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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 THE AMERICAN CIVIL LIBERTIES
9 UNION OF NEVADA, et al.,

10 Plaintiffs,

11 v.

12 CATHERINE CORTEZ MASTO, et al.,

13 Defendants.
14

2:08-CV-822 JCM (PAL)

Date: N/A

Time: N/A

15 ORDER

16 On January 13, 2009, this court granted plaintiffs' motion for \$145,823.50 in costs and fees
17 as a result of plaintiffs' successful litigation of issues surrounding the application of Nevada's sex
18 offender laws. Defendants now ask this court to stay the order for attorneys' fees pending the appeal
19 of this court's order granting a permanent injunction in this case. (Doc. #94.) Plaintiffs oppose this
20 motion. (Doc. 97.)

21 Under Fed. R. Civ. P. 62(d), an appellant may obtain a stay by supersedeas bond if an appeal
22 is taken. However, the stay applies only to the judgment being appealed. *See In re Zapata Gulf*
23 *Marine Corp.*, 941 F.2d 293, 295 (5th Cir. 1991). Defendants have not appealed this court's order
24 awarding attorneys' fees, and the time to appeal that order has expired. *See Fed. R. App. P. 4(a).*

25 Further, the award of fees and costs is collateral to the issue being appealed. *See Leslie v.*
26 *Grupo ICA*, 198 F.3d 1152, 1160 (9th Cir. 1999) (finding no jurisdiction to review fee award without
27 proper notice of appeal, and rejecting appellant's argument that if lower court were reversed on
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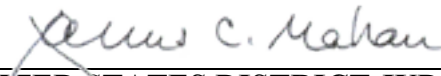
1 summary judgment, it should also be reversed on issue of attorneys' fees.) Therefore, this court has
2 no authority to grant defendants' motion to stay.

3 Further, the court is not persuaded by defendants' argument that the award of fees is
4 somehow dependent on the outcome of the appeal. Defendants' argue that plaintiffs will no longer
5 be the "prevailing party" if the Ninth Circuit Court of Appeals reverses this court's ruling. However,
6 to be considered a "prevailing party" for purposes of attorneys' fees in a civil rights case, a plaintiff
7 need not obtain a favorable final judgment. *Harris v. McCarthy*, 790 F.2d 753, (9th Cir. 1986). As
8 long as the plaintiff has succeeded on any significant issue in the litigation which achieved some of
9 the benefit plaintiff sought, he will be considered a "prevailing party." *See Harris*, 790 F.2d at 757.
10 Plaintiffs prevailed on their claims in this case and they succeeded in securing a permanent
11 injunction against the retroactive application of A.B. 579 and S.B. 471.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to stay
14 the order of attorneys' fees pending appeal (doc. #94) be, and the same hereby is, **DENIED**.

15 DATED this 8th day of April, 2009.

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18 UNITED STATES DISTRICT JUDGE