

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Martin Ogden,

10 Plaintiff,

11 vs.

12 CDI Corporation,

13 Defendant.

No. CV08-2180-PHX-DGC

ORDER

14 Plaintiff Martin Ogden has filed a motion for relief from this Court's Judgment on
15 Taxation. Doc. 156. For the following reasons, the Court will deny the motion.¹

16 Under Federal Rule of Civil Procedure 54(d), attorney's fees and costs are treated
17 differently. *See* Fed. R. Civ. P. 54(d). The Ninth Circuit has held that Rule 54 creates the
18 presumption that courts will award a prevailing party its costs. *Ass'n of Mexican-*
19 *American Educators v. California*, 231 F.3d 572, 591 (9th Cir. 2000).² Trial courts have
20 broad discretion in awarding costs, and are not required to "specify reasons" for awarding
21 costs. *Save our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003).

22 Defendant is incorrect in stating that a showing of impropriety is the only way to
23 overcome such a presumption. *See Ass'n of Mexican-American Educators*, 231 F.3d at
24

25 ¹ The request for oral argument is denied; the issue is fully briefed and oral
26 argument will not aid the Court's decision. *See* Fed. R. Civ. P. 78(b); *Partridge v. Reich*,
141 F.3d 920, 926 (9th Cir. 1998).

27 ² Several other circuits also recognize this presumption. *See Klein v. Grynberg*, 44
28 F.3d 1497, 1506 (10th Cir.1995); *Congregation of the Passion v. Touche, Ross & Co.*,
854 F.2d 219, 222 (7th Cir.1988).

1 593 (overruling *Nat'l Info. Servs., Inc. v. TRW, Inc.*, 51 F.3d 1470, 1471–72 (9th Cir.
2 1995). Contrary to the non-binding case law that Defendant cites, the Ninth Circuit has
3 explicitly disapproved the proposition that impropriety is the only reason costs can be
4 denied. 231 F.3d at 593. Factors that weigh on the Court's decision to deny costs also
5 include the party's limited financial resources. *Ass'n of Mexican-American Educators*,
6 231 F.3d at 592 (citing *Nat'l Org. for Women v. Bank of Cal.*, 680 F.2d 1291, 1294 (9th
7 Cir.1982)). Thus, in order to defeat the presumption in favor of awarding costs, plaintiffs
8 are allowed to use evidence of limited financial resources.

9 Here, Plaintiff is asking this Court to alter its Judgment on Taxation of Costs (Doc.
10 146) to more closely match the Court's order denying without prejudice Defendant's
11 motion for attorney's fees. Doc. 156. Specifically, Plaintiff asks the Court to change its
12 judgment to include the phrase "[b]ecause this case is on appeal, Defendant's motion for
13 [costs] is denied without prejudice." *Id.* This request proceeds from the mistaken
14 premise that attorney's fees and costs are to be treated the same. As both controlling case
15 law and Rule 54 make clear, they are not treated the same. *See, e.g., Ass'n of Mexican-*
16 *American Educators*, 231 F.3d at 592. Costs are presumptively awarded, whereas
17 attorney's fees are not. *See Fed. R. Civ. P. 54(d)*. Thus, Plaintiff's only option for
18 overcoming an award of costs was to provide the Court sufficient reasons to overcome
19 the presumption favoring the awarding of costs.

20
21 Defendant filed a Bill of Costs on March 21, 2011. Under Local Rule of Civil
22 Procedure 54.1(b), Plaintiff had fourteen days to object. No objection was made, and the
23 Court will not entertain an untimely objection. Moreover, Plaintiff vigorously litigated
24 their case, causing Defendant to incur litigation costs. Although the Court has not
25 required Plaintiff to pay Defendant's attorneys' fees, it will not relieve him from the
26 obligation to pay costs Defendant incurred solely as a result of Plaintiff's lawsuit.

