

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA STATE FOSTER PARENT
ASSOCIATION, CALIFORNIA STATE CARE
PROVIDERS ASSOCIATION, and LEGAL
ADVOCATES FOR PERMANENT PARENTING,

Plaintiffs,

v.

JOHN A. WAGNER, Director of the California
Department of Social Services, in his official
capacity; GREG ROSE, Deputy Director of the
Children and Family services Division of the
California Department of Social Services, in his
official capacity,

Defendants.

No. C 07-05086 WHA

**ORDER RE
ATTORNEY'S FEES**

In this civil rights action, the parties filed competing cross-motions for summary judgment on September 11, 2008. The Court denied defendants' motion for summary judgment, and granted in part and denied in part plaintiffs' motion for summary judgment. In particular, the Court granted plaintiffs' motion insofar as plaintiffs argued that defendants were in violation of the Child Welfare Act, but denied it insofar as plaintiffs asserted that defendants must be in exact compliance with its particular measure of child welfare maintenance payments. The Court determined that its order effectively ended the case, which has not been disputed.

1 Plaintiffs subsequently filed a motion for attorney’s fees pursuant to 42 U.S.C. 1988,
2 where they originally sought \$1,093,363.75. This Court issued an order dated February 6,
3 2009, setting forth a procedure for determining the appropriate fee award. It noted that whether
4 plaintiffs are entitled to fees was not in dispute and that the only matter in dispute was the
5 amount of fees to which plaintiffs are entitled. The parties submitted further filings but failed
6 to meet and confer, as required, and therefore the Court ordered the parties to do so and submit
7 a joint response informing the Court of the result.

8 The parties complied with the subsequent order. The joint response indicated that the
9 parties were unable to reach an agreement on the appropriate fees and that each party would
10 agree to a special master appointed by the Court. The parties also requested “that, to the
11 extent possible, the Court appoint a special master that requires no fee or only a nominal fee”
12 (Joint Rprt. 3). It also noted that it is not in dispute that plaintiffs were a prevailing party in
13 the action.

14 The main source of disagreement is straightforward. Defendants contend that plaintiffs
15 have prevailed on half of their requested relief and, accordingly, should have their fee requests
16 halved, generally, exclusive of other specific reductions in the requests noted in their
17 opposition. Plaintiffs contend that they are entitled to all reported fees because their claims for
18 relief involve a common core of facts and are based on a single set of legal theories, and that
19 they should therefore be deemed the prevailing party on the entire underlying Section 1983
20 dispute.

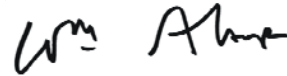
21 Under Supreme Court precedent, the proper amount of time to be compensated in an
22 award for attorney’s fees must be “reasonable in relation to the success achieved.” *Hensley v.*
23 *Eckerhart*, 461 U.S. 424, 434 (1983). It is an abuse of discretion for the district court to award
24 attorney’s fees without considering the relationship between the “extent of success” and the
25 amount of the fee award. *Farrar v. Hobby*, 113 S.Ct. 566, 575 (1992). This order disagrees
26 that the amount of fees awarded should be exactly halved simply because plaintiffs only
27 obtained relief on half their claims, but some deductions should be made regarding work done
28 by plaintiffs for claims that did not ultimately bear fruit.

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This order hereby appoints Marc Bernstein, of the Bernstein Law Group,
555 Montgomery St., Suite 1650, San Francisco, CA, 94111, (415) 765-6633, as the special
master. His fees shall be paid by the parties, to be allocated by the Court with the input of
counsel and the special master's recommendation. Counsel shall submit a proposed form of
reference within **SEVEN CALENDAR DAYS**.

IT IS SO ORDERED.

Dated: May 14, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE