

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 20 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT P. SMITH, III,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA,

Defendant,

And

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION and A. HEDGPETH,

Defendants - Appellees.

No. 12-17019

D.C. No. 3:10-cv-02959-CRB

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, Senior District Judge, Presiding

Submitted November 17, 2014\*\*  
San Francisco, California

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: REINHARDT, THOMAS, and CHRISTEN, Circuit Judges.

In light of the Defendants' concession that they were not "prevailing part[ies]" within the meaning of Federal Rule of Civil Procedure 54(d)(1) and that the award of costs should be reversed, we reverse the award of costs.

**REVERSED.**