1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 JUAN MATIAS TORRES, CASE NO. 1:16-cv-01525-LJO-JLT (PC) 11 ORDER DENYING PLAINTIFF'S MOTION Plaintiff, TO STRIKE 12 v. (Doc. 46) 13 CONNIE GIPSON, et al., 14 Defendants. 15 Plaintiff moves to strike the defendants' "counterclaim" for costs of suit and attorneys' fees 16 as frivolous and in bad faith. (Doc. 56.) This motion addresses the defendants' inclusion of a request 17 in their answer for costs of suit and attorneys' fees. See Ans. at 9 (Doc. 51). Defendants have not 18 responded to plaintiff's motion. 19 Turning first to defendants' request for costs, Rule 54(d) of the Federal Rules of Civil 20 Procedure states: "Unless a federal statute, these rules, or a court order provides otherwise, costs— 21 other than attorney's fees—should be allowed to the prevailing party." There is a presumption in 22 favor of awarding costs to the prevailing party, and a district court following the presumption need 23 not specify its reasons for doing so. Save Our Valley v. Sound Transit, 335 F.3d 932, 944-45 (9th 24 Cir. 2003). However, the court may elect not to award costs where the party is indigent or where 25 other compelling circumstances exist. Escriba v. Foster Poultry Farms, Inc., 743 F.3d 1236, 1247-26 48 (9th Cir. 2014). The losing party must demonstrate why costs should not be awarded. Nat'l Info. 27 Servs., Inc. v. TRW, Inc., 51 F.3d 1470, 1471-72 (9th Cir. 1995), overruled on other grounds, Ass'n 28

of Mexican-Am. Educators v. State of California, 231 F.3d 572, 592-3 (9th Cir. 2000). "Appropriate reasons for denying costs include: (1) the substantial public importance of the case, (2) the closeness and difficulty of the issues in the case, (3) the chilling effect on future similar actions, (4) the plaintiff's limited financial resources, and (5) the economic disparity between the parties." <u>Id.</u> This list is not exhaustive, but rather a starting point for analysis. <u>Escriba</u>, 743 F.3d at 1248.

There is no basis shown to strike the defendants' request for costs on grounds of frivolity or bad faith. Indeed, it is premature to analyze whether defendants would be entitled to attorney's fees should they prevail since any such analysis would be speculative. Accordingly, plaintiff's motion to strike defendants' request for costs is DENIED without prejudice.

Concerning defendants' request for attorneys' fees, an award of fees to defendants is only appropriate when "the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." <u>Hughes v. Rowe</u>, 449 U.S. 5, 14 (1980). This is a stringent standard: "[t]he plaintiff's action must be meritless in the sense that it is groundless or without foundation." <u>Id.</u> The Supreme Court has made clear that, in the case of uncounseled prisoners, "attorney's fees should rarely be awarded." <u>Id.</u> at 15. "The fact that a prisoner's complaint, even when liberally construed, cannot survive a motion to dismiss does not, without more, entitle the defendant to attorney's fees. An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." <u>Id.</u>

Again, the court finds no basis in the record to strike this request on grounds of frivolity or bad faith. Moreover, any analysis of the propriety of such a request is premature at this stage considering the defendants have not submitted a motion for attorneys' fees. Accordingly, plaintiff's motion to strike (Doc. 56) is hereby **DENIED** without prejudice.

25 IT IS SO ORDERED.

26 Date

Dated: **October 18, 2018** 

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE