

ORIGINAL

Priority
X Send
X Cisd
X Enter
JS-5/JS-6
JS-2/JS-3

FILED
CLERK, U.S. DISTRICT COURT
APR 13 2001
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy

ENTERED
CLERK, U.S. DISTRICT COURT
APR 16 2001
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy

4 Docketed
5 Copies / NTC Sent
6 JS - 5 / JS - 6
7 JS - 2 / JS - 3
8 CLSD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEAGUE OF UNITED LATIN AMERICAN)
CITIZENS, et al.,)
Plaintiffs,)
v.)
PETE WILSON, et al.,)
Defendants.)
GREGORIO T., et al.,)
Plaintiffs,)
v.)
PETE WILSON, Governor of the State)
of California; et al.,)
Defendants.)

CASE NO. CV 94-7569 MRP

OPINION

CASE NO. CV 94-7652 MRP ✓

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Proposition 187 was an initiative measure submitted to the voters of the State of California in the November 8, 1994 general election. The day after the initiative passed, the plaintiffs filed a class action to enjoin the enforcement of Proposition 187. On November 20, 1995, this Court granted plaintiffs' motion with respect to the classification, notification, and cooperation/reporting provisions of sections 4 through 9 of the initiative, holding that they were

187

1 preempted by federal law. LULAC v. Wilson, 908 F. Supp. 755, 786-87
2 (C.D. Cal. 1995). On March 13, 1998, the Court granted the
3 plaintiffs' renewed motion for summary judgment, again on preemption
4 grounds, and entered a permanent injunction on the sixth claim for
5 relief as to sections 1 and 4 through 9 of Proposition 187. In 1998,
6 the plaintiffs in these cases filed a Motion for Attorneys' Fees and
7 Expenses, and in 2001 they filed an Amended Motion for Attorneys' Fees
8 and Expenses.

9 Pursuant to the Civil Rights Attorney's Fees Awards Act, 42
10 U.S.C. §1988, parties are entitled to recover fees and costs in
11 certain civil rights actions. To qualify for a fee award under §1988,
12 plaintiffs must have prevailed in the litigation. Even if plaintiffs
13 have not succeeded on every claim presented, they are considered
14 "prevailing parties" for fee award purposes where they succeed in
15 "modifying the defendant's behavior in a way that directly benefits
16 the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-112 (1992); Hensley
17 v. Eckerhart, 461 U.S. 424, 433 (1983).

18 The plaintiffs have prevailed in this litigation despite the
19 uncompromising opposition which they encountered. The Court granted
20 plaintiffs' motion for summary judgment as to those sections dealing
21 with eligibility for public services, education and healthcare, as
22 well as the parts of the proposition concerning state verification and
23 reporting procedures. Plaintiffs, therefore, have satisfied this
24 prerequisite.

25 To be successful on a claim for attorneys' fees under §1988,
26 plaintiffs must have maintained an action that would have been
27 supported under §1983. Generally, preemption of state law based on
28 federal occupation of the field or conflict with federal goals does

1 not support an action under §1983, and thus does not support a claim
2 for attorney's fees under §1988. White Mountain Apache Tribe v.
3 Williams, 810 F.2d 844, 850 (9th Cir. 1984).

4 Section 1983 does provide a cause of action, however, when a
5 state statute actually conflicts with a federal statute and when (1)
6 the statute creates "enforceable rights," and (2) Congress did not
7 foreclose private enforcement of those rights through a §1983 action.
8 Middlesex County Sewerage Authority v. National Sea Clammers Ass'n,
9 453 U.S. 1, 18 (1981). Therefore, plaintiffs are entitled to an award
10 of attorneys' fees under §1988 to the extent they have prevailed on
11 their claim that Proposition 187 is in actual conflict with federal
12 law and is preempted under the third test for preemption set forth in
13 DeCanas v. Bica, 424 U.S. 351, 363 (1976). See Pennhurst State School
14 and Hospital v. Halderman, 451 U.S. 1, 28 (1981).

15 This Court has previously held that sections 5 and 6 of
16 Proposition 187 directly conflict with federal law. The federal
17 statutes involved here regulate the eligibility of aliens for public
18 benefits, creating enforceable rights in the realm of exceptions for
19 emergency medical services; short-term, non-cash, in-kind emergency
20 disaster relief; assistance with immunizations for immunizable
21 diseases; treatment of symptoms of communicable diseases; and programs
22 specified by the Attorney General. 8 U.S.C. §1621(b). That these
23 federal statutes were enacted for the benefit of a special class
24 presumptively provides a federal remedy for persons injured by
25 violation of these statutes. See, e.g., Bivens v. Six Unknown Named
26 Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 402 (1971).

27 The defendants have not shown that Congress intended the federal
28 statutes to preclude the private enforcement of eligibility rights

1 through a §1983 action. See, e.g., Keaukaha-Panawa Community Ass'n v.
2 Hawaii Homes Comm'n, 739 F.2d 1467, 1470-71 (9th Cir. 1984) (placing
3 the burden on the government defendant to show congressional intent
4 that the statute provides the sole remedy). Since substantial
5 portions of Proposition 187 are preempted under the third DeCanas
6 test, the plaintiffs may recover attorneys' fees under §1988.

7 The plaintiffs also raised a number of other constitutional
8 challenges to Proposition 187. This Court has already acknowledged
9 that several of these other challenges may have independently required
10 the Court to render a decision for plaintiffs. In light of the
11 applicability of the DeCanas tests here, the Court did not find it
12 necessary to resolve the constitutional challenges presented.

13 Moreover, since the plaintiffs are entitled to an award of attorneys'
14 fees based on actual conflict under the third DeCanas test, the Court
15 need not reach the issue of whether they could also prevail on their
16 alternative fee award bases.

17 Calculation of the Fee Award

18 The Court has attempted to be as dispassionate as possible in
19 explaining the calculation of these fee awards. However, nothing in
20 the Court's analysis should be taken as a criticism of the quality of
21 the legal work that is the subject of the awards. The plaintiffs had
22 representation of the highest order. The Court particularly
23 compliments counsel for the assistance they gave the Court in the
24 resolution of the very complex legal questions presented.

25 The total fee award for the Gregorio T. plaintiffs is
26 \$2,159,842.79. The total fee award for the LULAC plaintiffs is
27 \$776,124.28. These sums will be distributed according to the attached
28 tables.

1 Except as noted, the Court has used the hourly billing rates and
2 total hours provided by the plaintiffs in their 1998 fee award
3 filings. The rates sought are reasonable in light of rates charged by
4 other attorneys for similar work. However, because the time billed by
5 Peter A. Schey and Carlos Holguin includes a number of tasks that
6 might have been performed by a less senior attorney with a lower
7 billing rate, (e.g., time spent on "Shepardizing" and "research")
8 their rates of billing are reduced to \$200 per hour.

9 Also, based on the numbers agreed to by plaintiffs for "tasks
10 more appropriately performed by a paralegal," excessive conferencing,
11 secretarial or administrative activities, Peter A. Schey's hours have
12 been reduced by 90.34 hours, Carlos Holguin's hours have been reduced
13 by 11.94 hours, and John Gehardt's hours have been reduced by 68.21
14 hours. Additionally, while plaintiffs have succeeded in enjoining many
15 of the provisions of Proposition 187, the LULAC plaintiffs' request
16 for an hourly upward adjustment of \$15 to the lodestar figure based on
17 "extraordinary success" is denied.

18 The Court has used a standard 5% downward billing adjustment on
19 all billable hours, as proposed by the plaintiffs' attorneys. In
20 addition, for Douglas Mirell, Kurtiss Grossman, Carlos Holguin, and
21 John Gehardt, the downward billing adjustment used was 15%, to account
22 for insufficient documentation supporting their billable hours. Using
23 single words, such as "research" or "R/D" to describe the nature of
24 hours billed provides no insight as to the actual work performed.

25 The Court has deducted from the lodestar figures any hours that
26 it could reasonably identify as involving media relations or
27 discussions with public office holders. The following amounts have
28 been deducted: Thomas Saenz, 8 hours; Carlos Holguin, 1.01 hours;

1 Peter Schey, 26.99 hours; Mark Silverman, 5 hours.

2 The stated number of hours for John Gehardt and Miranda D.
3 Junowicz do not match the hours supported by the records. Thus, their
4 hours are reduced to the number supported by the most favorable
5 reading of the billing records provided, which is 36.21 hours for
6 Junowicz and 96.75 hours for Gehardt. The LULAC plaintiffs' request
7 that 90.34 hours of administrative work be attributed, and thus
8 billed, at paralegal rates will not be granted, as secretarial and
9 administrative work is already built into regular hourly billing rates
10 and is not compensable at paralegal rates.

11 The Court has used historical rates of billing (rather than the
12 current rates that plaintiffs seek) and has compounded interest based
13 on the 52-week Treasury Bill to take into account the time value of
14 money. This calculation begins from the time that the renewed motion
15 was granted, providing compensation to plaintiffs for the delay while
16 preventing a windfall. Granting plaintiffs current rates would have
17 resulted in overcompensation, as national salary competition has
18 increased billing rates far beyond historical inflationary rates. The
19 52-week Treasury bill was used as the measure of interest because
20 Congress has expressed preference for the use of this measure in the
21 post-judgment interest statute. See 28 U.S.C. § 1961. While the
22 current billing rate method is more straightforward and less
23 time-consuming than the historic billing rate approach, it is not an
24 appropriate basis for this award.

25 Some courts have used the current billing rates approach because
26 it approximates the inflationary loss suffered from a long delay in
27 recovery. See, e.g., Burgess v. Premier Corp., 727 F.2d 826, 840-41
28 (9th Cir. 1984); Fantasy v. Fogerty, 94 F.3d 553, 561 (9th Cir.

1 1996) (decision to award or deny interest is within district court's
2 discretion). The use of current billing rates, however, is an
3 inaccurate measure of the effects of inflation. Increases in hourly
4 rates more likely reflect an attorney's increased experience and skill
5 rather than a mere increase in the time value of money. Additionally,
6 the increase in billing rates may reflect a change in the supply and
7 demand of lawyers practicing in the particular field more than the
8 effects of inflation. Also, the use of current billing rates does not
9 compensate for the loss of use of the money. The use of the rate of
10 interest on these securities, which is partly linked to the inflation
11 rate, is a better method of measuring loss from delay.

12 After considering the papers in support of and in opposition to
13 the Motion, the arguments of counsel and the pleadings and papers on
14 file, the Court GRANTS-IN-PART and DENIES-IN-PART the plaintiffs'
15 Motion and Amended Motion for Attorneys' Fees and Expenses. None of
16 the out-of-pocket litigation expenses requested appear excessive.
17 Thus, all of the out-of-pocket litigation expenses requested have been
18 GRANTED. The total for the Gregorio T. plaintiffs is \$2,159,842.79.
19 The total for the LULAC plaintiffs is \$776,124.28. These sums will
20 be distributed according to the tables attached.

21 IT IS SO ORDERED.

22
23 DATED: April 13, 2001



Hon. Mariana R. Pfaelzer
United States District Judge

LULAC Plaintiffs - Attorney's Fees Calculations

Attorneys for League of United Latin American Citizens	Hours	Rate	Initial Lodestar	Billing Adjustment	Lodestar Reduction	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
Peter A. Schey	2797.62	\$200.00	\$ 559,524.00	5%	\$ (27,976.20)	\$531,547.80	5.407%	4.918%	6.197%	\$ 624,272.25
Carlos Holguin	596.84	\$200.00	\$ 119,368.00	15%	\$ (17,905.20)	\$101,462.80	5.407%	4.918%	6.197%	\$ 119,162.21
John Gehardt	96.75	\$140.00	\$ 13,545.00	15%	\$ (2,031.75)	\$ 11,513.25	5.407%	4.918%	6.197%	\$ 13,521.65
Miranda D. Junowicz	36.21	\$130.00	\$ 4,707.30	5%	\$ (235.37)	\$ 4,471.94	5.407%	4.918%	6.197%	\$ 5,252.03
Mark Silverman	27.24	\$250.00	\$ 6,810.00	5%	\$ (340.50)	\$ 6,469.50	5.407%	4.918%	6.197%	\$ 7,598.05
								Total Yield Adjusted Lodestar Fees:		\$ 789,806.19
Out-of-Pocket Litigation Expenses:							52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Expenses
							5.407%	4.918%	6.197%	\$ 6,318.09
							Total of Fees and Expenses:			\$ 776,124.28

Gregorio T. Plaintiffs - Attorney's Fees and Expenses Calculations

ACLU Foundation of Southern California	Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
Mark Rosenbaum	1304.20	\$375.00	\$ 489,075.00	\$ (24,453.75)	\$ 464,621.25	5.407%	4.918%	6.197%	\$ 545,670.87
Mark Rosenbaum (On Fees for Appeal)	120.30	\$375.00	\$ 45,112.50	\$ (2,255.63)	\$ 42,856.88	5.407%	4.918%	6.197%	\$ 50,332.93
Mei-Lin Kwan Gatt	806.10	\$200.00	\$ 161,220.00	\$ (8,061.00)	\$ 153,159.00	5.407%	4.918%	6.197%	\$ 179,876.42
Karl Mannheim	536.65	\$350.00	\$ 187,827.50	\$ (9,391.38)	\$ 178,436.13	5.407%	4.918%	6.197%	\$ 209,562.94
Karl Mannheim (On Fees for Appeal)	18.10	\$350.00	\$ 6,335.00	\$ (316.75)	\$ 6,018.25	5.407%	4.918%	6.197%	\$ 7,068.09
Dan Tokaji	100.80	\$180.00	\$ 18,144.00	\$ (907.20)	\$ 17,236.80	5.407%	4.918%	6.197%	\$ 20,243.63
Silvia Argueta	249.30	\$230.00	\$ 57,339.00	\$ (2,866.95)	\$ 54,472.05	5.407%	4.918%	6.197%	\$ 63,974.28
Peter Eliasberg	10.50	\$180.00	\$ 1,890.00	\$ (94.50)	\$ 1,795.50	5.407%	4.918%	6.197%	\$ 2,108.71
Susan Simpson	341.40	\$130.00	\$ 44,382.00	\$ (2,219.10)	\$ 42,162.90	5.407%	4.918%	6.197%	\$ 49,517.90
E. Richard Larson (On Fees for Counsel)	149.80	\$350.00	\$ 52,430.00	\$ (2,621.50)	\$ 49,808.50	5.407%	4.918%	6.197%	\$ 58,497.21
						Total Yield Adjusted Lodestar Fees: \$ 1,186,852.98			
						</			

Mexican American Legal Defense and Educational Fund	Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
Thomas Saenz	1160.00	\$210.00	\$ 243,600.00	\$ (12,180.00)	\$ 231,420.00	5.407%	4.918%	6.197%	\$ 271,789.45
Thomas Saenz (On Fees for Counsel)	17.60	\$210.00	\$ 3,696.00	\$ (184.80)	\$ 3,511.20	5.407%	4.918%	6.197%	\$ 4,123.70
Thomas Saenz (On Fees for Appeal)	160.40	\$210.00	\$ 33,684.00	\$ (1,684.20)	\$ 31,999.80	5.407%	4.918%	6.197%	\$ 37,581.92
Vibiana Andrade	200.00	\$310.00	\$ 62,000.00	\$ (3,100.00)	\$ 58,900.00	5.407%	4.918%	6.197%	\$ 69,174.65
Vibiana Andrade (On Fees for Appeal)	97.20	\$310.00	\$ 30,132.00	\$ (1,506.60)	\$ 28,625.40	5.407%	4.918%	6.197%	\$ 33,618.88
Elisa Fernandez	411.20	\$180.00	\$ 74,016.00	\$ (3,700.80)	\$ 70,315.20	5.407%	4.918%	6.197%	\$ 82,581.15
Victor Narro	339.90	\$110.00	\$ 37,389.00	\$ (1,869.45)	\$ 35,519.55	5.407%	4.918%	6.197%	\$ 41,715.66
Total Yield Adjusted Lodestar Fees:									\$ 540,585.42
Out-of-Pocket Expenses (Including \$1149.68 for Appeal):									
						\$ 22,999.62	5.407%	4.918%	\$ 27,011.73
TOTAL OF FEES AND EXPENSES:									\$ 587,597.15

ACLU of Northern California									
	Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
Lucas Guttentag	133.35	\$330.00	\$ 44,005.50	\$ (2,200.28)	\$ 41,805.23	5.407%	4.918%	6.197%	\$ 49,097.83
Ann Parent	127.50	\$270.00	\$ 34,425.00	\$ (1,721.25)	\$ 32,703.75	5.407%	4.918%	6.197%	\$ 38,408.67
						Total Yield Adjusted Lodestar Fees: \$ 87,506.50			
						52-Week T-Bill Yield for 3/98-3/99			
						52-Week T-Bill Yield for 3/99-3/00			
						52-Week T-Bill Yield for 3/00-3/01			
						TOTAL OF FEES AND EXPENSES: \$ 89,150.72			

Loeb and Loeb		Hours	Rate	Initial Lodestar	15% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
	Douglas Mirell	181.30	\$325.00	\$ 58,922.50	\$ (8,838.38)	\$ 50,084.13	5.407%	6.197%	\$ 58,820.92
	Kurtiss Grossman	165.10	\$230.00	\$ 37,973.00	\$ (5,695.95)	\$ 32,277.05	5.407%	6.197%	\$ 37,907.53
								Total Yield Adjusted Lodestar Fees:	\$ 96,728.45
				Out-of-Pocket Litigation Expenses:			52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Expenses
				\$ 247.71			5.407%	6.197%	\$ 290.92
							TOTAL OF FEES AND EXPENSES:		\$ 97,019.37

Center for Law in the Public Interest		Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar		
	Carylie Hall	2.75	\$360.00	\$ 990.00	\$ (49.50)	\$ 940.50	5.407%	4.918%	6.197%	\$ 1,104.56		
	Ed Howard	173.25	\$220.00	\$ 38,115.00	\$ (1,905.75)	\$ 36,209.25	5.407%	4.918%	6.197%	\$ 42,525.68		
	Gus May	93.25	\$210.00	\$ 19,582.50	\$ (979.13)	\$ 18,603.38	5.407%	4.918%	6.197%	\$ 21,848.59		
	Lisa Weil Zansberg	42.75	\$195.00	\$ 8,336.25	\$ (416.81)	\$ 7,919.44	5.407%	4.918%	6.197%	\$ 9,300.92		
	Allison Regan	58.00	\$115.00	\$ 6,670.00	\$ (333.50)	\$ 6,336.50	5.407%	4.918%	6.197%	\$ 7,441.85		
Total Yield Adjusted Lodestar Fees:										\$ 82,221.61		
Out-of-Pocket Litigation Expenses:							\$ 2,373.34	5.407%	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Expenses
							\$ 2,373.34	5.407%		4.918%	6.197%	\$ 2,787.35
TOTAL OF FEES AND EXPENSES:							\$ 85,008.96					\$ 85,008.96

National Immigration Law Center		Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/08-3/09	52-Week T-Bill Yield for 3/09-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar	
Yolanda Vera		93.20	\$250.00	\$ 23,300.00	\$ (1,165.00)	\$ 22,135.00	5.407%	4.918%	6.197%	\$ 25,996.28	
							Total Yield Adjusted Lodestar Fees:				\$ 25,996.28
							52-Week T-Bill Yield for 3/08-3/09	52-Week T-Bill Yield for 3/09-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Expenses	
							5.407%	4.918%	6.197%	\$ -	
							TOTAL OF FEES AND EXPENSES:				\$ 25,996.28

Western Center on Law and Poverty	Hours	Rate	Initial Lodestar	5% Billing Adjustment	Adjusted Lodestar	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Lodestar
Robert Newman	55.20	\$335.00	\$ 18,492.00	\$ (924.60)	\$ 17,567.40	5.407%	4.918%	6.197%	\$ 20,831.90
Melinda Bird	25.40	\$330.00	\$ 8,382.00	\$ (419.10)	\$ 7,962.90	5.407%	4.918%	6.197%	\$ 9,351.97
Kara Meiss	9.25	\$345.00	\$ 3,191.25	\$ (159.56)	\$ 3,031.69	5.407%	4.918%	6.197%	\$ 3,560.54
							Total Yield Adjusted	Lodestar Fees:	\$ 33,544.41

Out-of-Pocket Litigation Expenses:	\$ -	52-Week T-Bill Yield for 3/98-3/99	52-Week T-Bill Yield for 3/99-3/00	52-Week T-Bill Yield for 3/00-3/01	Yield Adjusted Expenses
	\$ -	5.407%	4.918%	6.197%	\$ -
TOTAL OF FEES AND EXPENSES:	\$ -				\$ 33,544.41

OVERALL TOTALS

Yield Adjusted Lodestar Fees:	\$	2,064,067.79
Yield Adjusted Litigation Expenses:	\$	95,775.00
Overall Total of Fees and Expenses:	\$	2,159,842.79