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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN R. SANDOVAL,

Plaintiff,

v.

THE CITY OF PARLIER, *et al.*,

Defendants.

1:07-CV-00102 OWW SMS

ORDER RE DEFENDANT'S MOTION
FOR ATTORNEYS' FEES AND
COSTS (DOC. 50 & 52)

I. INTRODUCTION

On January 18, 2007, Plaintiff Juan R. Sandoval filed a complaint against the City of Parlier and Defendant Parlier City Police Officer Rene Jimenez, seeking damages for civil rights violations and various state law torts. The City of Parlier was dismissed from the action after the pretrial conference. On July 3, 2008, after a seven day trial, a jury returned a verdict in favor of Defendant Jimenez and against Plaintiff on all counts.

Before the court for decision is Defendant's motion for an award of attorneys fees and costs, pursuant to Federal Rule of Civil Procedure 65, in the amount of \$99,217.25, reflecting costs and fees incurred during the entire litigation. Doc. 52 at 1-2. In the alternative, Defendant requests a fee award in the amount

1 of \$86,107.50, reflecting fees and costs incurred after
2 depositions were completed in September 2007. *Id.* at 2.

3
4 II. BACKGROUND

5 Plaintiff's complaint alleged that on March 9, 2006, at the
6 Administration Office Board Room of the Parlier Unified School
7 District, Plaintiff was tasered by two Parlier Police Department
8 Officers, including Defendant Jimenez. Doc. 1, Compl., at ¶7.
9 Plaintiff alleged that Officer Jimenez failed to follow Parlier
10 Police Department "Use of Taser" Policy because Plaintiff did not
11 present an immediate, credible threat to the safety of the
12 officers or the public; Plaintiff was "at worst engaged in a
13 passive demonstration;" Defendant failed to announce that the
14 Taser was going to be used; and Defendant unnecessarily applied
15 the Taser multiple times. *Id.* at ¶8. The Complaint alleged the
16 following causes of action: (1) excessive force in violation of
17 Title 42 U.S.C. § 1983, against Defendant Jimenez in his official
18 capacity; (2) supervisory liability under section 1983 against
19 the City of Parlier; (3) assault and battery against Defendant
20 Jimenez; (4) intentional infliction of emotional distress against
21 Defendant Jimenez; and (5) negligence against Defendant Jimenez.

22 Defendant Jimenez did not move to dismiss the complaint, nor
23 did he move for summary judgment prior to trial. All claims
24 against the City of Parlier were dismissed prior to trial. Doc.
25 36, filed June 24, 2008. A seven day jury trial commenced June
26 24, 2008. Docs. 38, 40, 41-44.

27 The evidence at trial established that, on March 9, 2006, at
28 the Administration Office Board Room of the Parlier Unified

1 School District ("PUSD"), the PUSD Board of Directors (the
2 "Board") held a regularly scheduled meeting, attended by many
3 citizens.

4 Plaintiff, who at the time was both employed by the School
5 District and was a parent of at least one child attending school
6 within the District, desired to address the Board in his capacity
7 as a parent about the District's budget and Bilingual Education
8 program. Prior to the meeting, Plaintiff submitted a form
9 requesting that his name be added to the list of persons who
10 would be allowed to speak during the public comment portion of
11 the meeting. Plaintiff was a regular speaker at the meetings.
12 According to Board policy, he was allotted five minutes to speak.

13 When it was Plaintiff's time to speak, Plaintiff, who is
14 bilingual, chose to give his comments in Spanish. Slightly less
15 than 3 minutes after his name was called, Plaintiff was
16 interrupted so that his statements could be translated.
17 Plaintiff asked, in English, if someone was going to translate.
18 The PUSD superintendent, Dr. Elizondo, replied: "Would you like
19 to translate or would you like to have somebody translate?"
20 Plaintiff stated that he would like to have someone translate,
21 then asked if the translation would "be part of my minutes?" Dr.
22 Elizondo confirmed that it would. Plaintiff responded: "Ok then
23 I'll wait until I am finished because I don't want it to be part
24 of my minutes." Elizondo replied: "You have two minutes to
25 finish up."

26 Precisely 4 minutes and 9 seconds after his name was called,
27 Plaintiff was interrupted and the translator was asked to begin
28 his translation. The translator finished translating 5 minutes

1 and 17 seconds after Plaintiff's name was called. Although
2 Plaintiff testified that he had completed saying everything he
3 had to say to the Board, when the translator was done, Plaintiff
4 refused to cede the dais. After a brief argument regarding the
5 need for Plaintiff to sit down and allow the meeting to proceed,
6 the PUSD staff security guard was called, but was unable to
7 convince Plaintiff to cede the dais.

8 Plaintiff stated that he was not done with his public
9 comments. Dr. Elizondo reiterated that Plaintiff's time was up
10 and directed the Board President, Yolanda Montalvo to call a
11 recess. Montalvo called a recess and ordered that the audio
12 recording device be turned off. Plaintiff then demanded that the
13 recording device not be turned off and requested a transcript of
14 the proceedings. Elizondo then directed Montalvo to summon the
15 police and the audio recording device was turned off.

16 Defendant Officer Jimenez arrived on the scene after
17 receiving a call from dispatch that someone was disrupting the
18 meeting. Officer Jimenez spoke briefly with Montalvo and
19 Elizondo, then approached Plaintiff and asked him to step
20 outside. Plaintiff asked Defendant Jimenez what the charges
21 were. Defendant Jimenez responded that there were no charges.

22 According to Officer Jimenez, Jimenez asked Plaintiff
23 several times to accompany him outside. When Plaintiff refused
24 to comply, Jimenez placed his right hand around Plaintiff's left
25 wrist and told Plaintiff to walk out or he was going to be placed
26 under arrest. Jimenez requested that dispatch send another unit
27 to his location. Jimenez then took out his taser and advised
28 Sandoval that if he did not comply, Jimenez would use the taser

1 against him.¹

2 Jimenez also testified that Plaintiff challenged Jimenez to
3 use the taser and spoke loudly to the audience in a manner that
4 caused Officer Jimenez to believe Plaintiff was attempting to
5 incite a riot. Jimenez perceived that the audience was "anti-
6 police."

7 Plaintiff recalls the interaction differently, testifying
8 that shortly after Jimenez approached him, Jimenez grabbed
9 Plaintiff's shoulder, unprovoked, in an attempt to remove him
10 from the room.

11 A scuffle then ensued, the exact nature of which was
12 disputed. According to the responding officers, Plaintiff, who
13 has martial arts training, struck Officer Jimenez and attempted
14 to knock him down. In response, the taser deployed against
15 Plaintiff. Plaintiff testified that he put up no resistance and
16 was tasered twenty times. However, the physical evidence and
17 taser reports indicated that he was tasered no more than five
18 times. Eventually, one of the Board members convinced Plaintiff
19 to stop resisting, enabling the officers to then place Plaintiff
20 under arrest.

21 The jury returned its verdict, in favor of Defendant Jimenez
22 on all counts, on July 3, 2008. Doc. 48, filed July 7, 2008.
23 Defendant Jimenez filed his motion for attorneys fees and costs
24 July 16, 2008, Doc. 50, and amended that motion July 17, 2008,

25 _____

26 ¹ The Parlier Police Department has a written policy
27 regarding the use of tasers by its officers. The taser policy
28 states that tasers should not be used against passive
demonstrators.

2
3 III. ANALYSIS

4 Eastern District of California Local Rule 54-293 governs the
5 award of attorney's fees in this district. A motion for
6 attorney's fees must include an affidavit of counsel showing:

- 7 (1) that the moving party was a prevailing party, in
8 whole or in part;
- 9 (2) the moving party is eligible to receive an award
10 of attorneys' fees, and the basis for such
11 eligibility;
- 12 (3) the amount of attorneys' fees sought;
- 13 (4) the information pertaining to each of the criteria
14 set forth in subsection (c) of this Rule; and
- 15 (5) such other matters as are required under the
16 statute under which the fee award is claimed.

15 *Id.*

16 A district court may award attorneys' fees pursuant to 42
17 U.S.C. § 1988 to a prevailing civil rights defendant only if the
18 plaintiff's action was "unreasonable, frivolous, meritless, or
19 vexatious." *Galen v. County of Los Angeles*, 477 F.3d 652, 666
20 (9th Cir. 2007). An action may be deemed frivolous "when the
21 result appears obvious or the arguments are wholly without
22 merit." *Id.* (citing *Christiansburg Garment Co. v. EEOC*, 434 U.S.
23 412, 422 (1978)). A defendant may recover if this standard is
24 violated "at any point during the litigation, not just at its
25 inception." *Id.* (citing *Christiansburg*, 434 U.S. at 422). In
26 determining whether this standard has been met, a district court
27 must avoid "post hoc reasoning by concluding that, because a
28 plaintiff did not ultimately prevail, his action must have been

1 unreasonable or without foundation." *Tutor-Saliba Corp. v. City*
2 *of Hailey*, 452 F.3d 1055, 1060 (9th Cir. 2006).

