

CANDICE JACKSON (SBN 224648)  
**FREEMAN MATHIS & GARY, LLP**  
1010 B Street, Suite 300  
San Rafael, California 94901  
Telephone: (415) 352-6434  
cjackson@fmglaw.com

LAUREN ADAMS (*Pro Hac Vice*)  
**WOMEN'S LIBERATION FRONT**  
1802 Vernon St. NW, #2036  
Washington, DC 20009  
Telephone: (202) 964-1127  
legal@womensliberationfront.org

*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)**

JANINE CHANDLER; KRYSTAL GONZALEZ;  
TOMIEKIA JOHNSON; NADIA ROMERO,  
individuals; and WOMAN II WOMAN, a  
California non-profit corporation,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION;  
KATHLEEN ALLISON, Secretary of the  
California Department of Corrections and  
Rehabilitation, in her official capacity; MICHAEL  
PALLARES, Warden, in his official capacity;  
MONA D. HOUSTON, Warden, in her official  
capacity; and DOES 1-10, inclusive,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
OPPOSITION TO INTERVENTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Before: Hon. Jennifer L. Thurston  
Complaint Filed: 11/17/21  
Trial Date: None

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs will and hereby do move the Court for leave to file

1 a memorandum in opposition to the Motion to Intervene filed by Proposed Intervenors in this matter  
2 (ECF No. 19) (“Motion to Intervene”). Plaintiffs move for leave on the grounds that counsel for  
3 Proposed Intervenors has recently undertaken litigation activities that are procedurally  
4 inappropriate, as counsel are not representing any parties to this action. As the Court has not yet  
5 ruled on the Motion to Intervene, Plaintiffs seek leave to file a brief in opposition to the Motion to  
6 Intervene addressing recent circumstances that bear upon the Court’s discretion to grant permissive  
intervention to Proposed Intervenors.

7 Plaintiffs’ Motion is based upon this Notice of Motion, the following motion and  
8 memorandum of points and authorities, the Declaration of Candice Jackson and exhibits thereto  
9 filed concurrently with this motion, and on the pleadings and records on file in this case. This  
10 Motion is made following meet and confer efforts by Plaintiffs’ counsel. Plaintiffs’ counsel emailed  
11 counsel for Defendants and counsel for Proposed Intervenors in the early afternoon of July 5, 2022  
12 describing the grounds for this Motion and requesting response by the evening of July 5. No counsel  
13 responded to Plaintiffs’ meet and confer email. Around the time that Plaintiffs’ counsel were  
14 preparing this Motion to file, Plaintiffs’ counsel observed that Proposed Intervenors filed their own  
15 motion for leave; presumably they dedicated their time to preparing that motion rather than taking  
time to respond to our meet and confer request concerning the instant Motion.

16 Dated: July 5, 2022

RESPECTFULLY SUBMITTED,  
By:

17 /s/ Candice Jackson  
Candice Jackson (SBN 224648)  
FREEMAN MATHIS & GARY, LLP

18 By: /s/ Lauren Adams  
19 Lauren Adams (*Admitted Pro Hac Vice*)  
WOMEN’S LIBERATION FRONT

20 *Counsel for Plaintiffs*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs seek leave of Court to file an opposition to the Motion to Intervene filed by Proposed Intervenor (ECF No. 19). Although the time for opposing that motion has passed, Plaintiffs ask that the Court grant leave to file a concise, limited-scope opposition brief to address recent circumstances relevant to the Court's exercise of discretion in considering permissive intervention.

**II. LEGAL AND FACTUAL ARGUMENT IN SUPPORT OF MOTION**

**A. Plaintiffs Filed This Motion For Leave As Soon As The Basis For Opposing Intervention Became Apparent**

The Court has discretion to grant leave to a party to file a pleading or motion after the time frame for doing so has passed. Local Rule 144(d) provides that requests for extensions of time may be granted in the Court's discretion when the request is made "as soon as the need for an extension becomes apparent." Similarly, Fed. R. Civ. Proc. 6(b)(1)(B) provides that the Court "may, for good cause, extend the time...on motion made after the time has expired if the party failed to act because of excusable neglect." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Excusable neglect includes "the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith" *Id.* Here, the course of conduct by Proposed Intervenor's counsel that sheds light on whether these Proposed Intervenor would unduly delay and unduly prejudice existing parties (described *infra*), was not discernible until just six days before Plaintiffs brought this Motion. Plaintiffs therefore bring this Motion in good faith and "as soon as the need" has become apparent. The Court has not ruled on the Motion to Intervene, and Defendants already opposed the Motion (ECF No. 35). Thus, no party would be prejudiced by Plaintiffs filing an opposition to intervention.

**B. The Court Has Discretion To Deny Permissive Intervention To Avoid Needless Delay And Prejudice**

Fed. R. Civ. Proc. 24(b) allows for permissive intervention, in the court’s discretion, when a proposed intervenor “has a claim or defense that shares with the main action a common question of law or fact.” The Ninth Circuit has held that permissive intervention requires three elements: (1) timely application; (2) independent jurisdiction; and (3) common issues of law and fact shared between the applicant’s claim and the main action. *See, e.g., Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). Permissive intervention is within the discretion of the Court, and is only reviewable on appeal for abuse of discretion. *See id.* at 411. Fed. R. Civ. Proc. 24(b)(3) specifies: “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.”

In the instant case, Plaintiffs did not initially oppose the Motion to Intervene. In seeking leave to now oppose intervention on limited grounds, Plaintiffs do not address intervention of right under Rule 24(a). However, circumstances arising recently, well after the Motion to Intervene was filed, alter Plaintiffs’ position regarding whether permissive intervention by Proposed Intervenors, represented by a conglomerate of attorneys, is warranted under Rule 24(b).

**C. Recent Circumstances Demonstrate That Proposed Intervenors’ Participation As Parties Would Unduly Delay This Action And Unduly Prejudice Original Parties**

On June 30, 2022, Proposed Intervenors’ counsel Shawn Meerkamper sent an email to Plaintiffs’ counsel (“Meerkamper Email”) asserting, without specificity or factual basis, that Plaintiffs had made “false statements” in prior filings. The Meerkamper Email was styled as a “meet and confer” request stating that Proposed Intervenors intend to seek leave of Court to file a “supplemental reply” brief in support of Defendants’ Motion to Strike Plaintiffs’ Declarations (ECF No. 38). *See* Declaration of Candice Jackson (“Jackson Dec.”), Exh. A. However, Proposed Intervenors do not have the right to demand a meet-and-confer from counsel of record, or to even

1 seek leave to file a “supplemental reply” relating to a motion for which Proposed Intervenor do  
 2 not have permission to respond (either through stipulation with the parties of record, or from the  
 3 Court).<sup>1</sup> Furthermore, the Meerkamper Email did not identify which statements in the 25-page brief  
 4 and twelve accompanying declarations they alleged to be false, yet Plaintiffs received no response  
 5 from counsel for the Proposed Intervenor when this omission was brought to the Proposed  
 6 Intervenor’s attention in Plaintiffs’ Response Email (defined *infra*). Thus, the Proposed Intervenor  
 7 did not fulfill the meet-and-confer obligation, having failed to give Plaintiffs notice of which  
 8 statements they contend are false.

9 The Meerkamper Email attached a declaration from a CCWF inmate, marked “Draft” (but  
 10 dated, signed, and subscribed to under oath by the declarant) and also marked “Confidential Rule  
 11 408 Communication.” *See* Jackson Dec. at Par. 3. Plaintiffs’ counsel responded to the Meerkamper  
 12 Email the evening of June 30, 2022 (“Plaintiffs’ Response Email”), stating that a “supplemental  
 13 reply” was unwarranted and explaining that no “false statements” appear in Plaintiffs’ prior filings.  
 14 *See* Jackson Dec. at Exh. B. Plaintiffs’ Response Email further stated that the “Rule 408/Draft”  
 15 declaration attached to the Meerkamper Email appeared to simply contest certain facts that  
 16 Plaintiffs have placed in the record, so the only relevance of that declaration would be to weigh in  
 17 favor of the Court deciding Defendants’ Motion to Dismiss (ECF No. 15) under Rule 56 standards.  
 18 *See* Jackson Dec. at Exh. B.<sup>2</sup>

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19 <sup>1</sup> By Stipulation and then Order of the Court (ECF Nos. 17, 18), Proposed Intervenor were  
 20 authorized to file a Motion to Intervene, and briefing in support of Defendants’ Motion to Dismiss.  
 21 The Meerkamper Email, however, states intent for Proposed Intervenor to file a “supplemental  
 22 reply” to a different motion – Defendants’ Motion to Strike Plaintiffs’ Declarations (ECF No. 38),  
 but Proposed Intervenor have no authorization to file briefings on that motion.

<sup>2</sup> Note that while Plaintiffs contend that Rule 408 does not shield the “Rule 408/Draft” declaration  
 attached to the Meerkamper Email from admission into the court record, Plaintiffs do not attach  
 that declaration in Exhibit B (the Meerkamper Email), in an abundance of caution to defer to that  
 designation placed on the document by attorney Meerkamper, seeing no compelling reason to ask  
 the Court to decide that issue in the present Motion.

1 Proposed Intervenor's expressed intent to file an unnecessary filing styled as a  
2 "supplemental reply." The context and content of the Meerkamper Email reasonably imply that  
3 Proposed Intervenor's motive is to cause undue delay to these proceedings, baselessly attack  
4 Plaintiff's counsel with a vague accusation of "false statements" in prior filings (without having  
5 identified any such statements), and send a message to Plaintiff's counsel that Proposed Intervenor  
6 feel entitled to engage in litigation activity to influence this case *without having first been granted*  
7 *intervenor status*. This point is particularly made by the way that the Meerkamper Email threatens  
8 Plaintiff's counsel with action under Rule 11 – for not complying with an unspecified, vague  
9 accusation that prior filings contained "false statements" – when, again, Proposed Intervenor are  
10 not even parties (or counsel to parties) in this action. This is especially egregious in light of the fact  
11 that subject matter of the "Rule 408/Draft" declaration attached to the Meerkamper Email concerns  
12 a reported violent rape inside CCWF. In other words, Proposed Intervenor seek to badger  
13 Plaintiff's counsel into "withdrawing and correcting" facts in the record concerning an alleged  
14 sexual assault inside CCWF, when at most Proposed Intervenor are apparently prepared to submit  
15 evidence into the record that raises questions as to whether a specific alleged assault occurred.  
16 (Additionally, nothing in that "Rule 408/Draft" declaration contests or even addresses all of the  
17 evidence of sexual harms and risks Plaintiff's have submitted in this case, including that the male  
18 inmate reported by inmates to have committed this alleged rape also threatened to rape a group of  
19 female inmates.)

20 Significantly, the "Rule 408/Draft" declaration attached to the Meerkamper Email was  
21 obtained, on information and belief of Plaintiff's counsel, by Proposed Intervenor's counsel via an  
22 attorney, Jennifer Orthwein, *who represents the alleged rape perpetrator*, a male inmate named  
Jonathan Robertson who uses "he/him" pronouns and is not known to women in prison as a self-  
declared "transgender woman." These circumstances further indicate Proposed Intervenor's

1 counsel has little compunction about wading into the most sensitive areas of this litigation with or  
2 without the Court's permission. Knowing they have no legal standing or party rights in this  
3 litigation, Proposed Intervenor's counsel still acts with entitlement to interfere in this lawsuit, even  
4 without regard for potential implications of having an alleged rapist's attorney interview an alleged  
5 trauma victim.

6 These factors should be considered by the Court in exercising discretion to grant permissive  
7 intervention under Fed. R. Civ. Proc. 24(b). Proposed Intervenor's counsel's conduct indicates that  
8 they intend to expand this litigation with or without factual or legal bases for doing so and to require  
9 Plaintiffs' counsel to expend scarce resources addressing extra filings and groundless accusations  
10 that are at best peripheral and at worst, sharp tactics designed to intimidate or distract Plaintiffs  
11 from pursuing their claims.

### 12 **III. CONCLUSION**

13 For the reasons set forth herein, Plaintiffs respectfully request leave of Court to file their  
14 Opposition to Intervention, submitted as a "proposed" filing attached to this Motion.

15 Dated: July 5, 2022

RESPECTFULLY SUBMITTED,

16 By: /s/ Candice Jackson  
Candice Jackson (SBN 224648)  
FREEMAN MATHIS & GARY, LLP

17 By: /s/ Lauren Adams  
Lauren Adams (*Admitted Pro Hac Vice*)  
WOMEN'S LIBERATION FRONT

18 *Counsel for Plaintiffs*