

1 costs of the transcripts of Marc Puliuchio, Ramond Grewe, Cameron Lindsay and Eldon
2 Vail as those persons were not used at trial nor did they have any knowledge of the
3 incident.¹ Morgal further asserts that he is indigent (e.g., he is still paying his original
4 filing fees).

5 Williams responds that Morgal has not presented any information or argument that
6 rebuts the presumption that Morgal received the Bill of Costs. Counsel for Williams
7 mailed the Bill of Costs to Morgal on April 25, 2016 (Doc. 208), Exs. A and B. Further,
8 Williams asserts his costs were reasonable and necessary.

9
10 *Notice of Bill of Costs*

11 The applicable rule states: “The clerk may tax costs on 14 days’ notice. On
12 motion served within the next 7 days, the court may review the clerk's action.”
13 Fed.R.Civ.P. 54.1(d)(1). Here, Morgal does not dispute that Defendant sent the Bill of
14 Costs to him. Rather, he only asserts he did not receive a copy from the Clerk of Court.
15 However, the rule does not require that the notice be from the Clerk. The Court finds
16 Morgal received adequate notice of the Bill of Costs.

17 Further, although Morgal’s Objection was not filed within seven days, the Court
18 finds it appropriate to consider Morgal’s Objection.

19
20 *Bill of Costs – Reasonable and Necessary*

21 28 U.S.C. § 1920 authorizes a judge or clerk of the district court to tax costs.
22 Pursuant to Fed.R.Civ.P. 54(d), costs incurred by the prevailing party may be assessed
23 against the losing party and may be taxed by the Clerk. *Lai v. Nw. Mut. Life Ins. Co.*, No.
24 13-CV-05183-SI, 2015 WL 885035, at *1 (N.D. Cal. Feb. 27, 2015). “Unless a federal
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26
27 ¹Morgal asserts that “[a]lthough Anna Jacobs did testify she had nothing substantive to
28 add.” It is not clear if Morgal is objecting to her deposition transcript as well.

1 statute, [the Federal Rules of Civil Procedure], or a court order provides otherwise, costs
2 – other than attorney's fees – should be allowed to the prevailing party.” Fed.R.Civ.P.
3 54(d)(1). “Rule 54(d) creates a presumption in favor of awarding costs to prevailing
4 parties, and it is incumbent upon the losing party to demonstrate why the costs should not
5 be awarded.” *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079 (9th Cir. 1999).

6 Taxable costs are listed in 28 U.S.C. § 1920 as follows:

7 (1) Fees of the clerk and marshal;

8 (2) Fees for printed or electronically recorded transcripts necessarily obtained for
9 use in the case;

10 (3) Fees and disbursements for printing and witnesses;

11 (4) Fees for exemplification and the costs of making copies of any materials where
12 the copies are necessarily obtained for use in the case;

13 (5) Docket fees under section 1923 of this title;

14 (6) Compensation of court appointed experts, compensation of interpreters, and
15 salaries, fees, expenses, and costs of special interpretation services under section
16 1828 of this title.

17 28 U.S.C. § 1920.

18 As to Morgal’s objections to the costs for transcripts that were prepared for several
19 witnesses because they “were not used nor had any knowledge of the alleged incident[,]”
20 (Doc. 205, p. 1), Morgal does not dispute Defendant’s assertion that counsel for Morgal
21 noticed the depositions of Pulicicchio, Grewe, Lindsay, and Jacobs. The Court agrees
22 with Defendant that the costs associated with obtaining copies of the transcripts of those
23 proceedings were both reasonable and necessary. Further, it was because Morgal sought
24 to present expert testimony that the defense was placed in the position of seeking expert
25 Vail (Doc. 113); the Court finds these costs were reasonable and necessary.

26 *Bill of Costs – Discretion of Court*

27 Upon motion for review of the taxation of costs by the clerk, the clerk's actions
28 may be reviewed by the Court. Fed.R.Civ.P. 54(d)(1). The taxation of costs lies within

1 the trial court's discretion. *In re Media Vision Tech. Sees. Litig.*, 913 F.Supp. 1362, 1366
2 (N.D.Cal. 1996). If a district court departs from the presumption in favor of awarding
3 costs, it must give reasons for doing so by explaining “why a case is not ‘ordinary’ and
4 why, in the circumstances, it would be inappropriate or inequitable to award costs.”
5 *Ass'n. of Mexican-American Educators v. Cal.*, 231 F.3d 572, 593 (9th Cir. 2000). A
6 district court may consider a variety of factors in determining whether to exercise its
7 discretion to deny costs to the prevailing party, including great economic disparity
8 between the parties, meritorious claims, public importance of the issues, and the losing
9 party's limited financial resources. *Id.*²

10 The Court also considers that the Ninth Circuit Court of Appeals has stated, “We
11 do not mean to suggest that the presumption in favor of awarding costs to prevailing
12 parties does not apply to defendants in civil rights actions.” *Id.* at 593. Nonetheless, a
13 district court abuses its discretion when it awards costs against a losing plaintiff without
14 considering the plaintiff's limited financial resources. *Id.* at 592; *Stanley*, 178 F.3d at
15 1079–80 (“[d]istrict courts should consider the financial resources of the plaintiff and the
16 amount of costs in civil rights cases[;]” referring to the possibility that the plaintiff
17 “would be rendered indigent should she be forced to pay” the amount assessed against
18 her); *see also Mansourian v. Board of Regents of the Univ. of California at Davis*, 566
19 F.Supp.2d 1168, 1171 (E.D. Cal. 2008) (refusing to award costs against student plaintiffs,
20 noting their “limited financial resources” and that they were barely able to cover their
21 monthly living expenses).

22 This case has public importance. Indeed, “[i]ndividual Eighth Amendment cases
23 are important for safeguarding the rights and safety of prisoners.” *Draper v. Rosario*, —

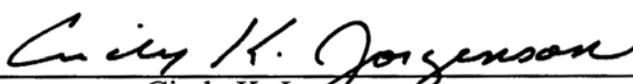
24
25 ²As pointed out by the Ninth Circuit, a prisoner “proceeding in forma pauperis does not,
26 by itself, exempt a prisoner from paying costs. Indeed, 28 U.S.C. § 1915 provides that when
27 costs are awarded against an indigent prisoner, the prisoner will be required to pay those costs
28 on a monthly payment plan of twenty percent of the prisoner's income from the previous month.”
Draper v. Rosario, — F.3d — , 2016 WL 4651407 (9th Cir. September 7, 2016).

1 F.3d —, 2016 WL 4651407 *12 (9th Cir. September 7, 2016) (citations omitted). Further,
2 “[Morgal’s] evidence of an Eighth Amendment violation was sufficient to survive
3 summary judgment. Ultimately, the case turned on which competing account of events
4 the jurors believed.” *Id.* However, it does not appear this case was nearly as close as in
5 *Draper*. In *Draper*, “[a]fter closing arguments, the jury deliberated for the remaining
6 half-day and then for several more hours the next morning before returning a verdict for
7 Rosario.” *Id.* In this case, the jury reached its verdict in less than two hours (Doc. 96).
8 However, the Court also considers the imposition of full costs could have a chilling
9 effect. *Draper*, 2016 WL 4651407 at *12. Lastly, there is a great economic disparity
10 between the parties and Morgal has limited financial resources. *See e.g. Baltimore v.*
11 *Haggins*, No. 1:10-cv-00931, 2014 WL 804463 *2 (E.D.Cal. Feb. 27, 2014) (“Plaintiff’s
12 *in forma pauperis* and incarceration status makes the financial disparity between him and
13 Defendant (a free, employed person, whose defense bills were undoubtedly paid by his
14 employer) self-evident.”). The Court finds it is appropriate to award costs in a reduced
15 amount. *Draper*, 2016 WL 4651407 at *12. In considering these factors, the Court finds
16 this case is not “ordinary” and taxation for the reduced amount of \$1,000 of the costs for
17 Williams and against Morgal to be appropriate.

18 Accordingly, IT IS ORDERED:

- 19 1. Morgal’s Objection to Costs (Doc. 205) is Sustained in Part and Overruled
20 in Part.
- 21 2. The Judgment on Taxation of Costs (Doc. 204) is VACATED. The Clerk
22 of Court is directed to issue a Judgment on Taxation of Costs with costs
23 taxed for Williams and against Morgal in the amount of \$1,000.

24 DATED this 18th day of October, 2016.

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27 _____
Cindy K. Jorgenson
United States District Judge