

2009 DEC 17 AM 10:57

CLERK OF THE SUPERIOR COURT
BY MELANIE MIGLIAZZO
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCED

ROSE JOHNSON,

Plaintiff,

vs.

GEORGE VALVERDE,

Respondent.

) Case No.: CU151740

) COURT'S RULING AND ORDER ON
) PLAINTIFF'S MOTION FOR ATTORNEY
) FEES.

The Plaintiff, ROSE JOHNSON, (hereinafter referred to as "Plaintiff") motion for attorney fees came duly before the court on September 24, 2009, at 8:15a.m. in courtroom 4 of the Merced County Superior Court.

Joseph D. Elford of the Law Offices of Americans for Safe Access appeared on behalf of the Plaintiff. Tamara L. Morgan of the Office of Attorney General State of California appeared on behalf of the Respondent, GEORGE VALVERDE.

The Court having reviewed the moving, opposing and reply papers, the Court's file including, but not limited to the administrative record, and hearing oral argument from counsel makes the following findings and rulings:

1 The Court finds that:

2 (1) The 1st Administrative Officer (Ground) had an exclusive, albeit erroneous
3 reliance on the determination that medical marijuana use was illegal when revoking the
4 Plaintiff's license;

5 (2) The 2nd Administrative Officer (Marshall) had a partial, albeit erroneous reliance
6 on the determination that medical marijuana use was illegal when revoking the Plaintiff's
7 license;

8 (3) Both Administrative Officers were unaware of an internal, non-public policy
9 allegedly contained in the 2001 Helpful Hints opining medical marijuana is to be treated by the
10 DMV like any other prescription drug;

11 (4) The DMV internal, non-public policy contained in the 2001 Helpful Hints was
12 ineffective;

13 (5) The DMV promulgated on February 18, 2009, a formal, public policy notifying
14 the public that the agency will treat medical marijuana like any other prescription drug;

15 (6) The Senior Staff Counsel (Berry) prior to March 2, 2009, did not disclose, in
16 writing or orally, to the Plaintiff the existence of an informal, non-public policy to treat medical
17 marijuana like any other prescription drug which is allegedly contained in the DMV's 2001
18 Helpful Hints;

19 (7) Plaintiff exhausted her administrative remedies;

20 (8) As a result of the Plaintiff's efforts, there was a substantial change in the DMV
21 regarding its policy and behavior in the treatment of medical marijuana.

22 (9) Plaintiff is a prevailing party entitled to an award of attorney fees

23 (10) Plaintiff's requested attorney fees at \$500 per hour, under the totality of the
24 circumstances, is reasonable.

25 The Plaintiff's license was exclusively (1st Administrative Officer) and partially (2nd
Administrative Officer) revoked because of her medical marijuana use. Irrespective, the record is

1 clear that both Administrative Officers were operating under the inaccurate and mistaken belief
2 that medical marijuana use was illegal.

3 Assuming the DMV had during the time of the Plaintiff's administrative hearings an
4 internal, non-public policy to treat medical marijuana like any other prescription drug, the
5 statements by both Administrative Officers indicates that they either: (a) were unaware of said
6 policy; (b) confused how to implement the policy; or (c) unwilling to follow it. Consequently,
7 said statements and conduct demonstrates the DMV internal, nonpublic 2001 Helpful Hints
8 policy on the subject was ineffective.

9 Subsequently, and irrespective of whether the DMV had in fact a 2001 Helpful Hints
10 policy to treat medical marijuana like any other prescription drug, the DMV on February 18,
11 2009, promulgated a formal, public policy on the subject.

12 The timing of the initiation of the suit herein in November 2008, the press release issue
13 the same month, the resulting press inquiries to the DMV on the subject and the agency's
14 response, including the promulgation of a formal, public policy on February 18, 2009, are not
15 lost on the Court nor deemed to be unrelated or coincidental.

16 The Plaintiff appears to the Court to be the catalyst in effectuating change in both the
17 DMV's formal, public policy on the subject and the agency's adherence to the policy.

18 Attorney fees are awarded to Plaintiff and calculated as follows:


19 78.9 Hours Billed
20 <5.5> Hours billed to Amanda Whittemore Case
21 <15.0> Hours billed to Matthew Vaughn Case
22 6.0 Hours preparing for hearing
23 4.0 Hours travel (to and from) hearing
24 1.0 Hour hearing time
25 69.9 TOTAL HOURS
 x \$500 Hourly rate applied
 \$34,700 Sub-Total
 x 2 Loadstar Multiplier
 \$69,400 TOTAL ATTORNEY FEES AWARD

1 The attorney fee award to Plaintiff is due and payable by the Respondent forthwith.

2
3 **ORDER.**

4 **IT IS SO ORDERED.**

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6 Dated: December 17, 2009

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Brian L. McCabe, Judge
Merced County Superior Court

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P)

STATE OF CALIFORNIA)
)
COUNTY OF MERCED)

Case No. **CU151740**

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is Merced County Superior Court, 627 West 21st Street, Merced, California 95340.

On **December 17, 2009**, I served the within **COURT'S RULING AND ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY FEES**, on the person(s) named below and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's outgoing mail addressed as follows:

Joseph D. Elford, Esq.
Americans for Safe Access
1322 Webster Street, Suite 402
Oakland, CA 94612

Tamara Morgan, Esq.
Deputy Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's office for the following department(s) or person(s):

N/a

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 17, 2009**, at Merced, California.


Melanie Migliazzo, Declarant