

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.¹


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 ¹ 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.”).