

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 10-cv-01840-WYD-BNB

DAVID CLAY;
MATTHEW DeHERRERA;
LAMONT MORGAN;
WILLIAM LaFONTAINE; and
CYNTHIA SHAW-PIERCE, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

JOE PELLE, in his official capacity as Boulder County Sheriff; and
LARRY R. HANK, in his official capacity as administrator of the Boulder County Jail and
Division Chief of the Boulder County Sheriff Office,

Defendants.

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT
OF CLASS ACTION**

This matter is before the Court on the Parties' Joint Motion to Approve Settlement of Class Action and Entry of Stipulated Judgment [ECF No. 49], filed April 27, 2011 and Order and Plaintiffs' Unopposed Motion for Attorneys' Fees [ECF No. 47], also filed April 27, 2011. The Court, being fully advised in these matters, enters the following Findings:

1. Plaintiffs filed a class action complaint on August 3, 2010, challenging the Boulder County Jail's recently implemented outgoing mail policy, which limited most outgoing prisoner correspondence to postcards. [ECF No. 1]. Plaintiffs alleged in their Class Action Complaint that the Boulder County Jail's postcard policy violated the free

speech rights of prisoners under the United States and Colorado constitutions. In this lawsuit, Plaintiffs sought no money damages, but only demanded that Boulder County Jail rescind its postcard policy.

2. On February 17, 2011, Plaintiffs filed a motion for preliminary injunction which this Court set for hearing on April 15, 2011. [ECF Nos. 32, 36].

3. On March 8, 2011, the Court issued an order granting Plaintiffs' motion for certification of a class defined as "all current and future prisoners in the Boulder County Jail who are subject to or affected by the defendants' postcard-only policy," and ordered that David C. Fathi and Mark Silverstein of the American Civil Liberties Union ("ACLU") be Appointed Counsel representing all Class Members. [ECF No. 37].

4. On March 17, 2011, the parties participated in a Settlement Conference with the Honorable Magistrate Judge Boyd N. Boland. On March 18, 2011, Defendants agreed to rescind the postcard policy, and the parties agreed to settle this case.

5. On March 21, 2011, the parties filed a Joint Motion to Hold Case in Abeyance Pending Finalization of Settlement. [ECF No. 41]. On March 23, 2011, the Court granted the parties' motion. [ECF No. 42].

6. The parties have since executed a settlement agreement resolving all claims in this matter, and providing in relevant part for Defendants' termination of the postcard policy and Defendants' payment of \$65,000 in attorneys' fees and costs to Plaintiffs' counsel. In the settlement agreement, the parties agree that a costs and fees award totaling \$65,000 is reasonable in this case.

7. On April 27, 2011, the Parties filed a Joint Motion to Approve Settlement

of Class Action and Entry of Stipulated Judgment and Order requesting this Court to approve the proposed settlement agreement, enter it as an order of the Court, and retain jurisdiction of this case for the purposes of enforcement of the settlement agreement. That same day, Plaintiffs filed an Unopposed Motion for Attorneys' Fees requesting request this Court enter an order that \$65,000.00 is a reasonable attorneys' fee and cost award in this case.

8. The Court held a hearing on August 17, 2011, to consider whether the proposed settlement is fair, reasonable, and adequate. Prior to the hearing, the Court directed that reasonable notice be sent to the class members in the manner provided for in the Joint Motion to Approve Settlement of Class Action and Entry of Stipulated Judgment and Order.

9. The Court, having reviewed the pleadings in this matter, as well as the motions at issue and the proposed settlement agreement, finds that the proposed settlement provides all the relief requested in Plaintiffs' Complaint. Accordingly, the proposed settlement is not only fair to the absent members of the class, it is also reasonable and adequate.

10. The Court further finds that the relief set forth in the settlement agreement is narrowly drawn, extends no further than necessary to correct the alleged violation of Plaintiffs' constitutional rights, and is the least intrusive means necessary to correct the alleged violation of Plaintiffs' constitutional rights.

11. The Court finds that the Plaintiffs are the prevailing parties in this litigation, and that they are entitled to recovery of their reasonable attorneys' fees and costs

pursuant to 42 U.S.C. § 1988. The Court further finds that an attorneys' fees and costs award of \$65,000 in this case is reasonable, considering Plaintiffs' significant downward departure from actual time spent litigating this case, the significance and scope of the case, the fact that Plaintiffs achieved in settlement all of the relief sought in their complaint, Defendants' continuing defense against Plaintiffs' claims, and Defendants' agreement that Plaintiffs' fee request in this case is reasonable.

Now, therefore, it is hereby

ORDERED that plaintiffs' Unopposed Motion for Attorneys Fees [ECF No. 47] and the Parties' Joint Motion to Approve Settlement of Class Action and Entry of Stipulated Judgment and Order [ECF 49] are hereby GRANTED. It is

FURTHER ORDERED that the proposed settlement agreement is hereby ratified and approved by this Court. It is

FURTHER ORDERED that the Settlement and Release Agreement, attached as Exhibit 1 to Plaintiffs' Joint Motion for Approval of Settlement of Class Action and Entry of Stipulated Judgment and Order [ECF No. 49-1] is incorporated herein by reference in its entirety and is entered hereby as a stipulated judgment and order of the Court. It is

FURTHER ORDERED that Defendants shall pay \$65,000 in attorneys' fees and costs within **14 days** of this Order. It is

FURTHER ORDERED that this Court shall retain jurisdiction of this case for the purposes of enforcement of the settlement agreement.

Dated: August 18, 2011

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Chief United States District Judge