

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL

<b>Case No.</b>	CV 15-2124 PA (AJWx)	<b>Date</b>	February 16, 2016
<b>Title</b>	America Unites for Kids, et al. v. Sandra Lyon, et al.		

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**Present: The Honorable** PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

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Stephen Montes Kerr	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
None	None	

**Proceedings:** IN CHAMBERS — COURT ORDER

On December 21, 2015, this Court granted in part, and denied in part, the Motion for Sanctions filed by defendants Sandra Lyon, Jan Maez, Laurie Lieberman, Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein, Oscar de la Torre, and Ralph Mechur (collectively “Defendants”). Defendants sought sanctions, up to and including terminating sanctions, against plaintiffs America Unites for Kids (“America Unites”) and Public Employees for Environmental Responsibility (“PEER”) (collectively “Plaintiffs”).

As explained in the Court’s December 21, 2015 minute order, Plaintiffs engaged in repeated instances of unauthorized testing of caulk and other building materials for PCBs at Malibu Middle and High School (“MHS”) and Juan Cabrillo Elementary School (“JCES”) (collectively the “Malibu Campus”) during the pendency of this action and despite this Court’s repeated orders limiting discovery to air and surface wipe testing unless the results of that testing exceeded the EPA’s health-based screening levels and justified more destructive testing. The Court concluded that this unauthorized testing, which involved the collection of dozens of samples on approximately six different days was wrongful and constituted or was tantamount to bad faith.

Although the Court denied Defendants’ request for the entry of terminating sanctions, the Court did conclude that significant sanctions short of dismissal were necessary and appropriate in this instance as a result of Plaintiffs’ pattern of unauthorized, illegal, and wrongful testing, which the Court found were an outrageous abuse of the judicial process for which Plaintiffs showed no remorse. The Court therefore crafted a series of sanctions short of dismissal to remedy the harm caused by Plaintiffs’ actions and to deter similar conduct in the future. Among the sanctions issued by the Court was an order requiring Plaintiffs to pay to Defendants the reasonable attorneys’ fees incurred by Defendants’ counsel to prepare the Motion for Sanctions. The Court then ordered Defendants to file a brief and evidence establishing the reasonableness of the fees incurred. The Court provided Plaintiffs with an opportunity to file an opposition brief challenging the amount of attorneys’ fees requested by Defendants.

In their submission, Defendants separated the fees they seek into two categories. The first category, according to Defendants, “relate specifically and singularly to researching, drafting and arguing the Motion for Sanctions.” The fees Defendants seek in this first category total \$67,638. The second category includes work performed by Defendants’ attorneys to investigate Plaintiffs’ sampling, determine the impact, analyze available remedies, and communicate with their clients. The fees in this

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second category total an additional \$37,345, for a total of \$104,983 in attorneys' fees associated with preparing the Motion for Sanctions. Defendants have also requested an award of \$1,371.68 in costs related to the Motion for Sanctions.

Plaintiffs' Opposition challenges the reasonableness of the fees Defendants seek. Specifically, Plaintiffs assert that those fees are excessive given that Defendants' portion of the Joint Statement the parties filed in support of and in opposition to the sanctions motion was approximately 14 pages, did not include any complicated legal or factual analysis, incorrectly relied to a large extent on Federal Rule of Civil Procedure 37's sanctioning authority, and much of the work for which Defendants seek fees is not sufficiently related to the preparation of the Motion for Sanctions. Plaintiffs also challenge the sufficiency of the evidence in support of the requested fees. Specifically, Plaintiffs argue that it is difficult to determine how much time was spent on specific tasks, or if that time was reasonable, because Defendants' counsel's billing records were block-billed and do not provide sufficient detail to determine the reasonableness of the tasks and how long they should take to accomplish. Finally, Plaintiffs urge the Court to take into account their limited financial resources in determining the amount of the sanction. See Haynes v. City & County of San Francisco, 688 F.3d 984, 987 (9th Cir. 2012) (“[I]n imposing sanctions pursuant to § 1927, ‘it lies well within the district court’s discretion to temper the amount to be awarded against an offending attorney by a balancing consideration of his ability to pay.’”) (quoting Oliveri v. Thompson, 803 F.2d 1265, 1281 (2d Cir. 1986)).<sup>1/</sup> Plaintiffs have not challenged the reasonableness of the hourly rates charged by Defendants' counsel, which are below those they charge for other clients.

The Court has reviewed the billing records submitted by Defendants' counsel and concludes that it will not award any fees for the second category of work identified by Defendants because that work is not sufficiently related to the preparation of the sanctions motion. Additionally, in light of the other sanctions imposed by the Court, and Plaintiffs' resources, the Court concludes that assessing the full amount of fees and costs requested by Defendants would be a more severe sanction than is appropriate under the circumstances. Having reviewed the billing records, the Court further concludes that the fees requested by Defendants in the first category of work they identified is also excessive and not adequately supported by the record. Specifically, the legal and factual issues raised in the motion were not particularly complex, and the length of Defendants' portion of the subject brief does not justify an award of the full amount Defendants seek. Moreover, by block-billing their time entries, Defendants' counsel has made it difficult to evaluate the reasonableness of the time spent on particular tasks. Finally, the Court is not required to assess a sanction that fully compensates Defendants. See Haynes, 688 F.3d at 987 (“A district court may not sanction an attorney for more than the excess costs, expenses and fees incurred by the opposing party, but is not required to impose an award that high.”).

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<sup>1/</sup> In assessing the amount of the sanction, the Court has considered Plaintiffs' purported limited resources. However, in this circumstance, Plaintiffs' limited resources do not justify a sizable reduction in the sanction assessed. If the Court were to substantially reduce the sanction for this reason alone, an indigent party would have little incentive to avoid engaging in bad faith conduct that unfairly shifts significant costs to the opposing party.

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To determine a reasonable amount of attorneys' fees to assess as a sanction to compensate Defendants for having brought the sanctions motion, the Court used the table and descriptions provided by Defendants' counsel to support their sanctions request and added columns for the amount of time the Court will award for particular time entries. Where that amount differs from the amount requested by Defendants' counsel, the Court has provided a brief rationale for the reduction. Consistent with the Court's table of awarded hours and reasons for reductions, which is attached to this Order, the Court concludes that an appropriate and reasonable sanction for the attorneys' fees incurred by Defendants in bringing the Motion for Sanctions is \$28,331.00. The Court will also award \$9.15 of the \$1,371.68 in costs Defendants sought. Defendants have not adequately supported the necessity or reasonableness of the remainder of the costs.

For all of the foregoing reasons, the Court orders Plaintiffs to pay to Defendants the amount of \$28,311.00 by no later than March 14, 2016. By no later than that date, Plaintiffs shall file with the Court a Statement of Compliance establishing, under penalty of perjury, that they have complied with this Order.

IT IS SO ORDERED.

Initials of Preparer

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Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Amaru, S.	10/21/2015	Research in preparation for motion for sanctions.	4.3	4.3	385.00	1,655.50	1,655.50	
Plant, C.L.	10/21/2015	Conference re terminating sanctions; research regarding terminating sanctions; research regarding supplementing subpoenas.	3.5	2	550.00	1,925.00	1,100.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Amaru, S.	10/22/2015	Perform research for motion for terminating sanctions.	3.8	3.8	385.00	1,463.00	1,463.00	
Stein, J.E.	10/22/2015	Research re termination sanctions and draft summary correspondence re same.	1	1	550.00	550.00	550.00	
Stein, J.E.	10/26/2015	Draft employee declarations re illicit sampling; conference with Ms. Rohr Daniel (Environ), M. Elliott, and C. Plant re illicit sampling; conference with M. Elliott and C. Plant re same; conference with Ms. Herkner (SMMUSD) re same; research TSCA penalties associated with disturbance of cleanup activities; conference with M. Elliott and Ms. Miesner (Environ) re illicit sampling; conference with M. Elliott, Ms. Lyon (SMMUSD), Ms. Maez (SMMUSD), Mr. Kelly (SMMUSD), C. Plant, and S. Amaru re same; conference with M. Elliott, Ms. Rohr Daniel (Environ), and Ms. Herkner re same; conference with M. Elliott and Mr. Fernow (F3 Law) re same.	11.8	3.9	550.00	6,490.00	2,145.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed

Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Amaru, S.	10/28/2015	Research in preparation for motion for terminating sanctions.	2	2	385.00	770.00	770.00	
Plant, C.L.	10/28/2015	Research regarding injunction; conference call with M.Elliott to strategize regarding next steps for terminating sanctions joint stipulation and environmental investigation; conference call with J.Stein regarding strategy on Joint stipulation;	3.7	1.5	550.00	2,035.00	825.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Stein, J.E.	10/28/2015	Conference with C. Plant re sanctions motion; research and outline sanctions motion.	6.5	3.25	550.00	3,575.00	1,787.50	Block billing; insufficient basis for establishing reasonableness of all time billed; excessive amount of time researching by all billers
Amaru, S.	10/28/2015	Research in preparation for motion for terminating sanctions.	6	0	385.00	2,310.00	0.00	Excessive amount of time researching by all billers (including 10.1 hours of time the Court has allowed for research by Amaru, S.)
Plant, C.L.	10/29/2015	Research regarding terminating sanctions; conference call with ENVIRON regarding evidentiary declarations; conference with M.Elliott and J.Stein regarding motion practice; research regarding motion to stay	4.7	1.6	550.00	2,585.00	880.00	Block billing; insufficient basis for establishing reasonableness of all time billed; excessive amount of time researching by all billers

Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Stein, J.E.	10/29/2015	Conference with M. Elliott, C. Plant, Mr. Daugherty (Environ), Ms. Miesner (Environ), and Ms. Rohr Daniel (Environ) re repair work; draft Daugherty Declaration in support of sanctions stipulation; conference with C. Plant re terminating sanctions; conference with M. Elliott and C. Plant re sanctions motion; conference with Mr. Ayden (F3) re detective investigation; review and draft response to letter by PEER and Ms. DeNicola.	10.8	3.6	550.00	5,940.00	1,980.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Amaru, S.	10/30/2015	Research monetary and evidentiary sanctions for motion.	1	0	385.00	385.00	0.00	Excessive amount of time researching by all billers (including 10.1 hours of time the Court has allowed for research by Amaru, S.)

Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Stein, J.E.	10/30/2015	Research and draft motion for terminating sanctions; conference with Mr. Avrith (America Unites) and M. Elliott re meet and confer; conference with M. Elliott, C. Plant, and S. Amaru re restraining order and terminating sanctions motions; conference with Ms. Huffman (SMMUSD) to review and execute declaration; tour MHS and JCES campus with Mr. Daugherty (Environ) and Ms. Rohr Daniel (Environ) to review extent of damage to property; conference with M. Elliott re property damage and next steps.	9.8	4.5	550.00	5,390.00	2,475.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Amaru, S.	10/31/2015	Write up research on evidentiary and monetary sanctions for motion.	1.2	0	385.00	462.00	0.00	Insufficient basis for establishing necessity or value of task
Elliott, M.E.	11/2/2015	Review and revise meet and confer letter on sanctions motion.	1.5	1.5	690.00	1,035.00	1,035.00	

Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Stein, J.E.	11/2/2015	Draft and revise motion for terminating sanctions; draft and revise meet and confer letter re sanctions; conference with M. Elliott, Mr. Daugherty (Environ), Ms. Miesner (Environ), and Ms. Rohr Daniel (Environ) re documenting damage and draft declaration; conference with M. Elliott, Ms. Lyon (SMMUSD), Ms. Maez (SMMUSD), Ms. Lieberman(SMMUSD), Ms. Pinsker (SMMUSD), Mr. Kelly (SMMUSD), and Mr. Fernow (F3 Law) re upcoming board meeting and EPA approval; revise Environ statement re impacts from illicit sampling.	9.4	3.1	550.00	5,170.00	1,705.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Stein, J.E.	11/3/2015	Research and draft terminating sanctions motion.	6.3	3	550.00	3,465.00	1,650.00	Excessive amount of time drafting motion given complexity and length of brief
Elliott, M.E.	11/4/2015	Work on joint statement for sanctions motion; conference with Julia Stein on same issue.	3.7	2	690.00	2,553.00	1,380.00	Excessive amount of time drafting motion given complexity and length of brief
Stein, J.E.	11/4/2015	Review and revise Elliott Declaration; review and revise Daugherty declaration; revise joint stipulation for terminating sanctions; meet and confer with M. Elliott, Mr. Avrith (America Unites), and Ms. Dinerstein (PEER).	8.3	3.5	550.00	4,565.00	1,925.00	Block billing; excessive amount of time drafting motion given complexity and length of brief; insufficient basis for establishing reasonableness of all time billed



Timekeeper	Date	Description	Hours Requested	Hours Awarded	Hourly Rate	Total Requested	Total Awarded	Reason for Reduction
Stein, J.E.	11/6/2015	Prepare and finalize Defendants' portion of joint stipulation for terminating sanctions; conference with Ms. Rohr Daniel re illicit sampling.	2.3	1	550.00	1,265.00	550.00	Block billing; not all tasks sufficiently related to sanctions motion; excessive amount of time drafting motion given complexity and length of brief; insufficient basis for establishing reasonableness of all time billed
Plant, C.L.	11/17/2015	Review and analyze joint stipulation; correspondence with J.Stein and M.Elliott regarding supplemental statement.	0.6	0.2	550.00	330.00	110.00	Block billing; no supplemental statement filed with Court
Stein, J.E.	11/17/2015	Review Plaintiffs' portion of joint stipulation.	0.8	0.4	550.00	440.00	220.00	Insufficient basis for establishing reasonableness of all time billed
Elliott, M.E.	11/18/2015	Review and revise motion for sanctions	3.3	1.5	690.00	2,277.00	1,035.00	Excessive amount of time drafting motion given complexity and length of brief
Stein, J.E.	11/20/2015	Draft supplemental memorandum in support of sanctions motion; conference with M. Elliott re sanctions motion.	5.8	0	550.00	3,190.00	0.00	Block billing; no supplemental statement filed with Court
Amaru, S.	12/11/2015	Draft case summaries and prepare materials for sanctions motion.	5.1	0	385.00	1,963.50	0.00	Insufficient basis for establishing necessity or value of task
Stein, J.E.	12/11/2015	Conference with M. Elliott re status of mediation and sanctions hearing; conference with S. Amaru re materials for sanctions hearing.	1.1	0.6	550.00	605.00	330.00	Block billing; not all tasks sufficiently related to sanctions motion; insufficient basis for establishing reasonableness of all time billed
Elliott, M.E.	12/21/2015	Prepare for and argue motion for sanctions	7.6	4	690.00	5,244.00	2,760.00	
			125.9	52.25		67,638.00	28,331.00	