

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KARLUK M. MAYWEATHERS;
DIETRICH J. PENNINGTON;
JESUS JIHAD; TERRANCE MATHEWS;
ASWAD JACKSON; ANSAR KEES,
individually and on behalf of
all others similarly situated,

Plaintiffs,

NO. CIV. S-96-1582 LKK/GGH P

v.

O R D E R

CALVIN TERHUNE; A.C. NEWLAND;
BARRY SMITH; BONNIE GARIBAY;
N. FRY; M.E. VALDEZ; N. BENNETT;
and F.X. CHAVEZ,

Defendants.

Plaintiffs are a class of Muslim state prisoners housed at California State Prison, Solano who sought relief under, inter alia, the Religious Land Use and Institutionalized Persons Act of 2000, Pub.L. No. 106-274, 114 Stat. 803, codified at 42 U.S.C. §§ 2000cc et seq. ("RLUIPA"), for alleged violations of the right to the free exercise of their religion. The

1 defendants included the Director of the California Department of
2 Corrections (CDC), the Warden of CSP-Solano, and various other
3 supervisory employees of the CDC at CSP-Solano. This matter
4 comes before me on plaintiffs' motion for an award of attorney's
5 fees pursuant to 42 U.S.C. § 1988 for work done until October
6 14, 2001.¹ I decide the matter based on the papers and
7 pleadings filed herein.

8 I.

9 **STANDARDS FOR AWARDING ATTORNEY FEES UNDER 42 U.S.C. § 1988**

10 This attorney's fee motion is governed by 42 U.S.C. § 1988,
11 and the Prison Litigation Reform Act (PLRA). Section 1988(b)
12 provides that "[i]n any action or proceeding to enforce a provision
13 of . . . 42 U.S.C. §§ 1981-1983, . . . [or] the Religious Land Use
14 and Institutionalized Persons Act of 2000, . . . the court, in its
15 discretion, may allow the prevailing party, other than the United
16 States, a reasonable attorney's fee as part of the costs."

17 The PLRA allows an award of attorney's fees in prisoner
18 litigation where "the fee was directly and reasonably incurred in
19 proving an actual violation of the plaintiffs' rights protected by
20 a statute pursuant to which a fee may be awarded under section 1988
21 of this title." 42 U.S.C. § 1997e(d)(1)(A).

22 To determine the amount of a fee award to a prevailing party
23 pursuant to Section 1988, the court determines the "lodestar"

24
25 ¹ Plaintiffs assert that enforcement of the injunctive
26 relief, as well as responding to defendants' appeal of the judgment
will involve further attorney time for which they will seek
additional compensation in the future.

1 figure, the product of the number of hours reasonably spent on
2 litigation by a reasonable rate. See Hensley v. Eckerhart, 461
3 U.S. 424, 433 (1983); Intel Corp. v. Terabyte Int'l, Inc., 6 F.3d
4 614, 622 (9th Cir. 1993). A fee award is to include compensation
5 of paralegals and law clerks. See Missouri v. Jenkins, 491 U.S.
6 274, 284-285 (1989); United Steelworker v. Phelps Dodge Corp., 896
7 F.2d 403, 407-408 (9th Cir. 1990). Finally, time spent
8 establishing entitlement to an award of attorneys fees under
9 Section 1988 is generally compensable. See Guerro v. Cummings, 70
10 F.3d 1111, 1113 (9th Cir. 1995), cert. denied, 518 U.S. 1018
11 (1996).

12 II.

13 ANALYSIS

14 A. PREVAILING PARTY

15 Plaintiffs have indisputably proven "an actual violation" of
16 their rights protected by 42 U.S.C. § 1983 and RLUIPA, and are
17 therefore entitled to an award of attorney's fees. This lengthy,
18 complex class action suit has involved multiple phases and appeals
19 in which the court has granted plaintiffs various forms of relief.
20 After lengthy discovery, the parties engaged in settlement
21 discussions from which all issues except the plaintiffs' right to
22 attend Jumu'ah and wear beards were settled. During the course of
23 this action, the court granted plaintiffs ten preliminary
24 injunctions allowing the plaintiffs to attend Jumu'ah without
25 penalty and five preliminary injunctions allowing plaintiffs to
26 wear half-inch beards without penalty. All but one of the

1 injunctions were appealed by the defendants. Mayweathers v.
2 Newland, 258 F.3d 930 (9th Cir. 2001); Mayweathers v. Newland, 314
3 F.3d 1062 (9th Cir. 2002), cert. denied, Alameida v. Mayweathers,
4 __ U.S. __, 124 S.Ct. 66 (2003). The court further ruled in
5 plaintiffs' favor in rejecting defendants' constitutional challenge
6 of RLUIPA, a determination that was upheld by the Ninth circuit,
7 and granting permanent injunctions on the Jumu'ah and beard
8 issues.² The final judgment also includes a court order governing
9 a process for locating and expunging certain disciplinary documents
10 from current and past plaintiffs' custody files wherever located
11 throughout the state.

12 **B. REASONABLE HOURLY RATE**

13 **1. Sue Christian**

14 Christian was appointed on October 16, 1997 as attorney of
15 record for all of the plaintiffs when she was Supervising Attorney
16 of the King Hall Civil Rights Clinic ("KHCRC"). Christian Dec. at
17 ¶ 1. After leaving the KHCRC, she continued to represent
18 plaintiffs while employed at the Law Office of Stewart Katz, and
19 then at the Prison Law Office, where she remains today. Id. at ¶
20 2,7.³

22 ² Defendants have appealed the judgment and a subsequent
23 order governing expungement of plaintiffs' disciplinary records.

24 ³ Christian asserts that some of her representation was done
25 on the time of these two law firms, while some was done on her
26 personal time. Id. at ¶ 7. She states that any fee awarded
pursuant to this motion will be properly apportioned and disbursed
to the KHCRC, the Katz firm, and to the Prison Law Office,
according to the amount of work performed during each period.

1 The fee for work performed by the attorney in this prisoner
2 litigation is limited to an hourly rate no "greater than 150
3 percent of the hourly rate established under section 3006A of Title
4 18, for payment of court-appointed counsel." 42 U.S.C.
5 § 1997e(d)(3). Defendants do not challenge the reasonableness or
6 extent to which plaintiff is entitled to attorney's fees.
7 Plaintiffs' counsel seeks, and defendants stipulated to, an award
8 of \$112.50 per hour for work performed prior to January 1, 2002 and
9 \$169.50 per hour for work performed thereafter. Def's Oppo. to
10 Pl's Mot. for Atty's Fees at 1.

11 **2. Law Students**

12 From the beginning of the litigation until Christian left the
13 KHCRC on June 30, 2001, a total of 34 law students certified by the
14 court worked on this case. Christian Dec. at ¶ 4. Plaintiffs seek
15 compensation at \$60.00 per hour for law students' work.

16 Christian provides sufficient evidence to support that her
17 requested hourly rate is reasonable. Christian Decl., Exh. A.
18 Under Christian's supervision, the students worked on a wide
19 variety of tasks, including discovery, taking and defending
20 depositions, legal research and writing, and arguing motions in
21 court. Christian Dec. at ¶ 4. Because of the nature of the action
22 and the issues involved, the work done by the KHCRC students was
23 more complex and legally sophisticated than work typically
24 performed by law clerks or paralegals in law firms. Accordingly,
25 the hourly rate of \$60.00 for student work is fair and reasonable.

26 ////

1 **C. REASONABLENESS OF HOURS BILLED**

2 Christian submits time records, kept contemporaneously, of
3 attorney and student hours expended in this case from October of
4 1997 to late June of 2001. Christian Dec., Exh. C. The records
5 show that attorney hours totaled 1,071, and student hours totaled
6 2,870. Christian Dec. at ¶ 6. The plaintiff only seek fees for
7 two-thirds the student hours, which amount to 1,913 hours. Id.
8 Christian also provides detailed time records maintained for her
9 time from July 1, 2001 to October 14, 2004. Christian Dec., Exh.
10 D.

11 Although the defendants do not generally challenge the
12 reasonableness of the billed hours, they assert that counsel
13 miscalculated the fees for the 101.2 hours of personal attorney
14 time. The contention is not based upon the number of hours billed,
15 but the rate under which the hours were calculated. According to
16 the defendants, a greater portion of these hours should have been
17 calculated at the lesser PLRA. In her reply, however, Christian
18 clarifies that the allocation and calculation of hours according
19 to the two PLRA rates are correct. She points out that she spent
20 80 hours between November 29, 2001 and January 24, 2002 on writing
21 the brief in opposition to defendants' Ninth Circuit appeal
22 regarding the constitutionality of RLUIPA. Because that time was
23 divided in half for the purpose of determining the applicable PLRA
24 rates, 40 hours were billed at the rate of \$112.50 and 40 hours at
25 \$169.50. See Exh. D, pg. 2, to Christian Decl. Accordingly, the
26 court is satisfied that plaintiffs' counsel's calculations are

correct.

IV.

CONCLUSION

Accordingly, plaintiffs' counsel is AWARDED fees of \$289,011.00.⁴

IT IS SO ORDERED.

DATED: November 18, 2004.


LAWRENCE R. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

⁴ The amount is based on the fees documented by plaintiffs' counsel as follows:

Christian:

<u>Dates</u>	<u>Hours</u>		<u>Rate</u>		<u>Total</u>
10/16/97 - 6/30/01 (KHCRC)	1,071	x	\$112.50	=	\$120,487.50
7/1/01 - 2/1/02 (Law Office of Stewart Katz)	28	x	\$112.50	=	\$ 3,150.00
2/1/02 - 8/6/02 (Law Office of Stewart Katz)	26	x	\$169.50	=	\$ 4,407.00
10/11/01 - 2/1/02 (personal time)	61	x	\$112.50	=	\$ 6,862.50
2/1/02 - 12/29/02 (personal time)	65	x	\$169.50	=	\$ 11,017.50
1/10/03 - 10/14/04 (Prison Law Office)	167	x	\$169.50	=	\$ 28,306.50

Students:

10/16/97 - 6/30/01	1,913	x	\$60.00	=	\$114,780.00
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TOTAL

\$289,011.00

United States District Court
for the
Eastern District of California
November 19, 2004

* * CERTIFICATE OF SERVICE * *

2:96-cv-01582

Mayweathers

v.

Sutton

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 19, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Susan Dee Christian
Prison Law Office
General Delivery
San Quentin, CA 94964

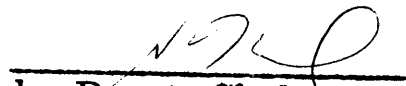
AR/LKK
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