

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 08, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KELLY O’KELL,

Plaintiff,

v.

DEB HAALAND, in her official capacity

as Secretary of the United States

Department of the Interior,

Defendant.

No. 2:18-CV-00279-SAB

**ORDER GRANTING IN PART  
PLAINTIFF’S MOTION FOR  
FEES AND COSTS; DENYING  
DEFENDANT’S MOTION TO  
AMEND JUDGMENT**

Before the Court are Plaintiff’s Motion for Fees, Costs, and Litigation Expenses, ECF No. 138, and Defendant’s Motion to Amend Judgment, ECF No. 150. The motions were considered without oral argument. Plaintiff is represented by Matthew Crotty and Michael Love. Defendant is represented by John Drake, Joseph Derrig, and Molly Smith.

Having reviewed the briefing and the applicable case law, the Court grants in part Plaintiff’s motion and denies Defendant’s motion.

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**ORDER GRANTING IN PART PLAINTIFF’S MOTION FOR FEES  
AND COSTS; DENYING DEFENDANT’S MOTION TO AMEND  
JUDGMENT # 1**

1 **Plaintiff’s Motion for Fees, Costs, and Litigation Expenses** (ECF No. 138)

2 Plaintiff requests that the Court award her attorney’s fees, costs, and  
3 litigation expenses (“attorney’s fees and costs”). Plaintiff argues that, because she  
4 prevailed on her Age Discrimination in Employment Act (“ADEA”) claim against  
5 the federal government, she is entitled to reasonable attorney’s fees and costs either  
6 under the ADEA itself or under the Equal Access to Justice Act (“EAJA”).

7 Defendant opposes the request. Defendant argues that (1) the ADEA does  
8 not provide for recovery of attorney’s fees and costs against the federal  
9 government; (2) the EAJA also does not provide for recovery of attorney’s fees  
10 and costs against the federal government because the EAJA does not amount to a  
11 clear and express waiver of sovereign immunity; and (3) even if Plaintiff can  
12 recover attorney’s fees and costs, Plaintiffs’ counsel’s requested compensation is  
13 excessive, unreasonable, and not compensable.

14 1. Whether Plaintiff can recover attorney’s fees and costs

15 As a threshold matter, the Court finds that Plaintiff can recover attorney’s  
16 fees and costs under the EAJA.

17 The ADEA’s federal-sector provision states that “[a]ny person aggrieved  
18 may bring a civil action in any Federal district court of competent jurisdiction for  
19 such legal or equitable relief as will effectuate the purposes of this chapter.” 29  
20 U.S.C. § 633a(c). However, this broad, generalized language contrasts against the  
21 ADEA’s private-sector provision, which specifically permits prevailing plaintiffs  
22 to recover attorney’s fees and costs. 29 U.S.C. § 626(b) (incorporating 29 U.S.C. §  
23 216(b), which states “[t]he court in such action shall, in addition to any judgment  
24 awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by  
25 the defendant, and costs of the action.”). Moreover, the ADEA’s federal-sector  
26 provision states that it “shall not be subject to, or affected by, any provision of this  
27 chapter,” which includes § 626(b)’s incorporation of § 216(b)). 29 U.S.C. §  
28 633a(f). Thus, several courts have held that plaintiffs cannot recover attorney’s

1 fees and costs under the “such legal and equitable relief” part of the ADEA’s  
2 federal-sector provision. *See Nowd v. Rubin*, 76 F.3d 25, 27 (1st Cir. 1996) (“[W]e  
3 affirm the district court ruling that the ADEA itself does not authorize attorney fee  
4 awards against the United States.”); *Boehms v. Crowell*, 139 F.3d 452, 462 (5th  
5 Cir. 1998) (“[T]he generalized language of subsection 633a(c)—authorizing ‘such  
6 legal or equitable relief as will effectuate the purposes of [the ADEA]’—cannot be  
7 interpreted as an *express* authorization of fee-shifting on Congress’ part, much less  
8 an *unequivocal* waiver of the government’s sovereign immunity *vis a vis* awards of  
9 attorney’s fees”).

10 However, courts have taken a different approach regarding attorney’s fees  
11 and costs under the EAJA. The EAJA states “[u]nless expressly prohibited by  
12 statute, a court may award reasonable fees and expenses of attorneys . . . to the  
13 prevailing party in any civil action brought by or against the United States.” 28  
14 U.S.C. § 2412(b). The EAJA also states that “[t]he United States shall be liable for  
15 such fees and expenses to the same extent that any other party would be liable  
16 under the common law or under the terms of any statute which specifically  
17 provides for such award.” *Id.* Thus, several courts have found that, even though a  
18 plaintiff cannot recover attorney’s fees and costs against the federal government  
19 under the ADEA itself, they *can* recover attorney’s fees and costs against the  
20 federal government under the EAJA. *See Nowd*, 76 F.3d at 28 (“We therefore  
21 conclude that the EAJA empowers the district courts, in their reasonable discretion,  
22 to award prevailing ADEA claimants attorney fees and expenses against the United  
23 States.”); *Boehms*, 139 F.3d at 463 (“[T]he EAJA enables trial courts to award  
24 attorney’s fees against the federal government in ADEA cases”).

25 Defendant argues that Plaintiff is not entitled to recover attorney’s fees and  
26 costs under the EAJA because she has not established that the EAJA “operates as a  
27 clear and express waiver of sovereign immunity.” ECF No. 148 at 3-4. However,  
28 the Court finds that the language in the EAJA constitutes a sufficiently clear and

1 express waiver of sovereign immunity. The statute explicitly says that “the United  
2 States shall be liable” for attorney’s fees and costs. 28 U.S.C. § 2412(b); *see also*  
3 *Kerin v. USPS*, 218 F.3d 185, 189 (2d Cir. 2000) (“The EAJA contains two distinct  
4 and express statutory waivers of sovereign immunity permitting the recovery of  
5 attorneys’ fees in lawsuits brought by or against the United States.”); *Newmark v.*  
6 *Principi*, 283 F.3d 172, 178 (3d Cir. 2002) (“[T]he EAJA enacted . . . Section  
7 2412(b), waiving the government’s immunity from the fees to which other litigants  
8 have long been subject.”). Thus, Plaintiff’s request for attorney’s fees and costs is  
9 not barred by sovereign immunity.

10 2. Whether the requested amount of attorney’s fees is reasonable

11 Next, the Court must determine whether the amount of attorney’s fees  
12 requested by Plaintiff’s counsel is reasonable.

13 When determining reasonable attorney’s fees, the Court must first utilize the  
14 lodestar method, which consists of multiplying the number of hours reasonably  
15 expended on the litigation by a reasonable hourly rate. *Jordan v. Multnomah Cnty.*,  
16 815 F.2d 1258, 1262 (9th Cir. 1987). The Court may then, at its discretion, adjust  
17 the lodestar amount after considering the *Kerr* factors, which are (1) the time and  
18 labor required; (2) the novelty and difficulty of the questions involved; (3) the skill  
19 requisite to perform the legal service properly; (4) the preclusion of other  
20 employment by the attorney due to acceptance of the case; (5) the customary fee;  
21 (6) whether the fee is fixed or contingent; (7) time limitations imposed by the  
22 client or the circumstances; (8) the amount of money involved and the results  
23 obtained; (9) the experience, reputation, and ability of the attorneys; (10) the  
24 “undesirability” of the case; (11) the nature and length of the professional  
25 relationship with the client; and (12) awards in similar cases. *Morales v. City of*  
26 *San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996) (*citing Kerr v. Screen Extras Guild,*  
27 *Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).

1 The party seeking the fees bears the burden of (1) establishing their  
2 entitlement to the requested amount; and (2) providing documentation of the time  
3 expended and the appropriate hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424,  
4 437 (1983). To determine a reasonable hourly rate, the Court must look at both  
5 reasonable hourly rates for the region, as well as the experience levels of the  
6 attorneys. *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir.  
7 2016).

8 Here, Plaintiffs' counsel estimate that they expended 1,111.83 hours on this  
9 case from intake to judgment—564.70 hours from Mr. Crotty and 547.13 hours  
10 from Mr. Love. ECF Nos. 139 at ¶ 19, 140 at ¶ 16. Additionally, Mr. Crotty states  
11 that his hourly rate is \$500/hour, whereas Mr. Love's is \$550/hour. *Id.* Thus,  
12 utilizing the lodestar method, this would amount to \$583,271.50 in attorney's  
13 fees—\$282,350 to Mr. Crotty and \$300,921.50 to Mr. Love.

14 Plaintiff's counsel also requests attorney's fees for the time they spent  
15 preparing the present motion for fees, costs, and expenses, as well for time spent  
16 working on other post-judgment tasks. Mr. Crotty estimates that he spent 19.9  
17 hours on these matters, whereas Mr. Love estimates that he spent 41.10 hours. *Id.*  
18 When multiplied by their respective hourly rates, this would amount to \$32,555 in  
19 attorney's fees—\$9,950 to Mr. Crotty and \$22,605 to Mr. Love.

20 Finally, Plaintiff's counsel requests attorney's fees for the time they spent  
21 responding to (1) Defendant's objections to the requested attorney's fees and costs;  
22 and (2) Defendant's motion to amend the Court's Judgment. In responding to  
23 Defendant's objections to the requested attorney's fees and costs, Mr. Crotty  
24 estimates that he spent 15 hours, whereas Mr. Love estimates that he spent 3 hours.  
25 ECF Nos. 152 at ¶ 7, 153 at ¶ 2. As for responding to Defendant's motion to  
26 amend the Court's Judgment, Mr. Crotty estimates that he spent 6 hours, whereas  
27 Mr. Love estimates that he spent 19.1 hours. ECF Nos. 155-1, 156. Thus, in total,  
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1 when multiplied by their respective hourly rates, this would amount to \$22,655 in  
2 attorney's fees—\$10,500 to Mr. Crotty and \$12,155 to Mr. Love.

3 Thus, utilizing the lodestar method, the total amount of Plaintiff's counsel's  
4 attorney's fees is \$638,481.50—\$302,800 for Mr. Crotty and \$335,681.50 to Mr.  
5 Love.

6 Defendant objects to the requested amount of attorney's fees on two  
7 grounds. First, Defendant argues that Mr. Crotty's and Mr. Love's requested  
8 hourly rates are too high. Second, Defendant argues that Plaintiff's counsel's  
9 estimate of 1,111.83 hours spent on the case (from intake to judgment) is  
10 excessive. The Court addresses each in turn.

11 *a. Hourly rate*

12 Defendant argues that Plaintiff's requested hourly rates are too high because  
13 Mr. Crotty and Mr. Love previously requested \$350/hour and \$400/hour,  
14 respectively, in a motion for attorney's fees in a 2015 case before Judge  
15 Quackenbush, *Zhu v. North Central Educational Service District ESD 171*, 2:15-  
16 CV-00183-JLQ (E.D. Wash.). Defendant argues that Mr. Crotty and Mr. Love  
17 have not provided sufficient justification for why a \$150/hour increase in their  
18 hourly rates is reasonable—especially since Judge Quackenbush awarded these  
19 attorney's fees to Mr. Crotty and Mr. Love on February 15, 2018, and Plaintiff  
20 filed her Complaint in the above-captioned case, on August 31, 2018. Additionally,  
21 Defendant argues that the requested rates do not reflect Plaintiff's counsel's  
22 respective years of experience (*i.e.*, even though Mr. Love has been practicing law  
23 for twice as long as Mr. Crotty, their requested rates are only \$50 apart)—thus,  
24 Defendant argues that, if the Court finds that \$550/hour is reasonable for Mr. Love,  
25 the Court should instead use a \$450/hour rate for Mr. Crotty.

26 The Court rejects Defendant's arguments. Having reviewed the declarations  
27 submitted by Joseph Barton, Patrick Kirby, and Robert Greer, the Court finds that  
28 the rates requested by Plaintiff's counsel are commensurate with reasonable rates

1 within the Eastern District of Washington for the services performed. ECF Nos.  
2 141, 144, 145. The Court also finds that the requested rates are reasonable in light  
3 of Plaintiff’s counsel’s legal skills and experience levels. Thus, the Court awards  
4 Mr. Crotty a \$500/hour rate and Mr. Love a \$550/hour rate.

5 *b. Number of hours*

6 Defendant also objects to Plaintiff’s counsel’s representation that they spent  
7 1,111.83 hours working on the case from intake to judgment. Defendant argues  
8 that this “figure is excessive and must be substantially reduced.” ECF No. 148 at  
9 8. However, Defendant provides no support for the argument that the amount of  
10 time expended by Plaintiff’s counsel was excessive, given the length, nature, and  
11 complexity of the case.

12 The Court is persuaded by Plaintiff’s argument that counsel are unlikely to  
13 spend unnecessary time on contingency fee cases, given that “[t]he payoff is too  
14 uncertain, as to both the result and the amount of the fee.” *Moreno v. City of*  
15 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Additionally, the Court notes  
16 that Defendant’s argument about excessive hours is contradicted by the fact that  
17 Defendant staffed three lawyers on this case (as opposed to Plaintiff’s two).  
18 Finally, the Court notes that this case was aggressively litigated by both sides,  
19 which is not a criticism but an important observation. At all steps, Plaintiff blamed  
20 Defendant for her experiences, and in return Defendant blamed Plaintiff. Such  
21 cases almost always result in long, hard work for the lawyers on both sides. The  
22 lawyers worked hard on this case, and the Court has no evidence that Plaintiff’s  
23 counsel worked too hard, billed too many hours to the file, or devoted too much  
24 effort to the case.

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1           *c. Conclusion*

2           Given that the Court has found that Plaintiff’s counsel’s requested hourly  
3 rates and number of hours are reasonable, the Court awards the lodestar amount of  
4 \$638,481.50 in attorney’s fees—\$302,800 for Mr. Crotty and \$335,681.50 to Mr.  
5 Love. The Court finds that the lodestar amount is reasonable and that any  
6 adjustments based on the *Kerr* factors are not warranted.

7           3.     Whether the requested amount of litigation costs and expenses is  
8                 reasonable

9           In the motion for attorney’s fees, costs, and expenses, Plaintiff’s counsel  
10 request the following litigation costs and expenses: (1) \$13,077.72 in deposition  
11 and trial transcript costs; (2) \$35,987.01 in expert fees for Erick West and Deborah  
12 Diamond; (3) \$10,969.43 in Westlaw costs; (4) \$191.79 in binder costs; (5)  
13 \$2,727.79 transportation, parking, and lodging expenses; (6) \$4,243.75 in  
14 mediation fees; (7) \$400.00 in filing fees; (8) \$275.00 in service of process fees;  
15 (9) \$1,058.76 in supplies and postage costs; (10) \$14,478.00 in costs related to  
16 obtaining declarations in support of the motion; (11) \$20,180.00 in Research  
17 Analyst costs; and (12) \$198.00 in fees paid to an office assistant for assembling  
18 the trial exhibits. ECF No. 138 at 7-10. These amount to \$103,787.25 in litigation  
19 costs and expenses.

20           Moreover, in their reply brief in support of the motion, Plaintiff’s counsel  
21 request an additional \$5,542.20 in litigation costs and expenses—specifically,  
22 \$4,998.20 in Westlaw costs and \$544.00 in trial transcript costs. ECF No. 151 at 9-  
23 10.

24           Finally, in a declaration submitted in support of Plaintiff’s response to  
25 Defendant’s Motion to Amend the Court’s Judgment, Mr. Crotty requests an  
26 additional \$724.85 in Westlaw costs. ECF No. 156 at ¶ 4.

27           Thus, in total, Plaintiff’s counsel’s requested amount of litigation costs and  
28 expenses is \$110,054.30.



1 Defendant objects to the requested amount of litigation costs and expenses  
2 on three grounds. First, regarding the \$14,478.00 in costs related to obtaining  
3 declarations in support of the motion for attorney's fees and costs, Defendant  
4 argues that (1) the Court should disallow this expense because Plaintiff's counsel  
5 failed to submit documentation establishing that they actually *paid* these expenses;  
6 and (2) even if Plaintiff's counsel did pay these expenses, they are excessive and  
7 unreasonable, particularly the expenses submitted by Mr. Kirby. Second, regarding  
8 the \$20,180.00 in Research Analyst costs, Defendant argues that (1) Nancy Cook,  
9 Plaintiff's research analyst, is neither an attorney nor a paralegal and thus cannot  
10 charge Defendant for legal work; and (2) her requested hourly rate of \$200/hour is  
11 unreasonable, especially given her lack of formal legal training. Third, regarding  
12 the \$16,692.48<sup>1</sup> in Westlaw costs, Defendant argues that Plaintiff's counsel has not  
13 shown that (1) separate billing for computerized legal research is the prevailing  
14 practice in the local community; or (2) Mr. Crotty separately charges Westlaw  
15 costs to his clients.

16 The Court addresses each in turn.

17 *a. Costs associated with obtaining declarations in support of the*  
18 *reasonable hourly rate*

19 Defendant objects to Plaintiff's counsel's request for \$14,478.00 in  
20 compensation to Patrick Kirby and Robert Greer, who both submitted declarations  
21 in support of Plaintiff's motion for attorney's fees and costs. ECF Nos. 144, 145.  
22 Specifically, Defendant argues that (1) Plaintiff has not provided any concrete  
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24 <sup>1</sup> Though Defendant's objection only addresses the \$10,969.43 in Westlaw fees  
25 initially requested by Plaintiff's counsel, the Court assumes that Defendant  
26 maintains the same objection to the additional Westlaw fees requested in Plaintiff's  
27 reply brief, ECF No. 151, and in Mr. Crotty's declaration in response to  
28 Defendant's Motion to Amend the Court's Judgment, ECF No. 156.

1 proof that she and her counsel have actually paid Mr. Kirby or Mr. Greer for their  
2 services, but rather have only submitted their invoices; and (2) even if these  
3 individuals were paid, the \$14,478.00 amount is excessive, especially the  
4 \$10,793.00 billed by Mr. Kirby.

5 The Court rejects Defendant's arguments. Having reviewed the invoices and  
6 billing records submitted by Mr. Kirby and Mr. Greer, the Court finds that the  
7 work they performed to prepare the declarations in support of Plaintiff's counsel's  
8 fee petition is reasonable. *See Bernardi v. Yeutter*, 951 F.2d 971, 976 (9th Cir.  
9 1991). Thus, the Court awards Plaintiff's counsel \$14,478.00 to compensate Mr.  
10 Kirby and Mr. Greer for their work.

11 *b. Costs from Ms. Cook's Research Analyst work*

12 Defendant also objects to Plaintiff's counsel's request for \$20,180.00 for  
13 services performed by Nancy Cook, who works as a part-time Research Analyst  
14 for Mr. Crotty. Specifically, Defendant argues that (1) Ms. Cook is neither an  
15 attorney nor a paralegal, yet is requesting compensation for legal work (*i.e.*,  
16 interviewing witnesses; attending depositions; reviewing discovery; researching  
17 personnel policies; drafting statements of fact; editing briefs; and assembling  
18 exhibits); and (2) even if Ms. Cook can be compensated for performing legal work,  
19 her requested rate of \$200/hour is unreasonable, given her lack of a legal  
20 background.

21 The Court rejects Defendant's arguments. The U.S. Supreme Court has  
22 stated that a reasonable attorney's fee "cannot have been meant to compensate only  
23 work performed personally by members of the bar," but rather must "take into  
24 account the work of . . . secretaries, messengers, janitors, and others whose labor  
25 contributes to the work product for which an attorney bills her client." *Missouri v.*  
26 *Jenkins by Agyei*, 491 U.S. 274, 285 (1989). Additionally—though both the Ninth  
27 Circuit and the U.S. Supreme Court have used the term "paralegal" when referring  
28 to non-attorneys who perform legal work—there is nothing in the caselaw to

1 suggest that *only* those with the formal job title of “paralegal” can be compensated  
2 for paralegal-type work. *See id.*; *Grove v. Wells Fargo Fin. California, Inc.*, 606  
3 F.3d 577, 580 (9th Cir. 2010). Finally, Defendant has not provided any evidence to  
4 suggest that Ms. Cook’s requested \$200/hour rate is unreasonable relative to the  
5 prevailing market-rate for paralegal-like services in the Eastern District of  
6 Washington. Thus, the Court awards Plaintiff’s counsel \$20,180.00 to compensate  
7 Ms. Cook for her work on the case.

8 *c. Costs from Westlaw research*

9 Finally, Defendant objects to Plaintiff’s counsel’s request for \$16,692.48 in  
10 Westlaw costs. Specifically, Defendant argues that Plaintiff’s counsel have not  
11 shown either that (1) separate billing for Westlaw expenses is “the prevailing  
12 practice in the local community”; or (2) Mr. Crotty typically charges his paying  
13 clients for computerized legal research fees separate from his normal hourly rate.  
14 *Trustees of Const. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*,  
15 460 F.3d 1253, 1258–59 (9th Cir. 2006); *Grove*, 606 F.3d at 580; *see also Cmty.*  
16 *Ass’n for Restoration of the Env’t, Inc. v. Cow Palace, LLC*, No. 13-CV-3016-  
17 TOR, 2016 WL 3582754, at \*18 (E.D. Wash. Jan. 12, 2016).

18 The Court agrees with Defendant’s arguments. Mr. Crotty has not shown  
19 that it is customary in the Eastern District of Washington for attorneys to  
20 separately bill clients for computer-based legal research costs—indeed, Mr. Love  
21 has not requested separate compensation for his Westlaw costs. Mr. Crotty also  
22 concedes that he does not charge every paying client for Westlaw costs separate  
23 from his normally hourly rate. *See* ECF No. 151 at 9. Thus, the Court rejects Mr.  
24 Crotty’s request for \$16,692.48 in Westlaw costs.

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1 *d. Conclusion*

2 The Court finds that all the requested costs and expenses are reasonable  
3 except for Mr. Crotty's Westlaw costs. Thus, the Court awards Plaintiff's counsel's  
4 \$93,361.82 in litigation costs and expenses.

5 **Defendant's Motion to Amend Judgment (ECF No. 150)**

6 Defendant requests that the Court amend its April 12, 2022 Judgment, ECF  
7 No. 137, pursuant to Fed. R. Civ. P. 59(e). Specifically, Defendant argues that the  
8 Court erred when it awarded Plaintiff both (1) monetary damages in the amount of  
9 \$928,054.00 for front pay; and (2) injunctive relief striking the reasons for  
10 termination from Plaintiff's SF-50 and removing all disciplinary letters from  
11 Plaintiff's personnel file. Defendant argues that the Court awarding both forms of  
12 relief to Plaintiff has "the effect of doubly compensating Plaintiff for forward-  
13 looking injuries" because "[b]oth remedies address Plaintiff's ability to find future  
14 re-employment." ECF No. 150 at 5.

15 Plaintiff in response argues that the Court properly exercised its discretion in  
16 awarding her both monetary and injunctive relief because these remedies were  
17 intended to address different injuries. Additionally, Plaintiff argues that Defendant  
18 never made this argument either at trial or in any previously filed motion with the  
19 Court and thus has waived the opportunity to do so now.

20 Legal Standard

21 A motion to amend judgment under Rule 59(e) may only be granted if (1)  
22 the motion is necessary to correct manifest errors of law or fact upon which the  
23 judgment is based; (2) the moving party presents newly discovered or previously  
24 unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or  
25 (4) there is an intervening change in the controlling law. *Turner v. Burlington N.*  
26 *Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). The Court has considerable  
27 discretion in deciding a Rule 59(e) motion. *McDowell v. Calderon*, 197 F.3d 1253,  
28

1 1255 n.1 (9th Cir. 1999). Reconsideration of an already-entered judgment “is an  
2 extraordinary remedy which should be used sparingly.” *Id.*

### 3 Discussion

4 The ADEA’s federal-sector provision states that a plaintiff may bring a civil  
5 action “for such legal or equitable relief as will effectuate the purposes of this  
6 chapter.” 29 U.S.C. § 633a(c). Additionally, the U.S. Supreme Court has noted that  
7 “the ADEA federal-sector provision was patterned directly after Title VII’s  
8 federal-sector discrimination ban.” *Gomez-Perez v. Potter*, 553 U.S. 474, 487  
9 (2008) (internal citation and quotation omitted). The Ninth Circuit has stated that  
10 “[t]he district court has wide discretion in awarding remedies to make a Title VII  
11 plaintiff whole.” *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1495 (9th Cir.  
12 1995).

13 The Court denies Defendant’s motion. As the Court stated in its Findings of  
14 Fact and Conclusions of Law, an ADEA plaintiff can recover front pay if  
15 reinstatement to their former position is not feasible. *Pollard v. E.I. du Pont de*  
16 *Nemours & Co.*, 532 U.S. 843, 846 (2001). Here, both parties conceded that  
17 reinstatement was not feasible. *See* ECF No. 150 at 5. Thus, the Court awarded  
18 Plaintiff front pay in lieu of reinstatement to her former position.

19 However, Defendant argues that the Court’s award of injunctive relief—  
20 specifically, ordering (1) removal of the reasons for termination in Plaintiff’s SF-  
21 50 and (2) removal of the letters of discipline in Plaintiff’s file, including the July  
22 21, 2016 Letter of Reprimand; the November 8, 2017 3-day suspension; and the  
23 July 18, 2018 termination letter—eliminated the need to award Plaintiff any front  
24 pay. Specifically, Defendant argues that, with the Court’s awarded injunctive  
25 relief, Plaintiff would no longer have any barriers to reobtaining federal  
26 employment and thus would be able to regain access to all of the categories of  
27 front pay the Court awarded her (*i.e.*, wages, benefits, pension, and student loan  
28 forgiveness until Plaintiff’s planned age of retirement).

**ORDER GRANTING IN PART PLAINTIFF’S MOTION FOR FEES  
AND COSTS; DENYING DEFENDANT’S MOTION TO AMEND  
JUDGMENT # 13**

1 The Court rejects Defendant’s argument. The Court’s award of injunctive  
2 relief was unrelated to redressing Plaintiff’s forward-looking economic damages.  
3 In its Findings of Fact and Conclusions of Law, the Court found that (1) Plaintiff  
4 engaging in protected EEO activity was the but-for cause of her July 21, 2016  
5 Letter of Reprimand; (2) Plaintiff raising concerns about age discrimination was  
6 the but-for cause of her November 8, 2017 3-day suspension; and (3) that these  
7 disciplinary actions constituted unlawful retaliation under the ADEA. ECF No. 136  
8 at 26-27. The Court also found that, under Defendant’s policy of progressive  
9 discipline, Plaintiff would not have been terminated from her employment in July  
10 2018 had she not had these two prior disciplinary actions in her file—thus, the  
11 Court concluded that Defendant’s unlawful retaliation was the but-for cause of  
12 Plaintiff’s termination. *Id.* at 27.

13 Given that the Court already concluded that Plaintiff’s letters of discipline  
14 and reasons for termination were only issued because of Defendant’s *illegal*  
15 actions, the Court considers it to be the most basic form of equitable relief to  
16 remove them from Plaintiff’s personnel file. Additionally, the Court finds that such  
17 relief is necessary to effectuate the purposes of the ADEA. *See* 29 U.S.C. § 633a(a)  
18 (stating that the purpose of the statute is to ensure that all personnel actions in the  
19 federal government “shall be made free from any discrimination based on age”).  
20 Thus, the Court denies Defendant’s motion.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Fees, Costs, and Litigation Expenses, ECF No.  
3 138, is **GRANTED in part.**

4 2. The Court awards Plaintiff's counsel \$638,481.50 in attorney's fees.

5 3. The Court awards Plaintiff's counsel \$93,361.82 in litigation costs  
6 and expenses.

7 4. The Clerk's Office shall issue an Amended Judgment for Plaintiff and  
8 against Defendant to reflect the awarded attorney's costs and fees.

9 5. Defendant's Motion to Amend Judgment, ECF No. 150, is **DENIED.**

10 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
11 this Order and to provide copies to counsel.

12 **DATED** this 8th day of July 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

18 Stanley A. Bastian  
19 Chief United States District Judge  
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