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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JUAN ESPINOZA,

 Plaintiff,

 v.

CITY OF TRACY, CHIEF OF POLICE
GARY HAMPTON, R. LEON CHURCHILL,
JR., and DOES 1 through 40,
inclusive,

 Defendants.

No. 15-cv-751 WBS KJN

MEMORANDUM AND ORDER RE:
MOTION FOR ATTORNEYS' FEES
AND BILL OF COSTS

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Plaintiff Juan Espinoza filed this action against the City of Tracy ("the City") and City Manager R. Leon Churchill alleging unconstitutional discharge and retaliation under 42 U.S.C. § 1983.¹ (First Am. Compl. (Docket No. 33).) Presently before the court is defendants' Motion for Attorney Fees (Docket No. 81) and defendants' Bill of Costs (Docket No. 80).

¹ The City and Churchill (collectively "defendants") are the only remaining defendant

1 I. Procedural Background

2 Plaintiff filed his initial Complaint on April 6, 2015,
3 and the court dismissed plaintiff's Complaint without prejudice.

4 (Compl. (Docket No. 1); Nov. 15 Order (Docket No. 32).)

5 Plaintiff then filed a First Amended Complaint ("FAC") under 42
6 U.S.C. § 1983 alleging the City and Churchill violated
7 plaintiff's "First, Fourth, and/or Fourteenth Amendment[]" rights
8 against him," by "discriminat[ing]" against him, "retaliati[ng]"
9 against him, denying him "due process," and denying him "Equal
10 Protection of the law." (FAC ¶¶ 49-50, 56-57 (Docket No. 33).)

11 Plaintiff also added two new claims for conspiring to violate
12 plaintiff's constitutional rights in violation of 42 U.S.C. §
13 1985, and for infringing upon plaintiff's rights to make and
14 enforce contracts in violation of 42 U.S.C. § 1985. (FAC ¶¶ 60-
15 68.)

16 The court denied defendant's Motion to Dismiss
17 plaintiff's 42 U.S.C. § 1983 causes of action, but granted
18 defendants' Motion to Dismiss plaintiff's causes of action under
19 § 42 U.S.C. §§ 1981 and 1985. On May 22, 2018, the court granted
20 defendants' Motion for Summary Judgment on plaintiff's remaining
21 causes of action under 42 U.S.C. § 1983. (Docket No. 77.)

22 Plaintiff did not file an opposition to defendant's Motion for
23 Summary Judgment.

24 II. Motion for Attorneys' Fees

25 Defendants now seek \$205,650.00 in attorneys' fees
26 against plaintiff for pursuing a frivolous lawsuit. (Defs.' Mot.
27 for Attorneys' Fees at 2 (Docket No. 81).)

28 Section 1988(b) of Title 42 of the United States Code

1 authorizes the court, in its discretion, to award a "reasonable"
2 attorney's fee to the prevailing party in a case brought under 42
3 U.S.C. § 1983. 42 U.S.C. § 1988(b). While § 1988 makes no
4 distinction between prevailing plaintiffs and defendants, courts
5 have interpreted the statute to treat a prevailing defendant
6 differently from a prevailing plaintiff; fees are not awarded to
7 a defendant routinely or simply because the defendant succeeded.
8 See Tutor-Saliba Corp. v. City of Hailey, 452 F.3d 1055, 1060
9 (9th Cir. 2006). A prevailing defendant in a § 1983 action may
10 be awarded attorneys' fees under § 1988 only when the plaintiff's
11 action is "frivolous, unreasonable, or without foundation." See
12 id. (quoting Christiansburg Garment Co. v. EEOC, 434 U.S. 412,
13 421 (1978)).

14 "A case may be deemed frivolous only when the 'result
15 is obvious or the . . . arguments of error are wholly without
16 merit.'" Karam v. City of Burbank, 352 F.3d 1188, 1195 (9th Cir.
17 2003) (quoting McConnell v. Critchlow, 661 F.2d 116, 118 (9th
18 Cir. 1981)). "A losing § 1983 claim is without merit only if it
19 is 'groundless or without foundation.'" Gibson v. Office of
20 Atty. Gen., 561 F.3d 920, 929 (9th Cir. 2009) (quoting
21 Christiansburg, 434 U.S. at 421)). "A defendant can recover if
22 the plaintiff violates this standard at any point during the
23 litigation, not just at its inception." Galen v. Cty. of Los
24 Angeles, 477 F.3d 652, 666 (9th Cir. 2007). The Ninth Circuit
25 has further recognized that "[a]ttorneys' fees in civil rights
26 cases should only be awarded to a defendant in exceptional
27 circumstances." Barry v. Fowler, 902 F.2d 770, 773 (9th Cir.
28 1990).

1 Here, there is no dispute that defendants are the
2 prevailing party on all claims. Rather, defendants argue that
3 plaintiff's claims were frivolous from the outset of the
4 litigation.² Defendants appear to rely on the court's reasoning
5 in granting summary judgment in arguing that plaintiff's claims
6 were frivolous. However, the Supreme Court has cautioned
7 district courts to "resist the understandable temptation to
8 engage in post hoc reasoning by concluding that, because a
9 plaintiff did not ultimately prevail, his action must have been
10 unreasonable or without foundation." Christiansburg, 434 U.S. at
11 421-22.

12 Furthermore, "in reviewing the pleadings, the Court
13 notes that plaintiff asserted several claims that were not
14 legally or factually baseless." See Pierce, 2013 WL 12174404, at
15 *3. For instance, it is undisputed that defendants searched
16 plaintiffs' work cellphone and that plaintiff was placed on
17 administrative leave. Plaintiff could have reasonably believed
18 that he was subjected to an unlawful search and was placed on
19 administrative leave in retaliation for exercising a protected
20 right. Thus, while the facts and evidence to support plaintiff's
21 allegations may have been insufficient to survive summary
22 judgment, the court cannot say that plaintiff's claims were

23
24 ² To the extent that defendants argue that plaintiff's
25 Fourteenth Amendment claim was frivolous because it was vague and
26 difficult to decipher, the fact that "the pleadings were prolix
27 or difficult to comprehend does not imply that the claims were
28 frivolous" See Pierce v. Santa Maria Joint Union High
Sch. Dist., No. 2:11-cv-9463 SVW FMOX, 2013 WL 12174404, at *2
(C.D. Cal. Jan. 29, 2013).

1 wholly without merit. See Christiansburg, 434 U.S. at 422 (“Even
2 when the law or the facts appear questionable or unfavorable at
3 the outset, a party may have an entirely reasonable ground for
4 bringing suit.”); see also Thomas v. Cty. of Riverside, No. 10-
5 cv-1846 VAP DTBX, 2012 WL 13014613, at *4 (C.D. Cal. Apr. 5,
6 2012) (“[A] few questionable allegations are insufficient to
7 merit a finding that an[] entire claim is frivolous.”).

8 Defendants also point to plaintiff’s failure to
9 present any evidence to support his claims in arguing that
10 plaintiff’s claims were frivolous. However, an inability to
11 present evidence establishing a genuine issue of material fact to
12 defeat summary judgment does not mean that plaintiff’s claims
13 were frivolous. See Karam v. City of Burbank, 352 F.3d 1188,
14 1196 (9th Cir. 2003) (fact that evidence to support theory failed
15 to materialize, and summary judgment is granted in favor of the
16 defendants, did not render claims groundless, without foundation
17 or frivolous, within the meaning of 42 U.S.C. § 1988, plaintiff’s
18 claims).

19 While the court is concerned by plaintiff’s failure to
20 file an opposition to defendants’ Motion for Summary Judgment and
21 provide evidence in support of his case, there is no indication
22 that the plaintiff brought his claims in bad faith.³

23
24 ³ Defendants also express concern over plaintiff’s delay
25 in responding to discovery. However, whether this delay required
26 defendants to incur additional fees has no bearing on whether
27 plaintiff’s claims were frivolous. See Thomas v. Cty. of
28 Riverside, No. 10-cv-01846 VAP DTBX, 2012 WL 13014613, at *4
(C.D. Cal. Apr. 5, 2012) (stating that the considerable cost of
defendants’ efforts “to quench what ultimately proved to be a lot
of smoke with very little, if any, flame” is not a factor the
court uses to determine whether plaintiffs’ claims were

1 Christiansburg, 434 U.S. at 422 (stating that if a plaintiff
2 "brought or continued such a claim in bad faith, there will be an
3 even stronger basis for charging him with the attorney's fees
4 incurred by the defense.") "Given the disfavor to award
5 defendants attorney fees [in civil rights actions], this Court
6 grants [plaintiff] the benefit of the doubt and admonishes his
7 counsel to screen and evaluate critically those cases which [he
8 pursues and continues to pursue." See Murdock v. Cty. of Fresno,
9 No. 09-cv-0547 LJO SMS, 2011 WL 13842, at *6 (E.D. Cal. Jan. 4,
10 2011) (denying attorney's fees where plaintiff lacked evidence to
11 support his discrimination and retaliation claims).

12 For the foregoing reason, the court cannot find that
13 plaintiff's action was frivolous, unreasonable, or wholly without
14 merit.⁴ Accordingly, the court will deny defendant's Motion for
15 Attorney's Fees.

16 III. Bill of Costs

17 After judgment was entered in favor of defendants
18
19 frivolous).

20 ⁴ Defendants appear to ask the court to consider that
21 plaintiff previously filed a meritless state court lawsuit
22 against defendants. In that action, it appears that defendants
23 filed an anti-SLAPP motion to plaintiff's operative Complaint
24 against the City of Tracy and other Tracy employees alleging
25 unlawful employment actions, and plaintiff voluntarily dismissed
26 his lawsuit. (Decl. of Arlin Kachalia (Kachalia Decl.") ¶ 4.)
27 The state court then awarded the City \$24,299.50 in attorney's
28 fees pursuant to the anti-SLAPP statute and ordered plaintiff to
pay the City \$4,590.13 in costs. However, the state court
judge's award of attorneys' fees based on a separate set of facts
in a separate action has no bearing in determining whether to
award attorneys' fees and costs in the instant action.

1 (Docket No. 78), defendants also submitted a Bill of Costs
2 totaling \$6,670.96. (Docket No. 80). Local Rule 292(c) provided
3 plaintiff Juan Espinoza ("Espinoza") with seven days from the
4 date of service to object, and Espinoza did not object.


5 Rule 54(d)(1) of the Federal Rules of Civil Procedure
6 and Local Rule 292 govern the taxation of costs, which are
7 generally subject to limits set under 28 U.S.C. § 1920. See 28
8 U.S.C. § 1920 (enumerating taxable costs); Fed. R. Civ. P.
9 54(d)(1) ("Unless a federal statute, these rules, or a court
10 order provides otherwise, costs--other than attorney's fees--
11 should be allowed to the prevailing party."); E.D. Cal. Local R.
12 292(f); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437,
13 441 (1987) (limiting taxable costs to those enumerated in §
14 1920).

15 Defendants have requested \$6,670.96 in costs based on
16 services that were actually and necessarily performed. After
17 reviewing the bills, and in light of the fact that plaintiff has
18 not objected, the court finds the requested costs to be
19 reasonable.

20 IT IS THEREFORE ORDERED that defendants' Motion for
21 attorney's fees (Docket No. 81) be, and the same hereby is,
22 DENIED.

23 IT IS FURTHER ORDERED that defendants' request for
24 Costs be, and the same hereby is, GRANTED. Costs shall be taxed
25 against plaintiff in the sum of \$6,670.96.

26 Dated: July 19, 2018

27 
28 WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE