

No. 24-2217

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLISON RICE

*Plaintiff-Appellant,*

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.

*Defendants-Appellees.*

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**APPELLEES' OPPOSITION BRIEF**

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On Appeal from the United States District Court  
for the Northern District of California  
No. 3:19-cv-04250-LB  
The Honorable Laurel Beeler

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## INTRODUCTION

Defendant/Appellee City and County of San Francisco (the “City”) prevailed at trial, and as the prevailing party, is entitled to its costs under Federal Rule of Civil Procedure 54(d)(1). Following trial, the City submitted a detailed and valid request for Bill of Costs. 3-SER-473–512. Plaintiff/Appellant Allison Barton Rice (“Rice”) filed a Motion to Deny Costs<sup>1</sup>, arguing the district court should deny the City its costs on the grounds specified in *Association of Mexican-American Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000). The district court observed that Rule 54(d)(1) creates a presumption in favor of awarding the prevailing party its costs, and concluded that the other grounds did not justify denying costs. In so holding, the district court applied the correct legal standard, and acted well-within its discretion. This Court should affirm.

## RELEVANT BACKGROUND

On June 22, 2023, after a four-day trial in which Rice was represented by counsel, a jury rejected Rice’s claims under the Fair Housing Act and returned a verdict in favor of the City. 3-SER-522–23. The district court entered judgment on June 26, 2023. 3-SER-521. On July 10, 2023, the City timely filed its Bill of Costs, which included reasonable expenses incurred during the litigation of the case. 3-SER-473–512. Rice filed a motion to stay the proceedings, including the adjudication of the City’s Bill of Costs. 3-SER-464–66. The district court deferred “consideration of the stay until the plaintiff renews the issue following any opposition to the clerk’s taxation of costs,” and ordered Rice to submit an

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<sup>1</sup> Submitted as “Plaintiff’s Notice Of Motion And Motion For Court Hearing To Deny Defendant’s Bill Of Costs Because Of Impropriety, Plaintiffs Limited Financial Resources, Close Or Difficult Issues, Chilling Effect On Civil Rights Plaintiffs Of Modest Means, And Presentation Of A Landmark Issue Of National Importance” (hereafter referred to as “Motion to Deny Costs”). 3-SER-397–428.

opposition to the taxation of costs and any renewed motion to stay by November 16, 2023. 3-SER-460-63. On November 8, 2023, Rice filed an Objection to the City's Bill of Costs ("Objection"). 3-SER-429-59. On November 15, 2023, the City filed a Reply to Rice's Objection, identifying procedural defects with the Objection. 3-SER-392-94. On November 16, 2023, Rice filed a Response to the City's Reply, in which he admits he failed to comply with Northern District Local Rules 54-2(a-b). 3-SER-389-91.

On November 12, 2023, Rice also filed a Motion to Deny Costs, which was essentially a re-filing of the Objection, but under a different title. 3-SER-397-428. On November 22, 2023, Rice filed a Motion to Amend the Motion to Deny Costs, pointing the Court's attention to *Green v. Mercy Housing, Inc.*, 991 F.3d 1056 (9th Cir. 2021) ("*Green*"). 3-SER-386-88. On November 27, 2023, the City filed an Opposition to Rice's Motion to Deny Costs. 3-SER-328-42. On December 4, 2023, Rice filed a Reply. 2-SER-193-216.

On March 31, 2024, the district court issued an order awarding the City costs in the amount of \$19,469.61. 1-SER-2-7 (hereinafter, "Order"). Rice appeals. Because the district court applied the correct legal standards and acted within its discretion in awarding costs, this Court should affirm.

### **STANDARD OF REVIEW**

The Ninth Circuit reviews an award of costs for an abuse of discretion. *Garcia v. Gateway Hotel L.P.*, 82 F.4th 750, 753 (9th Cir. 2023). "A district court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." *Id.* (quotation omitted). This Court reviews de novo "the threshold question of the applicable legal standard for awarding costs." *Id.* (citing *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1059-60 (9th Cir. 2006)).

## ARGUMENT

### I. THE DISTRICT COURT APPLIED THE CORRECT LEGAL STANDARD IN AWARDING COSTS

The district court correctly applied Federal Rule of Civil Procedure 54(d)(1) and relevant Ninth Circuit law in awarding costs. The district court observed that it has the discretion to deny costs, and considered Rice’s arguments for denying costs under *Association of Mexican-American Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000). 1-SER-3–7. However, the district court concluded that these factors did not warrant a departure from the general rule of awarding costs to the prevailing party, the City. This Court should affirm.

#### A. Federal Rule Of Civil Procedure 54(d)(1) Sets The Legal Standard And Establishes A Strong Presumption In Favor Of Awarding Costs

Federal Rule of Civil Procedure 54(d)(1) creates a strong presumption in favor of awarding costs to the prevailing party. *Ass’n of Mexican-Am. Educators*, 231 F.3d at 591; *Miles v. California*, 320 F.3d 986, 988 (9th Cir. 2003). Costs are recoverable by the prevailing party “unless a federal statute, these rules, or a court order provides otherwise . . . .” Fed. R. Civ. P. 54(d)(1). Importantly, the district court need not explain its reasons for awarding costs to the prevailing party consistent with Rule 54. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003) (“The presumption itself provides all the reason a court needs for awarding costs. . . .”).

Setting aside this presumption, the district court retains discretion to refuse to award costs. *See Ass’n of Mexican-Am. Educators*, 231 F.3d at 591. The Ninth Circuit has recognized several reasons for denying costs to a prevailing party, including: misconduct on the part of the prevailing party; the losing party’s limited financial resources; close and difficult issues in the case; and the potential chilling effect of imposing high costs on future civil rights litigants. *Id.* at 592. Because costs generally are awarded “as a matter of course,” the district court must give

reasons for denying costs, and this requirement “is, in essence, a requirement that the court explain why a case is not ‘ordinary’ and why, in the circumstances, it would be inappropriate or inequitable to award costs.” *Id.* at 593; *see also, Berkla v. Corel Corp.*, 302 F.3d 909, 921 (9th Cir. 2002) (district court exercising discretion to deny costs must “specify reasons”). The non-prevailing party has the burden of overcoming the presumption by affirmatively showing that the prevailing party is not entitled to costs (*i.e.*, by demonstrating a valid reason). *Save Our Valley*, 335 F.3d at 944–45.

Here, the City prevailed on all of Rice’s claims at trial, and is presumptively entitled to its costs. Rice failed to meet his burden in overcoming this presumption. Accordingly, the district court properly awarded costs to the City. This Court should affirm.

**B. *Green v. Mercy Housing, Inc.* Does Not Set The Legal Standard For Recovery Of Costs**

Rice argues that *Green v. Mercy Housing, Inc.*, 991 F.3d 1056 (9th Cir. 2021) sets the standard for recovery of costs, and the district court erred in awarding costs because his case was not “frivolous, unreasonable, or groundless.” Appellant’s Informal Opening Brief (hereinafter, “Opening Brief”) at 10-13. However, this Court effectively overruled *Green* in the subsequent case, *Garcia v. Gateway Hotel L.P.*, 82 F.4th 750, 760 (9th Cir. 2023). Rice’s lengthy citation to the dissenting opinion in *Garcia* is unpersuasive.

In *Green*, the Ninth Circuit extended to the Fair Housing Act its ruling in *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1190 (9th Cir. 2001), which applied the *Christiansburg* standard<sup>2</sup> for awarding a prevailing party’s attorneys’ fees in a

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<sup>2</sup> *See Christiansburg Garment Co. v. Equal Emp. Opportunity Comm’n*, 434 U.S. 412, 421 (1978) (concluding that “a district court may in its discretion award attorney’s fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff’s action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith”).

Title VII case to an award of costs to a prevailing party in an ADA case.

Accordingly, the *Green* court held “a plaintiff bringing suit under the Fair Housing Act should not be assessed fees or costs unless the court determines that his claim is ‘frivolous, unreasonable, or groundless.’” *Green*, 991 F.3d at 1058 (quoting *Christiansburg*, 434 U.S. at 422).

