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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JENNIFER LANDEROS, individually and as successor in interest to DANIEL LANDEROS, Deceased; DEJA LANDEROS, individually and as successor in interest to DANIEL LANDEROS, Deceased; B.M.L., individually and as successor in interest to DANIEL LANDEROS, Deceased, by and through JENNIFER LANDEROS, as Guardian ad Litem; J.J.L., individually and as successor in interest to DANIEL LANDEROS, Deceased, by and through JENNIFER LANDEROS, as Guardian ad Litem; D.F.L., individually and as successor in interest to DANIEL LANDEROS, Deceased, by and through JENNIFER LANDEROS, as Guardian ad Litem; and T.D.L., individually and as successor in interest to DANIEL LANDEROS, Deceased, by and through JENNIFER LANDEROS, as Guardian ad Litem,

Plaintiffs,

v.

SAMUEL SCHAFFER; STEVEN HOLSTAD; JUSTIN PARKER; PATRICK SCOTT; JEREMY BANKS; and CITY OF ELK

No. 2:17-cv-02598 WBS CKD

ORDER RE: BILL OF COSTS

1 GROVE,  
2 Defendants.

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5 Defendants have filed a bill of costs, and plaintiffs  
6 have filed objections. (Docket Nos. 116, 118.)<sup>1</sup>

7 Rule 54(d)(1) of the Federal Rules of Civil Procedure  
8 and Local Civil Rule 54.1 govern the taxation of costs, which are  
9 generally subject to limits set under 28 U.S.C. § 1920. See 28  
10 U.S.C. § 1920 (enumerating taxable costs); Fed. R. Civ. P.  
11 54(d)(1) ("Unless a federal statute, these rules, or a court  
12 order provides otherwise, costs--other than attorney's fees--  
13 should be allowed to the prevailing party."); Crawford Fitting  
14 Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 440-45 (1987) (limiting  
15 taxable costs to those enumerated in § 1920).

16 The court exercises its discretion in determining  
17 whether to allow certain costs. See Amarel v. Connell, 102 F.3d  
18 1494, 1523 (9th Cir. 1996) (district court has discretion to  
19 determine what constitutes a taxable cost within the meaning of §  
20 1920). The losing party has the burden of overcoming the  
21 presumption in favor of awarding costs to the prevailing party.  
22 See Russian River Watershed Prot. Comm. v. City of Santa Rosa,  
23 142 F.3d 1136, 1144 (9th Cir. 1998) (noting that the presumption  
24 "may only be overcome by pointing to some impropriety on the part  
25 of the prevailing party"); Amarel, 102 F.3d at 1523.

26 I. Plaintiffs' Request to Deny All Costs

27 \_\_\_\_\_  
28 <sup>1</sup> Defendants have also filed a reply withdrawing their  
request for certain costs. (Docket No. 119.)

1 Plaintiffs argue that the court should exercise its  
2 discretion to deny all costs because of (1) the “important  
3 constitutional protections” presented by the case and the fact  
4 that it was litigated in good faith; (2) the financial disparity  
5 between the parties and plaintiffs’ limited financial means, and  
6 (3) the potential chilling effect on future litigation if costs  
7 are granted.

8 The court first notes that financial disparity alone is  
9 insufficient to deny costs, given that even plaintiffs proceeding  
10 in forma pauperis are not per se protected from taxation of  
11 costs. See Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir.  
12 1994). The court recognizes that plaintiff Jennifer Landeros is  
13 a single mother supporting her five children, who are also  
14 plaintiffs in this case. However, plaintiffs provide only a bare  
15 assertion that Ms. Landeros earns less than \$1,000 a month and  
16 “can barely support herself and her children with her limited  
17 income and limited Social Security,” without any supporting  
18 documentation. Thus, the financial disparity between the parties  
19 and plaintiffs’ alleged limited financial means are not  
20 sufficient to disallow costs in this case. See, e.g., Fletes v.  
21 City of San Diego, No. 13-cv-2279-JAH(JMA), 2016 WL 6804434, at  
22 \*2-3 (S.D. Cal. July 1, 2016) (requiring plaintiff to prove  
23 indigence through documentation because “mere assertions are  
24 inadequate to demonstrate indigence that would warrant relief  
25 from Plaintiff’s obligation to pay costs”); Ritchie v. Haw. Dep’t  
26 of Pub. Safety, No. 14-46 LEK-KJM, 2017 WL 4172500, at \*3-6 (D.  
27 Haw. Aug. 23, 2017) (plaintiff’s representations regarding her  
28 employment status, current salary, and state of finances were

1 insufficient, without detailed information regarding her assets,  
2 to establish indigency for purposes of bill of costs).

3 The court also rejects as a ground to deny costs  
4 plaintiffs' argument that this case presented important  
5 constitutional protections and was litigated in good faith and  
6 with a reasonable basis. The rules and case law make it clear  
7 that prevailing parties are normally entitled to their costs,  
8 even though most cases are litigated in good faith, and there is  
9 no blanket exception for civil rights cases.

10 The court further rejects plaintiffs' argument that  
11 granting costs will chill future civil rights litigation. It is  
12 true that courts may consider that factor in deciding whether to  
13 award costs. See, e.g., Stanley v. Univ. of S. Cal., 178 F.3d  
14 1069, 1080 (9th Cir. 1999) ("[T]he imposition of such high costs  
15 on losing civil rights plaintiffs of modest means may chill civil  
16 rights litigation . . . ."); Ass'n of Mexican-American Educators  
17 v. California, 231 F.3d 572, 593 (9th Cir. 2000), (discussing  
18 Stanley). However, in the court's opinion, awarding the  
19 requested costs in this case would not have a significant  
20 chilling effect on civil rights litigation of this type, where  
21 the requested costs are relatively low, less than \$10,000, but  
22 the requested recovery was several millions of dollars.<sup>2</sup>

23 Overall, plaintiffs have not met their burden of  
24 showing that costs should not be awarded in this case, and the  
25 court finds that "the reasons for denying costs are not

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26 <sup>2</sup> Indeed, it seems likely that defendants' Bill of  
27 Costs pales in comparison to both sides' legal fees, expert  
28 witness fees, and other expenses incurred during the litigation  
of this case before and during trial.

1 sufficiently persuasive to overcome the presumption in favor of  
2 an award." See Save Our Valley v. Sound Transit, 335 F.3d 932,  
3 945 (9th Cir. 2003) (district court must provide reasons for  
4 denying costs but need not do so if it grants costs, as "[t]he  
5 presumption itself provides all the reason a court needs for  
6 awarding costs"). Accordingly, the court will not deny all costs  
7 and will proceed to examine plaintiffs' specific challenges to  
8 certain items on defendant's Bill of Costs.

9 II. Specific Objections

10 The court notes that in response to plaintiffs'  
11 objections, defendants have reduced the requested witness fee for  
12 Dr. Jason Tovar to the statutory \$40 witness fee, and have  
13 withdrawn their request for \$810 for deposition preparation time  
14 for defense expert George Williams. Accordingly, the court need  
15 not address plaintiffs' objections to those requested costs.

16 The parties continue to dispute whether defendants may  
17 recover \$315.60 for Mr. Williams' deposition transcript. While  
18 it is true that defendants did not call Mr. Williams at trial,  
19 "[w]hether a transcript or deposition is 'necessary' must be  
20 determined in light of the facts known at the time the expense  
21 was incurred." Sunstone Behavioral Health, Inc. v. Alameda Cty.  
22 Med. Ctr., 646 F. Supp. 2d 1206, 1219 (E.D. Cal. 2009) (Shubb,  
23 J.) (citation omitted). Here, obtaining the transcript of Mr.  
24 Williams before trial was reasonable because he was a potential  
25 witness and it was not clear that he would not be called at  
26 trial. See Robinson v. Kia Motors Am., Inc., No. 2:10-cv-3187  
27 SOM, 2016 WL 4474505, at \*2-3 (E.D. Cal. 2016). Accordingly, the  
28 court will not disallow this cost.

1           After reviewing the bill, plaintiffs' objections and  
2 defendants' reply, the court finds the requested costs, as  
3 reduced by defendants' reply, to be reasonable. Accordingly,  
4 costs of \$6,804.10 will be allowed for defendants and are taxed  
5 against plaintiff.

6           IT IS SO ORDERED.

7 Dated: November 21, 2022



8 WILLIAM B. SHUBB  
9 UNITED STATES DISTRICT JUDGE  
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