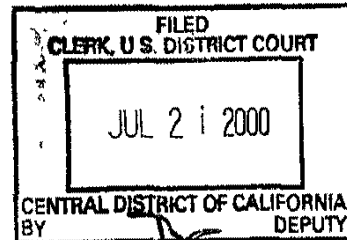


JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 98-56503
CT/AG#: CV-93-04142-MRP



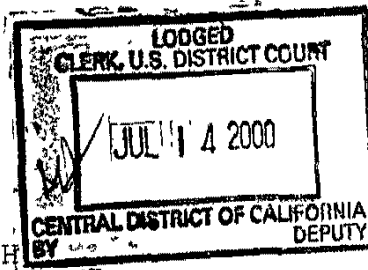
UNITED STATES OF AMERICA

Plaintiff - Appellant

v.

CITY OF TORRANCE; CITY OF TORRANCE POLICE DEPARTMENT; JOSEPH DE LADURANTEY, Police Chief in his official capacity; CITY OF TORRANCE FIRE DEPARTMENT; SCOTT ADAMS, Fire Chief in his official capacity

Defendants - Appellees



Priority _____
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JS-2/JS-3 _____

NO. 98-56906
CT/AG#: CV-93-04142-MRP Scan Only

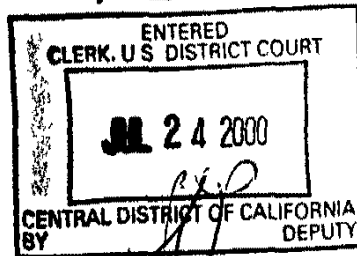
UNITED STATES OF AMERICA

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CITY OF TORRANCE; CITY OF TORRANCE POLICE DEPARTMENT; JOSEPH DE LADURANTEY, Police Chief in his official capacity; CITY OF TORRANCE FIRE DEPARTMENT; SCOTT ADAMS, Fire Chief in his official capacity

Defendants - Appellees



APPEAL FROM the United States District Court for the
Central District of California, Los Angeles .

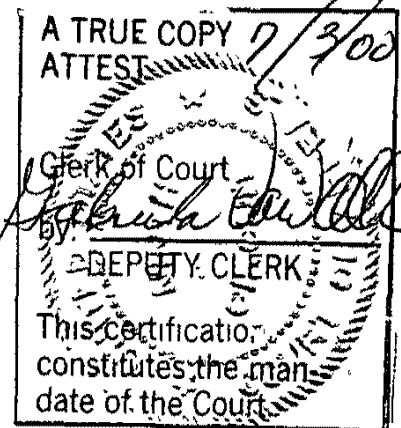
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356

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered 5/11/00



NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 11 2000

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

UNITED STATES OF)
 AMERICA,)
)
 Plaintiff-Appellant,)
)
 v)
)
 CITY OF TORRANCE; CITY)
 OF TORRANCE POLICE)
 DEPARTMENT; JOSEPH DE)
 LADURANTEY, Police Chief)
 in his official capacity; CITY)
 OF TORRANCE FIRE)
 DEPARTMENT, SCOTT)
 ADAMS, Fire Chief in his)
 official capacity,)
)
 Defendants-Appellees)

Nos. 98-56503, 98-56906

D C. No CV-93-04142-MRP

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Mariana R. Pfaelzer, District Judge, Presiding

Argued and Submitted April 10, 2000

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

Pasadena, California

Before FERNANDEZ and WARDLAW, Circuit Judges, and WEINER,**
District Judge

The United States appeals the district court's order awarding attorneys' fees to the appellees "under either or both" Title VII of the Civil Rights Act of 1964, 42 U S C § 2000e-5(k), and Rule 11 of the Federal Rules of Civil Procedure. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the fee award under Title VII. Because the parties are familiar with the factual and procedural history of the case, we discuss it only as necessary to explain our decision.

"[A] district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation" Christiansburg Garment Co. v EEOC, 434 U.S. 412, 421 (1978); see also Warren v. City of Carlsbad, 58 F.3d 439, 444 (9th Cir. 1995) (holding that this same standard applies "to an assessment of Title VII claims under Rule 11") In this case, the record amply supports the district court's determination that this standard was satisfied, that is, "that the Government had an insufficient factual basis for bringing the adverse impact claim" and "that the Government continued to pursue the claim . . . long after it became apparent that the

**The Honorable Charles R. Weiner, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation

case lacked merit "

For example, the district court found that the United States "approved" one of the challenged police-officer examinations for use "in other municipalities in Southern California"¹ It also found that the United States took "substantial discovery" on, and challenged up until trial, seven examinations for which it "offered no evidence" of adverse impact at all. The district court further determined that the United States "fail[ed] to provide meaningful discovery regarding its allegations or the bases of those allegations," and "[t]his unnecessarily and substantially increased the cost of defending the action " Finally, the court found that "the United States . . . offered no alternative selection device that would equally serve Torrance's legitimate hiring objectives," while repeatedly assuring the district court it would do so

The United States argues on appeal that several of the district court's findings of fact are clearly erroneous These arguments lack merit, and only two warrant

¹We previously reviewed and adopted this finding of fact, as well as many of the others relied upon by the district court and challenged by the United States in this appeal, in the earlier appeal on the merits See United States v City of Torrance, No 97-55290, 1998 WL 132979, at **1 (9th Cir Mar 23, 1998) (unpublished) We are bound to these findings under the law of the case doctrine See Jeffries v Wood, 114 F 3d 1484, 1489 (9th Cir 1997) (en banc) ("Law of the case is a jurisprudential doctrine under which an appellate court does not reconsider matters resolved on a prior appeal ")

discussion²

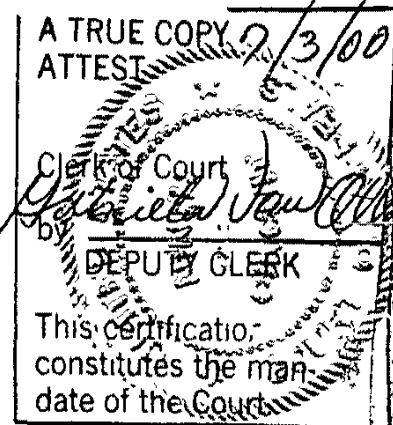
First, the United States argues that "[t]he district court unaccountably concluded that [it] failed to make 'an independent effort to determine the validity of the challenged examinations before it filed its Complaint '" According to the United States, it relied on the opinion of William C. Burns, a consultant in the area of industrial and organizational psychology, before filing its complaint; the United States contends that "[o]nce Burns' affidavit was filed, it was clear that the United States had acted responsibly prior to filing suit " According to his affidavit, however, Burns examined the validity studies for only two of the 12 challenged examinations and expressed no opinion as to whether, regardless of the validity studies, the tests actually were job-related. Moreover, the district court did consider Burns's affidavit, but, given "the Government's verified discovery responses" to the contrary, found that the United States "did not retain an expert to determine the job-relatedness of the challenged examinations until some time after February 1994, seven months after filing suit "

Second, the United States contends that it "presented a prima facie statistical case of disparate impact " The record does not support this argument, however

²We also reject the United States's argument that the district court's award of fees was "based on legally erroneous ideas as to how a Title VII lawsuit should be conducted " We have already determined that the district court correctly applied Title VII when it granted judgment to the appellees on the merits. See City of Torrance, 1998 WL 132979, at **1

Although the district court denied the appellees' motion to dismiss on the grounds that the United States had failed to establish a prima facie case, it did so "because this was not a jury trial [and the court] thought it advisable to hear all of the evidence before resolving a matter involving such serious allegations " Indeed, the district court never found that the United States established a prima facie case of disparate impact, but rather concluded that the testimony of the United States's statistical expert was unpersuasive.

Therefore, we hold that the district court did not abuse its discretion in awarding attorneys' fees to the appellees. See EEOC v Pierce Packing Co., 669 F 2d 605, 609 (9th Cir. 1982) ("It is well settled in this circuit that the award of fees and costs rests within the sound discretion of the trial judge, and will not be overturned absent abuse "), see also Cooter & Gell v Hartmarx Corp., 496 U S 384, 404 (1990) (noting that "[d]eference to the determination of courts on the front lines of litigation will enhance these courts' ability to control the litigants before them," and that "[s]uch deference will streamline the litigation process by freeing appellate courts from the duty of reweighing evidence and reconsidering facts already weighed and considered by the district court") Accordingly, the judgment of the district court is AFFIRMED.



INTERNAL USE ONLY: Proceedings include all events.
98-56503 USA v. City of Torrance, et al

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98-56906 USA v. City of Torrance, et al

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