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CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARONDA GRAHAM, individually)	Case No. CV 10-05059 DDP (Ex)
and as successor-in-)	
interest; SHAR'RHONDA DAVIS,)	
individually and as)	ORDER GRANTING DEFENDANTS' MOTION
successor-in-interest; and)	FOR ATTORNEYS FEES IN PART
DEBORAH JEFFERY,)	
individually,)	
)	
Plaintiffs,)	
)	
v.)	[Dkt. No. 73]
COUNTY OF LOS ANGELES,)	
DEPUTY GRIMES; DEPUTY)	
RANIAG; DEPUTY AUSTIN,)	
DEPUTY GRIFFITH,)	
)	
Defendants.)	
)	

Presently before the court is Defendants' Motion for Attorney Fees. Having considered the submissions of the parties and heard oral argument, the court grants the motion in part and adopts the following order.

I. Background

This action arises from the death of Raynard Davis ("Davis") following an encounter with Los Angeles County Sheriff's deputies, during which Davis was tased twice in the chest. After determining

1 that there were no triable issues of fact, this court granted
2 summary judgment in favor of Defendants. Defendants now seek to
3 recover certain fees incurred as a result of Plaintiffs' allegedly
4 improper failures to adequately respond to Defendants' requests for
5 admission.

6 **II. Legal Standard**

7 Federal Rule of Civil Procedure 37(c)(2) provides in relevant
8 part:

9 If a party fails to admit ... the truth of any matter as
10 requested under Rule 36, and if the party requesting the
11 admissions thereafter proves ... the truth of the matter,
12 the requesting party may apply to the court for an order
13 requiring the other party to pay the reasonable expenses
14 incurred in making that proof, including reasonable
15 attorney's fees. The court shall make the order unless it
finds that (A) the request was held objectionable
pursuant to Rule 36(a), or (B) the admission sought was
of no substantial importance, or (C) the party failing to
admit had reasonable ground to believe that the party
might prevail on the matter, or (D) there was other good
reason for the failure to admit.

16 Fed.R.Civ.P. 37(c)(2); see also Marchand v. Mercy Med. Ctr., 22
17 F.3d 933, 936 (9th Cir. 1994). Courts regularly entertain Rule 37
18 motions both post-trial and following the grant of summary judgment
19 in favor of a requesting party. See, e.g., Read-Rite Corp. V.
20 Burlington Air Express, Inc., 183 F.R.D. 545 (N.D. Cal. 1998);
21 Keithley v. The Home Store.com, Inc., No. C-03-04447 SI, 2008 WL
22 2024977 at *2 (N.D. Cal. May 8, 2008); Mane v. Tri-City Healthcare
23 Dist., No. 05cv397-WQH, 2007 WL 935624 (S.D. Cal. Mar. 21, 2007);
24 Mut. Serv. Ins. Co. v. Frit Inds., Inc., 358 F.3d 1312 (11th Cir.
25 2004); Am. Recovery Corp. v. Looper, Reed, Mark & McGraw, Inc., 164
26 F.3d 623 (4th Cir. 1998); Warren Pub. v. Spurlock, 645 F.Supp.2d
27 402, 445 (E.D. Pa. 2009); Long v. Howard, 561 F.Supp.2d 85, 93

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1 (D.D.C. 2008); Firestone v. Hawker Beechcraft Int'l Serv. Co., No.
2 10-1404-JWL, 2012 WL 899270 (D. Kan. Mar. 16, 2012).

3 In addition, Federal Rule of Civil Procedure 26(g) requires
4 counsel to certify that a particular discovery response is
5 consistent with the law and rules of civil procedure, proper, and
6 reasonable. Fed. R. Civ. P. 26(g)(1)(B). Unjustified violation of
7 this rule may result in an order requiring a party or counsel to
8 pay the reasonable expenses caused by the violation, including
9 fees. Fed. R. Civ. P. 26(g)(3); see also Appling v. State Farm
10 Mut. Auto Ins. Co., 340 F.3d 769, 785-86 (9th Cir. 2003).

11 **III. Discussion**

12 Defendants seek their expenses for twenty-six requests for
13 admission that, Defendants argue, Plaintiffs unjustifiably refused
14 to admit, and which were ultimately proven.

15 Defendants served Plaintiffs with requests for admission on
16 April 22, 2011, well after the filing of the complaint but before
17 the taking of any depositions. As explained in this court's Order
18 granting summary judgment, excessive forces cases such as this one,
19 where a key witness (in this case, Decedent) is unavailable,
20 sometimes turn on the credibility of witness-defendants. As
21 discussed more fully on the record, the majority of the requests at
22 issue here inquired not after objective facts, but rather after
23 contentious, relatively subjective matters. (e.g. Request for
24 Admission No. 20: "Admit that . . . [Decedent] refused to comply
25 with the instructions of . . . Deputies.") Given the early stage of
26 the proceedings and the nature of the suit and relevant
27 information, Plaintiffs had reasonable grounds to believe they
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1 would prevail and good reason to deny the majority of the requests
2 at issue here.

3 Certain requests for admission, however, more properly focused
4 their inquiry on discrete, objective matters that should not have
5 been denied. Request for Admission No. 52, for example, asked
6 Plaintiffs to admit that a specific laboratory test obtained at
7 Antelope Valley Hospital was positive for the presence of alcohol.
8 Requests 54, 55, and 56 sought identical admissions with respect to
9 cocaine, cannabis, and phencyclidine. Request 61 asked Plaintiffs
10 to admit that the coroner's report concluded that Decedent died as
11 a result of "Consequences of Drug Induced Excited Delirium."

12 In response to each of these five requests, Plaintiffs
13 responded with a boilerplate, meritless objection that the request
14 was compound, vague, and ambiguous. Plaintiffs further objected
15 that discovery was ongoing, and that they lacked sufficient
16 information on which to either admit or deny the request for
17 admission. This objection too was unjustified. At the time
18 Plaintiffs submitted their responses, they were already in
19 possession of the autopsy report, police reports, and Decedent's
20 hospital records. As Plaintiffs' counsel acknowledged at trial,
21 Plaintiffs possessed sufficient information to respond to these
22 five very narrow, objective requests for admission.

23 Having concluded that Plaintiffs had no justification for
24 failing to make the five admissions described above, the court must
25 grant Defendants' requests for the reasonable expenses incurred in
26 proving the matters that should have been admitted. Fed. R. Civ.
27 P. 37(c)(2). As described above, Requests 52, 54, 55, 56 and 61
28 were fairly straightforward, and did not require extraordinary

1 proof. The court concludes that Defendants' counsel reasonably
2 expended one hour of effort proving each of the five improperly
3 denied Requests. The court finds Defendants' requested rate of
4 \$155.00 per hour for attorneys' fees reasonable. Accordingly,
5 Plaintiffs and their counsel are ordered to reimburse Defendants
6 the \$775.00 reasonably expended as a result of Plaintiffs'
7 unjustified failure to admit to the five issues discussed herein.
8 Fed. R. Civ. P. 37(c)(2); Fed. R. Civ. P. 26(g).

9 **IV. Conclusion**

10 For the reasons stated above, Defendants' fee motion is
11 GRANTED in part. Defendants shall recover from Plaintiffs and
12 their counsel fees in the amount of \$775.00

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15 IT IS SO ORDERED.

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18 Dated: October 30, 2012

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DEAN D. PREGERSON
United States District Judge

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