

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' [PROPOSED]
OPPOSITION TO INTERVENTION**

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs oppose the Motion to Intervene filed by Proposed Intervenor (ECF No. 19) on

the basis that permissive intervention is not warranted due to recent conduct of Proposed Intervenor’s counsel that portends granting party status in this litigation will result in undue delays and undue prejudice to original parties.

II. LEGAL AND FACTUAL ARGUMENT IN SUPPORT OF MOTION

A. 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.”

B. Recent Circumstances Demonstrate That Proposed Intervenor’s Participation As Parties Would Unduly Delay This Action And Unduly Prejudice Original Parties

On June 30, 2022, Proposed Intervenor’s 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 Intervenor 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 Intervenor do not have the right to demand a meet-and-confer from counsel of record, or to even seek leave to file a “supplemental reply” relating to a motion for which Proposed Intervenor do

1 not have permission to respond (either through stipulation with the parties of record, or from the
 2 Court).¹ Furthermore, the Meerkamper Email did not identify which statements in the 25-page brief
 3 and twelve accompanying declarations they alleged to be false, yet Plaintiffs received no response
 4 from counsel for the Proposed Intervenors when this omission was brought to the Proposed
 5 Intervenors' attention in Plaintiffs' Response Email (defined *infra*). Thus, the Proposed Intervenors
 6 did not fulfill the meet-and-confer obligation, having failed to give Plaintiffs notice of which
 statements they contend are false.

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

16 Proposed Intervenors' expressed intent to file an unnecessary filing styled as a

17
 18 ¹ By Stipulation and then Order of the Court (ECF Nos. 17, 18), Proposed Intervenors were
 19 authorized to file a Motion to Intervene, and briefing in support of Defendants' Motion to
 Dismiss. The Meerkamper Email, however, states intent for Proposed Intervenors to file a
 "supplemental reply" to a different motion – Defendants' Motion to Strike Plaintiffs' Declarations
 (ECF No. 38), but Proposed Intervenors have no authorization to file briefings on that motion.

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

19 Significantly, the “Rule 408/Draft” declaration attached to the Meerkamper Email was
20 obtained, on information and belief of Plaintiff’s counsel, by Proposed Intervenor’s counsel via an
21 attorney, Jennifer Orthwein, *who represents the alleged rape perpetrator*, a male inmate named
22 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
counsel has little compunction about wading into the most sensitive areas of this litigation with or

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

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

11 **III. CONCLUSION**

12 For the reasons set forth herein, Plaintiff's respectfully request that the Court deny Proposed
13 Intervenor's Motion to Intervene.

14 Dated: July 5, 2022

RESPECTFULLY SUBMITTED,

By:

15 / Candice Jackson
16 Candice Jackson (SBN 224648)
FREEMAN MATHIS & GARY, LLP

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

Counsel for Plaintiff's