



1 Officer McCarthy and the City of San Diego are not liable if Officer McCarthy  
2 was justified in killing Victor Ortega in self-defense . . . . Officer McCarthy and  
3 the City of San Diego have the burden of proving by a preponderance of the  
evidence that the killing was justified. If Officer McCarthy and the City of San  
Diego have not met this burden, then self-defense has not been established.<sup>1</sup>

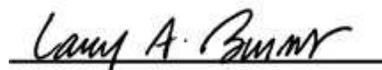
4 The verdict form was clear that the City of San Diego, not just Officer McCarthy, could be  
5 found liable. Specifically, the jury was asked if “Jonathan McCarthy and the City of San  
6 Diego” were liable for battery and wrongful death. Jurors unanimously answered “no.” Both  
7 the verdict form and the jury instructions made it clear that the City of San Diego was on the  
8 hook for any damages if the jury found Officer McCarthy violated the law.

9 The potential issues Ortega identifies are also frivolous for another reason: if the jury  
10 thought McCarthy was liable, but hesitated to find against him because jurors were  
11 concerned that he would have to pay a judgment, the jury could have found him liable and  
12 awarded only a small sum of money that they thought he could afford. But they didn't. The  
13 Court finds nothing to support Ortega's contention that the specter of Officer McCarthy's  
14 personal liability may have influenced the jury's decision.

15 Courts have the “power to protect the public from having to pay heavy costs incident  
16 to the inclusion of ‘wholly unnecessary’ matters in an in forma pauperis appeal.” *Adkins v.*  
17 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 337 (1948). Because the Court finds that  
18 Ortega's contentions aren't supported by the record, her request to proceed in forma  
19 pauperis is **DENIED**.

20 **IT IS SO ORDERED.**

21  
22 DATED: May 4, 2017

23 

24 **HONORABLE LARRY ALAN Burns**  
25 United States District Judge

26 \_\_\_\_\_  
27 <sup>1</sup> Dkt. 180, Instruction No.18. See also Instruction No.14 (“Ortega claims that Officer  
28 McCarthy battered Victor Ortega . . . and McCarthy and the City of San Diego are liable for  
this injury.”); Instruction No.15 (“Ortega's Heirs also claim that Officer McCarthy and the City  
of San Diego are responsible for the wrongful death of Victor Ortega.”).