

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
9

10 DE'MARIAN CLEMONS,

11 Plaintiff,

12 v.

13 ROBERT CLINTON HAYES, M.D., *et al.*,

14 Defendants.  
15

Case No. 2:10-CV-01163-KJD-GWF

**ORDER**

16 Before the Court is Defendant Elizabeth Acevedo's Motion for Attorney's Fees (#38). No  
17 opposition has been filed.

18 On July 26, 2011, the Court issued an Order (#37) granting Defendant's Motion to Dismiss.  
19 Defendant seeks attorney's fees of \$8,690.00 pursuant to 42 U.S.C §1988 which provides in relevant  
20 part, that the Court "in its discretion, may allow the prevailing party ... a reasonable attorney's fee as  
21 part of the costs..."

22 Courts should be cautious in awarding fees against *pro se* litigants because they lack the  
23 ability to recognize when a claim has merit. Miller v. Los Angeles County Bd. of Educ., 827 F.2d  
24 617, 620 (9th Cir. 1987). Further, Courts should consider the financial resources of a plaintiff before  
25 awarding fees under §1988. Id.; see also Horn v. Carter, 360 Fed.Appx. 851, 852 (9th Cir. 2009)  
26 (reversing award of attorney's fees against pro se prisoner).

1 Defendant argues that she should be awarded attorney's fees, because the Court found that  
2 Plaintiff's claims had no merit. Plaintiff is a prisoner representing himself *pro se*. There is no  
3 indication that Plaintiff was capable of accurately evaluating his chances of success on his claim.  
4 Further, it is highly unlikely that Plaintiff would have the ability to pay the \$8,690.00 fee award  
5 requested by Defendant. Defendant has not cited any cases where a court has awarded fees under  
6 facts like those present here. Accordingly, the Court declines to exercise its discretion to award  
7 Defendant fees.

8 **IT IS HEREBY ORDERED** that Defendant's Motion for Attorney's Fees (#38) is  
9 **DENIED.**

10 DATED this 9th day of December 2011.

11  
12  
13 

14 

---

Kent J. Dawson  
United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26