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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN B. CRUZ, et al.,  
Plaintiffs,  
v.  
FRESNO COUNTY, et al.,  
Defendants.

No. 1:93-cv-05070-MCE  
MEMORANDUM AND ORDER

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This action, brought pursuant to 42 U.S.C. § 1983, arose nearly twenty years ago out of allegations of unconstitutional overcrowding in the Fresno County jails. In February of 1994, the original dispute was resolved via a "Stipulation re Permanent Injunction; Order," referred to by the parties as the "Consent Decree." Over fifteen years later, however, on July 14, 2011, the Fresno County Superior Court ("Superior Court") moved to intervene in this case for the limited purpose of requesting clarification of the definition of the term "capacity" as it is used in the Consent Decree.

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1 Upon stipulation of the existing parties, this Court subsequently  
2 issued an Order modifying the Consent Decree such that the term  
3 "capacities" in paragraphs 2.B and 2.J and the term "capacity" in  
4 paragraph 3 of that Decree are now defined as "actual staffed  
5 capacities" and "actual staffed capacity," respectively. By  
6 Memorandum and Order dated February 16, 2012, the Superior  
7 Court's Motion to Intervene was thus denied as moot. Now before  
8 the Court is a Motion for Attorneys' Fees (ECF No. 95) filed by  
9 Plaintiffs in which they argue that, as prevailing parties, they  
10 are entitled under 42 U.S.C. § 1988 to recover fees from both the  
11 County Defendants and the Superior Court. For the following  
12 reasons, Plaintiffs' Motion is DENIED.<sup>1</sup>

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14 **ANALYSIS**

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16 "In any action or proceeding to enforce a provision  
17 of...[Section 1983]..., the court, in its discretion, may allow  
18 the prevailing party...a reasonable attorney's fee as part of the  
19 costs." 42 U.S.C. § 1988(b). According to Plaintiffs, they are  
20 entitled to recover attorneys' fees as the prevailing party here  
21 because they successfully opposed the Superior Court's Motion to  
22 Intervene and obtained the interpretation of the Consent Decree  
23 most favorable to them. Plaintiffs' arguments are rejected.

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27 <sup>1</sup> This Court determined oral argument will not be of  
28 material assistance and thus decides this case on the briefing.  
See E.D. Cal. Local Rule 230(g).

1 First, Plaintiffs were not prevailing parties in relation to  
2 Defendants. To the contrary, Plaintiffs and Defendants both  
3 opposed the Superior Court's Motion to Intervene and both  
4 ultimately agreed as to the proper definition of the term  
5 "capacity" as it is used in the Decree. Plaintiffs have pointed  
6 the Court to no authority supporting an award of fees under  
7 circumstances such as these, where the party from whom fees are  
8 sought is an "opposing party" in name only. Accordingly,  
9 Plaintiffs' request to recover fees from Defendants is DENIED.

10 Plaintiffs' request to recover fees from the Superior Court  
11 is likewise rejected. Fees should be awarded "against losing  
12 intervenors only where the intervenors' action was frivolous,  
13 unreasonable, or without foundation." Independent Federation of  
14 Flight Attendants v. Zipes, 491 U.S. 754, 761 (1989); Costco  
15 Wholesale Corp. v. Hoen, 538 F.3d 1128, 1133 (9th Cir. 2008);  
16 Democratic Party of Washington v. Reed, 388 F.3d 1281, 1288  
17 (9th Cir. 2004). The Superior Court's Motion to Intervene was  
18 none of those. To the contrary, the Superior Court sought to  
19 clarify an ambiguous term used within a Consent Decree that  
20 itself governs a matter of great public importance. Regardless  
21 of whether the Superior Court agrees with the construction of the  
22 term "capacity" ultimately adopted by the Court, and regardless  
23 of whether this Court believes that term should only logically be  
24 construed as it eventually was, the would-be intervenor  
25 nonetheless achieved its ultimate objective in seeking to  
26 intervene, which was to obtain judicial clarification as to  
27 whether the Consent Decree referred to "actual" or "staffed"  
28 capacity.

1 The Court is likewise unconvinced that the passage of time  
2 between entry of the Consent Decree and filing of the Motion to  
3 Intervene is sufficient to render the filing "unreasonable" or  
4 "without foundation." The Superior Court sufficiently explained  
5 its reasons for filing the Motion to Intervene so long after  
6 execution of the Consent Decree. Circumstances change and, under  
7 the circumstances relevant here, the Superior Court was not  
8 dilatory in seeking its requested relief. Accordingly, no fee  
9 award is justified, and Plaintiffs' request to recover fees from  
10 the Superior Court is DENIED.<sup>2</sup>

11  
12 **CONCLUSION**

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14 For the reasons just stated, Plaintiffs' Motion for  
15 Attorneys' Fees (ECF No. 95) is DENIED. Defendants' request to  
16 appear telephonically (ECF No. 101) at the hearing on this  
17 matter, which was vacated pursuant to this Court's order of  
18 April 30, 2012, is likewise DENIED as moot.

19 IT IS SO ORDERED.

20 Dated: May 30, 2012

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23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE

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27 <sup>2</sup> Given the above grounds for denial of Plaintiffs' Motion  
28 for Fees, there is no reason for the Court to further evaluate  
Plaintiffs' arguments that the Superior Court did not act in its  
official capacity in bringing its Motion or that the Superior  
Court is not entitled to judicial immunity.