

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

JOANNE BLIGHT,
Plaintiff,
v.
CITY OF MANTECA, et al.,
Defendants.

CIV. NO. 2:15-02513 WBS AC
MEMORANDUM AND ORDER RE: BILL OF COSTS

-----oo0oo-----

Plaintiff alleged defendants unreasonably searched her home and seized her in violation of her Fourth and Fourteenth Amendment rights. (Compl. (Docket No. 1).)¹ On October 19, 2017,

¹ In the initial Complaint, plaintiff alleged the following causes of action against all individually named defendants: (1) violation of civil rights under 42 U.S.C. § 1983; (2) violation of federal and state constitutional and statutory rights under California Civil Code § 52.1; (3) false arrest; (4) false imprisonment; (5) intentional infliction of emotional distress; (6) negligence; and (7) invasion of privacy. (Compl. at 1.) Against the City of Manteca, plaintiff alleged a failure to supervise and adequately train officers and detectives under 42

1 the court granted defendants' City of Manteca, Armando Garcia,
2 Ian Osborn, Paul Carmona, and Chris S. Mraz (collectively
3 "defendants") Motion for summary judgment on plaintiff's federal
4 claims under 42 U.S.C. § 1983, and declined to exercise
5 jurisdiction over plaintiff's state law claims. (Mem. and Order
6 Re: M. for Summ. J. (Docket No. 144).) After summary judgment
7 was entered, defendants submitted a Bill of Costs totaling
8 \$6,800.05 for the costs of 14 deposition transcripts. (Docket
9 No. 146). After defendants submitted a Bill of Costs, defendants
10 filed a Notice of Appeal.² (Docket No. 149.) Plaintiff objects
11 to awarding any costs for the depositions arguing that defendants
12 have not yet been conferred "prevailing party status", and even
13 if they have, the court should exercise its discretion to
14 disallow costs. (Pl.'s Opp'n at 2 (Docket No. 147).)

15 Federal Rule of Civil Procedure 54(d)(1) and Local Rule
16 292 govern the taxation of costs to losing parties, which are
17 generally subject to limits set under 28 U.S.C. § 1920. See 28
18 U.S.C. § 1920 (enumerating taxable costs); Fed. R. Civ. P.
19 54(d)(1) ("Unless a federal statute, these rules, or a court

20
21 U.S.C. § 1983. (Id.)

22 ² Even though a Notice of Appeal was filed, this court
23 may still decide whether or not defendants are entitled to their
24 costs under Rule 54(d)(1) See U.S. ex rel. McLean v. County of
25 Santa Clara, Civ. No. 05-01962 HRL, 2012 WL 4717793, at *1 (N.D.
26 Cal. Sept. 28, 2012) ("[A]wards of fees and costs are considered
27 collateral issues over which the district court normally retains
28 jurisdiction even after an appeal divests the court of
jurisdiction over the merits.") (citing Leslie v. Group ICA, 198
F.3d 1153, 1160 (9th Cir. 1999)); Masalosalo v. Stonewall Ins.
Co., 718 F.2d 955, 957 (9th Cir. 1983) ("The district court
retained the power to award attorneys' fees after the notice of
appeal from the decision on the merits had been filed.").

1 order provides otherwise, costs--other than attorney's fees--
2 should be allowed to the prevailing party."); E.D. Cal. Local R.
3 292(f); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437,
4 441 (1987) (limiting taxable costs to those enumerated in §
5 1920).

6 I. Prevailing Party

7 To be a prevailing party, a party must "receive[] a
8 judgment on the merits, or obtain[] a court-ordered consent
9 decree." Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't
10 of Health & Human Res., 532 U.S. 598, 606 (2001) (internal
11 citations omitted). "[T]here is a prevailing party where there
12 has been a material alteration of the legal relationship of the
13 parties." Miles v. State of California, 320 F.3d 986, 989 (9th
14 Cir. 2003) (citing Buckhannon, 532 U.S. at 603) (internal
15 quotations omitted). To be considered the prevailing party, "a
16 litigant need not prevail on every issue" in the case. Hashimoto
17 v. Dalton, 118 F.3d 671, 677 (9th Cir. 1997) (interpreting
18 discretion of court to award attorney's fees) (citation omitted).

19 Defendants prevailed on the federal law claims, because
20 the court granted summary judgment to defendants on the merits of
21 those claims. See Head v. Medford, 62 F.3d 351, 356 (11th Cir.
22 1995) (stating defendants success defeating plaintiff's federal
23 constitutional claims on summary judgment was a judgment on the
24 merits under Rule 54(d)).³ The court notes that the defendants
25 were not a prevailing party on the state law claims, because the
26 court declined to exercise supplemental jurisdiction pursuant to

27 ³ Plaintiff does not dispute the defendants are prevailing
28 parties as to the federal claims.

1 28 U.S.C. 1367(c) (3). See Oscar v. Alaska Dep't of Educ. and
2 Early Develop., 541 F.3d 978 (9th Cir. 2008) (stating "a
3 defendant is not a prevailing party with regard to claims
4 dismissed without prejudice"). However, this fact does not
5 change the court's analysis.

6 While the federal and state law claims rely on the same
7 set of facts, the court's decision to decline to exercise
8 supplemental jurisdiction over the state law claims does not
9 change the fact that defendants are the prevailing party in this
10 action and are therefore entitled to their costs. See Stevens v.
11 Trona Ry. Co., Civ. No. 08-01766 VAPOPX, 2009 WL 10673182, at *2
12 (C.D. Cal. Nov. 20, 2009) (stating "Court's use of its discretion
13 not to exercise supplemental jurisdiction over Plaintiff's
14 remaining state-law claim does not affect Defendant's status as
15 the prevailing party.") (citation omitted); Corridean v. Restore
16 Fin. Servs. Network, LLC, Civ. No. 06-524-HU, 2007 WL 1989622, at
17 *3 (D. Or. July 6, 2007) ("[A]lthough defendants are not
18 prevailing parties on the [state] claims, and although the state
19 and federal claims rest on identical facts . . . the dismissal of
20 the state claims based on this Court's declining to exercise
21 supplemental jurisdiction . . . does not change the fact that
22 defendants are the prevailing party in this federal claim and
23 thus, are entitled to an award of costs") (citations
24 omitted).

25 II. Discretion to Award Costs

26 While Rule 54(d) creates "a presumption for awarding
27 costs to prevailing parties," Save Our Valley v. Sound Transit,
28 335 F.3d 932, 944 (9th Cir. 2003) (citations omitted), Rule

1 54(d) (1) "vests in the district court discretion to refuse to
2 award costs." Ass'n of Mexican-Am. Educators v. State of
3 California, 231 F.3d 572, 591 (9th Cir. 2000) (citing National
4 Info. Servs., Inc. v. TRW, Inc., 51 F.3d 1470, 1471 (9th Cir.
5 1995)). In exercising that discretion, the Ninth Circuit has
6 instructed that:

7 Appropriate reasons for denying costs include (1) the
8 substantial public importance of the case, (2) the closeness
9 and difficulty of the issues in the case, (3) the chilling
10 effect on future similar actions, (4) the plaintiff's
11 limited financial resources, and (5) the economic disparity
12 between the parties. This is not an exhaustive list of good
13 reasons for declining to award costs, but rather a starting
14 point for analysis.

15 Escriba v. Foster Poultry Farms, Inc., 743 F.3d 1236, 1247-48
16 (9th Cir. 2014) (internal citations and quotations omitted). In
17 exercising its discretion, a district court must state the
18 reasons for denying costs to the prevailing party. See
19 Subscription Television, Inc. v. S. Cal. Theatre Owners Ass'n,
20 576 F.2d 230, 234 (9th Cir. 1978).

21 The Ninth Circuit has instructed that "[d]istrict
22 courts should consider the financial resources of the plaintiff
23 and the amount of costs in civil rights cases." Stanley v. Univ.
24 of S. Cal., 178 F.3d 1069, 1079 (9th Cir. 1999). While the
25 plaintiffs do not have to be currently indigent, "the proper
26 inquiry is whether an award of costs might make them so." Rivera
27 v. NIBCO, 701 F. Supp. 2d 1135, 1143 (E.D. Cal. 2010) (Wanger,
28 J.) (citing Stanley, 178 F.3d at 1079-80). The Ninth Circuit has
approved denying costs for the reason that the losing party has
limited financial resources. Ass'n of Mexican-Am. Educators, 231

1 F.3d at 592. See Mansourian v. Bd. of Regents of Univ. of Cal.
2 at Davis, Civ. No. 03-2591 FCD EFB, 566 F. Supp. 2d 1168, 1171
3 (E.D. Cal. July 15, 2008) (Damrell, J.) (denying costs to
4 University where student plaintiffs demonstrated they had limited
5 financial resources and could barely cover their monthly
6 expenses); Nat'l Org. for Women v. Bank of Cal., Nat'l Ass'n, 680
7 F.2d 1291, 1294 (9th Cir. 1982) (stating district court did not
8 abuse its discretion by denying the bank costs by considering the
9 plaintiff's limited budget); Knox v. City of Fresno, 208 F. Supp.
10 3d 1114, 1117 (E.D. Cal. Sept. 22, 2016) (Grosjean, J.) (denying
11 costs and noting that while plaintiffs "did not proceed in forma
12 pauperis and are not completely indigent, Plaintiffs have
13 submitted declarations attesting to their limited financial
14 resources.").

15 Here, plaintiff's argument that she has limited
16 financial means is both compelling and supported by evidence.
17 See Tubbs v. Sacramento County Jail, 258 F.R.D. 657, 661 (E.D.
18 Cal. Aug. 21, 2009) (Karlton, J.) (denying costs where
19 plaintiff's argument that he is indigent was compelling and
20 supported by evidence.) Plaintiff is a seventy-seven year old
21 woman who lives with her husband in a mobile home, and is unable
22 to work due to a tumor behind her eye. (Decl. at 13) Her
23 husband supports the family with his retirement pension and his
24 full-time driving job. (Pl.'s Opp'n at 8.) Plaintiff represents
25 in her declaration that it is difficult to stretch their finances
26 on a monthly basis and itemizes her estimated monthly expenses.

1 (Decl. of Joanne Blight 7-11).⁴ Given plaintiff's representation
2 about her finances, the court agrees that plaintiff's limited
3 financial resources weigh against awarded costs in this action.

4 Additionally, the Ninth Circuit has expressed concern
5 that the "imposition of such high costs on losing civil rights
6 plaintiffs of modest means may chill civil rights litigation in
7 this area." Stanley, 178 F.3d at 1080. Courts have hesitated to
8 award costs against low-wage workers, finding that awarding costs
9 would be a significant disincentive to bring meritorious suits. See
10 Rivera, 701 F. Supp. 2d at 1145 (finding that for a low wage-
11 worker the threat of a \$3,600 cost bill was a significant
12 disincentive to bring suit and risked a chilling effect); Escriba
13 v. Foster Poultry Farms, No. 1:09-CV-1878, 2012 WL 174847, at *6
14 (E.D. Cal. Jan. 20, 2012) (O'Neill, J.), aff'd sub nom. Escriba
15 v. Foster Poultry Farms, Inc., 743 F.3d 1236 (9th Cir. 2014)
16 (finding the threat of a \$13,958.16 cost bill, to a low-wage
17 worker, was a strong disincentive to bring a meritorious suit).
18 Here, the court believes the imposition of costs against the
19 plaintiff may have a chilling effect on others with limited
20 financial means alleging unreasonable searches and seizures.
21 Therefore, the court finds this factor weighs against awarding
22 costs to defendants.

23 The court may also consider the economic disparity
24 between the parties. See Escriba, 743 F.3d at 1248. The court

25
26 ⁴ Plaintiff further represents that she cannot afford to
27 replace her front door that was damaged by the police or the roof
28 on her mobile home, which needs to be replaced. (Decl. of Joanne
Blight ¶¶ 11, 12.)

1 agrees that there is a stark economic disparity between the
2 parties that weighs in favor of denying costs. See Draper v.
3 Rosario, 836 F.3d 1072, 1089 (9th Cir. 2016) (noting the
4 comparison between plaintiff's limited resources--having no money
5 in his prison account, no income, no assets, and owing
6 restitution--with the resources of the State of California.);
7 Mansourian, 566 F. Supp. 2d at 1171 (noting a significant economic
8 disparity between student plaintiffs with limited resources to a
9 University with a substantial budget); Knox, 208 F. Supp. 3d at
10 1117 (noting economic disparity between plaintiffs who submitted
11 declarations attesting to their limited financial resources and
12 the City of Fresno).

13 IT IS THEREFORE ORDERED that defendants' Bill of Costs
14 (Docket No. 146) be, and the same hereby is, DENIED.⁵

15 Dated: November 27, 2017

16 

17 **WILLIAM B. SHUBB**
18 **UNITED STATES DISTRICT JUDGE**

19
20
21
22
23
24
25
26
27 ⁵ Because the court denies costs based on equity
28 considerations, the court does not discuss whether the
depositions taken were reasonably necessary.