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

FREDERICK JACKSON, ASHLEY NICOLE  
 JACKSON, and BRIANA FREDRANIQUE  
 ANNETTE JACKSON,

Plaintiffs,

No. C 09-01016 WHA

v.

GERALD VINCENT LOMBARDI, individually  
 and as an officer of the City of Pittsburg Police  
 Department (Badge # 275), CORY LEE SMITH,  
 individually and as an officer of the City of  
 Pittsburg Police Department (Badge # 285),  
 SANKARA REDDY DUMPA, individually and as  
 an officer of the City of Pittsburg Police  
 Department (Badge # 291), WILLIAM BLAKE  
 HATCHER, individually and as an officer of the  
 City of Pittsburg Police Department (Badge # 274),

Defendants.

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**ORDER GRANTING  
 PLAINTIFF FREDERICK  
 JACKSON'S MOTION  
 AND DENYING  
 DEFENDANTS' MOTION  
 FOR ENTITLEMENT TO  
 ATTORNEY'S FEES AND  
 VACATING HEARING**

**INTRODUCTION**

Both sides have filed motions for attorney's fees. After a jury trial and post-trial motions, plaintiff Frederick Jackson won on his First Amendment claim against Officer Gerald Vincent Lombardi in the amount of \$250,000. In all other respects judgment was against plaintiffs and for numerous defendants.

This order will proceed to address entitlement to attorney's fees and then, if either side is entitled to them, it will set out a procedure for consideration of the amount to be awarded.

1 **PLAINTIFF FREDERICK JACKSON’S MOTION**

2 Plaintiff Frederick Jackson moves for attorney’s fees under 42 U.S.C. 1988(b), pursuant to  
3 which “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee  
4 as part of the costs . . .” A prevailing plaintiff “should ordinarily recover an attorney’s fee unless  
5 special circumstances would render such an award unjust.” *Thomas v. City of Tacoma*, 410 F.3d  
6 644, 647 (9th Cir. 2005) (citations omitted).

7 Again, of the plaintiffs, only plaintiff Frederick Jackson moves for attorney’s fees under  
8 Section 1988. Frederick Jackson prevailed against Officer Lombardi but not against the other  
9 defendants. He lost on all other claims and all other plaintiffs lost on all of their claims. “The  
10 fact that Plaintiff failed to recover on *all* theories of liability is not a bar to recovery of attorney’s  
11 fees.” *Id.* at 649 (emphasis in original) (where plaintiff prevailed against one out of 27  
12 defendants). Therefore, plaintiff Frederick Jackson is entitled to fees under Section 1988 absent  
13 “special circumstances.”

14 In opposition to plaintiff’s motion, defendants state the following:

15 If it was the court’s intent to determine definitively that neither side  
16 “prevailed” over the other, then it is true that the plaintiffs are not entitled  
17 to any attorneys’ fees at all. But for this court’s “finding” in its earlier  
18 order regarding costs, the defendants would not have wasted any time  
19 contesting the plaintiffs’ (really Mr. Jackson’s) “entitlement” to some  
20 attorneys’ fees. In short, a dispute between the parties under §1988 will  
21 concern the amount of such fees, rather than the absence of them.

19 This passage is not clear. What can be meant by an “absence” of attorney’s fees? Perhaps  
20 defendants mean to say that they do not contest plaintiff’s entitlement to fees, just the amount to  
21 be awarded. Perhaps instead defendants allude to a prior order regarding costs to point out its  
22 effect on Section 1988 analysis regarding attorney’s fees. It is hard to know.

23 The order denying costs under Federal Rule of Civil Procedure 54 to all parties stated:

24 [N]one of the parties can properly be termed a “prevailing party,” . . .  
25 Though plaintiff Frederick Jackson prevailed on his First Amendment  
26 claim, judgment was entered against him on all other claims; and though  
27 defendants prevailed on all claims besides the First Amendment claim,  
28 judgment was entered against Officer Lombardi on that claim. Each party  
shall therefore bear his or her own costs.

(Dkt. No. 256.) To clarify, that order was referring to the fact that the costs claimed by the  
parties, discounted according to who won and who lost, cancelled each other out. Although

1 plaintiff Frederick Jackson prevailed against Officer Lombardi, he lost as to all other defendants.  
2 And though Officer Lombardi lost in part, all other defendants prevailed. Defendants claimed  
3 \$8,037.61 in costs (Dkt. No. 225). Plaintiff Frederick Jackson claimed \$10,998.65 in costs (Dkt.  
4 No. 216). Given that there was joint representation of both sides, both winning and losing  
5 plaintiffs and defendants all necessarily incurred the costs claimed by both sides. Therefore, the  
6 order denying costs did not mean that within each group (of plaintiffs and defendants) no one  
7 prevailed. It meant that taken as a group, no one prevailed *for purposes of determining costs*,  
8 because when discounting the costs claimed after taking into account that they were incurred by  
9 both winning and losing individuals, they cancelled each other out.

10 \* \* \*

11 If a plaintiff prevails, he is supposed to recover an attorney's fee unless special  
12 circumstances would render such an award unjust. "In applying the 'special circumstances'  
13 exception, [courts] focus on two factors: '(1) whether allowing attorney fees would further the  
14 purposes of § 1988 and (2) whether the balance of the equities favors or disfavors the denial of  
15 fees.'" *Thomas*, 410 F.3d at 648. On the other hand, defendants can recover attorney's fees only  
16 if plaintiffs' claims were "frivolous." *Id.* at 647. Unlike the costs problem, the attorney's fees  
17 law is lop-sided in favor of plaintiffs.

18 Applying this in our case, plaintiff Frederick Jackson's claims fall within the classic  
19 category of claims for relief that Congress had in mind in Section 1988. Jackson got tasered for  
20 exercising his First Amendment rights. Allowing attorney's fees will further the purposes of  
21 Section 1988 in this case, because it will encourage counsel to take cases in which citizens seek a  
22 meaningful opportunity to vindicate their civil rights. *See S. REP. NO. 94-1011*, at 2 (1976).  
23 Also, the balance of the equities favors plaintiff Frederick Jackson's entitlement to attorney's  
24 fees; this is not a case of any sort of bad faith by Mr. Jackson or any other equitable consideration  
25 that would render the entitlement unjust. Therefore, the special circumstances exception does not  
26 apply.

27 Given that there was joint representation of the plaintiffs, however, some of the efforts of  
28 plaintiffs' counsel were expended in support of the losing plaintiffs. Only a fraction of plaintiffs'

1 fees will be allowed, those that are found to have been incurred in support of Frederick Jackson's  
2 win. Plaintiff Frederick Jackson is ordered to submit the amount of attorney's fees allocable to  
3 *his* claims, not those of the other plaintiffs, along with supporting documents. Plaintiff must do  
4 so by **NOVEMBER 15, 2010, AT NOON.**

5 **DEFENDANTS' MOTION**

6 Defendants also move for attorney's fees. As stated, "[p]revailing defendants . . . may  
7 only be awarded attorney's fees pursuant to 42 U.S.C. § 1988(b) when the plaintiff's civil rights  
8 claim is 'frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it  
9 clearly became so.'" *Thomas*, 410 F.3d at 647.

10 A prior order stated "the evidence is not frivolous as to the claims of Frederick, Ashley,  
11 and Briana Jackson. The only exception could be Shawna Martin" (Dkt. No. 261). Therefore,  
12 this order must proceed to address whether Shawna Martin's claims were frivolous such that  
13 defendants would be entitled to attorney's fees resulting from defending against her claims.

14 Shawna Martin alleged excessive force and unlawful detention. Martin testified that she  
15 was handcuffed and that the handcuffs were "really, really tight." She was detained in a police  
16 car for about an hour.

17 "It is well-established that overly tight handcuffing can constitute excessive force." *Wall*  
18 *v. County of Orange*, 364 F.3d 1107, 1112 (9th Cir. 2004) (citations omitted). And "[t]he issue of  
19 tight handcuffing is usually fact-specific and is likely to turn on the credibility of the witnesses."  
20 *LaLonde v. County of Riverside*, 204 F.3d 947, 960 (9th Cir. 2000). Furthermore, with regard to  
21 unlawful detention:

22 An officer's authority to detain incident to a search is categorical . . .  
23 [P]olice do not, however, have unfettered authority to detain . . . in any  
24 way they see fit. Rather, the detention must be conducted in a reasonable  
25 manner. [D]etaining a person in handcuffs . . . is permissible, but only  
26 when justified by the totality of the circumstances.

27 *Tekle v. United States*, 511 F.3d 839, 849 (9th Cir. 2007) (citations and quotation marks omitted).

28 Summary judgment was denied as to Shawna Martin's excessive force claim because it  
required fact-finding and weighing by a jury. The order considering defendants' summary  
judgment motion stated: "Taking the facts in the light most favorable to plaintiff Martin, a

1 reasonable jury could find that the officers used an unreasonable amount of force in handcuffing  
2 her and as a result violated her Fourth Amendment rights” (Dkt. No. 119 at 10). Yet as to  
3 Martin’s unlawful detention claim, that order granted summary judgment for defendants, stating:  
4 “Even accepting plaintiffs’ version of events, plaintiff Martin’s actions by disobeying the  
5 officers’ commands and continuing to argue with her mother while the police were attempting to  
6 secure the crowded, chaotic scene justified her detention” (*id.* at 16).

7 At the end of the presentation of evidence at trial, but before the jury was charged,  
8 Martin’s excessive force claim was dismissed. An order stated: “All claims by plaintiff Shawna  
9 Martin and/or against Officer Spires are dismissed under Rule 50 for insufficient evidence. The  
10 identification evidence is too weak or nonexistent and the exceedingly minor bruise was too  
11 minor to rise to the level of a constitutional violation” (Dkt. No. 193).


12 Even though Shawna Martin had too weak a case to go to the jury, there was a bruise and  
13 it came from the handcuffs. A reasonable litigant could have thought that Shawna Martin had a  
14 plausible case. It was insufficient but not frivolous. It follows that defendants are not entitled to  
15 attorney’s fees under Section 1988. *Thomas*, 410 F.3d at 647.

16 **CONCLUSION**

17 Based on the foregoing, plaintiff Frederick Jackson’s motion for entitlement to attorney’s  
18 fees is **GRANTED**. Plaintiff must submit his claimed amount and supporting documents by  
19 **NOVEMBER 15, 2010, AT NOON**. Defendants’ motion for attorney’s fees is **DENIED**. The hearing  
20 on the parties’ motions for attorney’s fees on November 18 is **VACATED**.

21 **IT IS SO ORDERED.**

22  
23 Dated: November 5, 2010.

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25 \_\_\_\_\_  
26 WILLIAM ALSUP  
27 UNITED STATES DISTRICT JUDGE  
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