

1 costs on March 17, 2023, seeking \$4,866.91. (Doc. 247.) Plaintiff filed objections to the bill of
2 costs on April 2, 2023, objecting not to specific cost items but to imposition of any costs under
3 the circumstances, claiming indigence and that imposition of costs could have a chilling effect on
4 other civil rights litigation. (Doc. 248.)¹ Defendant has filed a request (Doc. 249) to file a reply to
5 Plaintiff’s objections, which the Court **GRANTS**; in its discretion and in the interest of fairness,
6 the reply attached to the request for leave has been considered. For the reasons discussed below,
7 Plaintiff’s objections are **SUSTAINED**, and the Court therefore declines to impose costs upon
8 Plaintiff.

9 II. LEGAL STANDARD

10 Costs are awarded to the prevailing party in civil actions as a matter of course absent
11 express statutory provision, “unless the court otherwise directs.” Fed. R. Civ. P. 54(d). The rule
12 creates a presumption for awarding costs to prevailing parties; the losing party must show why
13 costs should not be awarded. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir.
14 2003). “Appropriate reasons for denying costs include: (1) the substantial public importance of
15 the case, (2) the closeness and difficulty of the issues in the case, (3) the chilling effect on future
16 similar actions, (4) the plaintiff’s limited financial resources, and (5) the economic disparity
17 between the parties.” *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1247–48 (9th Cir.
18 2014). This list is not “exhaustive . . . of good reasons for declining to award costs, but rather a
19 starting point for analysis.” *Id.* at 1248 (citation and internal quotation marks omitted).

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21 ¹ Defendant asserts that the objections were untimely under Local Rule 292(c). (Doc. 249 at 2.) Local Rule 292(c)
22 imposes a seven-day deadline upon “[t]he party against whom costs are claimed” to file any “specific objections to
23 claimed items with a statement of grounds for objection.” Taking into consideration any such objections, the Clerk of
24 Court then taxes costs. L. R. 292(d). Once costs are taxed, the taxed party may file a motion, again within seven days,
25 requesting review by the Court. L.R. 292(e). Because Plaintiff does not advance here any “specific objections” that
26 could be addressed by the Clerk, Local. Rule 292(e) arguably covers the situation. *See Jack v. Pearson*, No. 1:17-CV-
27 0520 AWI SAB, 2020 WL 5257605, at *2 (E.D. Cal. Sept. 3, 2020) (“Pursuant to Local Rule 292, the time to file a
28 request for review of the Clerk’s cost award runs from the date that the objecting party receives notice of the award.
See Local Rule 292(e.);”); *Maner v. Cnty. of Stanislaus*, No. 1:14-CV-01014-DAD-MJS, 2016 WL 8730741, at *2
(E.D. Cal. Oct. 28, 2016) (excusing failure to timely file under 292(c) where taxed party was raising general legal
objections to taxation of costs); *Sierra Club v. Tahoe Reg’l Plan. Agency*, No. 2:13-CV-00267 JAM, 2014 WL
3778274, at *3 (E.D. Cal. July 30, 2014) (excusing failure to timely file under L.R. 292(c) where objections at issue
could not be addressed by Clerk of Court). Because costs have not yet been taxed, the motion is not untimely. Even if
Local Rule 292(c)’s deadline applies, the Court would consider the objections because Defendant has not been
prejudiced by the very slight delay of just over one week. In addition, Plaintiff explains in his declaration why he did
not respond to counsel’s communications about this matter in a timely manner. (Doc. 248 at 4 (explaining that he
was worried about being laid off from work, so “did not get back to [counsel] immediately”).)

1 III. DISCUSSION

2 In his objections, Plaintiff generally argues that awarding costs to Defendant may have a
3 chilling effect on other civil rights litigation. (Doc. 248 at 3.) Specifically, Plaintiff avers that he
4 is of modest means. Plaintiff also argues that even though he did not prevail in her case, it does
5 not mean that his claims lacked merit. (*Id.*) Relatedly, Plaintiff contends that he litigated this case
6 in good faith because he defeated Defendant’s motion for summary judgment and conducted
7 extensive discovery. (*Id.* at 3–4.) For all these reasons, Plaintiff argues that Defendant’s bill of
8 costs should be denied in its entirety. (*Id.* at 4.)

9 As mentioned, district courts should consider the financial resources of the plaintiff before
10 awarding costs in civil rights cases. “It is not necessary to find that the plaintiffs in question are
11 currently indigent; rather, the proper inquiry is whether an award of costs might make them so.”
12 *Rivera v. NIBCO*, 701 F. Supp. 2d 1135, 1143 (E.D. Cal. 2010); *see also Mansourian v. Board of*
13 *Regents of the Univ. of Cal. at Davis*, 566 F. Supp. 2d 1168, 1171 (E.D. Cal. 2008) (refusing to
14 award costs against student plaintiffs, noting their “limited financial resources” and that they were
15 barely able to cover their monthly living expenses). Plaintiff submitted a declaration with his
16 objections indicating that in his last pay period prior to the filing of his objections, he earned
17 \$338.27. (Doc. 248 at 5.) His gross earnings this year as of early April were \$8,729.37. (*Id.*)² A
18 supplemental long-form *in forma pauperis* application filed on May 26, 2023 reveals that Plaintiff
19 earns on average \$1,600 per month, has expenses of 1,945 per month, and possesses little to no
20 savings. (Doc 25.) Although Plaintiff is employed, his income is very modest,³ and he lives
21 “paycheck to paycheck.” (Doc. 251.) A costs award of the magnitude requested here would
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23 ² Because Plaintiff did not initially offer many details about his expenses, the Court directed him to file a long-form
24 IFP application. (Doc. 250.) He did not do so by the deadline imposed by the Court. Instead, he filed the long-form
25 application approximately one week late. (Doc. 251.) Counsel has indicated in a declaration attached to the
completed long-form that Plaintiff lost his laptop and was therefore delayed in complying with the Court’s order.
(Doc. 251-1.) Considering this explanation, the Court will consider the information therein.

26 ³ “Many courts look to the federal poverty guidelines set by the United States Department of Health and Human
27 Services as a guidepost in evaluating in forma pauperis applications.” *J.E.S. by Martinez v. Comm’r of Soc. Sec.*, No.
28 1:21-CV-000784-NONE-SAB, 2021 WL 2941570, at *1 (E.D. Cal. July 13, 2021). The 2023 federal poverty
guideline for a household of one is \$14,580. *See* HHS Poverty Guidelines for 2023, <https://aspe.hhs.gov/poverty-guidelines> (last visited May 30, 2023). Though Plaintiff’s income (\$19,200 per year for his household of one) slightly
exceeds this level, his monthly expenses exceed his income.

1 undoubtedly be a significant burden. Plaintiff, as Defendant is aware, was recently released from
2 prison, which undoubtedly complicates his financial situation and employment prospects.

3 Consistent with other courts in this District, the undersigned also concludes that the
4 imposition of a \$4,866.91 costs award may have a chilling effect on future civil-rights litigation.
5 This factor weighs in favor of denying costs. *See Villareal v. Cnty. of Fresno*, No. 1:15-CV-
6 01410-ADA-EPG (PC), 2022 WL 17630790, at *1 (E.D. Cal. Dec. 13, 2022) (finding chilling
7 effect would result from awarding \$1,198.40 costs against a recently incarcerated person);
8 *Berrera v. Sivyser*, No. 2:15-CV-00610-KJM-EFB, 2020 WL 636489, at *1 (E.D. Cal. Feb. 11,
9 2020) (finding chilling effect would result from awarding costs in case where \$4,411.33 request
10 had already been reduced to \$2,264.03 by the Clerk of Court).

11 Regarding the economic disparity between the parties, the defendants' costs were borne
12 by the State of California, which is in a vastly different financial situation than Plaintiff. This
13 factor weighs in favor of denying costs. *See Aguirre v. California*, No. 16-CV-05564-HSG, 2019
14 WL 3544006, at *7 (N.D. Cal. Aug. 2, 2019) (denying costs in part due to "vast economic
15 disparity between [plaintiff's] resources and those of the State of California"), *aff'd*, 842 F. App'x
16 91 (9th Cir. 2021)

17 Even though Plaintiff did not prevail, the Court finds that Plaintiff's claims present an
18 important issue: an Eighth Amendment failure to protect claim premised upon an alleged lack of
19 attention to risks posed to prisoners who claim to have disassociated from a gang. There is
20 authority to support a finding that the claims were "close" for purposes of the relevant analysis
21 because the case survived summary judgment in part. (See Docs 131, 133); *see also Draper v.*
22 *Rosario*, 836 F.3d 1072, 1088 (9th Cir. 2016) (finding this factor weighed in favor of denying
23 costs where a civil rights case "ultimately turn[ed] on the jury's determination of whose account
24 of the event is more credible"). Here, while the jury ultimately sided with Defendant, this case
25 raised important issues about prison housing of former gang members.

26 Finally, there is no indication that Plaintiff acted in bad faith in pursuing this litigation.
27 Though this factor is not dispositive, *see Van Horn v. Dhillon*, No. 08-CV-01622 LJO DLB,
28 2011 WL 66244, at *6 (E.D. Cal. Jan. 10, 2011) (refusing to deny costs on grounds of good faith

1 “because plaintiff was at all times legally and ethically obligated to act in good faith”), all the
2 other factors weigh at least somewhat in favor of denying costs in this case.

3 **IV. CONCLUSION**

4 For all the reasons set forth above,

- 5 1. Defendant’s request to file a reply to Plaintiff’s objections (Doc. 249) is
6 **GRANTED.**
- 7 2. Plaintiff’s objections to the bill of costs (Doc. 248) are **SUSTAINED.**
- 8 3. The Court **DECLINES** to award costs in this case.

9
10 IT IS SO ORDERED.

11 Dated: May 31, 2023


UNITED STATES DISTRICT JUDGE