Freitag v. California Dep't of Corr.

United States District Court for the Northern District of California
October 17, 2003, Decided ; October 17, 2003, Filed
No. C 00-02278 TEH

Reporter: 2003 U.S. Dist. LEXIS 26579
DEANNA L. FREITAG, Plaintiff, v. CA DEPT OF CORRECTIONS, et. al., Defendants.

Subsequent History: Subsequent appeal at, Remanded by Freitag v. Ayers, 463 F.3d 838, 2006 U.S. App. LEXIS 23383 (9th Cir. Cal., 2006)

Prior History: Madrid v. Gomez, 940 F. Supp. 247, 1996 U.S. Dist. LEXIS 13415 (N.D. Cal., 1996)

Counsel: [*1] For DEANNA L. FREITAG, Plaintiff: Pamela Y. Price, Price and Associates PLC, Oakland, CA; John L. Burris, Law Offices of John L. Burris, Oakland, CA.

For ROBERT J. AYERS, JR., TERESA SCHWARTZ, DAVID A. CARMICHAEL, G. RODMAN, PAUL DILLARD, BARRY O'NEILL, GEORGE NEOTTI, AUGGIE LOPEZ, CALIFORNIA DEPARTMENT OF CORRECTIONS, defendants: Richard L. Manford, Marybelle Archibald, Jacob A. Appelsmith, CA Attorney General's Office, Sacramento, CA.

Judges: THELTON E. HENDERSON, UNITED STATES DISTRICT JUDGE.

Opinion by: THELTON E. HENDERSON

Opinion

ORDER AWARDING ATTORNEYS' FEES AND COSTS

This matter came before the Court on Monday, July 28, 2003 on plaintiffs Motion for Award of Reasonable Attorneys' Fees and Costs. Having carefully considered the parties' written and oral arguments, the supporting documentation, the supplemental declarations, the parties' August 20, 2003 stipulation, and the entire record herein, the Court grants plaintiff's motion as set forth below.

I. INTRODUCTION

Plaintiff, Deanna Freitag ("Freitag") brought this action on June 27, 2000 alleging that defendants -- the California Department of Corrections ("CDC") and several CDC employees -- discriminated against, and [*2] harassed her, on the basis of her sex. She also claimed that defendants retaliated against her for protected activity. It was not easy, however, for Freitag to obtain experienced counsel willing to represent her. *See* Freitag Decl., P 4. The unusual factual nature of her claims raised significant and difficult issues against a large institutional defendant that has a reputation for not settling cases. The events at issue also occurred in a remote part of California. *See* Price Decl., PP 30-31; Chanin Decl., P 10; Schwartz Decl., P 8; Chanin Decl., P 8; McNeill Decl., P 10-11 (discussing difficulty of obtaining experienced counsel in such cases). In accepting the case, plaintiff's counsel plainly undertook a substantial risk, and was ultimately required to advance costs of almost $ 100,000. *See* Price Decl., P 33; Schwartz Decl., P 11 ("The risk posed to Plaintiff's counsel in a civil rights case such as this one is extraordinarily high").

As anticipated, the action was vigorously contested and litigated at both the pre-trial stage and trial stage. After a roughly month-long trial commencing March 4, 2003, and concluding on April 2, 2003, the jury fully vindicated plaintiffs [*3] claim that her civil rights had been violated. Specifically, the jury found that the CDC had discriminated against Freitag on the basis of her sex in violation of *Title VII of the Civil Rights Act of 1964* ("Title VII"), and that defendants Robert Ayers, Theresa Schwartz, Augie Lopez, and the CDC, had retaliated against Freitag for her opposition to sexual harassment and discrimination, in violation of Title VII and *42 U.S.C. § 1983*. The jury found that five other individual defendants had no liability. The jury awarded Freitag $ 600,000.00 in compensatory damages and $ 300.00 in punitive damages. Plaintiff also subsequently obtained permanent injunctive relief prohibiting Pelican Bay officials from committing further violations of Title VII. *See* Order Granting Part and Denying in Part Plaintiff's Motion to Amend Judgment to Include Permanent Injunctive Relief. In addition, the Court directed the Special Master in *Madrid v. Gomez*, C90-3094 to oversee the development of a remedial plan to address the problem of inmate exhibitionist masturbation. *Id.*

As the prevailing party, plaintiff now seeks to recover for the reasonable time and costs expended [*4] by counsel in prosecuting this case pursuant to the fee shifting provisions set forth in *42 U.S.C. § 1983* and *42 U.S.C. § 2000e-5(k)*. Specifically, plaintiff requests fees in the amount of $ 982,992.50 through April 30, 2003, and non-statutory costs in the amount of $ 68,082.20. Defendants assert that the amount awarded should be

substantially reduced because the hourly rates requested are unreasonably high, and the number of hours requested is excessive. Each of defendants' objections is discussed in turn below.

II. DISCUSSION

To determine a reasonable attorney's fee, the Court must multiply the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983). There is a strong presumption that this lodestar figure constitutes a "reasonable" attorneys' fee since most relevant considerations are subsumed within this initial calculation. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564, 92 L. Ed. 2d 439, 106 S. Ct. 3088 (1986). Only in rare cases will adjustment of the lodestar be appropriate, *id.* at 565, and in this case, [*5] neither party argues that such an adjustment is warranted. Accordingly, the Court turns to the parties' disputes concerning the hourly rates and number of hours.

A. Reasonable Hourly Rate

In assessing a reasonable hourly rate, courts should consider the prevailing market rate in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-96, 79 L. Ed. 2d 891, 104 S. Ct. 1541 and n. 11 (1984); *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) ("Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate").

Defendants first contend that the hourly rates sought by Ms. Price and her associates [1] should be reduced because they do not reflect prevailing market rates for "such a small firm." *See* Defs.' Opp. at 4. Defendants cite no precedent from the Ninth Circuit Court of Appeals, however, that supports a "small firm" distinction; nor does this Court find that [*6] such an approach is warranted. Indeed, under defendants' logic, lawyers working at public interest organizations or in solo practices that serve the poor and charge little or nothing to their clients would be able to recover little or nothing when prevailing in a civil rights action, despite the significant risks inherent in accepting such cases. Such an outcome would discourage many qualified lawyers from accepting civil rights cases and thus severely undermine the very purpose of fee shifting statutes. *See e.g. Seattle School Dist. No. 1 v. State of Washington*, 633 F.2d 1338, 1348 (9th Cir. 1980) ("The congressional purpose in providing attorney's fees in civil rights cases was to eliminate financial barriers to the vindication of constitutional rights and to stimulate voluntary compliance with the law"). [2]

[*7] Moreover, the reduction defendants specifically propose for Ms. Price -- from $ 425.00 to $ 350.00 per hour -- is not reasonable given that the Honorable William H. Orrick, Ret., awarded Ms. Price, admitted to practice in 1983, $ 350.00 per hour five years ago in 1998, *see* Price Decl., Exh. B, and Magistrate Judge Joseph Spero set Ms. Price's fees for monitoring work at $ 400.00 per hour in November 2002. *See Croskrey v. Contra Costa County*, No. C73-0906 JCS (N.D. Cal), pls' Third Suppl. Decl., Exh. B. [3] The Court also notes that Ms. Price requested $ 375.00 per hour in October 2001 in connection with a discovery motion, stating that this rate was consistent with the rates charged by Bay Area attorneys with comparable experience. *See* Schratz Decl., Exh. 3 at 5. Taking all of the above into account, as well as the declarations submitted by both sides, and the Court's own familiarity with the prevailing market, and Ms. Price's extensive experience in civil rights litigation, skill, and reputation,

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[1] Defendants do not object to the hourly rate sought by Mr. Burris.

[2] Although defendants at oral argument conceded this adverse effect, they suggested that such a distinction is nonetheless justified because all small firms have lower overhead costs than large firms. *See Gucci America Inc., v. Rebecca Gold Enterprises Inc.*, 1993 U.S. Dist. LEXIS 3486, 1993 WL 88270 (S.D. N.Y.). Aside from defendants' failure to empirically support this argument, this Circuit has never identified "overhead" as a relevant basis for reducing an otherwise appropriate hourly rate. Furthermore, the fact that a particular firm or organization may have a lower overhead than other firms or organizations does not, in this Court's view, justify the adverse effect such an approach would have on the ability of plaintiffs to obtain experienced and competent counsel necessary to vindicate important civil rights. Accordingly, this Court declines to adopt what would effectively be a "low overhead penalty." Finally, the Court notes that in its experience, the hourly rate it has awarded Ms. Price is in any event lower than that which would likely be charged by a partner with her level of experience at the largest firms in this area.

[3] The Court also notes that the declaration of Stephen Schear, cited to by defendants, *see* Shratz Decl., Exh. 4 at 35 is not particularly relevant. Defendants cite to this declaration as an example of an experienced employment and civil rights attorney in Oakland, California admitted in 1978, who sought an hourly rate of $ 250.00 in 2002. However, as Mr. Schear's declaration explains, his client "negotiated a lower hourly fee . . . than the prevailing market rate" based on a partial contingent fee arrangement he had entered into which caused him the bear the risk of receiving far less than market rate if he lost entirely and more than market rate if he had obtained a very large judgment. As such, Mr. Schear's declaration does not provide a helpful comparison.

the Court concludes that a reasonable hourly rate for Ms. Price in this case is $ 400.00 per hour.

[*8] With respect to the specific hourly rates for Ms. Price's associates, defendants' remaining objections lack merit. For example, defendants reference a billing rate survey regarding small firms that was published in 2001. *See e.g.* Schratz Decl. at 17-18. Such figures are out of date and, as discussed above, focus improperly on"small firms." Notably, defendants also fail to attach a copy of the survey. They also cite to declarations from lawyers who do not have comparable experience. *See* Shratz Decl., at 17, and Exh. 6 (declaration of lawyer practicing 6 years cited in support of reducing rate for Mr. Douglass, practicing 10 years). With respect to Mr. Allen, defendants' own declarations support his requested rate of $ 250 per hour. *See* Shratz Decl. at 17 and Exh. 6 (declaration of lawyer practicing same amount of time as Mr. Allen lists billing rate as $ 250 per hour). Given the supporting declarations, and the record in this case, this Court is satisfied that the hourly rates sought for Ms. Price's associates are reasonable.

Finally, defendants contend that the hourly rate sought for Ms. Price's paralegal, Monique Beaver, should be reduced from $ 150 per hour to $ 85.00 [*9] per hour. While defendants' "auditor" asserts that this is the prevailing market rate for paralegals at small firms, he provides no documentation to support this statement. On the other hand, plaintiff also fails to satisfactorily document the reasonableness of the rate of $ 150, and it appears to be somewhat excessive for Ms. Beaver's level of experience *See* Price Decl., P 52. Accordingly, Ms. Beaver's time shall be compensated at an hourly rate of $ 105.00, which is consistent with her qualifications and experience.

B. Reasonable Number of Hours

A fee applicant has the burden of "documenting the appropriate hours expended." *Hensley*, 461 U.S. at 437. To this end, the applicant should exercise "sound billing judgment" regarding the number of hours worked, eliminating excessive, redundant, unproductive, or unnecessary hours, and provide the district court with billing records supporting the time claimed. *Id.* at 433. Plaintiff's counsel "is not required to record in great detail how each minute of his time was expended," but should "identify the general subject matter of his time expenditures." *Id.* at 437 n. 12; *Fischer v. SJB P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) [*10] ("plaintiffs counsel can meet his burden -- although just barely-by simply listing his hours and identify[ing] the general subject matter of his time expenditures'") (citation omitted);. *Davis v. City and County of San Francisco* 976 F.2d 1536, 1542 (9th Cir. 1992), *vacated in part on other grounds*, *984 F.2d 345 (9th Cir. 1993)*. It is the burden of the party opposing the request to submit specific objections to the hours expended. *Gates v Deukmejian*, 987 F.2d 1392, 1404 (9th Cir. 1992).

Plaintiff seeks compensation for a total of 2,776.05 hours, including 2,334.15 hours for Price and Associates, and 441.90 hours for John Burris, through April 30, 2003. [4] Plaintiff's counsel states that she exercised billing judgment by reviewing the billing log sheets each month and editing the billing statements to ensure that the time billed was justified by the tasks delineated and that vague entries were excluded. Suppl. Price Decl., P 3. Plaintiff's counsel also excluded all time expended by any attorney or paralegal who spent less than 50 hours on the case for a total deduction of 97 hours. Shratz Decl., P 13, n 2.; Price Decl., P 55 [5]. [*11] Defendants, however, contend that the amount of hours requested are excessive for a number of reasons each of which is discussed below.

1. *Block Billing and Vague Entries*

First, [*12] defendants contend that plaintiff's fee award should be reduced an unspecified amount to account for various "block billing" and "vague" entries. With respect to the block billing, defendants cite to no authority in this Circuit that requires that each time entry pertain to a single task. Nor do defendants complain that the descriptions in the identified instances of block billing lack sufficient. On the contrary a review of the block billing entries identified by defendants indicates a substantial degree of specificity. *See* Schratz Decl. at 7-12. The Court also notes that while the better practice would be to avoid block billing altogether, and thus avoid disputes of this nature, the block billing identified in this case was not extensive. This is not a situation in which, for each day worked on the case, counsel routinely lumped every task relating to the case into one time entry. Rather, for the most part defendants identify instances were some tasks were grouped together,

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[4] The parties have stipulated that the total numbers of hours claimed by plaintiffs' counsel Pamela Price and her associates is accurately reflected in the billing statements presented to the Court through April 30, 2003. *See* Aug. 20, 2003 Stipulation and Order. Defendants also do not dispute that the number of hours claimed by plaintiff's counsel John Burris is accurately reflected in his billing statements presented to the Court.

[5] The Court notes, however, that the declaration mistakenly identifies the number of hours deducted on this ground as 125.5 instead of 97. An independent calculation by the Court demonstrates that the actual number of documented hours through April 30, 2003 is 2420.60. Accordingly, the number of hours reduced to account for attorneys or paralegals who spent less than 50 hours on the case is 97.

while other tasks for the same day were separated out. Also, many of the identified examples involved relatively small blocks of time. Notably, even defendants' "auditor" does not recommend a disallowance [*13] based solely on blocked billing. *Id.* at 12.

The only "vague" entries identified by defendants concern Mr. Burris' entries for "trial preparation." Mr. Burris was brought into the case on the eve of trial to assist solely with trial preparation and the trial itself, and it is self-evident to this Court that Mr. Burris was in fact consumed with trial preparation leading up to, and throughout the actual trial. The Court finds no basis for reducing Mr. Burris' hours simply because he did not breakdown the exact nature of each item of trial preparation. *See* Hensley, 461 U.S. at 437, n.12; *Fischer* 214 F.3d at 1121. Notably, defendants own auditor, again, does not recommend a disallowance of Mr. Burris' time based solely on grounds of "vagueness." *See* Schratz Decl. at 12.

Given all of the above, the Court declines to reduce plaintiff's fee award to account for the identified instances "block billing" or "vague" entries.

2. *Effect of Unsuccessful Portions of Case*

Plaintiff's second amended complaint alleged four causes of action:

> (1) a Title VII claim against CDC for sexually-hostile work environment,
>
> (2) a Title VII claim against CDC [*14] for retaliation for complaining about the sexually hostile work environment,
>
> (3) a *section 1983* claim against eight individual defendants for violation of plaintiff's constitutional rights of free speech, equal protection, due process, and privacy, and
>
> (4) a conspiracy claim against the eight individual defendants to deprive plaintiff of her constitutional rights.

This Court granted a partial summary judgment in defendants' favor on March 25, 2002, dismissing the equal protection, due process, and privacy right claims in the third cause of action, and dismissing the fourth cause of action for conspiracy. The case proceeded to trial on the first three causes of action (with the third limited to the free speech claim). As noted above, the jury found in plaintiff's favor on all three claims, although five of the eight individual defendants were found not liable on the third claim.

Defendants contend that plaintiff's fees should be substantially reduced to account for the fact that five of the eight individual defendants were found not liable on the third claim and that three of her four *§ 1983* constitutional claims were dismissed on summary judgment, as well as the conspiracy [*15] claim. *See* Defs.' Opp. at 8, 10-11. In addition, defendants conclusorily assert that plaintiff can not recover for time incurred on three motions: (1) an ex parte motion to file a late opposition to defendants' motion for summary judgment. (2) an unsuccessful motion for reconsideration of the summary judgment ruling, and (3) an unsuccessful motion for leave to amend the second amended complaint to add class allegations and additional plaintiffs. *Id.* at 11; Shratz Decl. at 25.

(a) *Dismissed claims and defendants*

Notably, defendants completely fail to apply the applicable law in cases such as this, where a plaintiff prevails on some matters and is unsuccessful on others. In such instances, courts must undertake a two-part analysis. First, the court must determine whether "the claims upon which the plaintiff failed to prevail were related to the plaintiff's successful claims." *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir. 1986). As the Ninth Circuit has acknowledged, this test is not precise. *Id.* In general, however, claims are "related" if they involve a common core of facts, arise out of a common course of conduct, or are based on related [*16] legal theories. *Id.*; *Schwarz v. Secretary of Health & Human Services*, 73 F.3d 895, 902-04 (9th Cir. 1995); *O'Neal v. City of Seattle*, 66 F.3d 1064, 1068 (9th Cir. 1995). Conversely, claims are unrelated if the " relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised.'" *Schwarz*, 73 F.3d at 903 (citation omitted).