3 This kind of hindsight logic could discourage all but
4 the most airtight claims, for seldom can a prospective
5 plaintiff be sure of ultimate success. No matter how
6 honest one's belief that he has been the victim of
7 discrimination, no matter how meritorious one's claim
8 may appear at the outset, the course of litigation is
9 rarely predictable. Decisive facts may not emerge
until discovery or trial. The law may change or
clarify in the midst of litigation. Even when the law
or facts appear questionable or unfavorable at the
outset, a party may have an entirely reasonable ground
for bringing suit.

10 *Christiansburg*, 434 U.S. at 422. A Defendant seeking attorney's
11 fees has the burden of establishing that the action is frivolous
12 or vexatious. *Klotz v. United States*, 602 F.2d 920, 924 (9th
13 Cir. 1979).

14 Defendant argues that "the evidence known to Plaintiff prior
15 to the time this action was filed[] was sufficient to put
16 Plaintiff on notice that his action was frivolous." Doc. 52 at
17 3. Specifically, Defendant asserts that "[n]one of the witnesses
18 [at trial] gave statements which supported Plaintiff's
19 recollection of the facts. Indeed each of the witnesses [who]
20 watched Defendant's interaction with Plaintiff [and testified
21 were] entirely consistent in refuting Plaintiff's version of the
22 facts." *Id.* Defendant further argues that "Plaintiff should
23 have known that numerous credible eyewitnesses would testify to
24 facts that were in stark contrast to those facts necessary to the
25 success of Plaintiff's claims," and "[b]ecause this information
26 was available to Plaintiff long before his action was filed,
27 Plaintiff should have known that he had no chance of success and
28

1 should not have filed the action." *Id.* at 3-4.²

2 "A claim is not necessarily frivolous because a witness is
3 disbelieved or an item of evidence is discounted, disproved or
4 disregarded at trial." *Am. Fed'n of State, County and Mun.*
5 *Employees, AFL-CIO v. County of Nassau*, 96 F.3d 644, 652 (2d Cir.
6 1996). Where a plaintiff, through his own testimony, presents
7 evidence in support of his claims, fees may nevertheless be
8 appropriate if that testimony was "an unmitigated tissue of lies"
9 and/or the lawsuit was "motivated by malice and vindictiveness."
10 *Id.*

11 Here, although Defendant's motion for attorneys fees notes
12 the absence of any testimony to corroborate Plaintiff's version
13 of the facts, Defendant makes no mention of and does not provide
14 the court with Plaintiff's trial testimony. Although it was
15 ultimately not given credit by the trier of fact, Plaintiff's
16 testimony arguably supported his allegation that Defendant

17
18 ² Defendant argues that a claim may be deemed frivolous if
19 there is an abundance of case law suggesting the claim has no
20 merit, citing *Int'l Bhd. of Teamsters v. Silver State Disposal*
21 *Serv., Inc.*, 109 F.3d 1409, 1412 (9th Cir. 1997). Silver State
22 actually stands for a distinct principle: that a claim is less
23 likely to be considered frivolous when there is very little case
24 law directly apposite. However, even if Silver State is read as
25 Defendant suggests, it is not applicable here. Although, as
26 Defendant points out, "there is an abundance of legal precedent
27 on the issue of the use of force and excessive force under the
28 [Fourth] Amendment and the Civil Rights Act" and "[t]he Penal
Code is [] very clear in describing a citizen's responsibility
upon being placed under arrest...", the various Fourth Amendment
standards are highly fact-intensive, and the frivolousness of any
given claim will largely turn on the presence or absence of
facts, rather than the existence of parallel case law. The key
question here is whether Plaintiff had any facts to support his
claims.

1 unjustifiably deployed his taser against a passive demonstrator
2 in violation of Department policy. There is no basis for a
3 finding that Plaintiff's testimony was "an unmitigated tissue of
4 lies" or that his lawsuit was "motivated by malice and
5 vindictiveness." Although the jury ultimately concluded that
6 Plaintiff was unreasonable, stubborn, and unduly contentious as
7 to his insistence that he could address the Board on his own
8 terms in disregard of the rules, Defendant has failed to
9 demonstrate that this is the type of civil rights case that
10 warrants an award of attorney's fees to Defendant. However,
11 Defendant shall recover his costs of suit as authorized by law.

12
13 IV. CONCLUSION

14 Defendant's motion for attorney's fees is DENIED.

15
16 IT IS SO ORDERED.

17 Dated: February 13, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE