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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES T. DAVIS,

Plaintiff,

v.

EDDIE SIMMERSON, ANTHONY
AMERO, CHARLES HOUGHLAND and
BRYON VON RADER,

Defendants.

No. 2:05-cv-1898-JAM-EFB

**ORDER OVERRULING PLAINTIFF'S
OBJECTIONS TO DEFENDANTS' BILL
OF COSTS**

Defendants Eddie Simmerson, Anthony Amero, Charles Houghland, and Bryon Von Rader (collectively "Defendants") submitted a bill of costs (Doc. #176).¹ Plaintiff Charles T. Davis ("Plaintiff") filed an opposition (Doc. #179) asserting several objections to the bill of costs.

I. BACKGROUND

Plaintiff, a California prison inmate, brought this suit against Defendants, alleging civil rights violations. The matter

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 was tried before a jury and a verdict was returned, finding for
2 Defendants on all causes of action. After judgment was entered
3 in favor of Defendants against Plaintiff, Defendants submitted
4 their bill of costs requesting \$758.80 in costs for witness fees
5 and fees associated with recorded transcripts.

7 II. OPINION

8 A. Legal Standard

9 Federal Rule of Civil Procedure 54(d)(1) provides, in
10 pertinent part: "Unless a federal statute, these rules, or a
11 court order provides otherwise, costs—other than attorney's fees—
12 should be allowed to the prevailing party." Fed. R. Civ. P.
13 54(d)(1). This rule creates a presumption that costs will be
14 taxed against the losing party, but "vests in the district court
15 discretion to refuse to award costs" if the losing party shows
16 why costs should not be awarded. Ass'n of Mexican-Am. Educators
17 v. State of California, 231 F.3d 572, 591-92 (9th Cir. 2000) (en
18 banc). The costs a court may tax are listed in 28 U.S.C. § 1920
19 ("§1920").

20 If the court declines to award costs, it must "specify
21 reasons" for denying costs. Id. (citing Subscription Television,
22 Inc. v. Southern Cal. Theater Owners Ass'n, 576 F.2d 230, 234
23 (9th Cir. 1978)). However, it need not specify reasons for its
24 decision to abide by the presumption and tax costs to the losing
25 party. Save Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th
26 Cir. 2003) (citing Ass'n of Mexican-Am. Educators, 231 F.3d at
27 592-93).

28 The Ninth Circuit has discussed proper reasons for denying

1 costs, including: (1) the losing party's limited financial
2 resources; (2) the prevailing party's misconduct; (3) the
3 potential chilling effect of imposing high costs on civil rights
4 litigants; (4) the nature of the prevailing party's recovery;
5 (5) the losing party's good faith in litigating; and (6) the
6 importance of the case. Champion Produce, Inc. v. Ruby Robinson
7 Co., Inc., 342 F.3d 1016, 1022 (9th Cir. 2003).

8 B. Discussion

9 Plaintiff objects to the entire bill of costs on two
10 grounds. Plaintiff first contends there is evidence that
11 suggests the verdict was obtained by "intrinsic fraud" and
12 therefore Defendants should not be allowed "to benefit from their
13 own wrong-doing." Plaintiff submits no further detail as to the
14 alleged fraud, and the Court finds no evidence of it. The
15 objection is therefore overruled.

16 Plaintiff next objects on the grounds that he is an
17 "indigent inmate" and argues the Court should take this into
18 consideration when considering whether to grant costs. As
19 discussed above, a losing party's financial circumstances are a
20 factor that can be considered by the Court, however, 28 U.S.C.
21 § 1915(f) clearly provides for the full payment of costs by a
22 plaintiff prisoner if so ordered by the Court. It further
23 provides for the payment of such costs through an incremental
24 payment plan, thereby reducing any burden on Plaintiff. Id. In
25 addition, the amount requested by Defendants is relatively
26 minimal.

27 Outside of his indigence, Plaintiff puts forth no further
28 arguments as to why the Court should deny Defendants' costs. The

1 Court finds the arguments and evidence insufficient to rebut the
2 presumption in favor of awarding costs. See Draper v. Rosario,
3 No. 2:10-CV-0032 KJM EFB, 2014 WL 3689718, at *1-2 (E.D. Cal.
4 2014); Jano v. Stone, No. 06-CV-1511-JM, 2012 WL 70424, at *2-3
5 (S.D. Cal. 2012). The Court therefore overrules Plaintiff's
6 objection.

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8 III. ORDER

9 For the reasons set forth above, the Court overrules
10 Plaintiff's objections and GRANTS Defendants' costs. Total costs
11 awarded are \$758.80.

12 IT IS SO ORDERED.

13 Dated: February 19, 2015

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE