

United States District Court

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JULEUS CHAPMAN, et al.,

No. C 01-01780 CRB

Plaintiffs,

ORDER RE ATTORNEYS' FEES AND COSTS

v.

CALIFORNIA DEPARTMENT OF
EDUCATION, et al.,

Defendants.

Now before the Court is plaintiffs' motion for an award of attorneys' fees. Having carefully considered the papers submitted by the parties, and having had the benefit of oral argument, plaintiffs' motion for an award of attorneys' fees is GRANTED in part and DENIED in part.

DISCUSSION

A. Entitlement to and Calculation of Fees

The party seeking attorneys' fees has the burden of "establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983).

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly

1 rate.” Id. at 433. In addition to documenting the appropriate hours expended in the
 2 litigation, the fee applicant must submit evidence in support of those hours worked. See id.
 3 From the initial fee calculation, the district court should exclude hours that were not
 4 “reasonably expended,” including “excessive, redundant or otherwise unnecessary” hours.
 5 Id. at 434 (citation omitted).

6 A district court may also adjust the fee award based on other considerations, such as
 7 “the important factor of ‘results obtained.’” Id. In other words, the trial court should
 8 consider whether the prevailing party achieved “a level of success that makes the hours
 9 reasonably expended a satisfactory basis for making a fee award.” Id. “If . . . a plaintiff has
 10 achieved only partial or limited success, the product of hours reasonably expended on the
 11 litigation as a whole times a reasonable hourly rate may be an excessive amount.” Id. at 436.
 12 Accordingly, the fact that a plaintiff is the “‘prevailing party’ . . . may say little about
 13 whether the expenditure of counsel’s time was reasonable in relation to the success
 14 achieved.” Id.

15 “There is no precise rule or formula for making these determinations.” Id. Rather, the
 16 district court, in its discretion, “may attempt to identify specific hours that should be
 17 eliminated, or it may simply reduce the award to account for the limited success.” Id. at 436-
 18 37.

19 **B. Amount of Fees**

20 On December 1, 2003, plaintiffs submitted their motion for attorneys’ fees and costs.
 21 The Court held a hearing on that motion on December 19, 2003. At the hearing, the Court
 22 informed plaintiffs that its fees request was inadequate because the Court was unable to
 23 calculate the amount of time spent by plaintiff’s attorneys on the issue on which plaintiff
 24 prevailed. Plaintiffs had merely calculated all fees spent on the litigation, and then reduced
 25 that amount by two-thirds—plaintiff’s own determination of its degree of success. In other
 26 words, plaintiffs unilaterally decided that they had been one-third successful in the litigation,
 27 and therefore requested one-third of the total fees and costs that they had calculated for the
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1 entire litigation. The Court had never given any indication that the plaintiffs were “one-
2 third” successful, and the Court finds no legal basis for this determination.

3 Here, plaintiffs are the “prevailing party” on the very narrow, limited issue of
4 accommodations/modifications. Therefore, at the December 19 hearing, the Court directed
5 plaintiffs to submit supplemental briefing on the fees spent on that issue alone. Plaintiffs
6 submitted the supplemental briefing, and the Court held another hearing on fees on March
7 12, 2004. At the March 12 hearing, plaintiffs submitted even further briefing, and the motion
8 was deemed submitted on March 22, 2004.

9 The following table shows the fees and costs requested by plaintiffs in their original
10 fee request and their revised fee request.

Purpose	Original Fee Request	Revised Fee Request
Attorneys’ Fees on Merits	\$364,062.06	\$650,775.50
Costs	\$30,037.17	\$36,301.16
Fees on Fees	\$39,047.65	\$103,226.50
Total	\$433,146.88	\$790,303.16

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16 This Court finds that plaintiffs are entitled to recover attorneys’ fees and costs solely
17 attributable to the very limited issue upon which they prevailed:
18 accommodations/modifications. While plaintiffs contends that the appropriate cut-off date
19 for all work, both trial and appellate, is December 20, 2002, this Court finds that the cut-off
20 dates submitted by defendants—February 21, 2002, for trial court work and September 4,
21 2002, for appellate work—are correct.

22 This Court is persuaded by defendants’ analysis and conclusions, as contained in their
23 opposition to plaintiffs’ supplemental briefing, regarding recoverable fees for successful trial
24 and appellate work. Moreover, this Court finds that defendants’ calculations and the tables
25 attached to defendants’ supplemental opposition brief are based on a comparison of
26 plaintiffs’ original and supplemental billing records. According to his declaration, Mr. Press,
27 Supervising Deputy Attorney General and co-counsel of record for defendants, made a note
28 of each instance where plaintiffs, in their supplemental records, had reduced the claimed fee

1 to “zero.” See Press Decl., ¶ 7. Mr. Press then noted such instances in bold in the tables
 2 attached to defendants’ supplemental opposition brief. See id.; see also Def. Supp. Opp.
 3 Brief, Tables 1-7. The Court agrees with the calculations as submitted by defendants.

4 Accordingly, this Court finds that plaintiffs are entitled to \$39,798.50 for “successful”
 5 trial work and \$1,764.00 for “successful” appellate work, for a total of \$41,562.50. This
 6 includes time spent on the accommodations/modifications issue only.

7 Inasmuch as the Court does not participate in settlement discussions, and is prohibited
 8 from learning the amount of time spent in settlement negotiations on successful claims, and
 9 having ordered the parties to attempt settlement, this Court finds that plaintiffs are also
 10 entitled to recover all fees for time spent on settlements and demands, which amounts to
 11 \$31,318.50. See Cabrales v. County of Los Angeles, 935 F.2d 1050, 1053 (9th Cir. 1991)
 12 (holding that “a plaintiff who is unsuccessful at a stage of litigation that was a necessary step
 13 to her ultimate victory is entitled to attorney’s fees even for the unsuccessful stage.”)

14 **C. Fees on Fees**

15 Plaintiffs seek \$103,226.50 in fees on fees. The Ninth Circuit “has repeatedly held
 16 that time spent by counsel in establishing the right to a fee award is compensable.” Davis v.
 17 City and County of San Francisco, 976 F.2d 1536, 1544 (9th Cir. 1992) *vacated and*
 18 *remanded on other grounds*, 984 F.2d 345; see also Manhart v. City of Los Angeles, 652
 19 F.2d 904, 909 (9th Cir. 1981) *vacated and remanded on other grounds*, 461 U.S. 951 (1983)
 20 (“It would be inconsistent to dilute an award of fees by refusing to compensate an attorney
 21 for time spent to establish a reasonable fee.”).

22 However, a proportionate reduction in such fees may be warranted as the Ninth
 23 Circuit clearly explained in Thompson v. Gomez, 45 F.3d 1365, 1367 (9th Cir. 1995):
 24 “Because Hensley . . . requires the district court to consider the relationship between the
 25 amount of the fee awarded and the results obtained, *fees for fee litigation should be excluded*
 26 *to the extent that the applicant ultimately fails to prevail in such litigation.*” (Emphasis in
 27 original.) Thus, as explained by the Thompson court, the relative degree of success in
 28 litigating for merits fees should bear upon the size of the fees-on-fees award. Id at 1368.

1 The Ninth Circuit approved of an arithmetic formula to make this reduction, which was
2 illustrated by the district court as follows: “if Plaintiffs request \$1000 in merit fees, but are
3 only awarded \$500, then any attorneys’ fees generated in litigating the merit fees would be
4 reduced by 50%.” *Id.* at 1367 n.1. Accordingly, a court may determine what percentage of
5 the merit fees requested were awarded, and award that same percentage of the fees on fees
6 requested. *Id.* at 1368 (noting with approval its holding in *Harris v. McCarthy*, 790 F.2d 753,
7 759 (9th Cir. 1986) that the district court did not abuse its discretion when, after plaintiffs
8 received 11.5% of the merits fees they had sought, it simply applied that percentage (11.5%)
9 to plaintiff’s request for fees).

10 This Court finds that the Thompson court’s reasoning is applicable here, and plaintiffs
11 are entitled to the same percentage of fees on fees as they were awarded for the merits fees.
12 In this case it is somewhat complicated by the fact that plaintiffs’ original fee request nearly
13 doubled when the Court asked for supplemental briefing. Plaintiffs’ initial fee request was
14 insufficient to enable this Court to accurately evaluate the reasonable fees that could be
15 awarded for successful claims. The Court, therefore, gave plaintiffs a subsequent
16 opportunity to more accurately demonstrate the fees and costs incurred for the portion of the
17 lawsuit on which plaintiffs prevailed. Plaintiffs’ revised request includes an additional
18 \$64,178.85 in attorneys’ fees spent on the supplemental briefing. Even with the additional
19 time spent, the Court was unable to easily identify the fees spent on successful claims and
20 used defendants analysis and conclusions in calculating the appropriate merit fees award.

21 Plaintiff’s original merit fees request was for \$364,062.06, and their revised merit fees
22 request nearly doubled to \$650,775.50. As noted above, the Court has determined that a
23 reasonable merit fees award is for a total of \$72,881.00. If the Court bases the percentage of
24 success on the original request, plaintiffs received 20.0% of the fees sought. If, however, the
25 Court bases that percentage on the revised request, plaintiffs merely received 11.2% of the
26 fees sought. The Court will give the plaintiffs the benefit of the original fee request in
27 calculating the percentage of success. Thus, the Court will give plaintiffs 20.2% of the
28 \$103,226.50 (the revised fees on fees request) sought, which is \$20,645.30.

CONCLUSION

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After careful consideration, this Court finds that plaintiffs are entitled to attorneys’ fees in the amount of \$41,562.50 for successful trial and appellate work on the accommodations/modifications issue, attorneys’ fees in the amount of \$31,318.50 for time spent on settlements and demands, and fees on fees in the amount of \$20,645.30 for original and supplemental briefing on the issue of attorneys’ fees, for a total of \$93,526.30 in attorneys fees. Additionally, plaintiffs are entitled to costs in the amount of \$36,301.16. In sum, plaintiffs are entitled to \$129,827.46 in attorneys fees and costs.

IT IS SO ORDERED.

Dated: April 7, 2004

/s/
CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California