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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 TIM HARDY and DARLENE HARDY,

No. Civ. 2:07-CV-0799 JAM EFB

12 Plaintiffs,

ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEYS' FEES
AND/OR EXCESS FEES AND COSTS

13 v.

14 COUNTY OF EL DORADO, DEPUTY
15 SHERIFF DAVID COOK, TONY'S TOW,
16 BONANZA AUTO DISMANTLERS, and
DOES 1 thru 50,

17 Defendants.
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19 This matter is before the Court on Defendants County of El
20 Dorado ("County") and Deputy Sheriff David Cook's ("Cook")
21 (collectively "Defendants") motion for attorneys' fees and/or
22 excess fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C.
23 § 1927.¹ Plaintiffs Tim Hardy and Darlene Hardy (collectively
24 "Plaintiffs") oppose the motion. For the reasons set forth
25 below, Defendants' motion is DENIED.
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28 ¹ Because oral argument will not be of material assistance,
the court orders this matter submitted on the briefs. E.D. Cal.
L.R. 78-230(h).

1 BACKGROUND

2 On January 19, 2008, the Court issued a comprehensive order
3 which dismissed all causes of action except for Plaintiffs'
4 first and fourth claims for relief for violation of their Fourth
5 Amendment rights under 42 U.S.C. § 1983, Plaintiffs' seventh
6 cause of action for declaratory relief against County, and
7 Plaintiffs' municipal liability claims only as they pertain to
8 the alleged Fourth Amendment violations. Docket ("Doc.") # 58.
9 On November 13, 2008, the Court granted Defendants' motion for
10 summary judgment as to Plaintiffs' remaining claims. Doc. #
11 112. In the instant motion, Defendants, as the prevailing party
12 in this litigation, filed a motion for award of attorney's fees
13 and/or excess fees and costs. Doc. # 120. Plaintiffs oppose
14 the motion. Doc. # 122.

15 OPINION

16 First, Defendants argue they are entitled to attorneys'
17 fees under 42 U.S.C. § 1988. The authorization of an award of
18 attorneys' fees under § 1988 applies differently to prevailing
19 defendants than to prevailing plaintiffs. Plaintiffs prevailing
20 in a civil rights action should ordinarily recover attorneys'
21 fees unless special circumstances would render such an award
22 "unjust." However, a prevailing defendant should not routinely
23 be awarded attorneys' fees simply because he has succeeded, but
24 rather only where the action is found to be "unreasonable,
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1 frivolous, meritless, or vexatious." Vernon v. City of Los
2 Angeles, 27 F.3d 1385, 1402 (9th Cir. 1994); see also Roberts v.
3 Spalding, 783 F.2d 867, 874 (9th Cir.), *cert. denied*, 479 U.S.
4 930, 107 S. Ct. 399, 93 L.Ed.2d 352 (1986)(internal citations
5 omitted). Ultimately, the standard for awarding a prevailing
6 defendant attorneys' fees pursuant to 42 U.S.C. § 1988 is high.
7 "The mere fact that a defendant prevails does not automatically
8 support an award of fees." Vernon, 27 F.3d at 1402. Further,
9 Courts should be cautious when considering an award to a
10 prevailing defendant where the lawsuit was initiated by a party
11 with limited financial resources or one who is appearing pro se.
12 See Miller v. Los Angeles County Bd. Of Educ., 827 F.2d 617, 619
13 (9th Cir. 1987).

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16 Here, Defendants present arguments in support of their
17 motion that Plaintiffs' claims were frivolous, meritless, and
18 vexatious. A case is frivolous when "the result is obvious and
19 [] the arguments are wholly without merit." Vernon, 27 F.3d at
20 1402. Having read and reviewed the arguments, the Court cannot
21 conclude that Plaintiffs' claims were "wholly without merit."
22 While Plaintiffs' claims did not merit relief, their causes of
23 action were plausible. "[E]ven if the law or the facts are
24 somewhat questionable or unfavorable at the outset of
25 litigation, a party may have an entirely reasonable ground for
26 bringing suit." Hughes v. Rowe, 449 U.S. 5, 15 (1980)(citing
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1 Christianburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978)).
2 "[A] district court must exercise caution in awarding fees to a
3 prevailing defendant in order to avoid discouraging legitimate
4 suits that may not be 'airtight.'" See EEOC v. Bruno's
5 Restaurant, 13 F.3d 285, 287 (9th Cir. 1993) (quoting
6 Christianburg 434 U.S. at 422). Although Plaintiffs' claims
7 were not 'airtight' and ultimately failed on the merits, their
8 claims cannot be deemed clearly frivolous as Plaintiffs had a
9 reasonable ground to bring suit. Moreover, in Tim Hardy's
10 declaration, he states that he and his wife, Darlene Hardy, are
11 indigent. Doc. # 123. Granting Defendants' motion for
12 attorneys' fees would impose a severe financial hardship on the
13 Plaintiffs. Accordingly, the Court declines to exercise its
14 discretion under 42 U.S.C. § 1988 to award attorneys' fees
15 against Plaintiffs Tim Hardy and Darlene Hardy in favor of
16 Defendants.
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20 Second, Defendants assert that attorneys' fees should be
21 granted in favor of prevailing defendants in actions under 42
22 U.S.C. § 1983 because "to hold otherwise would be to deprive an
23 entire class of successful litigants equal protection in
24 violation of the Fourteenth Amendment." Defs' Mot. at 8:12-16.
25 However, Defendants do not cite a single case to support this
26 assertion nor do they set forth a detailed equal protection
27 argument in their motion. Binding Supreme Court precedent
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1 states that a prevailing defendant in a § 1983 action is
2 entitled to an attorneys' fee award under § 1988 *only if* the
3 plaintiffs' claims were "frivolous, unreasonable, or without
4 foundation." Hughes v. Rowe, 449 U.S. 5, 14 (1980)(citing
5 Christianburg, 434 U.S. at 421). Because 42 U.S.C. § 1988 is
6 legislation which does not affect fundamental rights or rely on
7 suspect classifications, it does not offend the equal protection
8 clause unless the classification bears no rational relationship
9 to a legitimate state interest. Fields v. Legacy Health System,
10 413 F.3d 943, 955 (9th Cir. 2005). The classification between
11 prevailing plaintiffs and prevailing defendants in § 1983
12 actions is rationally related to Congress' interest in promoting
13 vigorous enforcement of civil rights laws. As such, the Court
14 rejects Defendants' equal protection argument.

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18 Finally, Defendants argue excessive fees and costs should
19 be imposed upon Plaintiffs' counsel, Thomas Ho'okano, pursuant
20 to 28 U.S.C. § 1927. 28 U.S.C. § 1927 allows a Court to require
21 "[a]ny attorney . . . who so multiplies the proceedings in any
22 case unreasonably and vexatiously . . . to satisfy personally
23 the excess costs, expenses, and attorneys' fees reasonably
24 incurred because of such conduct." 28 U.S.C. § 1927. The Ninth
25 Circuit has held that the language "unreasonably and
26 vexatiously" prescribed in § 1927 requires a finding of "intent,
27 recklessness or bad faith." Barnd v. Tacoma, 664 F.2d 1339,
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1 1343 (9th Cir. 1982); B.K.B. v. Maui Police Dep't., 276 F.3d
2 1091, 1107 (9th Cir. 2002). "Section 1927 sanctions must be
3 supported by a finding of subjective bad faith," which "is
4 present when an attorney knowingly or recklessly raises a
5 frivolous argument, or argues a meritorious claim for the
6 purpose of harassing an opponent." B.K.B., 276 F.3d at 1107
7 (citation omitted).
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9 Based on the pleadings and the evidence presented, the
10 Court cannot conclude the action was wholly without merit or
11 lacked even an arguable basis in fact or law, or was otherwise
12 sanctionable. Defendants argue that Ho'okano multiplied the
13 proceedings by seeking leave to file an amended complaint, in
14 involving County as a Defendant, in joining Bonanza Auto
15 Dismantlers as a Defendant, and in allowing the remaining claims
16 against Cook and County to proceed to summary judgment. Defs'
17 Mot. at 13:14-28 thru 16:1-9. However, these actions did not
18 "multiply" the proceedings. They are a common means of
19 litigation, which Defendants have failed to demonstrate were
20 conducted by Ho'okano with subjective bad faith or recklessly.
21 Allowing the claims to proceed to summary judgment is a common
22 means of disposing of non-meritorious cases. Thus, sanctions
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2 under § 1927 are not warranted in this case and the Court denies
3 Defendants' § 1927 motion for excess fees and costs.
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5 ORDER

6 For the reasons stated above, Defendants' motion for
7 attorneys' fees and/or excess fees and costs is DENIED.
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9 IT IS SO ORDERED.

10 DATED: February 20, 2009

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12 JOHN A. MENDEZ,
13 UNITED STATES DISTRICT JUDGE
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