

FILED

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CLERK, U. S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY ANDERSON, et al.,  
Plaintiffs,

No. CIV F-90-205 REC JFM

vs.

COUNTY OF KERN, et al.,  
Defendants.

FINDINGS AND RECOMMENDATIONS

This matter came on regularly for hearing on defendants' motion to modify the preliminary injunction and plaintiffs' motion for interim attorneys' fees on October 24, 1991. Richard Herman and Paul Comiskey appeared for plaintiffs. Holly Gallagher, Deputy County Counsel, appeared for defendants. Sheriff Carl Sparks, a defendant, was also present.

Plaintiffs seek interim attorneys' fees and costs in the amount of \$472,890.00. It is undisputed that interim attorneys' fees may be awarded pursuant to 28 U.S.C. § 1988 to prevent extreme cash flow problems of plaintiffs' attorneys and to encourage the

1 activities of the private attorneys-general. Carpenter v. Stephen  
2 F. Austin State Univ., 706 F.2d 608, 633 (5th Cir. 1983). The  
3 court finds that it is premature to categorize this litigation as  
4 "protracted." This action was filed on April 9, 1990. Final post-  
5 trial briefing was completed on July 24, 1991. Findings and  
6 Recommendations on the merits of this action are imminent.  
7 Moreover, plaintiffs' counsel have not shown that they are  
8 experiencing "extreme" cash flow problems as a result of this  
9 litigation during the time period for which fees are sought, i.e.,  
10 through March 8, 1991. Deposition of Paul Persons at 6-7;  
11 Deposition of Paul Comiskey at 14-17; Deposition of Dan Stormer  
12 (under seal); Deposition of Richard Herman. The court finds that  
13 an interim award of attorneys' fees is not required nor appropriate  
14 at this time.

15 Defendants request a modification of the existing  
16 preliminary injunction to permit them to implement a "pilot  
17 program" under the auspices of the Board of Corrections. The  
18 program would provide for the double bunking of existing cells in,  
19 and for the removal of triple bunks currently installed in the  
20 dayrooms of, the Lerdo Pretrial Facility. The existing preliminary  
21 injunction provides for the single-celling of all inmates in the  
22 Lerdo Pretrial Facility, except that a maximum of twelve prisoners  
23 may be housed in the dayrooms of each unit providing that two  
24 single cells adjoining the dayrooms are unoccupied so that those  
25 inmates housed in the dayrooms may have access to the toilets and  
26 washbasins in those cells. The Pretrial Facility consists of seven

1 "pods" each containing six housing units. Each housing unit  
2 consists, at present, of 16 single cells. Thus, at the present  
3 time, the preliminary injunction permits a maximum of 26 prisoners  
4 to be housed in each housing unit in the Lerdo Pretrial Facility:  
5 14 in the single cells with two single cells unoccupied, plus 12 in  
6 the dayrooms. Under the proposed modification, a maximum of 32  
7 inmates could be housed in each housing unit, with two inmates  
8 housed in each of the 16 single cells and no inmates housed in the  
9 dayrooms. Under the approved project, a total of seven of the  
10 existing housing units (or a total of 112 cells) would not be  
11 modified; that is, double bunks would not be installed in these  
12 cells. Moreover, the program requires that a minimum total of 136  
13 cells be retained as single occupancy cells. An additional four  
14 deputies would be assigned to the Lerdo Pretrial Facility to  
15 maintain appropriate inmate/staffing ratios.

16 The court finds, after reviewing the proposed pilot project  
17 and in light of the Board of Corrections' approval of the project  
18 after a hearing at which plaintiffs' counsel were represented and  
19 were heard, that a modification of the preliminary injunction to  
20 permit defendants to begin the process of implementing the program  
21 is warranted.

22 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 23 1. Plaintiffs' motion for an interim award of attorneys'  
24 fees be denied.
- 25 2. Defendants' motion for a modification of the preliminary  
26 injunction be granted.

1           3. Paragraph B (1) of the Modified Preliminary Injunction of  
2 March 24, 1991 shall be modified to read as follows:

3           The Kern County Jails will have a system-wide prisoner  
4 population capacity of 2,330. The rated capacity for each of the  
5 following jails is as follows and will not be exceeded:

6           a. Kern County Receiving Center: 282 inmates;  
7           b. Womens' Minimum Facility: 96 inmates;  
8           c. Mens' Minimum Facility: 704 inmates (this figure  
9 may be adjusted so long as the total population remains within the  
10 overall cap);

11           d. Lerdo Pretrial Facility: The County of Kern may  
12 proceed in accordance with the pilot program approved by the Board  
13 of Corrections on July 18, 1991. Upon the addition of a second  
14 bunk to each of the cells in a housing unit, the bunks in the  
15 dayroom of that unit will be removed, and the inmates will be  
16 housed in the cells. A maximum of 32 inmates may be housed in a  
17 housing unit. A second bunk will not be installed in any of the  
18 cells of seven of the 42 housing units. Upon completion of the  
19 installation of the second bunks in each of the cells of those  
20 housing units not excluded from the pilot program, and the removal  
21 of the bunks from the dayrooms, the rated capacity of the Lerdo  
22 Pretrial Facility will be 1,232 inmates, and the inmate population  
23 of that Facility will not exceed this limit.

24           4. In all other respects, the Modified Preliminary  
25 Injunction issued March 24, 1991 is unchanged.

26           These findings and recommendations are submitted to the

1 United States District Judge assigned to the case, pursuant to the  
2 provisions of Title 28 U.S.C. § 636(b)(1). Within ten days after  
3 being served with these findings and recommendations, plaintiff may  
4 file written objections with the court. The document should be  
5 captioned "Objections to Magistrate Judge's Findings and  
6 Recommendations." Plaintiff is advised that failure to file  
7 objections within the specified time may waive the right to appeal  
8 the District Court's order. Greenhow v. Secretary of Health and  
9 Human Services, 863 F.2d 633 (9th Cir. 1988).

10 DATED: November 8, 1991.

13 JFM:ca:cw

  
UNITED STATES MAGISTRATE JUDGE

United States District Court  
for the  
Eastern District of California  
November 8, 1991

\* \* CERTIFICATE OF SERVICE \* \*

1:90-cv-00205

Anderson

v.

Kern, County of

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 8, 1991, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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