

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENO FUENTES RIOS,
Plaintiff,
v.
J.E. TILTON, et al.,
Defendants.

No. 2:07-cv-0790 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis. Defendants seek reimbursement of \$1,487.03 expenses incurred in obtaining deposition transcripts. Plaintiff objects to the application; defendants filed a response. As set forth below, the court grants the application.

I. Background

In plaintiff's complaint, filed April 25, 2007, he alleged that while he was incarcerated at California State Prison-Sacramento, five defendants relied on false and inadequate information to validate him as a prison gang associate and place him in security housing. Plaintiff challenged the validation and placement decisions on due process grounds and further claimed that defendants retaliated against him for exercising his First Amendment rights. This case survived multiple dispositive motions, including multiple motions for summary judgment, and counsel was appointed for plaintiff on June 7, 2012. A settlement conference was held on May 20, 2014. By

1 the July 28, 2016 final pretrial order, this action proceeded on plaintiff's due process claims
2 against defendants Brandon and Parker, and retaliation claims against defendants Parker and
3 Mayfield. (ECF No. 215.) Jury trial began on October 28, 2016, and on November 2, 2016, at
4 12:30 p.m., the jury began deliberations. (ECF No. 254 at 2.) At 2:38 p.m., the undersigned read
5 the jury's note reflecting a verdict had been reached. At 2:40 p.m., the jury foreperson delivered
6 the verdict form, and at 2:50 p.m. the defense verdict was read in open court. (Id.)

7 II. Application to Tax Costs

8 Federal Rule of Civil Procedure § 54(d)(1) provides that "[u]nless a federal statute, these
9 rules, or a court order provides otherwise, costs -- other than attorney's fees -- should be allowed
10 to the prevailing party." Id.; Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441
11 (1987). Indeed, "[a] district court deviates from normal practice when it refuses to tax costs to the
12 losing party, and that deviation triggers the requirement to 'specify reasons.'" Save Our Valley v.
13 Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003) (citing Assoc. of Mexican-American Educators
14 v. California, 231 F.3d 572, 591 (9th Cir. 2000)). The Ninth Circuit has said that proper reasons
15 for denying costs include (1) the losing party's limited financial resources; (2) the prevailing
16 party's misconduct; (3) the potential chilling effect of imposing high costs on civil rights litigants;
17 (4) the nature of the prevailing party's recovery; (5) the losing party's good faith in litigating; and
18 (6) the importance of the case. Champion Produce, Inc. v. Ruby Robinson Co., Inc., 342 F.3d
19 1016, 1022 (9th Cir. 2003) (citing Mexican-American Educators, 231 F.3d at 592 & n.15).

20 II. The Parties' Positions

21 Plaintiff does not challenge the costs themselves, which are authorized under the statute.
22 See Indep. Iron Works, Inc. v. U.S. Steel Corp., 322 F.2d 656, 678 (9th Cir. 1963) (stating that
23 the cost of deposition transcripts "necessarily obtained for use in the case" can be taxed under
24 § 1920(4)) (quotation marks omitted). Rather, plaintiff argues that the court should not tax costs
25 because of his indigence, his \$10,000 restitution order imposed for his incarceration offense, and
26 his inability to work in prison due to his gang validation (ECF No. 225 at 9, 14, 15, 20-21), as
27 well as the chilling effect the award will have on civil rights cases, the nature of and merit to his
28 claims against the correctional officers, and the economic disparity between the parties.

1 Defendants argue that the bill for deposition transcripts is a small fraction of the total cost
2 they incurred in defending this action. Defendants contend that there is a presumption that costs
3 are awarded to prevailing parties and plaintiff's mere indigence is insufficient to render him
4 immune therefrom. Defendants argue the case was not of extraordinary importance or
5 complexity, but rather involved two garden-variety due process and retaliation claims, and the
6 jury's unanimous verdict was reached within a half hour. Further, defendants contend that
7 awarding these costs would not chill future litigants, other than those raising false claims, and any
8 impact is softened by the payment scheme provided by the PLRA. Because this case ultimately
9 boiled down to a credibility question, and the jury believed the correctional officers, not the
10 plaintiff, defendants argue that plaintiff should be required to pay these deposition expenses.

11 (ECF No. 269 at 4-7.)

12 III. Discussion

13 First, it is clear that plaintiff is indigent. “[A] substantiated claim of the losing party’s
14 indigency may justify a reduction or denial of costs to the prevailing party, although such
15 indigency is not an absolute shield to the imposition of costs.” Conn v. City of Reno, 2012 WL
16 4194560, at *3 (D. Nev. Sep. 19, 2012) (quoting Moore’s Fed. Prac. § 54.10[1][b]). Plaintiff is
17 serving a life sentence with the possibility of parole, and has no ability to earn an income. (ECF
18 No. 266 at 1.) Indeed, plaintiff owes approximately \$10,000 in restitution for his underlying
19 criminal offense. Plaintiff’s previous long-term housing in the SHU, based on his gang
20 validation, precluded any access to working a prison job. Thus, plaintiff’s lack of financial
21 resources, in conjunction with the large amount owed in restitution, demonstrates that it is highly
22 unlikely plaintiff will be able to satisfy any costs. Reed v. Moore, 2011 WL 703618, at *1 (E.D.
23 Cal. Feb. 18, 2011) (denying \$4,293.89 in costs when “it is highly unlikely” the inmate would be
24 able to satisfy any costs).

25 Nevertheless, plaintiff has not shown the imposition of defendants’ relatively modest costs
26 will harm him despite his indigence. Jones v. Neven, 2011 WL 703618, at 2 (D. Nev. Jan. 14,
27 2013) (imposition of costs on inmate will not render him indigent in light of fact that costs will be
28 paid in installments under 28 U.S.C. § 1915(f)(2)(B)); Jano v. Stone, 2012 WL 70424, at *2

1 (S.D. Cal. Jan. 9, 2012) (imposing costs because of the “piecemeal payment plan” even though
2 plaintiff was unable to secure a prison job and worried about paying for hygiene items); see also
3 Antoine v. Cnty. of Sacramento, 2009 WL 1260318, at *2 (E.D. Cal. May 6, 2009) (whether
4 threat of indigency from imposition of costs is genuine “depends on the amount of the potential
5 cost award”); compare Stanley v. Univ. of So. Ca., 178 F.3d 1069, 1080 (9th Cir. 1999) (denying
6 “extraordinarily high” bill of costs). Here, defendants incurred far greater costs than the
7 \$1,487.03 deposition costs for which they seek reimbursement, particularly given the age of this
8 case and the motion practice involved.

9 Moreover, a prisoner’s indigence, as well as the disparity in income between the prisoner
10 and the state of California, which usually defends against these civil rights cases, are constant
11 factors in these cases. If such factors governed the court’s discretion, the presumption would be
12 opposite the presumption in Rule 54(d), and prisoners would be disinclined to refrain from
13 bringing false claims or to settle claims prior to trial.

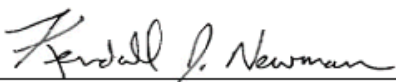
14 In Stanley, the Ninth Circuit remanded the case to the district court to consider its order
15 taxing costs, noting “the imposition of [] high costs on losing civil rights plaintiffs of modest
16 means may chill civil rights litigation” and finding the claims raised in that case were important
17 and “far from obvious.” 178 F.3d at 1080; see also Assoc. of Mexican-American Educators, 231
18 F.3d at 593 (upholding denial of costs in “extraordinary, and extraordinarily important, case” and
19 saying that granting high costs in important cases might discourage other civil rights litigation).
20 Without downplaying the importance of the case to plaintiff personally, or the potential viability
21 of due process and retaliation claims against prison guards, the issues in this case were not novel
22 or complex, and there is no reason to believe that the modest award of costs here will chill future
23 inmate litigation.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Defendants’ application for deposition costs (ECF No. 264) is granted; and
26 2. Plaintiff is taxed \$1,487.03 in costs.

27 Dated: March 23, 2017

28 rios0790.expsG

4 
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE