UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et al., Plaintiffs, v. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et al., Defendants.	CASE NO. C14-1178 MJP ORDER ON PLAINTIFFS' SECOND MOTION FOR ATTORNEY'S FEES AND COSTS

THIS MATTER comes before the Court on Plaintiffs' Second Motion for Attorney's Fees and Costs. (Dkt. No. 310.) Having considered the Parties' briefing and all related papers, the Court GRANTS the motion.

The Court previously awarded attorney's fees and costs to Plaintiffs. (Dkt. No. 162.) Plaintiffs now seek that same award of $1,267,769.10 in attorney's fees for 3,232.77 hours of work, and an award of $35,400.38 for litigation costs. (Dkt. No. 146 at 10-11.) Defendants agree that Plaintiffs, as prevailing parties, are entitled to attorney's fees and costs, but argue that

Plaintiffs' "partial success" (in light of the reversal and remand by the Ninth Circuit Court of Appeals) dictates a corresponding reduction in the Court's original award. (Dkt. No. 323 at 2-5.)

The Court disagrees with Defendants. First, Defendants only appealed a portion of the Court's order, seeking reversal of the fee award and the requirement that in-jail competency evaluations be completed within seven days. (See Dkt. No. 158, 167 and Cooper Decl. Ex. A-C.) The Ninth Circuit's order did not even address the fee award, only remanded the matter to this Court to "consider whether [the 14-day] time limit [passed by the Washington legislature while this litigation was pending; see RCW § 10.77.068] would pass constitutional muster." Trueblood v. Washington State Dept. of Soc. & Health Servs., 822 F.3d 1037, 1046 (9th Cir. 2016).

Defendant's briefing makes it sound as though this is exactly what the Department had argued for[1] and that they prevailed on their argument ("The Ninth Circuit agreed with the Department…"; Dkt. No. 323, Response at 4.). In fact, Defendant argued that the Court should be required to follow, not just the fourteen-day evaluation period, but the entire statute ("At oral argument, Washington proposed that… the best remedy would be to order Washington to comply with its own law;" Trueblood, 822 F.3d at 1046 fn.6.). On remand, this Court declined to do so, limiting the revision of the previous order to an increase of the in-jail competency evaluation period to fourteen days but refusing on constitutional grounds to adopt the extensive list of exceptions written into the state statute. (See Dkt. No. 303, Order Modifying Permanent Injunction at 28-31.)

To qualify as a "prevailing party," a litigant need only succeed on "any significant issue… which achieves some of the benefit the parties sought in bringing suit." Hensley v. Eckerhart, 461 U.S. 424, 440 (1983). "A plaintiff 'prevails' for purposes of § 1988 'when actual

[1] "On appeal, the Department argued that the appropriate timeline is at least the fourteen-day maximum outlined in state law." Dkt. No. 323, Response at 4.

relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'" Higher Taste, Inc. v. City of Tacoma, 717 F.3d 712, 715 (9th Cir. 2013)(quoting Farrar v. Hobby, 506 U.S. 103, 111-112 (1992)). This has unquestionably occurred in this case; even while the appeal was pending, Defendants undertook a series of actions in response to the Court's order, including a 43% increase in funding (in the amount of $4.67 million) for additional competency evaluators (Dkt. No. 234, Defendants' Revised Long-Term Plan, at 6 and 9), resulting in a decrease in class members' incarceration time from almost two months to less than two weeks. (Dkt. No. 131, Findings of Fact and Conclusions of Law at 8; Dkt. No. 303, Order Modifying Permanent Injunction at 14.)

Even considering the partial reversal, Plaintiffs won a major constitutional victory in this litigation and permanently altered their legal relationship with Defendants. The Court declines Defendants' invitation to somehow segregate out the work of Plaintiffs' counsel on the timing of in-jail evaluations – even setting aside the infeasibility of separating out the hours devoted to an issue inextricably intertwined with the entirety of Plaintiffs' lawsuit, the Court chooses to focus (as the Supreme Court has advised) on the overall excellent results achieved by Plaintiffs' efforts. Hensley, 461 U.S. at 434. Without diminishing the significance of Defendants' success on appeal, the Court finds beyond question that Plaintiffs are fully qualified as the prevailing parties .

Defendants continue to argue that fees should be reduced under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997. As the Court has previously indicated, Plaintiffs' fee award is not governed by the PLRA.

Plaintiff Disability Rights Washington is not a prisoner, is not confined to a correctional facility, and has not been detained as a result of being accused of a crime. See 42 U.S.C.

§ 1997e; Page v. Torrey, 201 F.3d 1136, 1140 (9th Cir. 2000). Disability Rights Washington litigated this suit on behalf of its constituents, (see Dkt. No. 131 at 15), and work on their behalf cannot be separated from work on behalf of the named Plaintiffs who are also class members. See Turner v. Wilkinson, 92 F. Supp. 2d 697, 704 (S.D. Ohio 1999) ("Since not all of the original plaintiffs were prisoners, the Court does not believe that this case can properly be characterized as a suit 'brought by a prisoner ...'"). Therefore, it would be improper to reduce Plaintiffs' fee petition even if some Plaintiffs were subject to the PLRA's fee cap. See also Alabama Disabilities Advocacy Program v. Wood, 584 F. Supp. 2d 1314, 1316 (M.D. Ala. 2008).

Dkt. No. 162 at 2.

This ruling finds further support in Ala. Disabilities Advocacy Program ("ADAP") v. Wood, 584 F.Supp.2d 1314 (M.D.Ala. 2008), another lawsuit initiated by an organization advocating for the rights of mentally-ill detainees. Besides finding that ADAP was not a "prisoner," the District Court also ruled "[t]he prospective-relief provisions of the PLRA do not apply because this action does not concern 'prison conditions.'" Id. at 1316. ADAP sought to enforce its right of access under federal law to a group of detainees. DRW sought to enforce the due process rights of its class to timely access to the courts, thus this lawsuit is not concerned with the "conditions" of Plaintiffs' confinement. The PLRA does not apply to Plaintiffs' suit.

Conclusion

The Court GRANTS Plaintiffs' Second Motion for Attorney's Fees and Costs. As before, the Court finds that Plaintiffs' counsel's hours and rates are reasonable considering the magnitude and complexity of the matter and the quality of the representation, and consequently awards Plaintiffs their requested lodestar amount of $1,267,769.10 in attorney's fees. The Court also awards Plaintiffs their litigation costs (subject to the reductions previously detailed in the original order on attorneys' fees and not contested here) for a total costs award of $35,400.38.

The clerk is ordered to provide copies of this order to all counsel.

Dated this _13th_ day of October, 2016.

Marsha J. Pechman
United States District Judge