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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **EUGENE E. FORTE,**

9 **Plaintiff**

10 **v.**

11 **COUNTY OF MERCED, et al.,**

12 **Defendants.**

**CASE NO. 1:11-cv-00318-AWI-BAM**

**ORDER DENYING PLAINTIFF'S *EX***  
***PARTE* APPLICATION FOR**  
**CLARIFICATION AND CORRECTION**  
**AND ORDER ON OBJECTIONS TO**  
**BILL OF COSTS**

**(Docs. 379 and 347)**

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15 On September 29, 2015, the court issued an order denying without prejudice the motion of  
16 Defendants County of Merced, et al. (“Defendants”) for injunctive relief to prevent plaintiff  
17 Eugene E. Forte (“Plaintiff”) from re-alleging Claims that have been previously ruled meritless by  
18 this court or against parties that have previously been dismissed with prejudice. Doc. # 376 (the  
19 “September 29 Order”). Currently before the court is Plaintiff’s “*Ex Parte* Application requesting  
20 Clarification and Correction of Inaccurate Facts Contained in Court’s Order (Doc. # 376) [. . .]  
21 And Repeated Request for Ruling on Motion for Costs by Defendant-Appellees. . . .” Doc. # 379  
22 (Plaintiff’s “Motion”).<sup>1</sup>

23 On June 8, 2015, the court ordered entry of judgment against Plaintiff following adoption  
24 of the Magistrate Judge’s Finding of Facts and Conclusions of Law regarding Defendants’ motion  
25 for application of terminating sanctions. Doc. # 344. On June 17, 2015, the attorney for  
26 individual Defendant Anthony Parker submitted a bill of costs pursuant to Local Rule 54-292.

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28 <sup>1</sup> The docket entry at number 379 is titled as an amended version of the entry at 378. The relief requested in both docket entries is the same.

1 Doc. # 345. On June 22, 2015, Roger Matzkind, attorney for Defendant County of Merced and  
2 individual Defendants Hill, Jaskowiac, Leuchner and Picinich submitted bill of costs. Doc. # 346.  
3 Plaintiff filed objections to the bills of cost on June 23, 2015. Doc. # 347. Plaintiff's Motion also  
4 requests that the court make its decision on Plaintiff's objection to Defendants' bills of cost. The  
5 court will address in order Plaintiff's request for clarification/correction and Plaintiff's request for  
6 decision on Defendants' bill of cost.

### 7 **I. Plaintiff's Request for Clarification/ Correction**

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9 Since the court denied *Defendants'* motion for injunctive relief, Plaintiff has no complaint  
10 about the actual order denying injunctive relief; his objections are aimed at the court's reasoning.  
11 Plaintiff's opposition to Defendants' motion for injunction, Docket Number 365, is primarily  
12 substantive; that is, Plaintiff's opposition disputes Defendants' characterizations of Plaintiff as a  
13 vexatious litigant who has been using both state and federal courts to harass Defendants by filing  
14 repetitive and meritless claims against them. The court did not refer to any of the arguments  
15 presented in Plaintiff's opposition and the first point of clarification Plaintiff seeks is whether the  
16 court considered his arguments at all. The answer to this question is that the court did read  
17 Plaintiff's opposition but chose to base its denial of Defendants' motion on concerns that a grant  
18 of the requested injunctive relief would likely interfere with proceedings currently underway in a  
19 different case under a different Judge. The court purposely chose to avoid a decision on the merits  
20 of Defendants' allegations until such time as a decision by this court will not be likely to interfere  
21 with ongoing proceedings in another courtroom.  
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24 Next, Plaintiff objects to the court's characterization of Defendants' motion for injunction  
25 as being "well reasoned and well supported by both law and fact." Doc. # 376 at 1:21. Plaintiff  
26 also objects to the court's characterization of his current action in case # 15cv0147 as alleging  
27 claims against individuals who were previously "dismissed with prejudice from this case and based  
28 on facts that were found by this court to fail to state claims upon which relief could be granted." *Id.* at

1 19-20. Plaintiff seeks the court's correction of these characterizations based on Plaintiff's contention  
2 that his complaint in case 15cv0147 alleges claims against both new and old defendants based on  
3 conduct that occurred after the action in case number 11cv0318 had been filed. The court has  
4 reviewed its statements and has briefly reviewed Plaintiff's complaint in case number 15cv0147. The  
5 court declines to make any corrections or alterations to its September 29 Order. Plaintiff's concern  
6 that the court's comments, if left uncorrected, would be prejudicial to the appeal currently before the  
7 Ninth Circuit Court of Appeals is unfounded. As Plaintiff has been admonished by the appellate court,  
8 the only information that can be considered on appeal is the information that had been placed before  
9 this court at the time judgment was entered. This court's opinions or observations on Plaintiff's most  
10 recent action in this case made in its September 29 Order are completely irrelevant to Plaintiff's  
11 appeal.  
12

13 Plaintiff's *ex parte* request for clarification and/or correction of the court's September 29 Order  
14 will be denied.

## 15 **II. Order on Plaintiff's Objections to Defendants' Bills of Cost**

16 The bill of cost submitted by Rayma Church, attorney for Defendant Parker, totaled \$1,265.  
17 The entire bill of cost consists of a single entry in the category of "fees for witnesses." The supporting  
18 documentation and the Declaration of Rayma Church, Doc. # 345 makes it clear that the actual  
19 expenses were for the "exemplification and copies of papers necessarily obtained for use in this case."  
20 The documents exemplified and copied were records of fees for medically related services rendered by  
21 various medical providers that were identified by Plaintiff through his answers to interrogatories as  
22 representing medical expenses arising out of Defendants' conduct. The bill of costs submitted by  
23 Roger Matzkind, attorney for Defendants County of Merced and the aforementioned individual  
24 Defendants, totaled \$1,467.39. As was the case with the Church Declaration, Matzkind's Declaration  
25 makes it clear that the sole cost being taxed is fees for the exemplification and copying of records by  
26 various medical providers for various medically-related services necessitated by Defendants' conduct.  
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1 Fees for the exemplification and copying of documents is authorized by Local Rule 54-  
2 292(f)(5); 28 U.S.C. § 1920(4). Since damages are an element of the claims Plaintiff alleged against  
3 Defendants, the recovery, exemplification and copying of documents that do, or do not, support  
4 Plaintiff's damage claims are a necessary part of preparation for trial. Absent any compelling reason  
5 to the contrary, the court finds that Defendants are entitled to the costs billed.

6 Plaintiff asserts three basic arguments against the awarding of costs to defendants. First,  
7 Plaintiff contends that Defendants were not the "prevailing party" within the meaning of section  
8 1920(4) because the court entered judgment against Plaintiff as sanction for bad faith conduct.  
9 Plaintiff contends the court was the real prevailing party. Plaintiff's argument is not persuasive.  
10 Defendants moved for terminating sanctions at more than one point during these proceedings and  
11 finally prevailed on that ground when it finally became clear to the court that Plaintiff could not  
12 proceed without continuing the abuses that he had been admonished repeatedly to discontinue.  
13 Judgment was entered in favor of Defendants and there is no basis for finding that Defendants are not  
14 the prevailing party. The fact that the case did not go to trial or that it ended as a result of sanctions for  
15 bad faith conduct instead of a more conventional disposition does not change the fact that Defendants  
16 were the prevailing party.  
17

18 Next, Plaintiff objects to the award of costs to Defendants by essentially rearguing the merits  
19 of the Magistrate Judge's recommendation for terminating sanctions and by arguing that his conduct  
20 was reasonable in light of Defendants conduct. This argument is basically a re-statement of Plaintiff's  
21 arguments against the imposition of terminating sanctions – an argument the court has rejected. Even  
22 if the court had granted judgement in favor of Defendants for some other reason, Plaintiff's argument  
23 is flawed because it conflates the issues of taxation of costs under 18 U.S.C. § 1920(4) and the award  
24 of attorney fees to prevailing parties in civil rights cases under 18 U.S.C. § 1988. As Plaintiff points  
25 out, an award of *attorney's fees* to a *prevailing defendant* in a civil rights case does take more than  
26 merely prevailing on the merits of the plaintiff's claims. The same is not true, however, with the  
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1 award of *costs* under section 1920(4). To be entitled to an award of *costs*, a party need only be the  
2 prevailing party.

3 Third, Plaintiff argues that the award of costs to the prevailing party is discretionary and that  
4 the equities of this case favor the withholding of the award of any costs to Defendants. The court  
5 disagrees. Plaintiff was told early in these proceedings that the *only* viable claims under the facts  
6 alleged were the two claims for fourth amendment violations from the two arrests. Plaintiff refused to  
7 proceed directly to trial on those two claims but instead made multiple attempts to interject previously  
8 alleged claims against Defendants who had been dismissed with prejudice, continued to make  
9 disparaging and insulting comments to the court and to opposing counsel and to pointlessly reargue  
10 issues that were decided against him. Finally, after repeated attempts to moderate Plaintiff's conduct  
11 proved unsuccessful, terminating sanctions brought the action to an end. The meritless and  
12 unnecessary nature of substantial portions of Plaintiff's conduct have been discussed in other orders in  
13 this case. It is sufficient to note that when a case is ultimately dismissed as a result of sanction for bad  
14 faith conduct, the equities of the case do not favor the withholding of costs to the prevailing party.  
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17 THEREFORE, for the reasons discussed above, Plaintiff's *ex parte* application for clarification  
18 and/or correction of the court's September 29 Order (Doc. 379) is hereby DENIED. Plaintiff's  
19 objections to the bills of cost submitted by Defendants (Doc. 347) is hereby OVERRULED.  
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21 IT IS SO ORDERED.

22 Dated: October 7, 2015

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24 SENIOR DISTRICT JUDGE