2002 WL 1836305
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United States District Court, C.D. California,
Western Division.

R. VANKE, et al., Plaintiff,
v.
Sherman BLOCK; et al., Defendants.

No. CIV.98-4111 DDP. | Aug. 8, 2002.

Pretrial detainees brought action alleging that they were "over-detained" in the county jail so that there could be a check made on them for warrants, wants, and holds. Some 30 months after a preliminary injunction was granted, a motion for permanent injunction was denied and the action was dismissed as moot as a result of sheriff's full compliance with the preliminary injunction. Detainees then moved for an award of attorneys' fees pursuant to the civil rights attorney fee statute The District Court, Pregerson, J., held that: (1) detainees were prevailing parties; (2) hourly rates were excessive; and (3) reduction was not warranted on ground the hours spent by the plaintiffs' counsel following order denying a permanent injunction were frivolous.

Fees awarded.

Attorneys and Law Firms

Stephen Yagman, Kathryn S. Bloomfield, Marion R. Yagman, Joseph Reichmann, Yagman & Yagman & Reichmann & Bloomfield, Venice Beach, CA, Richard H. Millard, Law Offices of Richard H. Millard, for plaintiffs.

Jeremy B. Warren, David Lawrence, Franscell, Strickland, Roberts & Lawrence, Glendale, CA for defendants.

Opinion

ORDER GRANTING PLAINTIFFS' AWARD OF ATTORNEYS' FEES PURSUANT TO 42 U.S.C. § 1988

PREGERSON, District J.

***1** This matter comes before the Court on the plaintiffs' motion for an award of attorneys' fees pursuant to 42 U.S.C. § 1988. After reviewing and considering the materials submitted by the parties, the Court adopts the following order.

I. Background

This equitable relief action was originally brought by a class of plaintiffs who contended that while they were pretrial detainees, they were "over-detained in the County Jail System so that there [could] be a check made on them for warrants, wants, and holds." (Verified First Amended Complaint ¶ 17 ("FAC").) On November 7, 1998, the Court granted the plaintiffs' motion for class certification and issued a preliminary injunction enjoining various practices and policies of the Los Angeles County Sheriff's Department ("LASD"). Specifically, the Court ordered:

> that the defendants and their officers, agents, servants, employees, and all others in active concert of participation with them are enjoined during the pendency of this action from holding individuals who have been acquitted of the charges on which they are being held, or whose release has been ordered by a court, beyond the period of time that is required to perform the administrative steps incident to release, including a check for wants and holds known to the defendants at the conclusion of the administrative steps incident to the release, but not including additional time for the receipt or processing of wants and holds not known to the defendants at the conclusion of the administrative steps incident to release.

(Court's 11/7/98 Order at 45-46 (footnote omitted).)

On April 26, 2001, nearly 30 months after issuing the preliminary injunction, the Court denied the plaintiffs' motion to convert the preliminary injunction into a permanent injunction. The Court found that, absent a judgment on the merits, the plaintiffs were not entitled to permanent injunctive relief.

The plaintiffs then moved for summary judgment and a permanent injunction, while the defendant Sheriff Lee Baca (the "defendant") filed a cross-motion for summary judgment, arguing that the action was moot as a result of the defendant's full compliance with the Court's preliminary injunction. The Court granted the defendant's motion, finding that the defendant had presented evidence that the County had instituted measures designed to

ensure compliance with the preliminary injunction. Because the plaintiffs failed to come forward with any evidence to suggest that the defendant had failed to comply, or was likely to engage in further violations, the plaintiffs' motion for a permanent injunction was denied and the action was dismissed as moot.

Counsel for the plaintiffs now move for attorney fees' as a prevailing party under 42 U.S.C. § 1988. The defendants oppose this motion on the grounds that: (1) the plaintiffs cannot be considered prevailing parties in light of the recent Supreme Court decision in *Buckhannon;* (2) the plaintiffs' request for attorneys' fees is statutorily precluded by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e; and (3) assuming, *arguendo,* that the plaintiffs are entitled to recover despite *Buckhannon* and the PLRA, their requested fees are unreasonable and should be reduced.

II. Legal Standard

1. *Attorneys Fees Under 42 U.S.C. § 1988*

***2** The fee shifting provisions of § 1988(b) state: "[i]n any action or proceeding to enforce a provision of sections ... 1983 ... of this title [and other specified sections], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs ..." 42 U.S.C. § 1988(b).

III. Discussion

In the recent case *Buckhannon Board & Care Home, Inc. v. W. Virginia Dept. of Health & Human Resources,* the Supreme Court interpreted the meaning of the term "prevailing party" and considered the character of judicial relief that a party must receive in order to recover attorney fees. 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001). The defendants contend that because this Court denied the plaintiffs' request that the preliminary injunction be made permanent, and concurrently granted summary judgment to the defendants on the grounds that the action was moot, the plaintiffs cannot be considered a prevailing party under *Buckhannon.* The Court disagrees.

A. *Buckhannon's Treatment of Prevailing Parties and Its Application in the Ninth Circuit*

The plaintiff in *Buckhannon* was the operator of a nursing home that failed a West Virginia State Fire Marshall inspection for violating a state law requiring that all home residents be capable of "self preservation" (i.e. that they be able to remove themselves from dangerous situations such as fire). *Buckhannon,* 532 U.S. at 600. After receiving a cease and desist order requiring closure of the nursing home, the plaintiff brought suit seeking declaratory and injunctive relief on the grounds that the "self-preservation" requirement violated the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.* ("FHAA") and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"). *Id.* at 600-01. The respondents agreed to stay enforcement of the order pending resolution of the controversy, and after discovery had commenced, the state legislature enacted two bills eliminating the "self preservation" requirement. *Id.* at 601. Since the allegedly offensive provisions were eliminated and there was no indication that the state legislature would repeal the amendments, the District Court granted the respondents cross-motion for summary judgment, finding that the the action was moot. *Id.* The plaintiffs then moved for attorneys' fees as the "prevailing party" under the FHAA and the ADA, arguing that they were entitled to recover under the "catalyst theory".[1]

[1] The catalyst theory allows a plaintiff to recover as the prevailing party "if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Id.* at 601. Prior to *Buckhannon,* this approach was utilized by courts in the First, Second, Third, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits. *Id.*

In rejecting the catalyst theory, the Supreme Court stated that "enforceable judgments on the merits and court-ordered consent decrees create the material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees." *Id.* at 604 (internal citations omitted). A judgement on the merits "provides the necessary foundation for a plaintiff's status as a prevailing party because the plaintiff has received at least some relief based on the merits of the claim" either in the trial court or on appeal. *Perez-Arrellano v. Smith,* 279 F.3d 791, 793 (9th Cir.2002) (*citing Buckhannon,* 532 U.S. at 604 (internal citations omitted)). A consent decree is acceptable, even without an admission of liability, "because it is a 'court-ordered chang[e] [in] the legal relationship' between the parties." *Id.* (*quoting Buckhannon,* 532 U.S. at 604).

***3** The Supreme Court also expressed concern that the catalyst theory "allows an award where there is no judicially sanctioned change in the legal relationship of the parties." *Buckhannon,* 532 U.S. at 605. Specifically, the Court noted that under the catalyst theory, a plaintiff could recover if it established that the complaint had enough merit to withstand dismissal for failure to state a claim or lack of jurisdiction. *Id.* In rejecting this potentiality, the Court held that "[a] defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." *Id.*

(emphasis in original). The Court clearly stated that a "non-judicial alteration of actual circumstances" has never been the basis for awarding attorney's fees under a prevailing party theory.[2] *Id.* at 606.

[2] In attacking the dissent, the majority opinion stated: "*We cannot agree that the term 'prevailing party' authorizes federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous lawsuit (it will never be determined), has reached the 'sought after destination' without obtaining any judicial relief.*" *Id.* at 606 (internal citations omitted) (emphasis in original).

The Court also addressed concerns "that the catalyst theory is necessary to prevent defendants from unilaterally mooting an action before judgment in an effort to avoid an award of attorney's fees." *Id.* at 608. The Court was skeptical of these assertions in the absence of any empirical evidence. *Id.* However, the Court did acknowledge the "petitioner's fear of mischievous defendants" and noted that:

> [These concerns] only materialize in claims for equitable relief, for so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case. Even then, it is not clear how often courts will find a case mooted: 'It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice' unless it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'

Id. at 608-09 (*quoting Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (internal citations omitted)).

***4** Lastly, the Court rejected the catalyst theory out of a concern that its application could "spawn a second litigation of significant dimension." *Id.* at 609 (internal citations omitted). This is because application of the catalyst theory would require a "highly factbound inquiry [into] the defendant's subjective motivations in changing its conduct." *Id.*

[1] The Ninth Circuit has since ruled that although *Buckhannon* involved the fee-shifting provisions of the FHAA and ADA, "the Supreme Court's express rule of decision sweeps more broadly." *Perez-Arellano,* 279 F.3d at 794. The *Perez-Arellano* court noted that *Buckhannon* explicitly referred to "numerous federal statutes that allow attorney's fees and costs to the prevailing party," including 42 U.S.C. § 1988. *Id.* Thus, in *Perez-Arellano,* the court applied the *Buckhannon* rationale to the fee shifting provisions of the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A). Although the EAJA is not mentioned in *Buckhannon,* the Ninth Circuit could discern no reason to interpret the "prevailing party" language of the EAJA inconsistently with *Buckhannon.*[3] *Id.* Therefore, this Court's analysis must comport with the Ninth Circuit's analysis of *Buckhannon.*

[3] Given the Ninth Circuit's recognition of the broad sweep of *Buckhannon,* and its finding that "[t]he Supreme Court did not expressly limit its interpretation of 'prevailing party' to the FHAA, ADA, and those statutes listed as examples of similar text," the Court rejects the plaintiffs' argument that discussion of § 1988 in *Buckhannon* is merely dicta. Moreover, the plaintiffs' reference to *Brickwood Contractors, Inc. v. United States,* 49 Fed. Cl. 738 (2001), as an example of how *Buckhannon* may be distinguished, is misplaced in light of the Ninth Circuit's direct rejection of *Brickwood. See Perez-Arellano,* 279 F.3d at 794, fn. 4 (rejecting *Brickwood*'s contention that *Buckhannon* is limited to the ADA and FDAA, as well as *Brickwood*'s consequent interpretation of the EAJA).

1. *The Defendants' Application of Buckhannon*

[2] The defendants point to language from this Court's November 7, 2001 order granting summary judgment to the defendants, which states: "plaintiffs are not entitled to a permanent injunction because their motion for summary judgment was denied and they [have] therefore not succeeded on the merits of their claims." (Court's 11/7/01 Order.) The defendants cite precedent from the Fourth Circuit explaining that:

> [T]he fact that a preliminary injunction is granted in a given circumstance, then, by no means represents a determination that the claim in question will or ought to succeed ultimately; that determination is to be made upon the 'deliberate investigation' that follows the granting of the preliminary injunction.

Smyth and Montgomery v. Rivero, 2002 U.S. App. LEXIS 2665 *1, *18-19 (4th Cir. 2002).

The defendants argue that because the preliminary injunction is not a binding adjudication on the merits, and given that the defendants prevailed at summary judgment on grounds of mootness, the plaintiffs cannot be "prevailing parties" who have secured a judgement on the merits under *Buckhannon.*

2. ***The Proper Application of Buckhannon***

***5** The defendants' argument belies the actual circumstances of this case and is inconsistent with the rationale of *Buckhannon.*

a. ***Issuance of a Preliminary Injunction in this Case was Judicial Action that Materially Altered the Legal Relationship of the Parties***

In this case, the plaintiffs received relief from the Court which instituted a change in the legal relationship between the parties. When this action was originally filed, the plaintiffs sought injunctions requiring the LASD to: (1) alter its claims-settlement process (including waiver considerations); (2) regularly provide inmates with paperwork through which they could report alleged overdetention; and (3) refrain from delaying release of inmates against whom charges are dropped in court while checks were made to assure the absence of any other wants or holds against the inmate.

In opposition, the defendants filed a motion to dismiss the FAC. This motion to dismiss was denied in part and granted to the extent the Court issued the preliminary junction previously described. (*See* Background, *supra* Sec. I.) In opposition to the instant motion for attorneys' fees, the defendants state:

> Rather than appeal this ruling or litigate the matter further, following the issuance of the preliminary injunction, a department-wide policy at the LASD was developed in order to *voluntarily comply* with the *preliminary injunction* and defendant has been in full compliance with the preliminary injunction since its issuance.

(Defs' Opp. at 1:22-26 (emphasis added).) The defendants further state that:

> Ultimately, based on the uncontroverted evidence proving compliance with the preliminary injunction and the clear indication that there was absolutely no intention of instituting any future policy or procedure that was prohibited by the preliminary injunction, judgement was granted in favor of the defendants.

(*Id.* at 3:14-16.) In light of these admissions, it is clear that the LASD did not voluntarily alter its behavior as a result of the plaintiffs bringing suit. Rather, the defendants changed their policies in order to comply with this Court's order.[4]

[4] The plaintiffs waited more than two years before moving for summary judgment and requesting that the injunction be made permanent. At that point, the defendants produced evidence of changed policies which the plaintiffs failed to refute. Therefore, the Court granted summary judgment on the grounds that the action was moot.

In this case, the judicial *imprimatur* was stamped on an injunction that led to an alteration of actual circumstances. Here, the plaintiffs brought an action for equitable relief only. In response to the injunction, the LASD changed its conduct and mooted the case.[5] Because the defendants have admitted they changed course in order to comply with the injunction, there is no concern here of future "mini-litigations" designed to determine the defendants' subjective motivation. *Buckhannon* can be further distinguished because in this case the issue became moot in response to actions taken by the defendant itself, as opposed to a state legislature.[6]

[5] Moreover, although courts may not often find a case mooted, the finding was appropriate here when there was no reasonable expectation that the LASD was likely to engage in further violations.

[6] Further, the Court notes that in Justice Scalia's concurring opinion he reasoned that the *Buckhannon* rule was consistent with *Talmage v. Monroe,* 119 P. 526 (1911). *Buckhannon,* 532 U.S. at 614 fn. 2 (Scalia, J., concurring). Justice Scalia explained that, in *Talmage,* costs were awarded after the defendant complied with an alternative writ of mandamus, where it was the writ, and not the mere petition, which led to the defendant's actions. Here too, the defendant acted to comply with the Court's Order and not because of the mere filing of an action.

Given the admitted compliance with the injunction, and the subsequent determination that the equitable action was moot on account of the defendants' compliance, the Court finds that the plaintiffs were prevailing parties who had secured a change in actual circumstances as a result of a judicial determination. This holding complies not only with the holding of *Buckhannon,* but also with principles of fundamental fairness.

3. ***Effect of the PLRA***

***6** The LASD contends that the PLRA applies to this

action, and that plaintiffs should not be able to recover under the PLRA since there was never an "actual violation" of the plaintiffs' rights. Even if there was such an "actual violation", the LASD contends that the plaintiffs' fees should be reduced to comply with the provisions of the PLRA. These arguments are without merit. In this Court's previous Order granting the preliminary injunction and certifying the class, the Court held that "[t]he PLRA does not apply to this action." (Court's Order Granting Prelim. Injunc. at 15, fn.5.)

IV. Reasonableness of Requested Fees

Prior to analyzing the reasonableness of the requested fees, the Court first summarizes the plaintiffs' request:

286.25 hours @ $550.00=$157,437.50 (Stephen Yagman)

006.25 hours @ $400.00=$2,500.00 (Kathryn S. Bloomfield)

043.75 hours @ $350.00=$15,312.00 (Richard H. Millard)

[29.00 hours @ $550.00=$15,950.00 (Joseph Reichman) -NC]

Fee Total: $191,199.50, of which $175,249.50 is requested

With regard to costs, the plaintiffs request $1,653.00 ($150 filing fee, $696 in depositions, $45.50 in messengers, and $761.50 in photocopies (3,046 copies @ $0.25 per page)).[7]

[7] Yagman's resume speaks for itself. Kathryn Bloomfield is a partner in Yagman's firm, a lawyer for 15 years, holds a chemical engineering degree in addition to her JD, and has clerked for several magistrates. Richard Millard has practiced law since 1966, working as a public defender for most of that time until leaving for private practice in 1989. Over the last 8 years, he has been co-counsel with Yagman on approximately 20 cases, in addition to working on various civil rights and capital cases.

The filings drafted by Stephen Yagman ("Yagman") in this case are:

1) Complaint (5/24/98)

2) Motion for Class Certification (5/27-28/98)

3) Motion for Preliminary Injunction (5/30/98)

4) First Amended Complaint (7/1/98)

5) Reply to Opposition to Prelim. Injunc. (7/8/98)

6) Reply to Opposition to Class Certification (7/10/98)

7) Opposition to Motion to Dismiss (7/26/98)

8) 4 Mot.'s for Findings of Viol. of Prelim. Injunc. (3/23&29/01)

9) Opp. to Def.'s Ex Parte Motion (6/21/01)

10) 10 Sets of Interrogatories (7/18/01)

11) Motion for Summary Judgment (8/16/01)

12) Reply to Pl.'s Opp. to Summary Judgment (9/01/01)

13) Reply to Pl.'s Objections to Evidence for MSJ (09/11/01)

14) Reply to Opp.'s Sanctions Motion (9/14/01) - (no charge)

15) Reply to Opp.'s Motion to Strike (9/16/01)

16) Opp. to Def.'s Cross-Motion for Summary Judgment (10/15/01)

In addition to time spent drafting pleadings, most of Yagman's other hours were spent reading pleadings, making telephone calls, having discussions with co-counsel, taking depositions and reviewing deposition testimony, and drafting various office memos and letters.

Richard Millard's 43.75 hours were spent interviewing clients, making telephone calls, studying the various motions and orders, and conferencing with co-counsel.

Kathryn Bloomfield billed 6.25 hours for researching and preparing memoranda, and attending a hearing.

In addition, Yagman provides receipts for three depositions, as well as a messenger service receipt.

A. ***Legal Standard***

To determine the amount of an award of attorney's fees, the court must first calculate the "lodestar amount" by multiplying the number of hours reasonably spent on the litigation by the reasonable hourly billing rate.[8] *Long v. United States Internal Revenue Service,* 932 F.2d 1309 (9th Cir.1991). A prevailing plaintiff must submit to the court documentation of the hours expended in the case and the hourly fees claimed. "If these two figures are reasonable, there is a 'strong presumption' that their product, the lodestar figure, represents a reasonable award." *Jordan v. Multnomah County,* 815 F.2d 1258 (9th Cir.1987) (*quoting Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,* 478 U.S. 546, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986)).

8 The LASD contends that the PLRA applies to this action, and that, as such, the award of attorney's fees under the statute is limited to a maximum hourly rate of 150% of the rate paid to court appointed counsel under 18 U.S.C. § 3006A. (Opp. at 10:22-28.) However, as this Court held in its order granting the plaintiff's motion for preliminary injunction, "[t]he PLRA does not apply to this action." (Order Granting Prelim. Injunc. at 15:fn.5.)

In determining the reasonableness of the hours billed the court will also examine whether the time spent is compensable, what hourly rates should be applied, and whether the hours should be reduced because of excessive time spent on a particular activity. *Nat'l Ass'n of Concerned Veterans v. Sec. of Def.,* 675 F.2d 1319, 1327-1328 (D.C.Cir.1982). Additionally, the court may reduce the amount of an award of attorney's fees if the hours billed are (1) duplicative, *Carter v. Sedgwick County,* 36 F.3d 952 (10th Cir.1998), *cert denied,* (2) not allotted to specific tasks, *Case v. Unif. Sch. Dist. No. 233, Johnson City,* 157 F.3d 1243 (10th Cir.1998), or (3) if the plaintiff obtains only partial or limited success. *Hensley v. Eckerhart,* 461 U.S. 424, 436-37, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).[9]

9 The defendants contend that this Court should also consider (1) the novelty and complexity of the disputed issues, (2) the special skill and experience of counsel, (3) the quality of the representation, and (4) the results obtained, in determining the reasonableness of the requested hours expended. *Blum v. Stevenson,* 465 U.S. 886, 898-900, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). However, when the court in *Blum* considered these factors, it did so in order to determine the "appropriateness of the upward adjustment of the fee award," and not the reasonableness of the hours reported. *Id.*

B. ***Summary of Plaintiff's Fee Requests***

***7** As detailed supra, the plaintiffs are entitled to an award of attorneys' fees under Section 1988. The plaintiffs' counsel have submitted documentation regarding the number of hours expended on this matter since it began in 1998. The Fee Summaries document that Stephen Yagman, who served as lead counsel in this matter, expended 286.25 hours on this matter and Kathryn S. Bloomfield and Richard R. Millard spent 6.25 and 43.75 hours respectively. The plaintiffs do not seek fees for Joseph Reichman's work on the matter, which totaled 29 hours at an hourly rate of $550.00. In sum, the plaintiffs seek an award of attorneys' fees in the amount of $182,537.00.[10]

10 The plaintiffs' motion for an award of attorney's fees requested an award of $175,249.50. This figure has been adjusted to include fees totaling $7,287.50 for Yagman's work on the plaintiffs' reply to the defendant's opposition to the fee application. Yagman billed 13.25 hours at $550.00/hour, for reading and analyzing the defendant's opposition to the plaintiffs' fees motion, additional research, and writing the plaintiffs' reply to the defendant's opposition to the motion for attorney's fees. (Reply at 8:9-17.) The Court finds that the amount of time spent by Yagman responding to the defendant's opposition to the fee application was reasonable.

[3] Plaintiffs' counsel indicate the present hourly rate for Stephen Yagman is $550.00 and Kathryn S. Bloomfield's and Richard R. Millard's hourly rates are $400.00 and $350.00 respectively. While the plaintiff's attorneys billed hours in years where they charged lower hourly rates, it is appropriate to apply current hourly rates rather than historic rates in reaching an award of attorney's fees.

Missouri v. Jenkins by Agyei, 491 U.S. 274, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989). The billing rate used by the district court in arriving at its lodestar figure should be established by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity. *Davis v. City of San Francisco,* 976 F.2d 1536, 1542 (9th Cir.1992).

[4] The Court finds that the hourly rates are excessive. Based on the Court's own experience in considering fee requests by other counsel, and given the lack of contemporary evidence submitted by the plaintiff to demonstrate the reasonableness of the claimed rates, the Court finds it appropriate to reduce the rates as follows: the hourly rate for Stephen Yagman for this case is $400.00, and Kathryn S. Bloomfield's and Richard R. Millard's hourly rates are $300.00 and $250.00 respectively.[11] Specifically, Yagman has not submitted any evidence that he was awarded a fee in excess of this adjusted rate for any similar case. Other cases where the plaintiff's counsel was awarded an hourly rate of $450 are distinguishable from the instant case because, in those cases, the court specifically found that the complexity of the issues merited such an award. In this case, the Court does not find that the complexity of the issues merit a rate at the highest end of the spectrum, as Yagman requests.

11 The Court notes that the plaintiff's evidence also does not support a fee award for an hourly rate of $550 in part because most of the plaintiffs' supporting evidence is out-of-date. The Blecher declaration states that Mr. Blecher bills at a maximum of $450 per hour, although this declaration is dated 1996. (Blecher Decl. ¶ 3.) The chart detailing the highest hourly rates at law firms reflects a maximum hourly rate of $400, although it appears to reflect 1988 figures. Out of the evidence that addresses billing rates for the more recent past, there is minimal support for the requested rate. For example, the O'Neill declaration executed in 2002 suggests only that a billing range between $400 and $600 is appropriate. (O'Neill Decl. ¶ 4.)

1. ***Fees Relating to Unsuccessful Claims***

***8** **[5]** While a court may reduce the fee award in cases where the plaintiff only received partial or limited success, *Hensley,* 461 U.S. at 436-37, such a reduction is not warranted in this case. As the Ninth Circuit held in *Cabrales v. County of Los Angeles,* "[a] plaintiff who is unsuccessful at a stage of litigation that was a necessary step to her ultimate victory is entitled to attorney's fees even for the unsuccessful stage." 935 F.2d 1050, 1052 (9th Cir.1991).

The defendants claim that because judgment was ultimately entered in favor of the defendants, a substantial amount of the hours claimed by the plaintiffs are unreasonable.[12] Specifically, the defendants claim that the defendants "should not have to pay for plaintiff's counsel's choice to spend inordinate amounts of time on frivolous matters following April 24, 2001." (Defs' Opp. at 19:4-5.) The defendants appear to contend that the April 26, 2001 Order was dispositive on the issue of whether a permanent injunction would be issued. This is not the case. The Order reads:

12 The defendant's argument that the amount of the plaintiffs' fee award should be reduced because some of the plaintiff's claims were dismissed on the defendant's motion to dismiss fails for the reasons discussed above.

> The plaintiffs must succeed on the merits of their claims to be entitled to a permanent injunction. Here, the plaintiffs have not succeeded *on the merits* of their claims through a motion for summary judgment or trial, and therefore are not entitled to summary judgment. (Court's April 26, 2001 Order)(citations omitted)(emphasis added).

Accordingly, the plaintiffs filed a motion for summary judgment. The Court does not find that the hours spent by the plaintiffs' counsel following the April 26, 2001 order were "frivolous." Therefore, the Court finds that the hours billed after April 2001 should not be reduced solely because the Court ultimately denied the plaintiffs' motion for a permanent injunction.

2. ***Specificity of Descriptions for Hours Billed***

[6] The defendants claim that, as in *Case,* the plaintiffs' accounting for hours marked as "conference" do not meet the plaintiffs' burden of showing that the billed hours were allotted to specific tasks. *Case,* 157 F.3d at 1253. In *Case,* the court found reductions appropriate for time spent in "conference" because the billing entries did not show how much time was spent in or what happened at conference. *Id.* Discussing the specificity which billing hours must meet, the Supreme Court stated, "counsel, of course, is not required to record in great detail how each minute of time was expended. But, at least counsel should identify the general matter of his time expenditures." *Brady v. Fort Bend County,* 145 F.3d 691, 716 (5th Cir.1998) (citing *Hensley v. Eckerhart,* 461 U.S. 424, 437 n. 12, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

Yagman rendered services on March 22, 2001 which are described solely as "telephone" and "memo to file," and which record the time spent at one hour. (Pls' Decl. in Support of Mot. for Attys' Fees at 1, hereinafter "Pls' Decl".) Except for the March 22, 2001 entry, all of

Yagman's entries for "telephone" either list the person with whom he spoke, or the entries are bundled with other tasks. Richard H. Millard's fee summary contains a total of 4.55 billed hours described only as "Telephone call(s)". (Pls' Decl., Ex. A.) As in *Case,* the Court finds that hours billed only as "telephone" or "telephone call(s)" do not meet the requirement that billed hours be allotted to specific tasks. *Hensley,* 461 U.S. at 437 n. 12. (finding that "at least counsel should identify the general matter of his time expenditures.")

Therefore, the Court reduces the plaintiffs' fee award by a total of $1537.50 for failing to present with sufficient specificity the tasks undertaken by Millard for a total of 4.55 hours and by Yagman for a total of one hour.

3. ***Excessive and Duplicative Fees***

***9** When more then one attorney works on a case or one aspect of a case, the court may reduce the number of hours billed as duplicative. *LaPrade v. Kidder, Peabody & Co.,* 146 F.3d 899 (D.C.Cir.1998) (ten percent reduction in attorney's fees when six partners and seven associates worked on case). It is within a court's discretion to reduce "the proposed lodestar by a reasonable amount without performing an item-by-item accounting." *Id.*

[7] In this case, there is some overlap in the work performed by Yagman and Millard. As an example of such overlap, the defendants point to the fact that Yagman spent 7.75 hours reading the objections to the original motions for preliminary injunction and class certification, and Millard billed 0.5 hours for conducting the same task.[13] Another example cited by the defendants is that Yagman spent five hours studying Sheriff Sherman Block's deposition and Millard spent 4.75 on the same task.[14] Where both Yagman and Millard have billed for the same task, the total accounting for these hours is as follows: Yagman spent 38.25 hours and Millard spent 11 hours on the same tasks. The Court finds that duplicative billing for these matters is inappropriate and therefore denies fees for the eleven hours that Millard billed for tasks that were also performed by Yagman. *Ramos v. Lamm,* 713 F.2d 546, 554 (9th Cir. 1983).

13 Millard's June 12, 1998 entry also includes "Rec'd Ct. order changing date of 6/15 to 6/29 in ctrm. 3." (Pls' Decl., Ex. A.)

14 The defense fails to note that Millard recorded the time he spent studying Block's deposition with other services, such as: reviewing the file, studying court rulings in related overdetention cases, and a telephone call. (Pls' Decl. Ex. A.)

The Court finds the amount of time billed for reading the deposition to be excessive and therefore reduces the amount of time for which Yagman may be reimbursed for this task to two hours.

[8] The defendants also claim that Yagman overstated his billable hours because on five different days, he expended over eight hours on this matter. While ten and fourteen hour days are extraordinary, the Court finds that Yagman's Fee Summary is reasonable in light of the case matter and length. The Court therefore finds that no reduction of the plaintiffs' fee award is warranted on this basis because the hours billed are not necessarily excessive nor duplicative.

4. ***Allowable Costs***

[9] Federal Rule of Civil Procedure 54(d)(1) provides generally that "costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). An award of costs under Section 1988 may only include costs that would "ordinarily be treated as reimbursable in a private attorney-client relationship." *Davis v. City and County of San Francisco,* 976 F.2d 1536, 1557 (9th Cir.1992). The plaintiffs' attorneys claim costs totaling $1,653.00.[15] The Court finds that the costs incurred by the plaintiffs are fully compensable under Section 1988 and therefore awards $1,653.00 in costs to the plaintiffs.

15 Costs are claimed as follows: filing fee costs of $150.00; deposition costs of $696.00; messenger costs of $45.50; and photocopying costs of $761.50.

IV. Conclusion

For the foregoing reasons, the Court awards the plaintiffs attorneys' fees in the amount of $128,325 and costs totaling $1,653.00.[16]

16 The Court calculated the attorneys' fee award in this case as follows: 298.5 hours for Yagman (286.25 hours plus 13.25 hours minus one hour) at an hourly rate of $400, 28.2 hours for Millard at an hourly rate of $250, and 6.25 hours for Bloomfield at an hourly rate of $300.

IT IS SO ORDERED.