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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KASEY F. HOFFMANN,

 Plaintiff,

 v.

LASSEN COUNTY, et al.,

 Defendants.

No. 2:16-cv-00946-JAM-AC

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this action seeking relief under The Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901-63. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Defendants move for attorney's fees, ECF No. 39, following dismissal of Plaintiff's third amended complaint for failure to join necessary parties. On January 23, 2018, the magistrate judge filed findings and recommendations, ECF No. 43, which were served on all parties. Defendants filed objections to those findings and recommendations. Obj., ECF No. 46.

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1 In accordance with the provisions of 28 U.S.C.
2 § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de
3 novo review of this case. The Court adopts in part and modifies
4 in part the findings and recommendations as to Defendants' motion
5 for attorney's fees.

6 7 **I. LEGAL STANDARD**

8 When a party objects to a magistrate judge's findings or
9 recommendations, the district court makes a de novo determination
10 of those portions to which objection is made. 28 U.S.C.
11 § 636(b)(1). The district court "may accept, reject, or modify,
12 in whole or in part, the findings or recommendations made by the
13 magistrate judge," and receive further evidence or send the
14 matter back to the magistrate judge with instructions. Id.

15 De novo review requires the court to "review the matter
16 anew, the same as if it had not been heard before, and as if no
17 decision previously had been rendered." Freeman v. DirectTV,
18 Inc., 457 F.3d 1001, 1004 (9th Cir. 2006). The court need not
19 hear any witnesses or hold a hearing of the case, so long as it
20 arrives at an independent conclusion about the portions of the
21 report to which objections were made. United States v. Remsing,
22 874 F.2d 614, 617-18 (9th Cir. 1989).

23 24 **II. ANALYSIS**

25 Defendants object to both parts of the magistrate judge's
26 reasoning for denying them attorney's fees. Opp'n at 1. First,
27 Defendants assert that the magistrate judge was incorrect in
28 finding that their motion was untimely, because it complied with

1 Local Rule 293(a). Id. at 2-3. Second, Defendants assert the
2 magistrate judge incorrectly relied on Plaintiff's subjective
3 belief that the complaint was filed in good faith. Id. at 3-4.

4 **A. Defendants' Motion Was Timely**

5 Defendants' first argument as to timeliness is well taken.
6 Defendants filed their motion for attorney's fees 28 days after
7 entry of judgment. The magistrate judge accurately assessed that
8 Defendants filed the motion beyond the 14-day period called for
9 in Federal Rule of Civil Procedure 54(d)(2)(B). Nevertheless,
10 Defendants persuasively argued that Local Rule 293(a) extends the
11 filing period to 28 days after judgment. The 14-day deadline
12 under Rule 54(d) applies in the absence of a statute or court
13 order providing otherwise. Fed. R. Civ. P. 54(d)(2)(B). Local
14 Rule 293(a) is a standing court order for purposes of Rule 54(d),
15 Eastwood v. Nat'l Enquirer, Inc., 123 F.3d 1249, 1257 (9th Cir.
16 1997), rendering Defendants' motion timely.

17 **B. The Factors In This Case Weigh Against A Fee Award**

18 Defendants next assert that the magistrate judge should not
19 have considered Plaintiff's subjective beliefs when determining
20 whether to award fees. Opp'n at 3-4. In the Ninth Circuit, the
21 district court has discretion to refuse or award costs. Draper
22 v. Rosario, 836 F.3d 1072, 1087 (9th Cir. 2016). A prevailing
23 defendant in a civil rights case may receive a fee award if the
24 plaintiff's action was "unreasonable, frivolous, meritless, or
25 vexatious." Galen v. Cnty. of L.A., 477 F.3d 652, 666 (9th Cir.
26 2007). Where the plaintiff is an uncounseled prisoner, the
27 Supreme Court has stated that limitations on awarding fees "apply
28 with special force" and "fees should rarely be awarded against

1 such plaintiffs." Hughes v. Rowe, 449 U.S. 5, 15 (1980).

2 Defendants argue fees must be awarded because one of the
3 facts alleged—that Plaintiff's parental rights were terminated—
4 was demonstrably false, and thus they conclude Plaintiff's case
5 was entirely frivolous. Yet the Court did not dismiss
6 Plaintiff's case because it was frivolous or wholly without
7 merit. Rather, the Court dismissed Plaintiff's case, without
8 prejudice, for failure to join a necessary party pursuant to
9 Federal Rules of Civil Procedure 12(b)(7) and (19). Based on the
10 material submitted, Defendants have not carried their burden of
11 showing that Plaintiff's actions were objectively unreasonable,
12 frivolous, meritless, or vexatious.

13 Accordingly, Defendants' motion for attorney's fees is
14 denied.

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16 III. CONCLUSION

17 For the reasons set forth above,

18 IT IS HEREBY ORDERED that:

19 1. The Court adopts in part and modifies in part the
20 findings and recommendations, ECF No. 43, filed January 23, 2018;

21 2. Defendants' motion for attorney's fees, ECF No. 39, is
22 denied.

23 Dated: May 2, 2018.

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE