

1 that follow, the court denies the requested award.

2 II. Legal Standards

3 Rule 54(d)(1) provides that “[u]nless a federal statute, these rules, or a court order
4 provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.”
5 Costs are payable by the nonprevailing party, not his or her counsel, absent a showing of bad faith
6 for which independent monetary sanctions may be imposed.³ Those circumstances are not
7 present here. Accordingly, the undersigned considers the merits of taxing defendant’s requested
8 costs against plaintiff personally.

9 Although Rule 54(d)(1) creates “a presumption for awarding costs to prevailing parties,”
10 the rule “also vests in the district court discretion to refuse to award costs.” Draper v. Rosario,
11 836 F.3d 1072, 1087 (9th Cir. Sept. 7, 2016) (citations and internal quotation marks omitted). In
12 determining whether to exercise this discretion, this court must consider the following:

13 Appropriate reasons for denying costs include: (1) the substantial
14 public importance of the case, (2) the closeness and difficulty of the
15 issues in the case, (3) the chilling effect on future similar actions,
16 (4) the plaintiff’s limited financial resources, and (5) the economic
disparity between the parties. This is not an exhaustive list of good
reasons for declining to award costs, but rather a starting point for
analysis.

17 Draper, 836 F.3d at 1087 (citations and internal quotation marks omitted). In a civil rights case, it
18 is an abuse of discretion to tax costs without considering the nonprevailing party’s indigency and

19
20 requested amount is \$1834.30. The court finds each of the requested costs taxable under the
criteria set forth in Local Rule 292(f).

21 ³ See e.g. Bell v. California, 2003 WL 23784808, at *8, 2003 U.S. Dist. LEXIS 26010, at *24
22 (N.D. Cal. Aug. 26, 2003) (prisoner civil rights case in which defendants prevailed on summary
judgment; the court denied defendants’ request to tax costs against plaintiff’s counsel under Rule
23 54(d)(1) due to “a lack of apposite authority” but imposed monetary sanctions against counsel
under 28 U.S.C. § 1927); accord, Cotterill v. City & County of San Francisco, 2010 WL
24 1223146, at *4, 2010 U.S. Dist. LEXIS 28310, at *13-14 (N.D. Cal. Mar. 10, 2010) (the court
declined to tax costs against the indigent plaintiff under Rule 54(d), but imposed monetary
25 sanctions against plaintiff’s counsel under 28 U.S.C. § 1927), report and recommendation
adopted, 2010 WL 1910528, 2010 U.S. Dist. LEXIS 48774 (N.D. Cal. May 11, 2010), aff’d in
26 part, remanded in part sub nom Haynes v. City & County of San Francisco, 474 Fed. Appx. 689
27 (9th Cir. 2012); see also Haynes v. City & County of San Francisco, 688 F.3d 984, 989 (9th Cir.
2012) (district court may reduce sanctions award under § 1927 based on the attorney’s inability to
28 pay).

1 “the chilling effect of imposing such high costs on future civil rights litigants.” Stanley v.
2 University of Southern California, 178 F.3d 1069, 1079 (9th Cir. 1999).

3 III. Analysis

4 Each of the factors identified in Draper supports the denial of defendant’s request to tax
5 costs against plaintiff. The court addresses each of these factors, concluding with the third factor,
6 the chilling effect on future similar actions if costs are taxed in this case.

7 Prison civil rights suits are matters of substantial public importance. The ability of
8 prisoners to seek redress in the federal courts for the alleged violation of their civil rights
9 encourages prison officials to be vigilant and accountable in operating safe and constructive
10 prisons. “Individual Eighth Amendment cases are important for safeguarding the rights and
11 safety of prisoners.” Draper, 836 F.3d at 1088 (vacating costs award against prisoner following
12 jury trial on his Eighth Amendment claim and remanding for further consideration). Because the
13 majority of prisoners are indigent, their access to the courts on potentially meritorious claims
14 must not be compromised by their fear of incurring costs should they not prevail. Thus, the first
15 factor weighs against an award of costs.

16 The second factor also weighs against an award of costs. The instant case required
17 resolution by a jury. The merits of plaintiff’s claim turned on a factual determination whether
18 defendant’s alleged “force was applied in a good faith effort to maintain or restore discipline or
19 maliciously and sadistically for the very purpose of causing harm.” Whitley v. Albers, 475 U.S.
20 312, 320-21 (1986) (citation and internal quotation marks omitted). As in Draper, plaintiff’s
21 evidence was sufficient to survive summary judgment and “[u]ltimately, the case turned on which
22 competing account of events the jurors believed.” 836 F.3d at 1088.

23 Jumping to the fourth factor, the court finds that it too weighs against an award of costs.
24 Plaintiff remains incarcerated and his financial resources are very limited. According to
25 plaintiff’s sworn affidavit in support of his application to proceed in forma pauperis, plaintiff has
26 no regular source of income; his outstanding legal fines far exceed his limited cash; he has no
27 checking or savings account; and he has no tangible assets. See ECF No. 2. Plaintiff is not
28 employed at his place of incarceration and has no prospects for such employment. According to

1 the First Amended Complaint, plaintiff is physically disabled and, inter alia, experiences chronic
2 back pain for which he is prescribed a wheelchair for use outside his cell. See ECF No. 72-1 at 3.

3 The economic disparity between the parties, the fifth factor for this court's consideration,
4 is marked. As the Ninth Circuit noted in Draper, "[t]here is no comparison between [plaintiff's]
5 limited resources and those of the state of California, which bore the defense costs." 836 F.3d at
6 1089.

7 Finally, the fourth factor also weighs against an award of costs. Awarding costs in this
8 case would have a chilling effect on similar lawsuits. As found by the Ninth Circuit in Draper, id.
9 at 1088-89:

10 Many would-be litigants in Eighth Amendment excessive force
11 cases, like Draper, have virtually no resources. Even those with
12 meritorious cases may choose not to risk an unsuccessful lawsuit
13 that could add to the fees and costs associated with conviction and
14 imprisonment. This is particularly true for those whose cases, like
15 Draper's, ultimately turn on the jury's determination of whose
16 account of the event is more credible. We further note that district
17 courts have routinely declined to award costs against prisoners
18 proceeding in forma pauperis under similar circumstances, citing
19 potential chilling effects. See, e.g., Baltimore v. Haggins, No.
20 1:10-CV-00931-LJO, 2014 WL 804463, at *2 [2014 U.S. LEXIS
21 26141] (E.D. Cal. Feb. 27, 2014) (denying \$1,462.61 in costs and
22 noting that "while this Court is what some may call 'inundated'
with similar cases filed under section 1983 by indigent inmates, the
potential chilling effect of being taxed with costs upon defeat
cannot be ignored in cases such as these"); Meeks v. Parsons, No.
1:03-CV-6700 OWW, 2010 WL 2867847, at *2 [2010 U.S. LEXIS
76261] (E.D. Cal. July 21, 2010) (denying the defendants' motion
to recover costs, in part because "an award has the potential to chill
meritorious civil rights actions"); Jimenez v. Sambrano, No.
04CV1833 L, 2009 WL 937042, at *1 [2009 U.S. LEXIS
28554](S.D. Cal. Apr. 6, 2009) (granting a motion to re-tax costs
because "[a]warding a large sum of costs against Plaintiff may have
a chilling effect on future civil rights litigants").

23 In contrast to the chilling effect that an award of costs in this action would have on prisoners
24 generally, there is no comparable chilling effect on state defendants by denying an award, as they
25 will continue to be represented by the Office of the Attorney General at public expense. Such
26 relatively *di minimis* public expenditures are a cost-effective means for ensuring judicial scrutiny
27 over prison conditions without chilling prisoners' rights to file such suits.

28 ///

