

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  
SOUTHERN DISTRICT OF CALIFORNIA**

GERRY WILLIAMS,  
  
vs.  
C/O DIAZ,  
  
Plaintiff,  
  
Defendant.

CASE NO. 03cv634-WQH-PCL  
ORDER

HAYES, Judge:

The matter before the Court is the motion to review the Order Taxing Costs, filed by Plaintiff, a state prisoner proceeding pro se and *in forma pauperis*. (Doc. # 237).

**BACKGROUND**

On March 5, 2007, based upon a jury verdict returned on February 28, 2007, the Court entered Judgment in favor of Defendant and against Plaintiff. (Doc. # 222).

On March 19, 2007, Defendant filed a Notice of Application to Clerk to Tax Costs. (Doc. # 223).

On March 22, 2007, Plaintiff filed a Notice of Appeal of the Judgment. (Doc. # 225).

On August 20, 2009, the Court of Appeals for the Ninth Circuit issued a mandate affirming the Judgment of this Court. (Doc. # 234).

On September 24, 2009, the Clerk of the Court issued the Order Taxing Costs in favor of Defendant in the amount of \$4,509.18. (Doc. # 235). The Order Taxing Costs states: "Counsels' attention is called to Local Rule 54.1.h which provides in part that a motion to re-tax by any party, in accordance with Rule 54(d), F.R.Civ.P. and Local Rule 7.1, shall be

1 served and filed within five (5) days after receipt of the Order Taxing Costs.” (Doc. # 235 at  
2 2). The docket reflects that a copy of the Order Taxing Costs was served on Plaintiff via U.S.  
3 Mail.

4 On February 22, 2010, the Court received a letter from Plaintiff. (Doc. # 237). In the  
5 letter, Plaintiff states:

6 I am requesting that the ‘Bill of Cost’ be denied ... because I am an indigent  
7 prisoner and cannot afford to pay the ‘Bill of Cost’ and ‘Federal Filing Fees.’ ...  
8 Everytime my family and friends send me money for hygiene[] and canteen the  
9 Prison Inmate Trust Account Office takes all of it for the ‘Bill of Cost’ and  
10 ‘Federal Filing Fees.’ Would you please refuse and deny the ‘Bill of Cost’ as  
11 I cannot afford it.

12 (Doc. # 237 at 1).

13 On March 9, 2010, the Court issued an Order stating that Plaintiff’s February 22, 2010  
14 letter is construed as a motion to review the Order Taxing Costs. (Doc. # 238).

15 On March 22, 2010, Defendant filed an opposition to the Plaintiff’s motion to review  
16 the Order Taxing Costs. (Doc. # 239). Defendant contends:

17 Williams’ motion is untimely. He has waived any ability to contest the award  
18 of costs in this case. Williams has a long, protracted history of prisoner civil  
19 rights litigation. The costs awarded in this case represent only a small fraction  
20 of the expenses California taxpayers have borne to respond to Williams’ many  
21 lawsuits, and that fact, regardless of his indigency, warrants keeping the cost  
22 award in place. Williams is gaming the courts, and did not disclose to this Court  
23 his recent \$10,000 settlement, which is the real money he is seeking to protect  
24 from the costs and fees he has incurred from his litigation over the years.

25 (Doc. # 239 at 5). Defendant attached a copy of a settlement agreement related to a prisoner  
26 civil rights case in the United States District Court for the Northern District of California,  
27 *Williams v. Ross*, Case No. C04-2409. (Doc. # 239, Ex. 1). The settlement agreement, signed  
28 by the defendants in the Northern District action on February 17 and 18, 2010, and signed by  
Plaintiff Gerry Williams on March 18, 2010, provides that the California Department of  
Corrections and Rehabilitation shall pay Plaintiff \$10,000 in exchange for Plaintiff voluntarily  
dismissing the Northern District action with prejudice. Defendant also attached copies of the  
docket sheets from six prisoner civil rights cases filed by Plaintiff in California federal district  
courts. (Doc. # 239, Exs. A-F).

On April 30, 2010, Plaintiff filed a reply in support of his motion to review the Order

1 Taxing Costs. (Doc. # 242). Plaintiff contends that his February 22, 2010 motion was timely  
2 because Plaintiff did not receive notice of the Order Taxing Costs until January 10, 2010.  
3 (Doc. # 242 at 1-2). Plaintiff contends that “each of the civil claims Plaintiff filed in the pas[t]  
4 and present are meritorious,” although in the present case, “Plaintiff just didn’t have the skills  
5 and experience to prove his case.” (Doc. # 242 at 2-3). Plaintiff contends that he did not  
6 inform the Court of the settlement in his motion to review the Order Taxing Costs because he  
7 had not agreed to settle the *Williams v. Ross* action at the time he received notice of the Order  
8 Taxing Costs. (Doc. # 242 at 3).

### 9 DISCUSSION

10 The *in forma pauperis* statute provides: “Judgment may be rendered for costs at the  
11 conclusion of the suit or action as in other proceedings.... If the judgment against a prisoner  
12 includes the payment of costs..., the prisoner shall be required to pay the full amount of the  
13 costs ordered.” 28 U.S.C. § 1915(f)(1)-(2)(A). Federal Rule of Civil Procedure 54 provides  
14 that, “[u]nless ... a court order provides otherwise, costs ... should be allowed to the prevailing  
15 party.... The clerk may tax costs on 14 days’ notice. On motion served within the next 7 days,  
16 the court may review the clerk’s action.” Fed. R. Civ. P. 54(d)(1); *see also* S.D. Cal. L.R.  
17 54.1(h) (same). Rule 54 “creates a presumption in favor of awarding costs to a prevailing  
18 party, but vests in the district court discretion to refuse to award costs.” *Ass’n of*  
19 *Mexican-American Educators v. California*, 231 F.3d 572, 591 (9th Cir. 2000) (en banc). A  
20 court may consider “the losing party’s limited financial resources,” “misconduct on the part  
21 of the prevailing party,” and any “chilling effect of imposing ... high costs on future civil  
22 rights litigants.” *Id.* at 592 (quoting *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079-80 (9th  
23 Cir. 1999)). “[I]t is incumbent upon the losing party to demonstrate why the costs should not  
24 be awarded.” *Stanley*, 178 F.3d at 1079 (citation omitted).

25 Plaintiff filed the motion to review the Order Taxing Costs almost five months after a  
26 copy of the Order Taxing Costs was served on Plaintiff. Accepting Plaintiff’s representation  
27 that he did not receive notice of the Order Taxing Costs until January 10, 2010, Plaintiff did  
28 not file his motion to review the Order Taxing Costs until 43 days later. The Court finds that


1 Plaintiff has waived the right to challenge the Order Taxing Costs by failing to timely file an  
2 objection after receiving notice of the Order. *See* Fed. R. Civ. P. 54(d)(1) (“On motion served  
3 within the next 7 days, the court may review the clerk’s action.”); *Walker v. California*, 200  
4 F.3d 624, 626 (9th Cir. 1999) (“[W]e hold that a party may demand judicial review of a cost  
5 award only if such party has filed a proper motion within the ... period specified in Rule  
6 54(d)(1).”); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow  
7 the same rules of procedure that govern other litigants.”).

8 Even if Plaintiff had timely filed his motion to review the Order Taxing Costs, the  
9 motion would have been denied on the merits. Plaintiff has not demonstrated misconduct on  
10 the part of Defendant, or that costs of \$4,509.18 would have a chilling effect on future civil  
11 rights litigants. *Compare Save Our Valley v. Sound Transit*, 335 F.3d 932, 946 (9th Cir. 2003)  
12 (costs of \$5,310.55 is a “relatively small sum”), *with Ass’n of Mexican-American Educators*,  
13 231 F.3d at 593 (affirming the district court’s denial of \$216,443.67 in costs to a prevailing  
14 defendant because the “extraordinarily high” costs “might have the regrettable effect of  
15 discouraging potential [civil rights] plaintiffs”). Plaintiff has not refuted the evidence that he  
16 will be receiving a settlement of \$10,000. Even without considering the \$10,000 settlement,  
17 Plaintiff has not demonstrated that the Order Taxing Costs will render him without means to  
18 provide for his basic needs. *Cf.* 28 U.S.C. § 1915(f)(2)(B) (providing for payment of costs by  
19 installments as described under § 1915(b)(2)); *Player v. Salas*, No. 04cv1761, 2007 WL  
20 4250015, at \*2 (S.D. Cal., Nov. 30, 2007) (in light of the provision of § 1915 for installment  
21 payments, finding no basis for incarcerated plaintiff’s fear that he would not be able to pay for  
22 hygiene items and postage unless costs were re-taxed).

23 CONCLUSION

24 IT IS HEREBY ORDERED that the motion to review the Order Taxing Costs is  
25 DENIED. (Doc. # 237).

26 DATED: June 11, 2010

27   
28 **WILLIAM Q. HAYES**  
United States District Judge