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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Michael L. Taylor; Dilawar Khan; Volena  
Glover-Hale; Manuel Montoya, on behalf  
of themselves and other persons similarly  
situated,

CV 10-08125-PCT-FJM

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**ORDER**

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Plaintiffs,

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vs.

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AutoZone Inc., a Tennessee corporation;  
AutoZone Inc., a Nevada corporation;  
AutoZoners LLC,

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Defendants.

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The court has before it plaintiffs' motion to review clerk's taxation of costs (doc. 292),  
defendants' response (doc. 293), and plaintiffs' reply (doc. 294).

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Plaintiffs filed this Fair Labor Standards Act ("FLSA") collective action, asserting that  
they were entitled to overtime pay as Store Managers of Autozone. We granted summary  
judgment to defendants on all claims (doc. 278). Defendants filed an application for costs  
(doc. 280), to which plaintiffs objected (doc. 283) and defendants responded (doc. 288). The  
Clerk taxed \$66,599.02 in costs against plaintiffs (doc. 291). Plaintiffs move this court to  
review the costs taxed against them.

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Under Rule 54(d)(1), Fed. R. Civ. P., costs are presumptively awarded to the  
prevailing party, although the court has the discretion to deny the award. The losing party  
bears the burden of proof to show why we should not award costs. Save Our Valley v. Sound

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1 Transit, 335 F.3d 932, 944-45 (9th Cir. 2003). Appropriate reasons to deny costs include "(1)  
2 a losing party's limited financial resources; (2) misconduct by the prevailing party; [] (3) the  
3 chilling effect of imposing [] high costs on future civil rights litigants;" (4) "the issues in the  
4 case were close and difficult;" (5) "the prevailing party's recovery was nominal;" (6) "the  
5 losing party litigated in good faith;" and (7) "the case presented a landmark issue of national  
6 importance." Champion Produce, Inc. v. Ruby Robinson Co., Inc., 342 F.3d 1016, 1022 (9th  
7 Cir. 2003) (citations omitted).

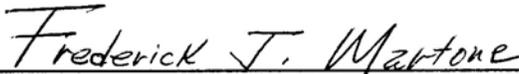
8 Plaintiffs argue in part that their limited financial resources and the potential chilling  
9 effect on FLSA litigation weigh in favor of reversing the Clerk's taxation of costs.  
10 Defendants argue that plaintiffs have not persuasively established that their financial  
11 resources are limited, because plaintiffs have not indicated who is ultimately responsible for  
12 the payment of costs under their fee agreement with counsel. Plaintiffs have not submitted  
13 a copy of the fee agreement or affirmatively confirmed its contents. Although plaintiffs  
14 submitted declarations in support of their opposition to the taxation of costs, these  
15 declarations do not affirmatively state that they will be ultimately responsible for paying the  
16 costs. They simply state that the plaintiffs cannot afford to pay "a judgment" of several  
17 thousand dollars (docs. 284, 285, 286, 287).

18 Plaintiffs argue that "the arrangements that class counsel may have made with their  
19 clients" is not the proper focus. Reply at 3. We disagree. The issue of who will ultimately  
20 incur the taxed costs is directly relevant to two of the factors that the Ninth Circuit (and  
21 plaintiffs) ask us to take into account: the plaintiffs' limited resources (which is irrelevant if  
22 their counsel will cover the costs) and the potential chilling effect on future FLSA litigation.  
23 See Jardin v. DATAlegro, Inc., 08-CV-1462-IEG (WVG), 2011 WL 4835742, at \*4 (S.D.  
24 Cal. Oct. 12, 2011) (denying motion to deny costs in part because plaintiff "has not argued  
25 that he—as opposed to his counsel, pursuant to a fee agreement—will have to pay the cost  
26 award himself"); Tibble v. Edison Int'l, CV-07-5359-SVW (AGRx), 2011 WL 3759927, at  
27 \*3 (C.D. Cal. Aug. 22, 2011) (chilling effect of taxing costs against plaintiffs low because  
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1 plaintiffs not liable for costs under the fee arrangement). Without this information, we  
2 cannot accurately assess whether plaintiffs have overcome Rule 54(d)(1), Fed. R. Civ. P.'s  
3 presumption that costs should be taxed against them.

4 Accordingly, **IT IS ORDERED** that within ten days of the date of this order,  
5 plaintiffs shall submit (1) a sworn declaration or affidavit from plaintiffs' counsel  
6 affirmatively stating who is responsible for payment of the costs taxed by the Clerk under  
7 the fee arrangement; (2) a copy of the fee arrangement between the named plaintiffs and  
8 counsel; and (3) a sworn declaration or affidavit from the four named plaintiffs explicitly  
9 stating whether they will be personally responsible for payment of the costs taxed by the  
10 Clerk.

11 DATED this 8<sup>th</sup> day of June, 2012.

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15 Frederick J. Martone  
16 United States District Judge  
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