If the claims are related, the court must then undertake the second part of the analysis by evaluating the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended. *O'Neal*, 66 F.3d at 1068-9. If the plaintiff obtained an "excellent result," full compensation may be appropriate, while partial or limited success may warrant a reduction. *Id.*

Here, the Court readily finds that a common core of facts underlay all of the plaintiff's claims against all defendants, since all of plaintiff's claims concerned a common set of circumstances confronting plaintiff at a single place of employment and defendants' [*17] responses thereto. While certain individual defendants were not held liable at trial, all of the defendants were involved in either supervising plaintiff and/or responding to the incidents at issue, and thus were all sufficiently intertwined to be "related" to the claims upon which plaintiff prevailed. Notably, defendants' papers do not argue otherwise.

Equally clear is that plaintiff obtained an "excellent result" in this action. While defendants mightily attempt to

downplay plaintiff's success, the fact remains that plaintiff was fully vindicated on all her core claims, and was granted a very substantial compensatory award of $ 600,000. The fact that the jury did not grant all of the damages requested does not significantly detract from plaintiff's success. Plaintiff also convinced the jury that the conduct of three individual defendants met the standard for punitive damages, albeit the amount of punitives damages awarded was small. All in all, it is plain that the jury fully accepted plaintiff's version of events and fully rejected defendants' version. As noted earlier, the risks inherent in a civil rights case of this nature are significant. Given these risks, and the outcome [*18] achieved, the result in this action, as stated above, is no less than "excellent." Accordingly, the Court finds no basis for reducing plaintiff's fees in this case to account for the dismissed defendants or claims.

(b) *Motions*

As noted above, defendants summarily assert that this Court should disallow any hours related to plaintiff's motions for (1) leave to file a late opposition to defendants' motion for summary judgment, (2) reconsideration of portions of the summary judgment ruling, and (3) leave to amend to add class allegations. In the Ninth Circuit, fees for an unsuccessful motion are not automatically excluded. Rather, an ultimately successful plaintiff should be compensated for steps along the path to victory, even if every step is not successful, where the motion constituted "a method of pursuing her ultimately successful claims," *O'Neal*, 66 F.3d at 1064, 1067, was a necessary stage of the case, *NAACP v. City of Richmond*, 743 F.2d 1346, 1349 (9th Cir. 1984), or otherwise contributes to the plaintiff's ultimate success.

Plaintiff's ex parte motion to file a late opposition brief was plainly a reasonable (and successful) step toward prevailing [*19] in this action. Similarly, plaintiff's motion for reconsideration on the summary judgment motion (which the Court only agreed to entertain because it believed it might have merit), was a reasonable, albeit ultimately unsuccessful, method of pursuing her ultimately successful claims. As to plaintiff's motion to add several new plaintiffs and class allegations, this motion -- essentially brought on the eve of trial -- was denied on the grounds that it was *extremely* untimely and prejudicial to defendants. *See* Court's May 29, 2002 order at 3 (Explaining that procedural posture of the case was "as if it were on the eve of trial"). The Court concludes that the motion was neither a reasonable method of pursuing plaintiff's ultimately successful claims nor a step that contributed to plaintiff's ultimate success. Accordingly, the Court will exclude all hours expended on this motion. [6]

[*20] 3. *Allegations of Excessive Billing*

Defendants also contend that plaintiffs counsel spent an excessive amount of time on (1) opposing defendants' motion for summary judgment, and (2) trial preparation.

(a) *Summary Judgment Motion*

Plaintiff spent 208.55 hours opposing defendants' motion for summary judgment, Defendants contend this amount of time was excessive and should be reduced to 100 hours. Defendants' summary judgment motion, however, was a comprehensive 25-page motion that raised 16 issues and was supported by 12 separate declarations. Given this, and the effort demonstrated by plaintiff's opposition and supporting declarations, the Court is not persuaded that a reduction is justified.

(b) *Trial Preparation*

Plaintiff's counsel Price and Associates expended 208.25 hours for trial preparation (excluding motions in limine and jury instructions). Mr. Burris expended an additional 247.10 hours for trial time and trial preparation. Although defendants' legal auditor asserts that the amount claimed is excessive based on his experience, *id.*, he provides no specific or objective basis for this assertion, and instead conclusorily asserts that the hours in this category [*21] should be reduced by 20 percent. Given the complexity and length of the trial, the number of defendants (eight individual defendants and one institutional defendant), the number of documents involved, and the fact the plaintiff's counsel clearly knew their case well at trial, the Court is not persuaded that the amount of time sought for trial preparation is excessive.

4. *Travel Time*

Defendants object that Price and Associates billed the full hourly rate for travel time, primarily to Crescent City, California to attend depositions and conduct document review at Pelican Bay State Prison. *See* Schratz Decl., at 24. They contend that travel time should be reduced by 50 percent. As plaintiff explains in her reply papers, however, Price and Associates bill only one-way for travel, thus effectively reducing their travel rates to 50 percent. Price Suppl. Decl., P 5. Accordingly, this objection appears misplaced.

5. *Fees Relating to Delays Caused by Plaintiff's Counsel*

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[6] Plaintiffs' counsel Pamela Price expended a total of 36.35 hours, and Mr. C. Jeffrey Fletcher at total of 34.30 hours, on this matter. *See* Price Third Suppl. Decl., Exh. C.

Defendants also complain that the trial date was moved three times and that plaintiffs law firm is responsible for the associated delay. *See* Defendants' Opp. at 10. In fact, however, plaintiff's counsel is [*22] only responsible for the first change in trial date, which occurred after plaintiff filed her opposition to defendants' motion for summary judgment one week late due to counsel's failure to properly calendar the due date. The second and third trial date changes (which involved minor delays) were made by the Court to accommodate its calendar and a death in the family. Accordingly, the last two delays (and any resulting additional trial preparation) are not the fault of the plaintiff. Moreover, some degree of delay is often present in litigation and does not, in and of itself, justify a reduction in fees. Nor have defendants even identified any specific hours that they believe are specifically attributable to undue delays actually caused by plaintiff. Accordingly, this objection is not grounds for a reduction of plaintiff's fee award. [7]

[*23] 6. *Attorney Communications with Clerical Staff*

Price and Associates' detailed billing records contain various references to "instruct secretary" (i.e. "Instruct Secretary regarding Client's Answers to Interrogatories"; "Instruct Secretary regarding Stipulation to Doctor Stokes"). *See* Shratz Decl., Exh. 8. Defendants contend that time spent on such tasks are a part of office overhead and thus noncompensable. While time spent by secretaries or clerical staff is noncompensable overhead, defendants cite no authority for the proposition that *attorney* time spent instructing staff regarding specific duties in a particular case is considered part of overhead. Accordingly, the Court declines to reduce plaintiff's fee award on this ground.

C. Costs

Defendants complain that plaintiff has not provided supporting documentation of the non-statutory costs sought. Defendants, however, cite no authority that requires a plaintiff to provide actual receipts for such costs such as postage, photocopying, chart reproduction, delivery costs, witness fees, etc. that are otherwise adequately itemized and appear reasonable. *See United Steelworkers*, 896 F.2d at 407 ("Reasonable [*24] expenses are allowed as part of the fee"). Accordingly, defendants' complaint that all of plaintiff's non-statutory costs should be disallowed because they are not supported by actual receipts is rejected.

III. CONCLUSION

Accordingly, and good cause appearing, it is HEREBY ORDERED that plaintiff's Motion for Award of Reasonable Attorneys' Fees and Costs (through April 30, 2003) is GRANTED in part and DENIED in part consistent with the above. Defendants shall pay plaintiff the following fees and non-statutory costs within 30 days of the date of this Order:

	Hours	Hourly Rate	Amount
Pamela Price	1,047.25	$ 400	$ 418,900.00
John L. Bums	441.90	$ 450	$ 198,855.00
Michael Douglass	265.95	$ 325	$ 86,433.75
C. Jeffrey Fletcher	234.15	$ 300	$ 70,245.00
Maria C. LaHood	78.90	$ 275	$ 21,697.50
Curtis E. Allen	225.95	$ 250	$ 56.487.50
Susan E. Thompson	340.30	$ 200	$ 68,060.00
Paralegal:			
Monique Beaver	71.00	$ 105	$ 7,455.00
Total Attorney Fees Due:			$ 928,133.75

[7] At argument, defendants suggested that plaintiffs' counsels' hourly rates should be reduced so that counsel does not benefit from higher rates resulting from the delay. This argument, however, fails to account for the fact that (1) plaintiffs' counsel also experienced a corresponding delay in payment, and (2) the length of the delay was not entirely attributable to plaintiffs.

Total Non-statutory Costs Due: $ 68,082.20

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

Dated: October 17, 2003

[*25] THELTON E. HENDERSON