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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Carol Loeb Shloss,

NO. C 06-03718 JW

Plaintiff,

v.

Sean Sweeney, in his capacity as trustee of
the Estate of James Joyce, et al.,

Defendants.

**ORDER GRANTING MOTION TO
CORRECT CLERICAL ERROR;
OVERRULING DEFENDANTS'
OBJECTION TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS
RE: ATTORNEY FEES; ADOPTING
JUDGE LLOYD'S REPORT AND
RECOMMENDATION**

On May 30, 2007, the Court issued an Order awarding attorney fees to Plaintiff. (hereafter, "May 30 Order," Docket Item No. 86.) The Court referred the parties to Magistrate Judge Lloyd for a determination of the amount of fees to be awarded. On May 12, 2009, Judge Lloyd issued his Report and Recommendation on Plaintiff's Application for Attorneys' Fees and Costs. (Docket Item No. 114.) Judge Lloyd awarded Plaintiff \$307,863.75 in attorney fees and \$2,458.15 in costs.

Presently before the Court are Plaintiff's Administrative Motion to Correct Clerical Error in Report and Recommendation (hereafter, "Motion," Docket Item No. 115) and Defendants' Objections to the Report and Recommendation on Plaintiff's Application for Attorneys' Fees and Applications (hereafter, "Objection," Docket Item No. 117). Plaintiff seeks a correction to the amount of fees upon which Judge Lloyd based his recommendation and Defendants seek reconsideration of Judge Lloyd's recommended attorney fee award and a corresponding reduction in the amount of fees awarded to Plaintiff.

1 A district court may modify a magistrate judge's ruling on a non-dispositive matter, such as
2 an order to recommending attorney fees, if the order is "clearly erroneous" or "contrary to law." 28
3 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME Hospitals, Inc., 929 F.2d 1404, 1414
4 (9th Cir. 1991).

5 First, with respect to Plaintiff's Motion for correction of a clerical error, Plaintiff contends
6 that she requested \$490,040.63 in fees. Upon review of the record, it is clear that Plaintiff did, in
7 fact, request this amount. (See Docket Item No. 107 at 15.) Judge Lloyd, however, used a base
8 number of \$461,795.63 when he made a 1/3 reduction from the amount requested by Plaintiff. In
9 fact, Judge Lloyd stated that he was awarding fees in the amount of 2/3 of the total requested by
10 Plaintiff. Given that his calculation was not based on the actual amount requested, the Court
11 GRANTS Plaintiff's Motion to correct clerical error, and adjusts Judge Lloyd's awarded amount to
12 \$326,693.75, which is 2/3 of the amount requested, \$490,040.63.

13 Second, Defendants raise a litany of objections to Judge Lloyd's recommendations,
14 including that Judge Lloyd failed to consider the attorney fee factors purportedly required by
15 Fogerty v. Fantasy, Inc., 510 U.S. 517, 535 n.19 (1994). Although Defendants suggest that the
16 Fogerty factors are mandatory, a review of that case makes clear that they are merely prefatory.
17 That is, the Supreme Court discusses "several nonexclusive factors" that "may be used to guide
18 courts' discretion." Fogerty, 510 U.S. at 535 n.19. Accordingly, the Court does not find that Judge
19 Lloyd committed clear error in failing to conduct a line-by-line consideration of the factors
20 articulated in Fogerty.

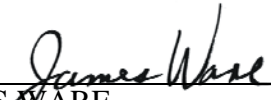
21 Ultimately, the Court finds that Judge Lloyd considered both sides' arguments in reaching
22 his conclusion. Indeed, he significantly reduced the fees sought by Plaintiff after making a careful
23 evaluation of Plaintiff's counsels' billing records. On the basis of the record before it, the Court
24 finds that Judge Lloyd's determination of fees and costs are not clearly erroneous.

25 Accordingly, the Court OVERRULES Defendants' Objections to Judge Lloyd's Report and
26 Recommendation. The Court ADOPTS the Report and Recommendation, and orders Defendants to
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1 pay to Plaintiff \$326,693.75 in attorney fees and \$2,458.15 in costs within thirty (30) days from the
2 date of this Order.

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4 Dated: May 29, 2009



JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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12 **Dated: May 29, 2009**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy