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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAM BESS,)	Case No. 2:07-CV-01989 JAM-JFM
)	
Plaintiff,)	
)	
v.)	
)	
MATTHEW CATE, DAVID SHAW,)	<u>ORDER DENYING DEFENDANTS' CATE</u> <u>AND SHAW'S MOTION FOR</u> <u>ATTORNEYS' FEES</u>
RODERICK HICKMAN, JEANNE)	
WOODFORD, JOHN DOVEY, SCOTT)	
KERNAN, MARTIN HOSHINO,)	
)	
Defendants.)	
)	

This matter comes before the Court on Defendants' Matthew Cate ("Cate") and David Shaw ("Shaw"), both employed in the Office of the Inspector General ("OIG") (collectively "OIG Defendants") Motion for Attorneys' Fees (Doc. 240). The OIG Defendants request attorneys' fees pursuant to 42 U.S.C. § 1988 after prevailing on a Summary Judgment motion against Plaintiff Sam Bess ("Plaintiff"). Plaintiff opposes the motion.¹

¹This motion was determined to be suitable for decision without oral argument. E.D.Cal. L.R. 230(g).

1 I. FACTUAL BACKGROUND

2 Plaintiff brought a civil rights lawsuit under 42 U.S.C.
3 1983 and a cause of action under the Racketeer Influenced
4 Corrupt Organizations Act ("RICO") against the OIG Defendants
5 and five high level officials of the California Department of
6 Corrections and Rehabilitation ("CDCR Defendants"). Plaintiff
7 alleged that the California prisons engage in a management
8 practice of using influential inmates, whom Plaintiff labels
9 "peacekeepers," to instill discipline among other inmates in
10 exchange for illegal favors and preferred treatment, including
11 trafficking drugs, pornography and other contraband, and
12 permission to assault or kill other inmates. Plaintiff alleged
13 that the OIG Defendants conspired with the CDCR Defendants, in
14 violation of RICO, to perpetuate the use of peacekeepers through
15 various acts of retaliation, intimidation, cover-up, tampering
16 and hampering of investigations.

17 Plaintiff advised the CDCR, the OIG, and/or prison
18 management staff that the use of peacekeepers has resulted in -
19 and will continue to result in - serious threats of actual
20 bodily injury or death to correctional officers and other
21 inmates. After Plaintiff was involved in an inmate shooting
22 incident that was instigated by a known peacekeeper, resulting
23 in the death of one inmate and severe injuries to another,
24 Plaintiff attempted to follow through on his prior request that
25 CDCR and OIG end the use of peacekeepers within California's
26 prisons. Plaintiff alleged that his efforts to end the use of
27 peacekeepers resulted in retaliation, harassment, and adverse
28 employment actions.

1
2 II. OPINION

3 A. Legal Standard

4 A prevailing defendant is entitled to attorney fees under
5 42 U.S.C. § 1988 "only when the plaintiff's claims are
6 unfounded, frivolous, meritless or vexatious." Christiansburg
7 Garment Co. v. Equal Employment Opportunity Commission, 434 U.S.
8 412, 421 (1978) (internal citations omitted). An unfounded,
9 frivolous, meritless, or vexatious lawsuit is one where "the
10 result appears obvious or the arguments are wholly without
11 merit." Galen v. County of Los Angeles, 477 F.3d 652, 666 (9th
12 Cir. 2007).

13 B. Claims For Fees

14 1. The Reasonableness of the Claims

15 The OIG Defendants argue that Plaintiff's allegations were
16 frivolous and unreasonable because Plaintiff knew that he had not
17 suffered any loss of pay or benefits and any change in duties was
18 necessitated by his shooting (albeit proper) of an inmate.
19 Plaintiff counters that the suit was not frivolous or unreasonable
20 because he presented evidence demonstrating that the OIG Defendants
21 were each involved in adverse actions against him and he offered
22 expert evidence to support his claims. Plaintiff also points out
23 that he survived a Motion to Dismiss and that even though he lost
24 at Summary Judgment, the Court noted that the Ninth Circuit might
25 disagree with its ruling.

26 As discussed supra, a defendant may only collect fees if the
27 plaintiff's claims are "groundless, without foundation, frivolous,
28 or unreasonable." Karam v. City of Burbank, 352 F.3d 1188, 1195

1 (9th Cir. 2003) (internal citations omitted). The "inability to
2 defeat summary judgment does not mean that [Plaintiff's] claims
3 were groundless at the outset. Id. at 1196.

4 The Court agrees with Plaintiff that the case was not
5 groundless, frivolous, or unreasonable. Plaintiff met his burden
6 on the First Amendment issue, however he could not proffer
7 sufficient evidence that he suffered adverse employment actions.
8 Plaintiff presented evidence which he believed demonstrated that
9 the OIG Defendants were each involved in the purportedly adverse
10 actions against him, including evidentiary documents, deposition
11 testimony, and an expert report from a former CDCR senior
12 administrator. But, as the Court noted during the hearing on the
13 Motion for Summary Judgment, Plaintiff lacked "someone on the
14 inside" who could provide the specificity necessary for the case to
15 continue. March 12, 2010 Hearing Tr. at 69:13. Even though
16 Plaintiff lost at summary judgment, the OIG Defendants and the
17 Court must "resist the understandable temptation to engage in *post*
18 *hoc* reasoning by concluding that, because a plaintiff did not
19 ultimately prevail, his action must have been unreasonable or
20 without foundation." Christiansburg, 434 U.S. at 421-22.

21 Accordingly, the Defendants' motion for fees because Plaintiff's
22 claims were groundless, frivolous or unreasonable is DENIED.

23 2. The Reasonableness of the Claims After Discovery

24 The OIG Defendants argue that even if this Court finds that
25 Plaintiff's claims were not unreasonably filed, Plaintiff knew
26 at the close of discovery that he did not have any evidence to
27 prove his allegations and it was unnecessary for him to pursue
28 his claim after the close of discovery. Plaintiff argues that

1 he uncovered a large volume of documents, favorable deposition
2 testimony, and submitted a detailed expert report to support his
3 case and therefore it was reasonable for him to believe his
4 evidence would be sufficient to survive summary judgment.

5 A defendant can recover "if the plaintiff violates [the
6 unreasonable, frivolous, meritless, or vexatious] standard at
7 any point during the litigation, not just at its inception."

8 Galen, 477 F.3d at 666.

9 The OIG Defendants rely on Edgerly v. City & County of San
10 Francisco, 599 F.3d 946 (9th Cir. 2010) and Galen, 477 F.3d 652.

11 Both cases affirmed the district court's decision to award
12 attorneys' fees to the defendants for the post-discovery period.

13 In both cases, the Ninth Circuit awarded fees because after
14 discovery it was "obvious [the plaintiff] lacked direct
15 evidence." Galen, 477 F.3d at 667 (emphasis added); see

16 Edgerly, 599 F.3d at 962 ("it was unreasonable for [Plaintiff]
17 not to dismiss [Defendant] after his deposition confirmed that
18 there was *no basis* for supervisory liability") (emphasis
19 added).

20 In contrast to Galen and Edgerly, Plaintiff uncovered and
21 introduced a large volume of documents, deposition testimony,
22 and a detailed expert report to support his case. Even though
23 the Court found that Plaintiff lacked the specific evidence to
24 prove his case and therefore did not survive summary judgment,
25 the facts presented by Plaintiff were sufficient to establish
26 that there was a reasonable basis for him to pursue this case
27 after discovery closed. In short, Plaintiff's claims were not
28 frivolous, unreasonable or without foundation and at no point

1 during the summary judgment stage did the Court so state.

2 Accordingly, the OIG Defendants' motion for attorneys' fees
3 post-discovery is also DENIED.

4

5 III. ORDER

6 For the reasons set forth above,

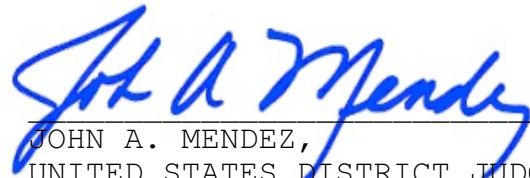
7 The OIG Defendants' motion for attorneys' fees is DENIED.

8 IT IS SO ORDERED.

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10 Dated: October 22, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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