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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAM BESS,)	Case No. 2:07-CV-01989 JAM-JFM
)	
Plaintiff,)	
)	
v.)	<u>ORDER DENYING COSTS FOR OIG</u>
)	<u>DEFENDANTS</u>
MATTHEW CATE, DAVID SHAW,)	
RODERICK HICKMAN, JEANNE)	
WOODFORD, JOHN DOVEY, SCOTT)	
KERNAN, MARTIN HOSHINO,)	
)	
Defendants.)	
)	

This matter comes before the Court on Defendants' Matthew Cate and David Shaw, both employed in the Office of Inspector General ("OIG") (collectively "OIG Defendants") Bill of Costs (Doc. 232). The OIG Defendants' request costs as the prevailing party on a Summary Judgment motion against Plaintiff Sam Bess ("Plaintiff"). Plaintiff opposes the request.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff brought a civil rights lawsuit under 42 U.S.C. § 1983 and a cause of action under the Racketeer Influenced Corrupt Organizations Act ("RICO") against two officials at the

1 OIG and five Defendants at the California Department of
2 Corrections and Rehabilitation ("CDCR Defendants"). Plaintiff
3 lost at Summary Judgment. The Court declined to award
4 attorneys' fees to the OIG Defendants and the CDCR Defendants.

6 II. OPINION

7 A. Legal Standard

8 Federal Rule of Civil Procedure § 54(d)(1) provides that
9 "costs other than attorneys' fees shall be allowed as of course
10 to the prevailing party unless the court otherwise directs."

11 When considering whether to grant costs to the prevailing party
12 in a civil rights case, courts should consider the plaintiff's
13 financial resources and the effect of imposing costs on future
14 civil rights litigants. Stanley v. University of Southern
15 California, 178 F.3d 1069, 1079 (9th Cir. 1999).

16 B. Claim for Costs

17 The OIG Defendants ask for \$17,705.35 in costs. Plaintiff
18 asks the Court not to assess costs because a costs award could
19 have a chilling effect on future civil rights claims, the suit
20 addressed a matter of public importance, and there is an
21 economic disparity between the parties. In the alternative,
22 Plaintiff asks the Court to reduce costs to \$8,357.65. The
23 reduced award discounts the \$350 new case filing fee paid for by
24 Plaintiff's counsel, \$691.33 in costs related to fees incurred
25 for service of summons and subpoena, \$8,084.00 in costs related
26 to the fees incurred in making copies, and \$222.26 for overnight
27 federal express delivery charges.

28 Courts have exercised their discretion to deny costs in

1 civil rights cases for reasons such as the losing party's
2 limited financial resources, National Organization for Women v.
3 Bank of Cal., 680 F.2d 1291, 1294 (9th Cir. 1982); the case
4 addressed issues of substantial public importance, Association
5 of Mexican-American Educators v. State of California, 231 F.3d
6 572, 591-93 (9th Cir. 2000); and the concern of creating a
7 chilling effect on other future civil rights plaintiffs,
8 Stanley, 178 F.3d at 1079.

9 Here, the Court is concerned about the effect of requiring
10 a civil rights plaintiff with limited resources to pay
11 \$17,705.35, or even \$8,357.65. Even though Plaintiff did not
12 incur legal fees because he had pro bono counsel and despite his
13 position at the California Department of Corrections and
14 Rehabilitation, assessing thousands of dollars in costs could
15 have a negative effect on other potential civil rights
16 plaintiffs. "[T]he imposition of such high costs on losing
17 civil rights plaintiffs of modest means may chill civil rights
18 litigation. . . . Without civil rights litigants who are
19 willing to test the boundaries of our laws, we would not have
20 made much of the progress that has occurred in this nation. . .
21 ." Stanley, 178 F.3d at 1080.

22 Accordingly, the OIG Defendants' request for costs is
23 DENIED.

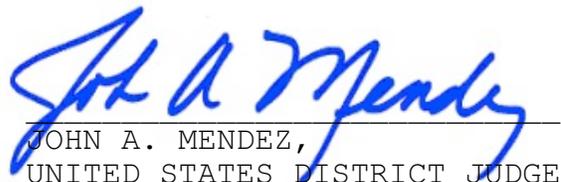
24 III. ORDER

25 For the reasons set forth above,

26 The OIG Defendants' motion for costs is DENIED.

27 IT IS SO ORDERED.

28 Dated: November 10, 2010


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE