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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Richard Brubaker, et al.,

10 Plaintiffs,

11 v.

12 City of Tucson, et al.,

13 Defendants.
14

No. CV-10-00649-TUC-DCB

ORDER

15 The Court denies the request for attorney fees and refers the request for taxable costs
16 to the Clerk of the Court. Fed. R. Civ. P. 54; LRCiv. 54.1. As noted by the Defendants,
17 “[T]he importance of civil rights litigation cannot be overstated. It is often the only leverage
18 that ordinary people have in forcing the government to take the Constitution seriously, and
19 our courts are right to tread lightly in awarding fees lest they chill meritorious litigation.”
20 (Motion (Doc. 199) at 6 (citing *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d
21 1016, 1022 (9th Cir. 2003)). The Defendants assert that the Plaintiff’s case was meritless,
22 and that he failed to accept a reasonable settlement offer and instead sought retribution in
23 the form of protracted litigation. The Court disagrees.


24 While the Court did grant a Rule 50 motion in favor of the Defendants at the end of
25 a four-day jury trial, the Court also denied summary judgment because there was evidence
26 supporting a question of fact material to the disposition of the case. Plaintiff alleged a
27 constitutional violation of the Fourth Amendment to the United States Constitution for
28 damages resulting for an alleged illegal search. Plaintiff alleged that the search warrant was

1 not supported by probable cause because it contained false statements, which were made
2 by the Defendant officers intentionally or with reckless disregard for the truth. In the state
3 courts, an underlying criminal conviction had been dismissed based on a judicial finding
4 that the warrant affidavit contained incorrect information. The constitutional claim hinged,
5 here, on whether any incorrect information in the affidavit was intentional or made in
6 reckless disregard for the truth. After a full hearing of the evidence, this Court dismissed
7 on the merits because there was insufficient evidence for any reasonable jury to find that
8 the Defendants acted with reckless disregard or intentionally to falsify the warrant. This
9 was the basis for the Rule 50 qualified immunity dismissal of the case. The Court has
10 reviewed the record relevant to granting Defendants' Rule 50 motion and finds that its
11 ruling on the merits did not suggest, and the Court did not intend to suggest, that the case
12 lacked merit. (TR: Day 4 at 4-23 (Doc. 205))

13 **Accordingly,**
14 **IT IS ORDERED** that the Motion for Attorney Fees (Doc. 199) is DENIED.
15 **IT IS FURTHER ORDERED** that the question of taxable costs is referred to the
16 Clerk of the Court.

17 Dated this 7th day of May, 2020.

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Honorable David C. Bury
United States District Judge