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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERTO VERA JIMENEZ,)	Civil No. 04cv1833-L(PCL)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION TO RETAX COSTS
v.)	
)	
R. SAMBRANO, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

In this is a prisoner civil rights action regarding a claim for excessive force used during a cell search in violation of the Eighth Amendment, Defendants prevailed after a jury trial. On February 23, 2010, pursuant to Federal Rule of Civil Procedure 54(d), the Clerk issued an Order Taxing Costs in the amount of \$9,771.95. Pursuant to Rule 54(d)(1) and Civil Local Rule 54.1(h), Plaintiff moved to retax costs based on his indigence and the chilling effect of a cost award on other civil rights litigants. For the reasons which follow, Plaintiff’s motion is **GRANTED.**

Under Rule 54(d)(1), “Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.” “[T]he rule creates a presumption in favor of awarding costs to a prevailing party, but vests in the district court discretion to refuse to award costs.” *The Association of Mexican-American Educators v. State of California*, 231 F.3d 572, 579, 591 (9th Cir. 2000) (*en banc*). In a civil


1 rights case, it is an abuse of discretion to deny a losing “plaintiff”s motion to re-tax costs without
2 considering (1) the plaintiff’s limited financial resources; and (2) ‘the chilling effect of imposing
3 such high costs on future civil rights litigants.’” *Id.* at 592, quoting *Stanley v. Univ. of S. Cal.*,
4 178 F.3d 1069, 1079-80 (9th Cir. 1999).

5 Plaintiff is a California state prisoner who filed the case *pro se* and *in forma pauperis*.¹
6 On the other hand, Defendant is represented by the California Attorney General. Plaintiff’s lack
7 of resources and the disparity in resources between the parties are therefore apparent. Although
8 Plaintiff ultimately did not prevail, his action had some merit. It survived a motion to dismiss
9 and a motion for summary judgment. Initially the jury was hung as to one Defendant and only
10 after a second jury trial were both Defendants found not liable. Last, this is a civil rights action
11 alleging Defendants used excessive force against Plaintiff and caused him substantial physical
12 injury. Awarding a large sum of costs against Plaintiff may have a chilling effect on future civil
13 rights litigants. All of the foregoing reasons counsel against awarding costs in this action. *See*
14 *Mexican-American Educators*, 231 F.3d at 593; *Stanley*, 178 F.3d at 1079-80.

15 For the foregoing reasons, Plaintiff’s motion to retax costs is **GRANTED**. No costs shall
16 be awarded in this case.

17 **IT IS SO ORDERED.**

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19 DATED: April 29, 2010

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21 M. James Lorenz
22 United States District Court Judge

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¹ After representing himself for four years and on the eve of trial, Plaintiff was able
to secure *pro bono* counsel.