

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FORREST M. RICHARDSON,  
Plaintiff,  
v.  
J. MENDEZ,  
Defendant.  
No. 2:10-cv-00025-GEB-EFB  
**ORDER**

## ORDER

Plaintiff objects to Defendant's \$1,784.47 Bill of Costs (ECF No. 144), which was filed following a jury trial and a verdict and judgment in favor of Defendant. Plaintiff argues: "[t]he equities present in this case compel the conclusion that Plaintiff is unable to pay the costs sought by Defendant and that substantial injustice and inequity would result if a judgment for those costs were to be entered against Plaintiff." (Pl.'s Objection to Def.'s Bill of Costs ("Pl.'s Obj.") 4:12-14, ECF 145.)

James V. Weixel of the Weixel Law Office represented Plaintiff throughout this action. Mr. Weixel declares that he "took the case on a contingency basis . . . and often advanced or even absorbed . . . costs and expenses, such as mileage, copies, postage, travel expenses . . . , since Plaintiff is indigent and his family is largely unable to bear the expenses of litigation." (Weixel Decl. in Supp. of Pl.'s Obj. ¶ 8, ECF No. 145-1.)

1 Plaintiff applied to proceed in forma pauperis, and his request  
2 was granted on May 4, 2010. (See ECF Nos. 3, 11.) Plaintiff  
3 declares he is incarcerated in state prison, has no paying job  
4 and no money in his inmate trust account. (Richardson Decl. in  
5 Supp. of Pl.'s Obj. ¶¶ 2-9, ECF No. 149.)

6 The claims tried concerned Plaintiff's allegations that  
7 Defendant, a former correctional officer at California State  
8 Prison-Solano in Vacaville, California, subjected Plaintiff to  
9 excessive force when Defendant was employed as a correctional  
10 officer at that prison. The trial issues involved credibility  
11 determinations concerning whether CSP-Solano Facility III, Yard 3  
12 had a rule in February 2007 that prohibited inmates from bringing  
13 drinks into a dining hall, and whether Defendant used excessive  
14 force against Plaintiff in connection with Defendant's asserted  
15 effort to obtain Plaintiff's compliance with that purported rule.

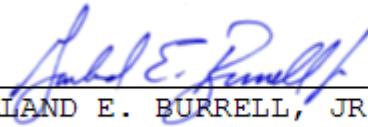
16 Federal Rule of Civil Procedure 54(d)(1) and Local Rule  
17 292 govern the taxation of costs on the losing party, subject to  
18 the requirements of 28 U.S.C. § 1920 (defining taxable costs).  
19 Rule 54(d)(1) prescribes: "[U]nless a federal statute, these  
20 rules, or a court order provides otherwise, costs—other than  
21 attorney's fees—should be allowed to the prevailing party." "By  
22 its terms the rule creates a presumption in favor of awarding  
23 costs to a prevailing party, but vests in the District Court  
24 discretion to refuse to award costs." Ass'n of Mexican-Am.  
25 Educators v. Cal., 231 F.3d 572, 591 (9th Cir. 2000). However,  
26 "[t]hat discretion is not unlimited. A district court must  
27 'specify reasons' for its refusal to award costs." Id.

1           "District courts should consider the financial  
2 resources of the plaintiff and the amount of costs in civil  
3 rights cases." Stanley v. Univ. of S. Cal., 178 F.3d 1069, 1079  
4 (9th Cir. 1999). "Indigency is a factor that the district court  
5 may properly consider in deciding whether to award costs." Id.  
6 Here, Plaintiff avers he is indigent and that "[he] does not have  
7 any reasonable expectation of being able to pay the bill of costs  
8 filed by [D]efendant, whether now or at any time in the  
9 foreseeable future." (Richardson Decl. ¶¶ 3, 9.) Defendant does  
10 not contest that Plaintiff is indigent and without financial  
11 resources to pay costs.

12           Further, here, the court should consider whether "the  
13 imposition of . . . costs on losing civil rights plaintiffs of  
14 modest means may chill civil rights litigation in this area."  
15 Stanley, 178 F.3d at 1080. Although Plaintiff's claims were  
16 rejected by the jury, until the trial on the merits thereof, the  
17 outcome was not obvious. Under the circumstances, the issue of  
18 discouraging others from bringing similar claims because of the  
19 specter of paying costs disfavors requiring Plaintiff to pay the  
20 costs Defendant seeks.

21           For the stated reasons, Plaintiff's objection to  
22 Defendant's Bill of Costs is sustained, and Defendant's request  
23 to recover costs is denied.

24           Dated: October 15, 2013:

25             
26           GARLAND E. BURRELL, JR.  
27           Senior United States District Judge