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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TODD JONES,)	Case No. 2:17-cv-02128-JAM-KJN
)	
Plaintiff,)	
)	ORDER GRANTING IN PART AND
v.)	DENYING IN PART DEFENDANTS'
)	BILL OF COSTS
COUNTY OF EL DORADO, et al.,)	
)	
Defendants.)	
)	
)	

The County of El Dorado, Teri Monterosso, and Timothy Pappas ("Defendants") request \$8,929.71 in costs resulting from the settlement of Todd Jones' ("Plaintiff") retaliation and defamation claims against them. Bill of Costs, ECF No. 66. Defendants seek costs pursuant to Fed. R. Civ. P. 54(d) and Local Rule 292(f). Id. Plaintiff opposes these costs, arguing that: (1) Plaintiff does not owe costs for the defense of his Fair Employment and Housing Act ("FEHA") claims; (2) Catherine Goddard was not deposed in this case; and (3) Erin Hane's travel costs should not be included. For the reasons stated below, the Court GRANTS IN PART and DENIES IN PART Defendants' bill of costs.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for January 14, 2020.

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 On October 13, 2017, Plaintiff sued Defendants for employment
3 discrimination under 42 U.S.C. § 2000e, discrimination and
4 retaliation under 42 U.S.C. § 1983, discrimination and retaliation
5 under FEHA, and defamation. See Compl., ECF No. 1. Trial
6 commenced two years later. See ECF No. 61. On the first day of
7 trial, Plaintiff voluntarily dismissed his discrimination claims
8 under both federal and state law. Bill of Costs at 2. The case
9 proceeded on the retaliation and defamation claims. Id. Just
10 before the conclusion of Plaintiff's case-in-chief, the parties
11 settled. See ECF No. 65. The case was dismissed with prejudice
12 and Defendants were deemed the prevailing party for the purposes of
13 recovering costs. Id. Per the settlement agreement, Defendants
14 are "entitled to recover their taxable costs up to a maximum of
15 \$8,500." Trial Transcript ("Trial Tr.") ¶ 2, November 1, 2019.
16 Defendants submitted their bill of costs fourteen days later. See
17 ECF No. 66. Plaintiff objects to Defendants' bill of costs. See
18 Objections, ECF No. 67.

19
20 II. OPINION

21 A. Legal Standard

22 Federal Rule of Civil Procedure 54(d) allows for a prevailing
23 party to be awarded taxable costs other than attorneys' fees. Fed.
24 R. Civ. P. 54(d)(1). Taxed costs may include the following:

- 25 (1) Fees of the clerk and marshal;
26 (2) Fees for printed or electronically recorded
27 transcripts necessarily obtained for use in the
28 case;

- 1 (3) Fees and disbursements for printing and witnesses;
- 2 (4) Fees for exemplification and the costs of making
- 3 copies of any materials where the copies are
- 4 necessarily obtained for use in the case;
- 5 (5) Docket fees under section 1923 of this title;
- 6 (6) Compensation of court appointed experts,
- 7 compensation of interpreters, and salaries, fees,
- 8 expenses, and costs of special interpretation
- 9 services under section 1828 of this title.

10 28 U.S.C. § 1920(1)-(6). Federal courts are bound by the
11 limitations set out in 28 U.S.C. § 1821 and § 1920 when taxing
12 expenses as costs. Crawford Fitting Co. v. J. T. Gibbons, Inc.,
13 482 U.S. 437, 445 (1987).

14 While the rule creates a presumption of awarding costs to a
15 prevailing party, district courts have discretion in determining
16 whether and to what extent prevailing parties may be awarded costs.
17 Ass'n of Mexican-Am. Educators v. State of California, 231 F.3d
18 572, 591 (9th Cir. 2000) (en banc). However, "this discretion is
19 not unlimited. A district court must specify reasons for its
20 refusal to award costs." Id. at 592 (internal quotation marks and
21 citation omitted). The reasons specified must "explain why a case
22 is not ordinary and why, in the circumstances, it would be
23 inappropriate or inequitable to award costs." Id. at 593 (internal
24 quotations marks and citation omitted). The losing party bears the
25 burden of providing such reasons to the court. Mansourian v. Bd.
26 of Regents of the Univ. of Cal. At Davis, 566 F.Supp.2d 1168, 1171
27 (E.D. Cal 2008).

28 Reasons for refusing to award costs to a prevailing party

1 include: (1) the losing party's limited financial resources;
2 (2) misconduct on the part of the prevailing party; (3) the
3 chilling effect of imposing such high costs on future civil rights
4 litigants; (4) whether the issues in the case were close and
5 difficult; (5) whether the prevailing party's recovery was nominal
6 or partial; (6) whether the losing party litigated in good faith;
7 and (7) whether the case presented issues of national importance.
8 Quan v. Computer Sciences Corp., 623 F.3d 870, 888-89 (9th Cir.
9 2010) (citation omitted). However, this is not "an exhaustive list
10 of good reasons for declining costs." Ass'n of Mexican-Am.
11 Educators, 231 F.3d at 593 (internal quotation marks omitted).

12 B. Analysis

13 As an initial matter, it is undisputed that Defendants are the
14 prevailing party, see ECF No. 65 ("[D]efendants were deemed the
15 prevailing party for the purposes of recovering costs."), and their
16 request for taxable costs was timely. See E.D. Cal. L.R. 292(b)
17 (specifying that a bill of costs must be filed within 14 days of
18 the entry of judgment); ECF No. 64 (case settled on November 1,
19 2019); ECF No. 66 (bill of costs submitted on November 15, 2019).
20 However, their recoverable taxable costs are capped at \$8,500.
21 Trial Tr. ¶ 2.

22 Defendants request reimbursement for money spent on
23 depositions, copying materials, and witness travel. Bill of Costs
24 at 2-5. These costs are taxable under 28 U.S.C. § 1821 and § 1920.
25 Generally, the assessment of taxable costs "is merely a clerical
26 matter that can be done by the court clerk." Taniguchi v. Kan Pac.
27 Saipan, Ltd., 566 U.S. 560, 573 (2012) (quoting Hairline Creations,
28 Inc. v. Kefalas, 664 F.2d 652, 656 (7th Cir. 1981)). Accordingly,

1 the Court will not use its limited resources to sift through
2 Defendants' undisputed taxable cost submissions when the Local
3 Rules designate authority to tax costs to the Clerk. E.D. Cal.
4 L.R. 292. The Court's consideration of costs, thus, will focus
5 only on Plaintiff's disputed costs.

6 1. Defense of FEHA Claims

7 Plaintiff objects to owing costs for either of the FEHA
8 claims. Objections at 2. Plaintiff argues that, for claims
9 related to FEHA violations, a prevailing defendant may only recover
10 costs where the court makes a finding that the action was
11 "frivolous, unreasonable, or groundless." Id. (citing Gov't. Code
12 § 12965(b); Williams v. Chino Valley Independent Fire Dist., 186
13 Cal. Rptr. 3d 976, 981-88(2015). Williams does, in fact, establish
14 a frivolity requirement for defendants to recover costs in
15 defending FEHA violations. See Williams, 186 Cal. Rptr. 3d at 988.
16 But Plaintiff misses a meaningful distinction between Williams and
17 the case at hand. Williams was in state court. Whereas
18 Plaintiff's claims are in federal court.

19 Federal Rule of Civil Procedure 54(d) provides that "costs—
20 other than attorney's fees—should be allowed to the prevailing
21 party," unless "a federal statute, these rules, or a court order
22 provides otherwise." Fed. R. Civ. P. 54(d)(1). An award of
23 standard costs in federal district court is normally governed by
24 this rule, even in diversity cases. Drumm v. Morningstar, Inc.,
25 695 F.Supp.2d 1014, 1026 (N.D. Cal. 2010) (citing Champion Produce,
26 Inc. v. Ruby Robinson Co., 342 F.3d 1016, 1022 (9th Cir. 2003))
27 (internal quotation marks omitted).

28 An exception to this is when an award of costs is substantive

1 in nature. Clausen v. M/V New Carissa, 339 F.3d 1049, 1064-65 (9th
2 Cir. 2003). When, for example, a damages provision under state law
3 permits prevailing plaintiffs to recover costs as an element of
4 compensatory damages, courts deem costs to be part of the
5 underlying substantive right. Id. Moreover, when "the question of
6 the proper measure of damages is inseparably connected with the
7 right of action," and costs are included in the damages provision,
8 costs also become a substantive right. Id. at 1065 (internal
9 quotation marks and citation omitted). And when a federal court is
10 presented with a choice between a federal cost provision and a
11 state damages provision that includes costs, the substantive state
12 law prevails. Id. at 1064.

13 But costs are not included as an element of damages for a FEHA
14 claim because the law has no substantive damages provision. See
15 State Dep't of Health Servs. v. Superior Court, 31 Cal. 4th 1026,
16 1042 (2003) ("FEHA permits individual suits for damages to enforce
17 its provisions, but it does not specify what damages are
18 recoverable."). Accordingly, costs are not substantive in nature
19 and federal law governs. See Drumm, 695 F.Supp.2d at 1026-27
20 (where the Northern District found that costs were procedural and
21 federal law governed when costs were not included as an element of
22 damages for an unpaid wage claim under California law).

23 As further support that Federal Rule of Civil Procedure 54(d)
24 governs, the Ninth Circuit has applied this Rule to determine
25 whether costs were appropriately awarded in cases involving FEHA
26 violations. See Mauran v. Walmart Inc., 786 Fed.Appx. 671, 675
27 (9th Cir. 2019) (where plaintiff alleged FEHA violations along with
28 other state-law based claims and the court applied Federal Rule of

1 Civil Procedure 54(d) in deciding the district court abused its
2 discretion in awarding costs to Walmart); Stanley v. University of
3 Southern California, 178 F.3d 1069, 1079-80 (9th Cir. 1999) (where
4 plaintiff alleged FEHA violations along with violations of federal
5 statutes and other state law-based claims and the court applied
6 Federal Rule of Civil Procedure 54(d) in deciding the district
7 court abused its discretion in awarding costs to USC).

8 In sum, Federal Rule of Civil Procedure 54(d) governs. The
9 Court is not required to reduce Defendants' award of costs to
10 account for the FEHA claims that remained at the time of trial and
11 therefore declines to reduce Defendants' award of costs for this
12 reason.

13 2. Catherine Goddard's Deposition

14 Plaintiff objects to owing costs for the deposition of witness
15 Catherine Goddard. Objections at 1-2. Goddard was deposed as the
16 plaintiff in her own case against Defendants. Id. Accordingly,
17 Plaintiff argues this cost is not recoverable in his case. Id. at
18 2. The Court agrees. It would be inequitable to hold Plaintiff
19 responsible for the cost of a deposition that was taken in a
20 separate case. The fact that Goddard's deposition was utilized in
21 the instant case is of no consequence. The cost of Goddard's
22 deposition may be recoverable at the conclusion of her case against
23 Defendants.

24 Thus, the Court denies Defendants \$1,502.40 in costs for the
25 deposition of Catherine Goddard.

26 3. Erin Hane's Airfare

27 Plaintiff objects to owing costs for the airfare of witness
28 Erin Hane. Objections at 2. Plaintiff argues that he should not

1 be responsible for the cost of Hane's airfare as she was never
2 called to testify. Id. The Court disagrees. Hane flew to
3 Sacramento prepared to testify on November 1, 2019. Bill of Costs
4 at 4. The case settled unexpectedly that day. Id. But the trial
5 had been ongoing, and Plaintiff was on the verge of resting his
6 case-in-chief. It was entirely reasonable for Defendants to have a
7 witness on hand.

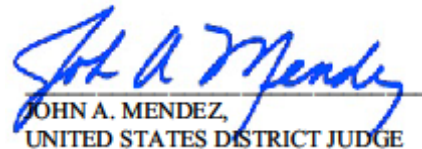
8 Accordingly, the Court grants Defendants \$627.96 in costs for
9 witness Erin Hane's airfare.

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11 III. ORDER

12 For the reasons set forth above, the Court GRANTS IN PART and
13 DENIES IN PART Defendants' Bill of Costs and awards Defendants
14 \$7,427.31 in taxable costs.

15 IT IS SO ORDERED.

16 Dated: January 22, 2020

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE