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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TIFFANY DEHEN, an individual on  
behalf of herself,  
  
Plaintiff,  
  
vs.  
  
JOHN DOES 1-100, TWITTER, INC.,  
UNIVERSITY OF SAN DIEGO, AND  
PERKINS COIE LLP,  
  
Defendants.

CASE NO. 17cv198-LAB (WCG)  
  
**ORDER ON DEHEN’S MEMORANDUM  
FOR CAUSE**

After dismissing with prejudice Plaintiff Tiffany Dehen’s claims against Defendants Twitter, University of San Diego (USD), and Perkins Coie, this Court ordered Dehen to show cause why each of the Defendants’ costs should not be taxed against her. Dkt. 83 at 12. Dehen has now responded. For the reasons below, the Court finds that she has failed to show cause.

Dehen’s response makes a series of scattershot arguments, none of which are availing. Her primary contention appears to be that by dismissing Twitter, the Court has stripped her of the ability to seek recourse against John Doe. See Dkt. 84 at 2 (“The Court dismissed out defendants before Defendant Twitter provided the identifying information of John Doe . . . .”); Dkt. 84 at 3 (“[T]he Court’s order effectively leaves Ms. Dehen with no meaningful legal recourse to pursue legal action in a court of law for which

1 Ms. Dehen has legitimate claims against John Doe . . . .”). First, that’s incorrect. Dehen  
2 has never explained why Twitter needs to be a party to the case in order for her to take  
3 third-party discovery to uncover the identity of Doe. Second, the argument completely  
4 misses the point. Twitter and the other named Defendants “prevailed” in Dehen’s dispute  
5 with each of them individually. Whether she has pending claims against John Doe, or  
6 whether the Court’s dismissal of the named Defendants somehow impacts her claims  
7 against John Doe, is irrelevant to whether the named Defendants, as prevailing parties,  
8 are entitled to recover the costs they expended in defending against her claims.

9 Dehen also cites state trial court orders from Tennessee and New Jersey to  
10 support her argument that the named Defendants are not entitled to costs. *Id.* at 1-2.  
11 These opinions are not on point and have no relevance to whether Defendants may  
12 recover costs under Ninth Circuit law. FRCP 54(d)(1) provides that “costs other than  
13 attorneys’ fees shall be allowed as of course to the prevailing party unless the court  
14 otherwise directs.” As the Ninth Circuit has recognized, “[b]ecause Rule 54(d)(1) states  
15 that costs ‘shall’ be allowed ‘as of course,’ there is a strong presumption in favor of  
16 awarding costs to the prevailing party.” *Miles v. State of California*, 320 F.3d 986, 988  
17 (9th Cir. 2003). Courts within the Ninth Circuit have explicitly held that a dismissal for  
18 failure to state a claim confers “prevailing party” status on a defendant. *See Willis Corroon*  
19 *Corp. of Utah v. United Capitol Ins. Co.*, 1998 WL 196472, at \*3 (N.D. Cal. 1998) (“[W]hen  
20 an action has been dismissed for failure to state a claim, the defendant is the prevailing  
21 party for purposes of an attorney fee award.”). This District’s local rules support the same  
22 finding. Civ. LR 54.1(f) (“The defendant is the prevailing party upon any termination of  
23 the case without judgment for the plaintiff except a voluntary dismissal under Fed. R. Civ.  
24 P 41(a).”).

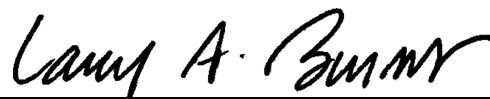
25 The Court takes seriously Dehen’s contention that she is indigent and would be  
26 unable to pay Defendants’ costs. But she should raise that argument in a motion to set  
27 aside an award of costs, not as a basis to prevent Defendants from submitting a bill of  
28 costs altogether. *See Harrison v. Robinson Rancheria Band of Pomo Indians Bus.*

1 *Council*, 2013 WL 6057077, at \*4 (N.D. Cal. 2013) (“In any motion to set aside an award  
2 of costs, this Court will consider demonstrated evidence of indigence as one of several  
3 factors in determining whether to set aside an award, and will balance those factors  
4 against the policy considerations that ordinarily compel the losing party to pay costs to  
5 the prevailing. But the Court cannot conclude on the basis of the current record that any  
6 costs Defendant might seek would necessarily result in severe injustice.”) (internal  
7 quotation marks omitted).

8 In short, the Court finds that Twitter, USD, and Perkins Coie are “prevailing  
9 parties,” and that Dehen has failed to show cause why Defendants’ costs should not be  
10 taxed against her. The Court also finds that there is no reason to delay entry of judgment  
11 as to these Defendants, given (1) the significant differences between Dehen’s (now  
12 dismissed) claims against the named Defendants and her remaining claims against John  
13 Doe, and (2) Dehen’s indication that she intends to appeal. Pursuant to the Court’s Order  
14 of Dismissal, Dkt. 83, the clerk is therefore **ORDERED** to enter judgment in favor of  
15 Twitter, USD, and Perkins Coie. FRCP 54(b). This does not affect Dehen’s remaining  
16 claims against John Doe. Defendants may each submit a bill of costs by **November 9,**  
17 **2018.**

18 **IT IS SO ORDERED.**

19 Dated: October 24, 2018



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HONORABLE LARRY ALAN BURNS  
United States District Judge