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CLERK, U.S. DISTRICT COURT  
APR 14 1992  
CENTRAL DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT  
APR 15 1992  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOHN E. PELOZA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CAPISTRANO UNIFIED SCHOOL )  
DISTRICT, BOARD OF TRUSTEES )  
OF THE CAPISTRANO UNIFIED )  
SCHOOL DISTRICT, PAUL B. )  
HASEMAN, CRYSTAL KOCHENDORFER, )  
MARLENE M. DRAPER, ANNETTE B. )  
GUDE, KATHRYN I. ITZEL, E. G. )  
KOPP, A. EDWARD WESTBERG, JEROME )  
R. THORNSLEY, WILLIAM D. ELLER, )  
GERALDINE JAFFE, THOMAS R. )  
ANTHONY, ROSS VELDERRAINE, JAMES )  
CORBETT, PAUL PFLUEGER, RAY PANICI )  
TIM DUNN, WILLIAM REDDING )  
AND DOES 1 THROUGH 200, )  
INCLUSIVE, )  
 )  
Defendants. )

NO. CV 91-5268-DWW(Bx)

ORDER GRANTING ATTORNEYS'  
FEES AND COSTS TO  
PREVAILING PARTY

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP. RULE 77 (d).

John E. Peloza is a biology teacher in a public high school in the Capistrano Unified School District. He has brought an action for declaratory and injunctive relief in a civil rights action brought under the First, Fifth, and Fourteenth Amendments to the United States Constitution and also 42 U.S.C. § § 1983, 1985 and 1988. He has named

1 as defendants the Capistrano Unified School District, its Board of  
2 Trustees and a number of individuals who are teaching colleagues of the  
3 plaintiff. Pelosa contends in this action that he has the  
4 constitutional right to teach his students pursuant to his belief in the  
5 system of creationism as expounded in Genesis. The School District  
6 contends that his biology classes should be taught pursuant to an  
7 accepted theory of evolution which is defined within the framework of  
8 the California Education Code. Pursuant to the code, the School  
9 District is required to establish local curriculum for grades 7 through  
10 12. This curriculum must include biology sciences as well as other  
11 standard subjects. The curriculum sets forth the subjects that must be  
12 covered in the high school biology class. The School District must  
13 maintain uniformity so that all students are adequately prepared for  
14 college entrance examination and higher education. In the biology  
15 curriculum, evolution is one of the main themes to be covered. It is  
16 taught throughout two years of science study in the district curriculum.  
17 After a series of administrative hearings, the District has ordered  
18 Pelosa to cease teaching creationism because it is a constitutionally  
19 prohibited religious subject and to teach the theory of evolution as  
20 approved by the district curriculum.

21 The School District brought a motion to dismiss the complaint under  
22 Federal Rules of Civil Procedure 12(b)(6) and the plaintiff and  
23 defendants have filed voluminous memoranda in support of and in  
24 opposition to the motion. The matter came on for hearing and the Court  
25 after giving all the parties a full opportunity to be heard, took the  
26 matter under submission and thereafter and on January 16, 1992, issued  
27 its Memorandum granting the motion. On February 21, 1992, the  
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1 defendants filed a motion to recover attorneys' fees and costs as the  
2 prevailing parties in a civil rights action. Opposition thereto was  
3 filed by the plaintiff and the cause came on to be heard on April 6,  
4 1992. This Court has read and considered all of the memoranda in  
5 support of and opposing motion and has taken the matter under submission  
6 and now grants the defendants' motion, upholding defendants' claim that  
7 plaintiff's complaint was frivolous and unreasonable and was filed  
8 without adequately researching the subject.

9  
10 INCLUSION OF INDIVIDUAL DEFENDANTS

11 As indicated before, the plaintiff has not only named as defendants  
12 the School District and its Board of Trustees but has also named a  
13 number of his fellow teachers accusing the latter of conspiring to  
14 defame him as a teacher and to cause his dismissal. His principal  
15 complaint against his fellow colleagues is that they became participants  
16 in an on-going on-campus discussion that surrounded the insistence of  
17 Pelosa that he has a right to depart from curriculum requirements and  
18 teach his own religious contentions in the classroom under the pretense  
19 that it is science. These defendants contend that the only thing they  
20 are guilty of is disagreeing with the plaintiff and voicing their  
21 opinions.

22 Under 42 U.S.C. § 1988 the Court may grant attorneys' fees to the  
23 prevailing party in civil rights actions. Under Rule 11 of the Federal  
24 Rules of Civil Procedure the Court may sanction a party if the claim  
25 submitted is frivolous and unreasonable. The Court dismissed this case  
26 on the basis that a teacher does not have the right to teach anything  
27 he wants in the classroom based on his own personal views. As cited  
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1 in the Memorandum issued by the Court, there is vast authority holding  
2 that a teacher may not teach according to his own personal views.  
3

4 CASE OF FIRST IMPRESSION

5 Plaintiff seeks to avoid imposition of attorneys' fees by claiming  
6 that the case presents issues of first impression. An appropriate  
7 adventure into legal research would have shown him and his attorney that  
8 there was little helpful legal precedent to their desires to destroy  
9 declared curriculum policy. There is a lengthy list of cases holding  
10 against plaintiff on precisely the identical issues he puts in front of  
11 this Court. Webster v. New Lennox School Dist. No. 122, 917 F.2d 1004  
12 (7th Cir. 1990) and Wright v. Houston Independent School Dist., 366  
13 F.Supp. 1208 (S.D. Tex. 1972), aff'd 486 F.2d 137 (5th Cir. 1973) cert.  
14 den. 417 U.S. 969 (1974) are both directly on point. In 1987 the United  
15 States Supreme Court made a similar ruling in the case of Edwards v.  
16 Aguillard, 482 U.S. 578, 96 L.Ed. 510 (1987). Plaintiff's attorney  
17 conceded in argument that this was not a case challenging the framework  
18 of the curriculum committee as set forth by the Department of Education.  
19 Therefore, the only issue to be decided was whether this plaintiff may  
20 depart from the set curriculum and teach what he thinks is appropriate.

21 The Supreme Court in Christiansburg Garment Company v. EEOC, 434  
22 U.S. 412, 422 (1978) held that a successful defendant may be awarded  
23 attorneys' fees where the action brought was frivolous, unreasonable and  
24 without foundation, even though not brought in subjective bad faith.  
25 A party may prevail in any of the various stages of the litigation  
26 before final judgment. The party need not go through a full blown trial  
27 in order to be the prevailing party entitled to attorneys' fees. Betts  
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1 v. Coltes, 449 F.Supp. 751 (D. Ha. 1978); Unemployed Workers Organizing  
2 Committee v. Batterton, 477 F.Supp. 509 (D.Md. 1979). Courts allow  
3 attorneys' fees by defendants when plaintiff brings civil rights action  
4 which are contrived, baseless and unreasonable. Goldrich, Kest & Stern  
5 v. City of San Fernando, 617 F.Supp 557 (C.D. Cal. 1985).

6 To determine whether the action at issue is frivolous, unreasonable  
7 or groundless, the court looks at the following relevant factors: (1)  
8 whether the issue is one of first impression requiring judicial  
9 resolution; (2) whether the controversy is sufficiently based upon a  
10 real threat of injury to the plaintiff; (3) whether the trial court made  
11 a finding that the suit is frivolous under the Christiansburg guidelines  
12 and whether the record would support such a finding. Reichenberger v.  
13 Pritchard, 660 F.2d 280, 288 (7th Cir. 1981). The Court has already  
14 addressed the ample legal precedent that could have been discovered by  
15 plaintiff's attorney had he performed adequate legal research and  
16 learned that this was not a case of first impression. Additionally, the  
17 California Education Code sets forth the thinking that a teacher must  
18 teach, and defines what a teacher may not teach in the classroom.

19 Plaintiff contends that the conspiracy claims made against his  
20 fellow teachers are claims of first impression. However, plaintiff has  
21 not adequately shown that any kind of conspiracy exists. Plaintiff's  
22 paper merely proves that the individual defendants disagreed with  
23 plaintiff's methods and have publicly voiced their disagreement. There  
24 is no evidence in plaintiff's complaint of a conspiracy.

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1 Applying the standard discussed above, plaintiff's claims against  
2 the individuals are found frivolous and without foundation. These  
3 defendants have suffered from being named in this action. Plaintiff has  
4 not presented to this Court any indication supporting a conspiracy on  
5 their part to violate his constitutional rights. This Court finds that  
6 these claims against the individual defendants were brought for  
7 vexatious purposes and in bad faith. Plaintiff has asked for punitive  
8 damages in the amount of one million dollars from these defendants.

9 Plaintiff further states that he and his attorney have suffered  
10 adequate sanctions in the media. Both assert that their reputations  
11 have suffered as a result of this action. It is the plaintiff and his  
12 counsel who have sought out the media.<sup>1</sup>

#### 14 REASONABLE FEES

15 The fees set forth by the moving party must be reasonable and the  
16 district court has wide discretion in setting attorneys fees. Keith v.  
17 Volpe, 501 F. Supp. 403 (C.D. Cal. 1980) aff'd 858 F.2d 467 (9th Cir.  
18 1988). The reasonableness in attorney's fees is set forth in Johnson  
19 v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The  
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21 <sup>1</sup> Plaintiff's argument against being assessed fees because he  
22 is only a salaried school teacher, omits reference to his having  
23 paid fees for his own attorney and fails to disclose the fact that  
24 he is a member of and being financially supported in his cause by  
25 an organization called Christian Research Institute (CRI), an  
26 Orange County ministry with large resources. Plaintiff is said to  
27 be a star on its lecture circuit since the filing of this case.  
28 After the granting of defendants' motion to dismiss, CRI has used  
its long-range radio network to (1) urge its listeners to "jam"  
this Court's telephone lines (which they did); (2) to write letters  
of protests to this Court (we have received over 300 letters in one  
week from numerous States); and (3) transported more than 50  
persons from Orange County to picket the United States Courthouse  
in Los Angeles on April 6, 1992, the date of the hearing of this  
motion.

1 Ninth Circuit adopted these factors in Kerr v. Screen Extras Guild,  
2 Inc., 526 F.2d 67 (9th Cir. 1975), cert. den., 425 U.S. 951 (1976).  
3 Those factors are as follows: (1) time and labor required, (2) the  
4 novelty and difficulty of the questions involved, (3) the skill  
5 requisite to perform the legal service properly, (4) the preclusion of  
6 other employment by the attorney due to the acceptance of the case,  
7 (5) the customary fee, (6) whether the fee is fixed or contingent,  
8 (7) time limitations imposed by the client or the circumstances, (8) the  
9 amount involved and the results obtained, (9) the experience, reputation  
10 and the ability of the attorneys, (10) the "undesirability" of the case,  
11 (11) the nature and length of the professional relationship with the  
12 client and (12) awards in similar cases.

13 The attorneys spent a total of 181.5 hours preparing and defending  
14 this case and law clerks spent 47.6 hours researching and assisting the  
15 attorneys. Defendant asserts that the individual claims were not novel  
16 but needed to be individually and thoroughly researched and addressed.  
17 The motion required the ability to understand constitutional issues and  
18 to articulate the principles in the motion. The law firm would have  
19 been able to devote to other clients whose rates may have been higher  
20 than those the firm charge the district. The firm charged the district  
21 \$140 per hour which is less than what is regularly paid in private  
22 practice. If plaintiff had been successful the district would have lost  
23 the ability to control the content of its own curriculum. This would  
24 result in a serious problem of religion being taught in class.

25 The experience of the District's attorneys are 18 and 6 years.  
26 They have represented the District for several years. Courts have  
27 granted prevailing defendants in civil rights cases in amounts greater  
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1 than what defendants are asking for in this matter. In those cases the  
2 court found that they concluded that the plaintiff's claims were without  
3 merit, frivolous, unreasonable or without foundation. See Munson v.  
4 Friske, 754 F.2d 683 (7th Cir. 1985); Tonti v. Petropoulous, 656 F.2d  
5 212 (6th Cir. 1981); Goldrich, Kest & Stern v. City of Fernando, 617 F.  
6 Supp. 557 (C.D. Cal. 1985); American Family Life Assurance Co. of  
7 Columbus v. Teasdale, 564 F. Supp. 1571 (W.D. Mo. 1983), aff'd, 733 F.2d  
8 559 (8th Cir. 1984).

9 The district court does not have to consider all of the Johnson  
10 factors, only those which are relevant for the case at issue. Keith v.  
11 Volpe, 501 F. Supp. 403, 410.

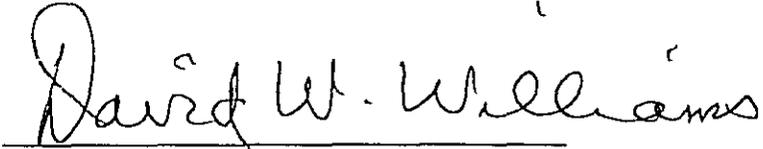
12 Attorneys' fees are allowed in the sum of \$30,884.00. Defendants  
13 have also requested reimbursement of expenses in the amount of  
14 \$1,719.49, and this is allowed. This includes photocopying, Lexis legal  
15 research, etc. In International Woodworker of America v. Donovan, 792  
16 F.2d 762 (9th Cir. 1986), the Ninth Circuit held that incidental and  
17 necessary expenses incurred in furnishing effective and competent  
18 representation may be included in the amount determined to be attorney's  
19 fees.

#### 20 21 CONCLUSION

22 While granting fees may have a chilling effect on civil rights  
23 claims of this matter, not granting fees may give the appearance of  
24 court tolerance of those claims which have not been thoroughly  
25 researched and where established case law has already determined the  
26 matters before the court.

1 The fees and costs are moderate and reasonable and are allowed as  
2 requested.

3 DATED: April 14, 1992.

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5 DAVID W. WILLIAMS  
6 Senior, U. S. District Judge

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