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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF CALIFORNIA

7 STEVEN D. JOHNSON,)
8 Plaintiff,) 2:09-cv-01930-GEB-EFB
9 v.)
10 FULTON-EL CAMINO RECREATION &) ORDER DENYING DEFENDANT'S
11 PARKS DISTRICT,) MOTION FOR ATTORNEYS' FEES
12 Defendant.) AND COSTS*

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14 Defendant moves for attorneys' fees and costs, arguing that it
15 was granted summary judgment on Plaintiff's 42 U.S.C. § 1983 Fifth and
16 Fourteenth Amendment procedural due process claims because those claims
17 were "entirely frivolous in nature and filed in bad faith." (Def.'s Mot.
18 6:9-10.) Plaintiff opposes the motion.

19 "In any action or proceeding to enforce . . . [42 U.S.C. §
20 1983] . . . the court, in its discretion, may allow the prevailing party
21 . . . a reasonable attorney's fee as part of the costs." 42 U.S.C. §
22 1988(b). "[A] prevailing defendant should not routinely be awarded
23 attorneys' fees simply because [it] has succeeded, but rather only where
24 the action is found to be unreasonable, frivolous, meritless, or
25 vexatious." Vernon v. City of Los Angeles, 27 F.3d 1385, 1402 (9th Cir.
26 1994) (internal quotation marks omitted). A claim is "frivolous . . .

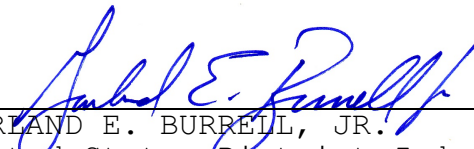
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* This matter is deemed suitable for decision without oral
argument. E.D. Cal. R. 230(g).

1 when the result is obvious or the [claim is] wholly without merit." Id.
2 "Attorneys' fees in civil rights cases should only be awarded to a
3 defendant in exceptional circumstances." Barry v. Fowler, 902 F.2d 770,
4 773 (9th Cir. 1990).

5 In addition, "[u]nder its 'inherent powers,' a district court
6 may . . . award sanctions in the form of attorneys' fees against a party
7 or counsel who acts 'in bad faith[.]'" Leon v. IDX Systems Corp., 464
8 F.3d 951, 961 (9th Cir. 2006) (quoting Primus Auto. Fin. Servs., Inc. v.
9 Batarse, 115 F.3d 644, 648 (9th Cir.1997)). "Before awarding such
10 sanctions, the court must make an express finding that the sanctioned
11 party's behavior 'constituted or was tantamount to bad faith.'" Id.
12 (quoting Primus, 115 F.3d at 648). "A finding of bad faith is warranted
13 where [a party] knowingly or recklessly raises a frivolous argument, or
14 argues a meritorious claim for the purpose of harassing an opponent."
15 Primus, 115 F.3d at 649.

16 Here, since Defendant has not satisfied any standard
17 applicable to its motion, its motion is denied.

18 Dated: September 6, 2011

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22 GARLAND E. BURRELL, JR.
23 United States District Judge
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