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3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6

7 HARRY WHITLOCK, *et al.*,

No. C 08-2742 SI

8 Plaintiffs,

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR REVIEW
OF TAXATION OF COSTS**

9 v.

10 PEPSI AMERICAS, *et al.*,

11 Defendants.
12 _____/

13 Plaintiffs' motion for review of the Clerk's taxation of costs is scheduled for a hearing on August
14 27, 2010. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for
15 resolution without oral argument, and VACATES the hearing on this matter.
16

17 **LEGAL STANDARD**

18 28 U.S.C. § 1920 authorizes a judge or clerk of the district court to tax costs. Pursuant to Federal
19 Rule of Civil Procedure 54(d), costs incurred by the prevailing party may be assessed against the losing
20 party as of course and may be taxed by the clerk. "Unless a federal statute, these rules, or a court order
21 provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party." Fed.
22 R. Civ. P. 54(d)(1). "Rule 54(d) creates a presumption in favor of awarding costs to prevailing parties,
23 and it is incumbent upon the losing party to demonstrate why the costs should not be awarded." *Stanley*
24 *v. Univ. of S. Cal.*, 178 F.3d 1069, 1079 (9th Cir. 1999). Taxable costs are listed in 28 U.S.C. § 1920
25 as follows:

26 (1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded
27 transcripts necessarily obtained for use in the case; (3) Fees and disbursements for
28 printing and witnesses; (4) Fees for exemplification and the costs of making copies of
any materials where the copies are necessarily obtained for use in the case; (5) Docket
fees under section 1923 of this title; (6) Compensation of court appointed experts,

1 compensation of interpreters, and salaries, fees, expenses, and costs of special
2 interpretation services under section 1828 of this title.

3 Civil Local Rule 54-3 provides additional “standards for interpreting the costs allowed under section
4 1920.” *Intermedics v. Ventritex, Co.*, No. C-90-20233, 1993 U.S. Dist. LEXIS 17803, at *2 (N.D. Cal.
5 Dec. 2, 1993). Upon motion for review of the Clerk’s taxation of costs, the Clerk’s actions may be
6 reviewed by the Court. Fed. R. Civ. P. 54(d)(1). The taxation of costs lies within the trial court’s
7 discretion. *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996).

8 If the district court wishes to depart from the presumption in favor of awarding costs, it must
9 give reasons for doing so by explaining “why a case is not ‘ordinary’ and why, in the circumstances,
10 it would be inappropriate or inequitable to award costs.” *Assoc. of Mexican-American Educators v.*
11 *Cal.*, 231 F.3d 572, 593 (9th Cir. 2000). District courts may consider a variety of factors in determining
12 whether to exercise their discretion to deny costs to the prevailing party. These factors include great
13 economic disparity between the parties, and the losing party’s limited financial resources. *Id.*

14 DISCUSSION

15 In orders filed October 21, 2009 and January 26, 2010, the Court granted summary judgment in
16 favor of defendants on the claims brought by plaintiffs Melissa Dalton and Leland Chalmers. The Court
17 held that Ms. Dalton’s claims were barred by the statute of limitations, and that because Mr. Chalmers
18 worked at the Remco facility and never lived in Willits, his claims were barred by the Workers
19 Compensation Act. Thereafter, pursuant to 28 U.S.C. § 1920 and Civil Local Rule 54-1, defendants
20 filed a Bill of Costs seeking reimbursement for taxable costs incurred in this action in the amount of
21 \$1,304.80 from Ms. Dalton and \$1,446.25 from Mr. Chalmers. These expenses were related to the costs
22 of taking those plaintiffs’ depositions. Plaintiffs filed objections to the Bill of Costs, asserting the Clerk
23 should exercise its discretion and award no costs because of the important nature of this case, and
24 plaintiffs’ claimed inability to pay. On July 20, 2010, the Clerk issued an order taxing costs in the
25 amount of \$1,279.80 from Ms. Dalton and \$1,403.75 from Mr. Chalmers.

26
27 Plaintiffs then filed the instant motion for review of the Clerk’s taxation of costs. Plaintiffs’
28 motion contends that the Court should deny defendant’s Bill of Costs in its entirety because this case

1 “raises fundamental civil rights issues” and because plaintiffs are extremely poor. Both plaintiffs have
2 submitted declarations stating that their only income is Social Security Disability Insurance, and that
3 after paying for rent, utilities and basic necessities, there is no money remaining. Dalton Decl. ¶ 2;
4 Chalmers Decl. ¶ 2.¹ Both plaintiffs state that they have no savings or other assets. Dalton Decl. ¶ 4;
5 Chalmers Decl. ¶ 4. In addition, Ms. Dalton states that she has cancer. Dalton Decl. ¶ 3. Defendants
6 oppose plaintiffs’ motion on substantive and procedural grounds.

7 The Ninth Circuit has recognized that the district court may properly consider the losing party’s
8 ability to pay in deciding whether to award costs. *See Mexican-American Educators*, 231 F.3d at 593.
9 Based upon plaintiffs’ declarations regarding their financial resources, the Court finds it appropriate to
10 exercise its discretion and reduce the total taxed costs by half, with Mr. Chalmer’s taxed costs at
11 \$733.13 and Ms. Dalton’s taxed costs at \$652.40. While the Court is sympathetic to plaintiffs’ position,
12 the Court does not find it appropriate to entirely deny costs to defendants, as the depositions costs were
13 incurred and are recoverable the applicable statutes and rules. Further, both plaintiffs were dismissed
14 on statutory grounds that should have been anticipated by counsel and explained to plaintiffs prior to
15 filing suit.²

16 **CONCLUSION**

17 For the foregoing reasons, plaintiffs’ motion for review of the Clerk’s taxation of costs is
18 GRANTED IN PART. (Docket No. 134).

19 **IT IS SO ORDERED.**

20 Dated: August 25, 2010

21 
22 _____
23 SUSAN ILLSTON
24 United States District Judge

23 ¹ Defendants correctly note that when these declarations were originally filed, they did not
24 comply with General Order 45 with regard to the signatures. Plaintiffs have since corrected the
25 problem. In addition, plaintiffs’ counsel did not meet and confer with defense counsel prior to filing
26 the instant motion. In this case and the related cases, the Court has repeatedly reminded plaintiffs’
27 counsel of the importance of complying with all applicable rules. The Court declines to find that
28 plaintiffs have waived their objections. However, counsel is once again admonished to follow all
applicable rules.

² It is incumbent on counsel to inform their clients of their potential liability for taxed costs in
the event that defendants prevail. If plaintiffs’ counsel has not already done so, the Court directs
counsel to inform all of the plaintiffs in this action of this possibility.