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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY BOWOTO *et al.*,
Plaintiffs,

No. C 99-02506 SI

ORDER DENYING BILL OF COSTS

v.

CHEVRON CORPORATION *et al.*,
Defendants.

Defendants have filed a bill of costs. A hearing on the bill of costs is scheduled for April 24, 2009. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court rules as follows.

DISCUSSION

This case arose from events on an oil platform in the Niger Delta of Nigeria in 1998. On December 1, 2008, after a four-week trial and eight and a half years of litigation, the jury returned a verdict for defendants on all claims. Defendants filed a bill of costs on December 16, 2008 [Docket No. 2274] seeking \$485,159.15 in costs. Plaintiffs oppose the bill of costs.

Federal Rule of Civil Procedure 54(d)(1) provides, in relevant part, “costs – other than attorney’s fees – should be allowed to the prevailing party.” *See* Fed. R. Civ. Pro. 54(d)(1). “Rule 54(d) creates a presumption in favor of awarding costs to prevailing parties, and it is incumbent upon the losing party to demonstrate why the costs should not be awarded.” *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079 (9th Cir. 1999). The “requirement that a district court give reasons for denying costs is, in essence, a

1 requirement that the court explain why a case is not ‘ordinary’ and why, in the circumstances, it would
 2 be inappropriate or inequitable to award costs.” *Assoc. of Mexican-American Educators v. California*,
 3 231 F.3d 572, 593 (9th Cir. 2000) (en banc). District courts may consider a variety of factors in
 4 determining whether to exercise their discretion to deny costs to the prevailing party. The Ninth Circuit
 5 has approved the following reasons for refusing to award costs to a prevailing party: great economic
 6 disparity between the parties and the losing party’s limited financial resources, “the chilling effect of
 7 imposing . . . high costs on future civil rights litigants,” and whether the issues raised were close and
 8 complex. *Id.* (collecting cases and quoting *Stanley*, 178 F.3d at 1079).

9
 10 **1. Costs Billed Against Trial Plaintiffs**

11 Here, the plaintiffs who pursued their claims to trial argue that the factors weigh against
 12 awarding costs to defendants.¹ The Court agrees. The economic disparity between plaintiffs, who are
 13 Nigerian villagers, and defendants, international oil companies, cannot be more stark. The trial plaintiffs
 14 have filed declarations attesting that they cannot afford to pay any costs or fees in this case. They have
 15 jobs working in a petrol station (earning as much as \$100 per month), operating a kerosene business
 16 (\$867 per month), doing odd jobs such as cutting or selling firewood, fishing, and construction (\$60
 17 per month); selling spare parts for fishing boats (\$1271 per month); buying and selling fish (\$465 per
 18 month); collecting rent (\$207 per month); buying and reselling clothes (\$567 per month); operating a
 19 small store (\$233 per month); or are students – ten of the plaintiffs are minors – and have no income.
 20 *See* Plaintiffs’ Declarations, Docket Nos. 2300-2309. On these incomes, many of the plaintiffs support
 21 multiple family members. *Id.*

22 Defendants argue that plaintiffs have not provided sufficient evidence to establish that plaintiffs
 23 are indigent. According to defendants, plaintiffs should also have provided the court with evidence of

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 25 ¹ Margaret Irowarinun, Mary Irowarinun, Ola Oyibo, Orioye Irowarinun, Roseline Irowarinun,
 26 Adegoroye Irowarinun, Basse Jeje, Eniyansoro Irowarinu, and Larry Bowoto. Sunday Johnbull
 27 Irowarinun filed a declaration on behalf of the minor children of Sunday’s brother, Arolika Irowarinun:
 28 Temilola, Gbenga, Caleb, Bosuwo, Aminora James, Ibimisan, Monotutegha, and Olamisbode. Ola
 Oyibo filed a declaration on behalf of her minor children Bayo and Deji. The Court assumes that the
 “Eniesoro Irowarinun” listed in defendants’ motion in support of their bill of costs is the same person
 as plaintiff Eniyansoro Irowarinu. For clarity, the Court will refer to this group of plaintiffs as “trial
 plaintiffs.”

1 their assets. Defendants' objection is not well taken. It can reasonably be assumed that plaintiffs do
2 not earn pensions or accrue other significant assets through their work as, for instance, fish sellers in
3 a Nigerian village. Defendants also argue that, because of the low cost of living in Nigeria, plaintiffs'
4 incomes "place them well above the average."² Def. Reply at 5. While the Court accepts that the cost
5 of living is lower in Nigeria than in the United States, defendants' bill of costs seeks reimbursement for
6 witness per diems, service of subpoenas, court reporters, videotaping, transcription, and photocopying
7 in *this* county. The lower cost of living – and correspondingly lower incomes – in Nigeria would
8 therefore suggest that plaintiffs are less able, not more able, to pay these fees, which are calculated
9 according to U.S. standards. The Court finds that the declarations filed in conjunction with the instant
10 motion, as well as evidence at trial about the abject poverty of villagers in Nigeria's Ondo State, is
11 sufficient to establish that plaintiffs are indigent. The Court also finds that it is beyond dispute that there
12 is an extreme economic disparity between plaintiffs and defendants – Chevron Corporations's fourth
13 quarter net income in 2008 was \$4.9 billion; full year 2008 net income was \$23.93 billion. *See* Decl.
14 of Cindy Cohn in Supp. of Pls.' Opp. to Defs.' Bill of Costs ("Cohn Decl."), ex. B.

15 In addition, the Court finds that awarding costs to defendants in this case would have a "chilling
16 effect . . . on future civil rights litigants." *Stanley*, 178 F.3d at 1079. At root, this case was an attempt
17 by impoverished citizens of Nigeria to increase accountability for the activities of American companies
18 in their country. Plaintiffs' ultimate failure at trial does not detract from the fact that this was a civil
19 rights case. The threat of deterring future litigants from prosecuting human rights claims in the future
20 is especially present in a case such as this, where plaintiffs have paltry resources and defendants are
21 large and powerful economic actors.

22 Relatedly, the Court finds that this case presented close and complex questions. Nothing about
23 the case was simple – from determining the applicable law to obtaining permission for plaintiffs to travel
24 abroad, this case presented unique challenges. Defendants contend that plaintiffs' failure at trial
25 demonstrates that their claims never had merit to begin with. The Court disagrees. Plaintiffs survived
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27 ² Defendants cite a World Bank resource that lists the gross national product of Nigeria as
28 amounting to \$930 per capita in 2007. *See* World Bank, *Gross National Income Per Capita 2007* at 3,
available at siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf.

1 a series of intensely litigated summary judgment motions and the evidence presented at trial required
2 the jury to decide a complicated set of facts. The questions that ultimately went to the jury were difficult
3 ones, and the complexity of the case meant that it was expensive both to prosecute and to defend.

4 Accordingly, in light of the Court's finding that plaintiffs cannot afford to pay any costs in this
5 litigation, the threat of deterring future human rights litigants, and the complexity of this unusual case,
6 the Court finds that costs should not be assessed against the trial plaintiffs under Rule 54(d)(1).

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8 **2. Costs Assessed Against Plaintiffs Who Voluntarily Dismissed Their Claims with Prejudice**

9 Defendants' bill of costs also seeks costs from two groups of plaintiffs who voluntarily dismissed
10 their claims with prejudice before trial. The first group consisted of Rhoda Eferasua³, Robinson Uroupa,
11 and Obele Ignoni. On August 16, 2005, the Court granted these plaintiffs' motion to voluntarily dismiss
12 their claims with prejudice. *See* Aug. 16, 2005 Order.

13 The second group consists of the following individuals: Smart Iteimor, Miyensente Oloko,
14 Perebo Oloko, Doubra Oloko, Ebifa Oloko, Gbolo Oloko, Monday Oloko, Silas Oloko, Benson Edekou,
15 Peremobo Okoro, Bralaye Okoro, Anthony Lawuru, Helen Lawuru, Ebi Lawuru, Francis Lawuru, Peter
16 Lawuru, Henry Pabulogba (a.k.a. Berlin Tiemo), Elizabeth Bright, Bakewei Pabulogba, Grace
17 Pabulogba, John Ikenyan, Blessing Ikenyan, Nanamu Ikenyan, Tominibor Ikenyan,⁴ and Yellow
18 Ikenyan.⁵ On March 14, 2008, the Court granted these plaintiffs' motion to voluntarily dismiss their
19 claims with prejudice. *See* Order of Dismissal. [Docket No. 1729]

20 As an initial matter, the Court recognizes that there is some uncertainty as to whether the trial
21 plaintiffs' counsel represented the former plaintiffs when defendants filed the bill of costs, and thus
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25 ³ Rhoda Eferasua was guardian ad litem for Ebiere Eferasua, a minor. Defendants also seek costs from Ebiere Eferasua.

26 ⁴ The Court assumes that the "Tominor Ikenyan" named in defendants' motion in support of their bill of costs is the same person as the "Tominibor Ikenyan" who moved to dismiss his claims in March of 2008.

27 ⁵ Defendants also seek costs from Paul Pabulogba. It is not clear who this individual is. He is
28 not among the trial plaintiffs or the plaintiffs whose claims were dismissed in 2005 or 2008.

1 whether the former plaintiffs have properly been served with the bill.⁶ See Local Civil Rule 54-1 (bill
2 of costs must be filed served within 14 days after entry of judgment). It appears, however, that trial
3 plaintiffs' counsel, who previously also represented the former plaintiffs, had not filed a motion
4 withdrawing from representation before the bill of costs was filed. See Civil Local Rule 11-5(a)
5 ("Counsel may not withdraw from an action until relieved by order of Court after written notice has
6 been given reasonably in advance to the client and to all other parties who have appeared in the case.").
7 The Court will assume that counsel continued to represent the former plaintiffs, at least for the purposes
8 of accepting service of the bill of costs. *Accord Maxwell v. Cooltech, Inc.*, 57 Cal. App. 4th 629, 632
9 (1997) (attorney-client relationship deemed to continue for the purpose of accepting service regarding
10 a motion for costs).

11 The parties also dispute whether costs may be assessed against plaintiffs who voluntarily dismiss
12 their claims with prejudice. In its August 16, 2005 order, the Court found that costs could not be taxed
13 against the plaintiffs who had dismissed their claims with prejudice. See Aug. 16 Order, at *2 (citing
14 *Cauley v. Wilson*, 754 F.2d 769, 772 (7th Cir. 1985) ("Fees are not awarded when a plaintiff obtains a
15 dismissal *with prejudice* because the defendant cannot be made to defend again.") (emphasis in
16 original); *Burnette v. Godshall*, 828 F. Supp. 1439, 1444 (N.D. Cal. 1993)). The Court notes that since
17 deciding the *Cauley v. Wilson* case, the Seventh Circuit held, in *Mother and Father v. Cassidy*, 338 F.3d
18 704, 710 (7th Cir. 2003), that voluntary dismissal under Federal Rule of Civil Procedure 41, even if with
19 prejudice, could not be conditioned on refusal to award prevailing party costs otherwise available under
20 Federal Rule of Civil Procedure 54.⁷

21 However, the Court need not decide this issue because it concludes that costs are not proper
22 under Rule 54. The Court finds that costs should not be taxed against the former plaintiffs for the same
23 reasons that it found costs were not appropriate under Rule 54(d)(1) against the trial plaintiffs. While

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25 ⁶ Judgment was entered on December 3, 2008. Defendants filed their bill of costs on December
26 16, 2008. Defendants attested through their counsel, Caroline Mitchell, that a copy of the bill of costs
27 had been served on all parties through electronic service. See Bill of Costs, at 1. Trial plaintiffs'
28 counsel subsequently informed defendants that counsel no longer represented the two groups of
plaintiffs whose claims had been dismissed and that service of the bill of costs had therefore not been
effectuated on the former plaintiffs. See Cohn Decl., ex. E.

⁷ The Court has not found any specific Ninth Circuit decision on this question.

1 the Court does not have specific evidence about the economic circumstances of the former plaintiffs,
2 the evidence presented at trial was sufficient to establish a presumption that these individuals, who are
3 also villagers in the same region as the trial plaintiffs, are indigent.

4 The Court also finds that assessing costs against the former plaintiffs would have a chilling effect
5 on future human rights litigants. Although defendants imply that the voluntary dismissals are evidence
6 of bad faith on the part of the former plaintiffs, the Court disagrees. The Court never made any findings
7 of bad faith, and it is certainly not uncommon for plaintiffs to dismiss individual claims, or even whole
8 cases, once they have had an opportunity to fully evaluate what discovery has revealed about their cases.
9 In an international human rights case such as this, where the opportunities for misunderstandings from
10 cross-cultural differences, language barriers and technological limitations abound, complete fact finding
11 prior to the filing of a complaint may not be possible. Courts should not discourage plaintiffs from
12 dismissing their claims when it is prudent to do so.

13 Finally, the Court finds that the former plaintiffs' claims were just as complex as the claims that
14 proceeded to trial.

15 For these reasons, the Court finds that costs should not be assessed against the former plaintiffs.

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CONCLUSION

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For the foregoing reasons and good cause shown, the Court DENIES defendants' bill of costs.

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IT IS SO ORDERED.

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Dated: April 22, 2009

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SUSAN ILLSTON
United States District Judge

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