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9 Attorneys for Defendants COUNTY OF FRESNO and MARGARET MIMS, FRESNO  
COUNTY SHERIFF

10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12  
13 JOHN B. CRUZ, et al.,

Case No. 1:93-cv-05070-MCE

14 Plaintiffs,

**STIPULATED MODIFICATION RE JAIL  
CAPACITY; ORDER**

15 vs.

16 COUNTY OF FRESNO, *et al.*,

17 Defendants.

18  
19  
20 Unanticipated changes in fact and law have arisen that require the parties to  
21 modify the terms of the *Stipulation Re Permanent Injunction; Order* filed February 25,  
22 1994 (“Order”). Specifically:

23 A. At the time of the Order, defendants were engaged in programs to expand the  
24 Fresno County jail system, including the construction of additional jail housing units.  
25 The expansion was completed, and the new housing units staffed and made  
26 operational. However, over the past several years unanticipated and severe budget  
27 shortfalls faced by the State of California (“State”), and by defendants, created  
28 circumstances whereby defendants have been unable to staff all of the housing units

1 in the Fresno County jail system . As a result, some housing units have been rendered  
2 unusable.

3 B. In response to serious budget shortfalls, and in response to a United States  
4 Supreme Court decision affirming a three-judge panel order requiring time-phased  
5 reductions of the inmate population in the California Department of Corrections and  
6 Rehabilitation ("CDCR"), the State has effectuated an unanticipated change in the  
7 California law governing incarceration responsibilities. Pursuant to recent legislation  
8 commonly known as "realignment" (including Assembly Bills 109 and 117), the State  
9 has transferred responsibility for the incarceration of certain classifications of offenders  
10 and parolees from state prison to county jails. However, questions have arisen  
11 concerning the availability of funding necessary to house these additional inmates in the  
12 Fresno County Jail. Furthermore, while the long term impact of realignment cannot yet  
13 be measured, serious initial problems have arisen because of: (a) the transfer of more  
14 inmates into the Fresno County Jail than the CDCR had estimated; (b) an increase in  
15 the average length of stay for inmates in the jail because of these transfers, thereby  
16 limiting the beds available for new bookings; (c) additional classification challenges  
17 created by the influx of former state prisoners; and (d) increased correctional and health  
18 care costs.

19 In addition, on July 14, 2011, the Fresno County Superior Court filed a motion to  
20 intervene in this matter, seeking clarification of the term "capacities," as set forth in  
21 paragraphs 2.B. and 2.J. of the Order; and the term "capacity" as set forth in paragraph  
22 3 of the Order. Specifically, the question was raised whether the term "capacity" should  
23 be defined as "design capacity" or "actual staffed capacity."

24 Because of the unanticipated changes of fact and law set forth above, the parties  
25 stipulate, pursuant to paragraph 4 of the Order, to modify the *Stipulation Re Permanent*  
26 *Injunction; Order* filed February 25, 1994 as follows:

27 1. The term "capacities," as set forth in paragraphs 2.B., and 2.J. of the Order, is  
28 defined as actual staffed capacities.

1           2. The term "capacity," as set forth in paragraph 3 of the Order, is defined as  
2 actual staffed capacity.

3  
4 **IT IS SO STIPULATED.**

5 Dated: December 5, 2011

6           KEVIN  
7           County

B. BRIGGS  
Counsel

8           By:  
9           Michael

/s/ Michael Linden  
R. Linden, Deputy  
Attorney for Defendants  
OF FRESNO and  
MARGARET MIMS, FRESNO COUNTY  
SHERIFF

10          COUNTY

11  
12  
13 Dated: December 5, 2011

14  
15          By:

/s/ John Hagar  
JOHN H. HAGAR  
Attorney for Defendants  
OF FRESNO and  
MARGARET MIMS, FRESNO COUNTY  
SHERIFF

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17          COUNTY

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20 Dated: December 5, 2011

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22          By:

/s/ Paul Comiskey  
PAUL COMISKEY  
Attorney for Plaintiffs

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Dated: December 5, 2011

By:

/s/ Catherine Campbell  
CATHERINE CAMPBELL  
Attorney for Plaintiffs

**IT IS SO ORDERED.**

Dated: February 13, 2012

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE