filed a “Declaration of Nithya Senra Regarding Costs of Bringing the United States’ Motion for Sanctions” (the “Declaration”) with a declaration of Mahana K. Weilder and an exhibit [ECF No. 21]. No response to the Declaration was filed. For the reasons discussed below, sanctions are assessed against Fuess in the amount of \$2,483.30.

I. BACKGROUND

The United States commenced this litigation against Defendant William C. Fuess on May 21, 2015. (Compl. 6, ECF No. 1).¹ Plaintiff initiated this action “to reduce

¹ The Court will cite to documents as paginated on the electronic case filing system.

1 federal income tax, penalty, and interest assessments, along with other accruals that have
2 not yet been formally assessed, against Defendant William C. Fuess to judgment.” (Id. at
3 2.) The United States contends that Fuess failed to pay \$286,574.24 in taxes from the
4 years 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, and 2012. (Id. at 3-5.)
5 Plaintiff asks for a judgment in this amount, and it additionally seeks “accrued but
6 unassessed interest and other statutory additions, along with statutory interest and other
7 additions accruing after April 30, 2015, less any applicable credits and payments,” as
8 well as its costs. (Id. at 6.)

9 On May 25, 2016, the United States filed a Motion for Discovery Sanctions [ECF
10 No. 15]. There, among other requests, Plaintiff sought an order “awarding the United
11 [States] reasonable expenses, including attorney’s fees, for bringing this motion for
12 discovery sanctions.” (Mot. Disc. Sanctions 2, ECF No. 15.) After a hearing on the
13 motion, the Court issued an order granting Plaintiff’s request for sanctions under Rule
14 37(d)(3). (Mins. 1, July 5, 2016, ECF No. 20.) The Court set a deadline of July 15,
15 2016, for the United States to “file a declaration regarding its expenses and attorney’s
16 fees incurred in bringing those portions of the Motion for Discovery Sanctions that relate
17 to Defendant’s failure to respond to its interrogatories and requests for production.” (Id.)
18 Fuess was given the deadline of July 22, 2016, to respond to Plaintiff’s declaration. (Id.)
19 The United States filed the Declaration on July 12, 2016 [ECF No. 21], but Defendant did
20 not file a response.

21 II. LEGAL STANDARD

22 Under Rule 37(d)(3), where a party fails to respond to interrogatories or requests
23 for production, “the court must require the party failing to act, the attorney advising that
24 party, or both to pay the reasonable expenses, including attorney’s fees, caused by the
25 failure” Fed. R. Civ. P. 37(d)(3). “By the very nature of its language, sanctions
26 imposed under Rule 37 must be left to the sound discretion of the trial judge.” O’Connell
27 v. Fernandez–Pol, 542 F. App’x 546, 547-48 (9th Cir. 2013) (unpublished memorandum
28 disposition) (citing Craig v. Far West Eng’g Co., 265 F.2d 251, 260 (9th Cir. 1959)).

1 “Overall, sanctions imposed under Rule 37 should deter the Defendant’s conduct, and
2 remedy any prejudice it caused the Plaintiff.” S. Cal. Stroke Rehab. Assocs. v. Nautilus,
3 Civil No. 09–CV–744 JLS (AJB), 2010 WL 2998839, at *2 (S.D. Cal. July 29, 2010)
4 (citing Pioneer Drive, LLC. v. Nissan Diesel America, Inc., 262 F.R.D. 552, 560 (D.
5 Mont. 2009)).

6 III. DISCUSSION

7 In her Declaration, Nithya Senra, counsel for the United States, indicates that the
8 total cost of bringing those portions of the Motion for Discovery Sanctions that relate to
9 Fuess’s failure to respond to the interrogatories and requests for production is \$2,483.30.
10 (Decl. Senra Regarding Costs 5, ECF No. 21.) This number is the total of \$651.03 in
11 costs, and nine and a half hours of attorney’s fees, billable at \$192.87 per hour. (Id.) The
12 Court addresses these expenses separately.

13 A. Costs

14 Only Senra’s co-counsel, Mahana K. Weidler, claims costs arising from bringing
15 those portions of the Motion for Discovery Sanctions that relate to the failure of
16 Defendant to respond to the interrogatories and requests for production. Weidler
17 indicates that the \$651.03 in costs is the sum of (1) airfare from Washington, D.C. to San
18 Diego, California, totaling \$205.10; (2) one half of her airfare from Denver, Colorado to
19 Washington, D.C. following unrelated business on her return trip, totaling \$103.55; (3) a
20 taxicab from her residence to Reagan National Airport, totaling \$36.38; and (4) \$306.00
21 for a hotel in San Diego for two nights. (Id. Attach. #1 Decl. Weidler 4.) Attached to her
22 declaration are receipts for these expenses. (Id. Ex. 1, at 7-12.) These receipts reflect the
23 amounts claimed by the United States. Moreover, the costs represent reasonable
24 expenses incurred in bringing those portions of the Motion for Discovery Sanctions
25 relating to Fuess’s failure to respond to the interrogatories and requests for production.
26 Plaintiff is awarded \$651.03 in costs.

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1 **B. Attorney's Fees**

2 Senra and Weidler collectively spent nine and a half hours preparing those portions
3 of the Motion for Discovery Sanctions that relate to Defendant's failure to respond to the
4 interrogatories and requests for production. (Decl. Senra Regarding Costs 5.) Senra
5 attributes four hours of her time to drafting the Motion for Discovery Sanctions and two
6 hours to her efforts to meet-and-confer with Fuess regarding his failure to respond to this
7 discovery, totaling six hours. (Id. at 2-3.) Weidler indicates that three and a half hours of
8 her time spent preparing for and appearing at the hearing on the Motion for Discovery
9 Sanctions are attributable to Fuess's failure to respond to the interrogatories and requests
10 for production. (Id. Attach. #1 Decl. Weidler 2.) According to the United States, the
11 Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, set the hourly rate at \$125 as of
12 March 29, 1996, and the inflation-adjusted rate is \$192.87. (Id. at 3-4.)

13 "EAJA provides that . . . attorney fees shall not be awarded in excess of \$125 per
14 hour unless the court determines that an increase in the cost of living or a special factor . .
15 . justifies a higher fee." Nadarajah v. Holder, 569 F.3d 906, 911 (9th Cir. 2009) (citing
16 28 U.S.C. § 2412(d)(2)(A)). "District courts have been determining the cost-of-living
17 adjustment by multiplying the basic EAJA rate by the current consumer price index for
18 urban consumers (CPI-U), and then dividing the product by the CPI-U in the month that
19 the cap was imposed" Sorenson v. Mink, 239 F.3d 1140, 1148 (9th Cir. 2001)
20 (citing Ramon-Sepulveda v. INS, 863 F.2d 1458, 1463 (9th Cir. 1988)). Courts are to
21 use the consumer price index for urban consumers at the time the work was conducted.
22 See id. ("Enhancing the EAJA's base rate by the CPI-U that is current in the year when
23 the fee is earned compensates for increases in the cost of living between the time that the
24 EAJA was enacted and the time that the fee was earned.").

25 Senra asserts that the consumer price index for urban consumers was 240.236 in
26 May of 2016, when the work on the Motion for Discovery Sanctions was conducted.
27 (Decl. Senra Regarding Costs 5, ECF No. 21.) She further indicates that the consumer
28 price index for urban consumers in March of 1996 was 155.7. (Id.) After reviewing the


1 relevant data from the Bureau of Labor Statistics, the Court finds that these numbers are
2 accurate. See CPI Detailed Report: Data for May 2016, Bureau of Labor Statistics 4, 70
3 (Malik Crawford, Jonathan Church & Bradley Akin eds., 2016),
4 <http://www.bls.gov/cpi/#tables> (select “CPI Detailed Report (complete text and tables)
5 May 2016”). Further, Senra’s calculation of the enhanced EAJA base rate as \$192.87 is
6 accurate and consistent with the Ninth Circuit’s ruling in Sorenson. The rate for nine and
7 a half hours of attorney time totals \$1832.27, which is the amount that Plaintiff seeks in
8 attorney’s fees. The Court finds that this is a reasonable award of attorney’s fees for the
9 amount of time spent on those portions of the Motion for Discovery Sanctions relating to
10 Defendant’s failure to respond to the interrogatories and requests for production. See
11 Fed. R. Civ. P. 37(d)(3). As a result, the United States is awarded \$1832.27 in attorney’s
12 fees.

13 IV. CONCLUSION

14 In sum, Plaintiff is awarded \$651.03 in costs and \$1832.27 in attorney’s fees,
15 totaling \$2,483.30. Defendant shall pay this amount to the United States within thirty
16 days of the filing of this order.

17 IT IS SO ORDERED.

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19 DATED: September 13, 2016



20 Hon. Ruben B. Brooks
21 United States Magistrate Judge

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23 cc: Judge Benitez
24 All Parties of Record
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