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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DORIS RAY KNOX; JERRY WAYNE
12 KNOX; JEREMY EDWARD MOORE,
13 individually and as successor-in-interest to
14 VERONICA LYNN CANTER, deceased,

15 Plaintiffs,

16 v.

17 CITY OF FRESNO, a municipal
18 corporation;
19 EDWARD CHRISTOPHER LOUCHREN,
20 individually and in his capacity as a police
21 officer for the CITY OF FRESNO;
22 DOUGLAS EDWARD COX, individually
23 and in his capacity as a police officer for the
24 CITY OF FRESNO,

25 Defendants.
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Case No. 1:14-cv-00799-EPG

**ORDER ON PLAINTIFFS'
OBJECTIONS TO DEFENDANTS' BILL
OF COSTS**

(ECF Nos. 168, 174, 175)

On May 27, 2014, Plaintiffs filed a complaint against Defendants alleging causes of action under 42 U.S.C. § 1983 arising out of the death of Veronica Canter, the daughter, stepdaughter, and mother of Doris Knox, Jerry Knox, and Jeremy Moore, respectively. The matter came before the Court for a jury trial on June 14, 2016. On June 20, 2016, the jury returned a verdict in favor of Defendants on all causes of action. The Court entered judgment in favor of Defendants shortly thereafter. On June 23, 2016, Defendants submitted a bill of costs, requesting an award of \$14,973.10 in costs. (ECF No. 168.) Plaintiffs filed objections to

1 the bill of costs on June 30, 2016. (ECF No. 174.) Defendants filed a reply and agreed to
2 reduce the amount of costs requested to \$10,812.99. (ECF No. 175.) Plaintiffs' objections to
3 the bill of costs are now before the Court.

4 "Federal Rule of Civil Procedure 54(d)(1) provides that '[u]nless a federal statute, these
5 rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed
6 to the prevailing party.'" *Draper v. Rosario*, No. 14-16340, 2016 WL 4651407, at *11 (9th
7 Cir. Sept. 7, 2016). The Ninth Circuit Court of Appeals has interpreted this rule as creating "a
8 presumption for awarding costs to prevailing parties; the losing party must show why costs
9 should not be awarded." *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 n. 12 (9th Cir.
10 2003). The rule also "vests in the district court discretion to refuse to award costs." *Ass'n of*
11 *Mexican-American Educators v. California*, 231 F.3d 572, 591 (9th Cir. 2000).

12 "Appropriate reasons for denying costs include: (1) the substantial public importance of
13 the case, (2) the closeness and difficulty of the issues in the case, (3) the chilling effect on
14 future similar actions, (4) the plaintiff's limited financial resources, and (5) the economic
15 disparity between the parties. This is not 'an exhaustive list of 'good reasons' for declining to
16 award costs,' but rather a starting point for analysis." *Draper v. Rosario*, No. 14-16340, 2016
17 WL 4651407, at *11 (9th Cir. Sept. 7, 2016), *quoting Escriba v. Foster Poultry Farms, Inc.*,
18 743 F.3d 1236, 1247-48 (9th Cir. 2014). "A losing party need not demonstrate that all five
19 factors weigh against imposing costs." *Id.*

20 Plaintiffs' claims involved allegations that Defendants, police officers for the City of
21 Fresno, violated Veronica Canter's constitutional rights by subjecting her to excessive force
22 and causing her death. Plaintiffs contended that Defendants knew or should have known that
23 Canter was mentally ill or unstable at the time of their encounter and that they should have
24 acted with more restraint in approaching her. The case thus involved a topic of substantial
25 public importance—the situations and circumstances under which police officers can use lethal
26 force against mentally ill individuals. *Mahach-Watkins v. Depee*, 593 F.3d 1054, 1062 (9th
27 Cir. 2010) ("We have difficulty imagining a more important issue than the legality of state-
28 sanctioned force resulting in death. It is obviously of supreme importance to anyone who might

1 be subject to such force. But it is also of great importance to a law enforcement officer who is
2 placed in a situation where deadly force may be appropriate.”); *Washburn v. Fagan*, Case No.
3 C03-00869 MJJ, 2008 WL 361048, at *2 (N.D. Cal. Feb. 11, 2008) (despite lack of *Monell*
4 claims at trial, “action raised important issues regarding how the San Francisco Police
5 Department dealt with, and supervised, excessive force incidents”).

6 The issues in the case were relatively close, as well. The jury was offered conflicting
7 accounts of what transpired after Defendants Louchren and Cox entered the apartment that
8 Canter was in—the officers testified that Canter was brandishing knives from an elevated
9 position on top of a sofa when she was shot and killed, while at least one witness testified that
10 she had not reached an elevated position on the sofa before she was shot. Many witnesses also
11 differed on the timing and sequence of the shots fired by the officers. Much of the jury’s
12 decision thus turned on questions of credibility. While Plaintiffs did not ultimately prevail,
13 their case was not meritless. *Draper*, 2016 WL 4651407 at *12 (award of costs an abuse of
14 discretion where “case turned on which competing account of events the jurors believed”);
15 *Romero v. Frederick*, Case No. C05-03014 MJJ, 2008 WL 142359, at *2 (N.D. Cal. Jan. 14,
16 2008) (“The closeness of the case also leads the Court to conclude that an award of costs would
17 be inequitable in this situation. There was conflicting testimony presented at trial regarding
18 Defendants’ conduct and use of force.”).

19 Two of the factors considered involve Plaintiffs’ financial resources. While Plaintiffs in
20 this case did not proceed *in forma pauperis* and are not completely indigent, Plaintiffs have
21 submitted declarations attesting to their limited financial resources. (ECF Nos. 174-3, 174-4.)
22 They have also been represented in this case by *pro bono* counsel and have not paid any of the
23 expenses incurred in this litigation. Defendants note that the City of Fresno is not “some
24 wealthy corporation” and argues that courts in at least one circuit have rejected the comparison
25 of relative wealth between the parties, but the Ninth Circuit Court of Appeals has explicitly
26 used such comparisons in examining bills of costs. *Draper*, 2016 WL 4651407 at *13
27 (“[Plaintiff] represented himself in this litigation for several years, until the district court
28 appointed pro bono counsel. There is no comparison between Draper’s limited resources and

