

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL GAREDAKIS, et al.,

Plaintiffs,

v.

BRENTWOOD UNION SCHOOL
DISTRICT, et al.,

Defendants.

Case No. 14-cv-04799-PJH

**ORDER RE BRENTWOOD UNION
SCHOOL DISTRICT DEFENDANTS'
MOTION FOR ATTORNEY'S FEES**

On February 24, 2017, the court issued an order (Doc. 282) granting the motion of defendants Brentwood Union School District, Lauri James, Brian Jones, Jean Anthony, Margo Olson, Margaret Kruse, and Merrill Grant (“Brentwood defendants”) for defense costs including attorney’s fees pursuant to California Code of Civil Procedure § 1038. In their motion, originally filed on July 13, 2016 (Doc. 239), defendants requested \$578,854.20 in fees and costs. In the February 24, 2017 order, the court deferred ruling on the amount of the award pending further briefing.

Under the California Tort Claims Act (“CTCA”), Cal. Gov’t Code § 810, et seq., a person who wishes to sue a public entity “for money or damages” based on a state-law cause of action relating to personal injuries must first present a claim to the entity within six months of the date the cause of action accrues. See Cal. Gov’t Code §§ 911.2, 945.4. Compliance with the CTCA filing requirements is mandatory. Cal. Gov’t Code § 945.4. Failure to present a claim within this six month period is a bar to future tort suits. See San Jose v. Superior Court, 12 Cal. 3d 447, 455 (1974); Renteria v. Juvenile Justice,

1 135 Cal. App. 4th 903, 908-09 (2006).

2 Here, some of the plaintiffs filed no CTCA claims at all; others filed CTCA claims,
3 but the claims were denied by the Brentwood Union School District as untimely, and none
4 of those plaintiffs sought leave to file a late claim or attempted to appeal the denial.
5 California Code of Civil Procedure § 1038 “provides public entities with a protective
6 remedy for defending against unmeritorious litigation.” Knight v. City of Capitola, 4 Cal.
7 App. 4th 918, 931 (1992) (citation and quotation omitted). Section 1038 permits a public
8 entity to recover defense costs, including attorney’s fees, from a plaintiff who files a civil
9 action under the CTCA without “reasonable cause” or a “good faith belief that there was a
10 justifiable controversy under the facts and law which warranted the filing of the
11 complaint[.]” Cal. Civ. P. Code § 1038.

12 Here, the basis for defendants’ motion for fees and costs was that plaintiffs had
13 asserted state-law claims against them in the present action but had failed to submit
14 timely claims under the CTCA before filing suit. The request for fees and costs under
15 § 1038 was based solely on work performed by defendants’ counsel in defending against
16 the state law claims.

17 Plaintiffs made various arguments in opposition to defendants’ motion. The only
18 argument that the court found to be potentially meritorious was plaintiffs’ contention that
19 even if the Brentwood defendants were entitled to fees and costs, the award should be
20 reduced because of plaintiffs’ limited financial resources and their inability to pay the
21 claimed amount. Plaintiffs attached declarations from the parents of the minor plaintiffs,
22 but the court found that those declarations did not include sufficient information.

23 The court found that the Brentwood defendants were entitled to fees and costs
24 under § 1038. The court deferred ruling on the amount of the award, and requested that
25 the parties provide any available California authority on the subject of whether the court
26 should take plaintiffs’ financial condition into account in determining the amount of an
27 award of fees and costs under § 1038, and also requested that plaintiffs provide
28 additional declarations supporting their claim that they lack sufficient financial resources

1 to pay the fees and costs owed to the Brentwood defendants. The court specified that
2 the declarations should be similar to the affidavits required in this district of plaintiffs
3 seeking to proceed with a lawsuit in forma pauperis, with supporting documentation
4 showing their income and financial resources.

5 On March 17, 2017, plaintiffs filed a supplemental brief. Plaintiffs concede that
6 they have uncovered no California authority authorizing the court to consider a plaintiff's
7 financial resources when deciding whether to award fees and costs under § 1038, but
8 argue that the court should apply "strong public policies" under Federal Rule of Civil
9 Procedure 54 to prevent the imposition of potentially financially ruinous fee awards.
10 Plaintiffs acknowledge that in an action involving state law claims, a federal court applies
11 the law of the forum state to determine entitlement to attorney's fees, but assert that this
12 is true only if the state law does not conflict with a valid federal statute or procedural rule.

13 They contend that they have shown in their declarations that paying the fees
14 requested by defendants would ruin them financially, and assert that imposition of such a
15 sum (\$115,770.84 per family) would conflict with "clearly expressed policy" of federal
16 courts in applying Rule 54(d)(1). The contend that under Rule 54(d)(1), the court has
17 discretion to decline to award fees and costs to a prevailing party, which they urge the
18 court to do in this case.

19 Plaintiffs also argue that because district courts in federal civil rights cases are
20 required to consider the financial resources of the plaintiffs in awarding fees to prevailing
21 defendants under 42 U.S.C. § 1988 (applicable to claims under 42 U.S.C. § 1983, Title VI
22 of the Civil Rights Act of 1964, and § 504 of the Rehabilitation Act) and 42 U.S.C.
23 § 2000e-5 (applicable to claims under Title VII of the Civil Rights Act of 1964), the court
24 here should do the same.

25 Plaintiffs have submitted declarations from Danielle Gullo (parent and guardian ad
26 litem of B.G.), Lawrence Gullo (parent of B.G.), Michael Garedakis (parent and guardian
27 ad litem of M.G.), Yolanda Jackson (guardian ad litem of A.G.), Ahmad Razaqi (parent of
28 E.R.), Dania Razaqi (parent and guardian ad litem of E.R.), and Viviana Rose (parent

1 and guardian ad litem of B.R.). In their declarations, plaintiffs all assert that they do not
2 have the financial resources to pay defendants' fees and costs.

3 The Brentwood defendants argue that the court should reject plaintiffs' proposal
4 that the court consider their financial resources based on federal case law interpreting the
5 attorney's fees provisions contained in § 1988 and Title VII. In particular, defendants
6 note, those federal statutes expressly grant the trial court the discretionary authority to
7 award fees ("in its discretion, the court may allow"), whereas § 1038 is not discretionary,
8 as it provides that an award of defense costs including attorney's fees is mandatory after
9 entry of summary judgment and upon a finding that a claim against a public entity is
10 frivolous or brought in bad faith ("the court shall render judgment in favor of that party in
11 the amount of all reasonable and necessary defense costs"). Thus, defendants argue,
12 federal courts' interpretations of § 1988 – including the provision that a plaintiff's financial
13 condition should be taken into consideration as part of the court's discretionary authority
14 to award fees – simply do not apply in this context.

15 Additionally, defendants assert, plaintiffs have failed to provide the financial
16 information requested by the court, as they have not submitted declarations similar to the
17 affidavits required in this district of plaintiffs seeking to proceed in forma pauperis. For
18 example, defendants note, plaintiffs have not provided information regarding whether
19 they own a home, and if so, the value of that home, and have not specified the present
20 value of their bank accounts or other financial accounts or property.

21 The court already determined that the Brentwood defendants are entitled to
22 recover fees and costs under Code of Civil Procedure § 1038, because plaintiffs pursued
23 the state-law claims without reasonable cause. Reasonable cause exists “if the claim is
24 legally sufficient and can be substantiated by competent evidence.” Antounian v. Louis
25 Vuitton Malletier, 189 Cal.App.4th 438, 449 (2010). Reasonable cause to file the state-
26 law claims in the present action did not exist because, as indicated above, the filing a
27 timely CTLA claim is a prerequisite to filing a lawsuit seeking tort damages against a
28 public entity.

1 Thus, given that the court has already determined that the Brentwood defendants
2 are entitled to recover fees and costs under § 1038, plaintiff's contention that the court
3 should ignore § 1038 and apply a standard derived from Rule 54 and federal civil rights
4 fee-shifting statutes is misplaced and non-responsive. In addition, as defendants
5 correctly point out, an award of fees/costs under § 1038 is mandatory, whereas the
6 decision whether to award fees under the federal fee-shifting statutes rests with the
7 discretion of the district court.

8 As for the amounts plaintiffs should be required to pay, there is no California
9 authority holding that the court should consider the losing party's ability to pay in reaching
10 that determination. This alone is sufficient to deny plaintiffs' request that the court
11 consider their financial resources and ability to pay. While the court has discretion to
12 determine whether the hours claimed by counsel were "reasonably and necessarily
13 incurred," see Cal. Civ. P. Code § 1038(a), the court has no discretion in determining
14 whether to award fees and costs: "If the court should determine that the proceeding was
15 not brought in good faith and with reasonable cause, . . . the court shall render judgment
16 in favor of [the defendant] in the amount of all reasonable and necessary defense
17 costs[.]" Cal. Civ. P. Code § 1038(a) (emphasis added). Thus, the only discretion is with
18 regard to determining which costs were reasonably and necessarily incurred by
19 defendants.

20 In their opposition to the Brentwood defendants' motion, plaintiffs did not challenge
21 the time spent or the number of hours claimed. In this court's experience, the billing rates
22 claimed by defendants' counsel were extremely low for a Bay Area law firm – in the range
23 of 50% or less than the rates claimed in attorney's fees motions generally. In addition,
24 the court has reviewed the declarations of defendants' counsel and the attached
25 materials, including counsel's detailed time records (Docs 239-1 to 239-9), and finds the
26 amounts claimed to have been reasonably and necessarily incurred by defendants in
27 connection with their defense against the state-law claims.

28 Plaintiffs declarations do not comply with the court's instruction to submit

1 information similar to the information the court requires of plaintiffs seeking to proceed in
2 forma pauperis. Nevertheless, the adequacy of the declarations is a moot point, as the
3 award of fees under § 1038 to a prevailing public entity defendant is mandatory, and
4 there is no statutory or case authority requiring the court to consider the financial
5 resources of the losing plaintiffs.

6 Finally, it may be that plaintiffs pursued the state-law claims without first filing
7 timely CTLA claims solely on advice of counsel, without having any understanding of the
8 CTLA requirements. Thus, it would arguably be more equitable if the burden of paying
9 the fees were shifted to plaintiffs' counsel. The Brentwood defendants suggested in their
10 reply to plaintiffs' opposition to the original motion for fees and costs that the court should
11 consider ordering plaintiffs' counsel to pay the fees as a sort of sanction, but as the court
12 noted in the February 24, 2017, order, defendants filed a motion seeking relief under
13 § 1038, not under 28 U.S.C. § 1927 or pursuant to the court's inherent power.

14 As for § 1038, while the statute is silent on whether defense costs may be
15 imposed on counsel, the California Court of Appeal has held that a court may not impose
16 § 1038 defense costs on a plaintiff's attorney even if counsel lacked reasonable cause
17 and good faith in filing or maintaining a tort action against a public entity. Settle v. State
18 of Calif., 228 Cal. App. 4th 215, 219 (2014); see also Suarez v. City of Corona, 229 Cal.
19 App. 4th 325, 333-34 (2014).

20 **CONCLUSION**

21 In accordance with the foregoing, the court GRANTS the Brentwood defendants'
22 motion for fees and costs under California Code of Civil Procedure § 1038, in the amount
23 of \$578,854.20.

24
25 **IT IS SO ORDERED.**

26 Dated: July 13, 2017



27
28 _____
PHYLLIS J. HAMILTON
United States District Judge