



1 of Mexican-Am. Educators v. State of California, 231 F.3d 572, 592-3 (9th Cir. 2000).  
2 “Appropriate reasons for denying costs include: (1) the substantial public importance of the case,  
3 (2) the closeness and difficulty of the issues in the case, (3) the chilling effect on future similar  
4 actions, (4) the plaintiff’s limited financial resources, and (5) the economic disparity between the  
5 parties.” Id. This list is not exhaustive, but rather a starting point for analysis. Escriba, 743 F.3d at  
6 1248.

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

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

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

24  
25 IT IS SO ORDERED.

26 Dated: October 18, 2018

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE