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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHRISTINE MYERS, Acting as
guardian ad litem for L. Myers, a
minor,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 02cv1349-BEN

**ORDER GRANTING
PLAINTIFF'S MOTION TO
RE-TAX COSTS (Dkt. No. 588)**

Plaintiff moves the Court pursuant to Fed.R.Civ.P. 54(d) to re-tax costs imposed against the Plaintiff in the amount of \$13,271.06. Plaintiff's motion is granted. No costs are imposed.

DISCUSSION

Rule 54(d)(1) of the Federal Rules of Civil Procedure creates a presumption in favor of awarding costs to a prevailing party. Nevertheless, the Court has discretion to deny costs. Fed.R.Civ.P. 54(d)(1) (“[C]osts other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs.”). The Court may deny costs where the circumstances are such that an award “would be inappropriate or inequitable.” *Champion Produce, Inc. v. Ruby Robinson Co., Inc.*, 342 F.3d 1016, 1022 (9th Cir. 2003). Circumstances justifying the denial of costs include the following: (1) a losing party’s limited financial resources; (2) misconduct by the prevailing party; and (3) ‘the chilling effect of

1 imposing high costs on future civil rights litigants.” *Id.* (quoting *Association of*
2 *Mexican-American Educators v. California*, 231 F.3d 572, 592 (9th Cir. 2000) (en
3 banc)). Other factors for denying costs include that the issues were close and
4 difficult, and that “the case presented a landmark issue of national importance.” *Id.*

5 The Court finds it would not be equitable to award the Government costs
6 against the Plaintiff. In other circumstances, the costs incurred by the Government
7 would be reasonably awarded. But, the issues in this case were close and difficult.
8 The Plaintiff is part of a military family with limited financial resources that is
9 already sacrificing in manifold ways for the benefit of the Government. Moreover,
10 an award of costs in favor of the Government and against Plaintiff could have a
11 chilling effect upon future military families living on military bases considering
12 suits where the Government undertakes potentially hazardous remediation projects.
13 Finally, the presented legal issue of when the discretionary function exception
14 applies is an issue of national importance. The Court finds these factors justify the
15 Court’s exercise of its discretion to deny costs to the Government in this case.

16 **CONCLUSION**

17 For the reasons set forth herein, the Court finds this is an unusual case where
18 an award of costs in favor of a prevailing party defendant would be inequitable.
19 Therefore, the Court GRANTS Plaintiff’s motion to re-tax costs, and vacates the
20 Clerk’s order taxing costs in favor of Defendant. No costs are awarded to the
21 Government defendant.

22 IT IS SO ORDERED.

23 DATED: March 22, 2017

24 
25 Hon. Roger T. Benitez
26 United States District Judge