

Freitag v. Cal. Dep't of Corr.

United States District Court for the Northern District of California

July 20, 2007, Decided; July 20, 2007, Filed

NO. C00-2278 TEH

Reporter: 2007 U.S. Dist. LEXIS 56035; 2007 WL 2118925
DEANNA L. FREITAG, Plaintiff, v. CALIFORNIA
DEPARTMENT OF CORRECTIONS, et al., Defendants.

Subsequent History: Magistrate's recommendation at, Costs and fees proceeding at Freitag v. Cal. Dep't of Corr., 2008 U.S. Dist. LEXIS 119220 (N.D. Cal., Dec. 8, 2008)

Prior History: Freitag v. Cal. Dep't of Corr., 2007 U.S. Dist. LEXIS 43769 (N.D. Cal., June 6, 2007)

Counsel: [*1] For Deanna L. Freitag, Plaintiff: Pamela Yvette Price, LEAD ATTORNEY, Price & Associates, A Professional Law Corporation, Oakland, CA.; Charles Stephen Ralston, Attorney at Law, East Chatham, NY.; John L. Burris, Law Offices of John L. Burris, Oakland, CA.

For Robert J. Ayers, Jr., Teresa Schwartz, California Department of Corrections, Defendants: Kathryn Allen, Richard Lee Manford, LEAD ATTORNEYS, Vincent John Scally, Office of the Attorney General, Sacramento, CA.; Jacob A. Appelsmith, Attorney General's Office, Sacramento, CA.; Lyn Harlan, Attorney General's Office, Oakland, CA.

For David A. Carmichael, G. Rodman, Paul Dillard, Barry O'Neill, George Neotti, Auggie Lopez, Defendants: Kathryn Allen, Richard Lee Manford, LEAD ATTORNEYS, Vincent John Scally, Office of the Attorney General, Sacramento, CA.; Jacob A. Appelsmith, Attorney General's Office, Sacramento, CA.

Judges: THELTON E. HENDERSON, JUDGE.

Opinion by: THELTON E. HENDERSON

Opinion

ORDER DENYING PLAINTIFF'S REQUEST FOR ORDER OF PAYMENT OF FUNDS FROM SPECIAL DEPOSIT FUND

In conjunction with the parties' jointly filed July 16, 2007 status statement, Plaintiff Deanna Freitag filed a proposed order of payment from the special deposit fund created as a result of this Court's December [*2] 4, 2003 Order Granting Stay of Execution of Judgment Without Supersedeas Bond.

Pursuant to the December 4, 2003 order, Defendants placed \$ 1,700,000 in a special deposit fund pending Defendants' appeal of the jury's verdict and this Court's grant of injunctive relief. The order provided that:

If Defendants are successful on appeal, then the restrictions on Defendants' ability to spend the \$ 1,700,000 set aside in accordance with this order shall be dissolved once the [United States Court of Appeals for the] Ninth Circuit issues its mandate. If, on the other hand, Defendants are unsuccessful on appeal, then they shall pay the required funds to Plaintiff within thirty days, without any further action required by Plaintiff or her counsel. Dec. 4, 2003 Order at 5. The parties now dispute whether Defendants were "successful" or "unsuccessful" on appeal within the meaning of the Court's order.

The Ninth Circuit issued its decision affirming in part, reversing in part, and remanding in part this Court's post-trial rulings on September 13, 2006, and made minor amendments to that decision on November 3, 2006. *Freitag v. Ayers*, 468 F.3d 528 (9th Cir. 2006), cert. denied, 127 S. Ct. 1918, 167 L. Ed. 2d 567 (2007). [*3] The appellate court affirmed the jury's verdict on Freitag's Title VII claims and also affirmed this Court's grant of injunctive relief. The court reversed the *First Amendment* retaliation judgment against Defendant Lopez based on insufficiency of the evidence, and it remanded the remaining *First Amendment* retaliation claims, as well as the damages and attorneys' fees awards as necessary, to this Court for further consideration in light of *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006). On June 6, 2007, this Court found for Plaintiff on all remanded issues, and Defendants filed a timely appeal on June 28, 2007.

As long as Defendants' appeal remains pending, Defendants cannot be said to have been unsuccessful on appeal. If this Court's June 6, 2007 order is reversed, then the monetary damages or amount of attorneys' fees awarded to Plaintiff may ultimately be reduced. The reasoning in this Court's December 4, 2003 order therefore continues to apply, and the Court thus finds good cause to DENY Plaintiff's request for an order that \$

1,006,500 be immediately paid to Plaintiff and her attorneys out of the special deposit fund.

IT IS SO ORDERED.

The Court notes, however, that Defendants have already paid Plaintiff's [*4] counsel \$ 593,500 out of the special deposit fund pursuant to a stipulation reached by the parties and ordered by the Court on April 25, 2007. By denying Plaintiff's request for an order of payment, the Court does not preclude any future similar stipulations for payment while Defendants' latest appeal remains pending.

Dated: 07/20/07

THELTON E. HENDERSON, JUDGE

UNITED STATES DISTRICT COURT