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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LISA GARVEY, individually and on  
behalf of others similarly situated,

No. C 11-02575 WHA

Plaintiff,

**ORDER ON PARTIES' MOTIONS  
REGARDING TAXABLE COSTS**

v.

KMART CORPORATION,

Defendant.

Following trial, defendant submitted a bill of costs seeking \$75,603.99 (Dkt. No. 249). The Clerk of the Court taxed \$45,331.19 of the requested costs to plaintiff and denied the remainder (Dkt. No. 272). Plaintiff now moves to strike these costs in their entirety (Dkt. No. 273), and defendant moves for the costs taxed by the clerk to be increased by \$26,999.30 (Dkt. No. 277).

We are faced with a collision of two principles. One is that, under the American Rule, there is no shifting of attorney's fees but the losing party should still pay court costs. The second principle is that a court should be open to public interest litigation and court costs should not be an undue barrier to court access.

Ms. Garvey surely knew that she was at risk of paying court costs in this action. The Court uses its discretion to reduce the taxable court costs to \$20,000. This order takes into consideration the impecunious nature of Ms. Garvey's financial circumstances. Kmart's cross-motion to increase the taxable costs is **DENIED** on the grounds that even if the clerk's office

1 made an error in its initial review of the bill of costs, the Court would still exercise its discretion  
2 to reduce the total to the foregoing amount.

3 Plaintiff's counsel shall insure that the proposed new plaintiffs are aware of the potential  
4 obligation to pay court costs and that they should not count on any reduction. Going forward,  
5 the taxation of costs will be reviewed on a case-by-case basis.

6 Counsel on both sides are ordered to advise the Court if at any time these costs are paid  
7 from any source other than Ms. Garvey or are reimbursed to her. This disclosure obligation  
8 extends indefinitely.

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10 **IT IS SO ORDERED.**

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12 Dated: March 26, 2013.

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15 WILLIAM ALSUP  
16 UNITED STATES DISTRICT JUDGE  
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