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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 CHARLES ROBERT GORTON,
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11 Plaintiff,

NO. CIV. S-08-3069 LKK/GGH P

12 v.

13 TODD, et al.,

O R D E R

14 Defendants.
15 _____/

16 The court is in receipt of Defendants' Bill of Costs, totaling
17 \$9,145.54. Defs' Bill of Costs, ECF No. 231. Plaintiff objects,
18 asserting that he is indigent and that taxing costs again him would
19 be inequitable. Pl's Obj., ECF No. 232. For the reasons provided
20 herein, the court declines to award costs to Defendants.

21 This case arose from the medical treatment of Plaintiff
22 Charles Robert Gorton, a state prisoner, by Defendants Robert
23 Hawkins and Sahir Naseer, physicians for the California Department
24 of Corrections and Rehabilitation ("CDCR"). Plaintiff brought
25 claims against Defendants for their delays in treatment of his
26 kidney disorder, arguing that such delays constituted medical
malpractice and violated his rights under the Eighth Amendment.

1 Following trial, the jury found in favor of Defendants on all
2 claims.

3 Federal Rule of Civil Procedure 54(d) governs the taxation of
4 costs to the prevailing party in a civil matter.¹ Pursuant to
5 Federal Rule of Civil Procedure 54(d)(1), unless a court order
6 provides otherwise, costs (other than attorney's fees) "should be
7 allowed to the prevailing party." This rule creates a presumption
8 that costs will be taxed against the losing party. Ass'n of
9 Mexican-American Educators v. California, 231 F.3d 572, 591-93 (9th
10 Cir. 2000) (en banc). However, if the losing party shows why costs
11 should not be awarded, the rule "vests in the district court
12 discretion to refuse to award costs." Id., at 591; Save Our Valley
13 v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003) ("the losing
14 party must show why costs should not be awarded"). If the court
15 declines to award costs, it must state its reasons, giving the
16 reviewing court an opportunity to determine if that discretion was
17 abused. Save Our Valley, 335 F.3d at 945.

18 In considering Plaintiff's request that costs be denied, this
19 court considers: the losing party's limited financial resources;
20 the chilling effect of imposing such high costs on future civil
21 rights litigants; whether the issues in the case are close and
22 difficult; and whether Plaintiff's case, although unsuccessful, had
23 some merit. Ass'n of Mexican-American Educators, 231 F.3d at 592-
24 93.

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26 ¹ In the Eastern District of California, this rule is
implemented by Local Rule 292. E.D. Cal. R. 292 (2013).


It appears undisputed that Plaintiff, a state prisoner, is indigent. At the initiation of this lawsuit, Plaintiff filed an application to proceed in forma pauperis, in which he attested that he was paid \$0.10 per hour and that he had no other assets aside from \$450.00 held in an account at Altura Credit Union. Pl's Application, ECF No. 2. Plaintiff has recently reiterated that he is indigent, in response to Defendants' submitted bill of costs. See Pl's Obj., ECF No. 232, at 1. The court finds that taxing Plaintiff \$9,145.54 in costs would chill future civil rights litigants, especially those of modest means.

The court further finds that the issues in this case were close, and that Plaintiff's case had some merit, notwithstanding the jury verdict against him. This court denied Defendants' motion for summary judgment, in part, because each party proffered the testimony of experts, who had reached contrary conclusions as to whether the actions of Defendants Hawkins and Naseer fell within the applicable standards of care. Because the jury's finding turned, in large part, upon the weight given to each expert's testimony, the issues presented in this case were close and difficult.

Accordingly, the court exercises its discretion to decline to tax costs in favor of Defendants in this case.

IT IS SO ORDERED.

DATED: April 12, 2013.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT