

1                                    IN THE UNITED STATES DISTRICT COURT  
2  
3                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

4                                    TREMAYNE COLLIER,

5                                    Plaintiff,

6                                    v.

7                                    SHERIFF MICHAEL HENNESSEY, et al.,

8                                    Defendants.  
9 \_\_\_\_\_/

No. C 06-01143 CW

ORDER DENYING  
DEFENDANTS' MOTION  
TO AMEND JUDGMENT  
(Docket No. 194)

10                                    Defendants Sheriff Michael Hennessey, et al., move to amend  
11 the judgment to state that they are entitled to costs. Defendants  
12 contend that the Court manifestly erred because Federal Rule of  
13 Civil Procedure 68 mandates that Plaintiff Tremayne Collier pay  
14 their costs and because the Court denied their recovery of costs  
15 without explanation. Plaintiff opposes Defendants' motion.

16                                    In relevant part, Rule 68 provides, "If the judgment that the  
17 offeree finally obtains is not more favorable than the unaccepted  
18 offer, the offeree must pay the costs incurred after the offer was  
19 made." Fed. R. Civ. P. 68 (d). This provision is "inapplicable in  
20 a case in which the defendant obtains judgment." MRO Commcn's,  
21 Inc. v. Am. Tel. & Tel. Co., 197 F.3d 1276, 1280 (9th Cir. 1999)  
22 (citing Delta Air Lines, Inc. v. August, 450 U.S. 346, 352 (1981)).  
23 "Where a defendant prevails after making an offer of judgment, 'the  
24 trial judge retains his Rule 54(d) discretion.'" MRO, 197 F.3d at  
25 1280 (quoting August, 450 U.S. at 354)). Here, because Defendants  
26 prevailed, Rule 68(d) does not mandate an award of costs.

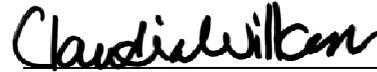
27                                    In this civil rights case, the Court denied Defendants'  
28

1 recovery of costs based on Plaintiff's circumstances. Plaintiff is  
2 currently incarcerated and apparently indigent, which supports the  
3 denial of costs. Stanley v. Univ. of S. Cal., 178 F.3d 1069, 1079-  
4 80 (9th Cir. 1999).

5 For the foregoing reasons, Defendants' motion is DENIED.  
6 (Docket No. 194.)

7 IT IS SO ORDERED.

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9 Dated: 5/9/2011



CLAUDIA WILKEN  
United States District Judge

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