

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

NOEL PUENTE GOMEZ, JUAN)
SANCHEZ, DAN ELLIOT, LEE MAZUR)
HAYS, BOB JONES, ALFREDO)
ROMAN, PATRICK HALL, MARQ)
BARTLETT, GREGORY JOSEPH)
NELSON, individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

BRENT D. REINKE, DAVE PASKETT,)
LARRY WRIGHT, JAMES C.)
SPALDING, JOE KLAUSER, ALAN LEE)
BRANDT,)

Defendants.)

Case No. CV91-299-S-LMB

ORDER

The Court previously entered an award of attorney’s fees and costs to counsel for Plaintiffs and an award of costs to Defendants. (Docket No. 849.) The issue of the amount of attorney’s fees to be awarded to local counsel Howard Beladoff and the issue of the amount of attorney’s fees to be awarded to all of Plaintiff’s counsel for preparation of the request for attorney’s fees were reserved. Those issues have now been briefed. (Docket Nos. 850 through 854.) The Court, having considered the briefing, as well as the record in this matter, enters the following Order.

I.

**FEES-ON-FEES REQUEST OF MR. PEVAR
AND THE NPP ATTORNEYS**

A. Standard of Law

In *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), the United States Supreme Court instructed district courts to consider the relationship between the amount of the fee awarded and the results obtained in making an award of attorney's fees on the merits portion of a case. In *Commissioner, I.N.S. v. Jean*, 496 U.S. 154 (1990), the Supreme Court clarified that a fees-on-fees award should also be reduced to the extent that the applicant failed to prevail in the underlying litigation, according to the court's discretion. *Id.* at 163 n.10.

The district court "can apply a percentage formula to reduce the fees-on-fees requested without providing an additional explanation for its actions, since it already has provided a "concise but clear explanation of its reasons for the [merits] fee award" and that same explanation underlies and supports the decision to award fee-on-fees in the same . . . or about the same . . . percentage." *Schwartz v. Secretary of Health & Human Services*, 73 F.3d 895, 909 (9th Cir. 1995) (internal citation omitted). The court is also free to award a higher amount of fees than the amount of fees awarded on the merits portion of the case if, in its discretion, such an amount is warranted. *Id.* at 909.

B. Discussion

Plaintiffs argue that the amount of fees awarded on the merits portion of the claim is higher than the 20% figure used by the Court; Plaintiffs place their victory at 37.4% of the amount requested. Defendants argue that Plaintiffs achieved only an 18% victory overall. Defendants also argue that various line items in Plaintiffs' fees-on-fees request should be

deducted, including time spent on the earlier fees applications in 1999-2002.

Having considered the arguments of the parties, the Court rejects each and adopts a 20% figure for the fees-on-fees requests. The Court will not reduce counsels' fee requests by line item, balancing Defendants' duplication-of-time argument with the fact that counsel accepted and have worked on the case pro bono for nearly twenty years and have remained unpaid for ten years after judgment was entered for the individual plaintiffs. In addition, the Court agrees with Plaintiffs that the time spent in 1999-2002 was reasonable and necessary to preserve the attorney's fees claims and provided a substantial basis for the new fees application.

Accordingly, the following amounts shall be awarded. Mr. Pevar spent a total of 252 hours preparing, briefing and attending oral argument on his fee application, as well as attempting to settle the claim. With application of a billing rate of \$169.50 per hour and a reduction of the hours to 20%, the total amount to be awarded is \$8,542.80 ($252 \times \$169.50 = \$42,714 \times .20 = \$8,542.80$).

National Prison Project (NPP) attorneys seeks compensation for the following time: 1999-2002 attorney time, 212.3 hours; 1999-2002 law clerk and student intern time, 39.3 hours; 1999-2002 paralegal time, 3.9 hours; 2007-2008 attorney time, 63.62 hours; and 2007-2008 law clerk time, 6 hours. With application of a billing rate of \$169.50 for the attorney time, a \$90 rate for law clerk/student intern time, a \$60 billing rate for paralegal time, and a reduction of the hours to 20%, the total amount to be awarded to the NPP attorneys is \$10,215.89 ($(212.3 \times \$169.50 = \$35,984.85) + (39.3 \times \$90 = \$3,537) + (3.9 \times \$60 = 234) + (63.62 \times 169.50 = \$10,783.59) + (6 \times \$90 = 540) \times .20 = \$10,215.89$).

The additional cost amounts submitted by Plaintiffs were minimal. Mr. Pevar will be

awarded 100% of his costs of \$912.86 to travel to the hearing on the attorney's fees application, given that the entire cost of travel would have been incurred regardless of the amount of success on the fees application, and that a significant six-figure fee amount was awarded, even after a reduction was calculated. Similarly, the NPP attorneys will be awarded 100% of the \$178.27 submitted for costs for photocopying, telephone, fax, and postage cost, for preparing their fees-on-fees request because the amount is minimal and a significant award was obtained.

II.

HOWARD BELADOFF FEES REQUEST

A. Fee Request on Merits of Case

The parties, through counsel, have stipulated that local counsel Howard Beladoff's fee claim for the merits portion of the case "shall total \$4,322.42." (Docket No. 850, p. 1.) The parties arrived at this figure by applying the same formula used by the Court in determining the fees of the other attorneys. (*Id.*, p. 2.) As set forth above, the Court rejects Defendants' arguments that the amount should be reduced by various line items. Therefore, the sum of \$4,322.42 shall be awarded to Mr. Beladoff for fees on the merits portion of the case.

B. "Fees on Fees" Request

The parties further stipulated that Mr. Beladoff could submit a fees-on-fees request. Mr. Beladoff has done so, and Defendants have filed an objection to some of the fees. (Docket Nos. 851 through 854.) Using the formula set forth above for all Plaintiffs' counsel's requests, the amount of \$1,333.85 shall be awarded to Mr. Beladoff on his fees-on-fees request ($39.50 \times \$169.50 = \$6,669.25 \times .20 = \$1,339.05$).

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Plaintiffs' Motion for Attorney's Fees (Docket No. 851) is GRANTED, as follows:

A. Defendants shall pay Mr. Pevar and the National Prison Project attorneys the amount of **\$18,758.69** as a fees-on-fees award, and **\$1,091.13** for associated costs.

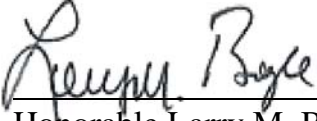
This amount is in addition to the fees awarded in the Court's order of August 7, 2008.

B. Defendants shall pay Mr. Beladoff the total amount of **\$5,661.47**, consisting of \$4,322.42 as a fee award on the merits of the case, and \$1,339.05 as the fees-on-fees award.

IT IS FURTHER HEREBY ORDERED that Plaintiffs are awarded interest on their entire attorney's fees and costs awards and Defendant are awarded interest on their costs award, including those amounts awarded in this Order and in the Order dated August 7, 2008 (Docket No. 849), at the applicable rate under 28 U.S.C. § 1961.¹



DATED: **March 9, 2009.**


Honorable Larry M. Boyle
United States Magistrate Judge

¹ Rates found at <http://www.federalreserve.gov/releases/h15/current>.