*Green*, however, does *not* establish legal precedent in the Ninth Circuit. In *Garcia v. Gateway Hotel L.P.*, 82 F.4th 750, 752 (9th Cir. 2023), the Ninth Circuit extinguished *Green*’s precedential value and criticized the *Green* court for failing to consider the Supreme Court’s opinion in *Marx v. General Revenue Corp.*, 568 U.S. 371 (2013), which effectively overruled *Brown*.<sup>3</sup> And “[b]ecause *Green* did not consider *Marx* in the context of determining the appropriate standard for awarding defendants their costs, we reject [the plaintiff’s] argument that its holding evinces that *Brown* and *Marx* may be reconciled.” *Garcia*, 82 F.4th at 760 (citing *United States v. Kirilyuk*, 29 F.4th 1128, 1134 (9th Cir. 2022) (“Prior precedent that does not ‘squarely address’ a particular issue does not bind later panels on the question.”)). Finding that *Brown* and *Green* are fundamentally irreconcilable with *Marx*, the *Garcia* court maintained that Rule 54(d)(1) governs the award of costs to a prevailing ADA defendant, and such costs may be awarded in the district court’s discretion.<sup>4</sup> *Garcia*, 82 F.4th at 760. The FHA’s cost provision is nearly identical

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<sup>3</sup> In *Marx*, the Supreme Court was asked to clarify when a federal statute “provides otherwise” for the purpose of Federal Rule of Civil Procedure 54(d)(1). 568 U.S. at 373–74. *Marx* involved a suit brought under the federal Fair Debt Collection Practices Act (“FDCPA”), which, like the ADA, includes a provision for awarding fees and costs. *See id.* The Supreme Court affirmed the district court’s assessment of costs against the losing party, clarifying that because Rule 54(d)(1) “grants district courts discretion to award costs, a statute is contrary to the Rule”—and thus “provides otherwise”—“if it limits that discretion.” *Id.* The Court further held that a “statute providing that ‘the court may award costs to the prevailing party’ . . . is not contrary to the Rule because it does not limit a court’s discretion.” *Id.* at 378.

<sup>4</sup> The Ninth Circuit’s memorandum disposition in *Yellowstone Womens First Step House, Inc. v. City of Costa Mesa*, No. 19-56410, 2021 WL 4077001, at \*2 (9th Cir. Sept. 8, 2021), which held that *Green* controlled costs awards under the

to the ADA, and Rule 51(d)(1) governs for the same reasons. *Compare* 42 U.S.C. § 3613(c)(2) *with* 42 U.S.C. § 12205. Accordingly, the district court applied the correct legal standard in awarding costs, and this Court should affirm.

## II. RICE’S OTHER ARGUMENTS ARE WITHOUT MERIT

Rice contends the district court should have denied the City its costs for five reasons: “(a) Impropriety on the part of the prevailing party (including misconduct or bad faith practices); (b) Losing party’s indigence or limited financial resources; (c) Issues in the cases were close or difficult; (d) Imposition of Bill of Costs would [have] a chilling effect on civil rights plaintiffs of modest means [; and] (e) *Rice* presents a landmark issue of national importance.” Opening Brief at 5. None of Rice’s arguments support reversal. The district court considered Rice’s arguments, and did not abuse its discretion in awarding the City its costs. *See* Order at 1-SER-5–7; Motion, 3-SER-426. This Court should affirm.

### A. Rice’s Accusations Of Misconduct Are Baseless, And He Failed To Identify Any Cost Incurred As A Result Of The Alleged Impropriety

Rice dedicated a significant portion of his Motion to Deny Costs to accusing the City of alleged impropriety throughout this litigation. Rice summarized the City’s conduct as follows: (a) the City illegally interfered with his rights and refused to provide his mental illness disability related FHA accommodation to “lease a portion of his home” to a “rent-paying roommate”; (b) the City has been “mendacious, duplicitous, and deceptive to Rice, to others, the Jury to *this* Court . . . about all relevant facts and elements . . . under the FHA case starting with their ‘Action Required’ letter”; (c) the Court relied on the City Attorney and his deputies; (d) the “City attorney and his deputies took full advantage of the trust Honorable Beeler put in them and their esteemed position . . . they chose to abuse

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ADA and FHA, also failed to cite *Marx* and therefore has no precedential value pursuant to *Garcia*.

that trust and make a mockery of our rule of law, the law itself, our judicial process, the FHA and *this* Court”; (e) the Court’s trust in the City attorney and his deputies to “give a full record” leaves Rice unable to trust the Court to provide him fair and impartial treatment. Pl.’s Motion, 3-SER-416–18; *see* Opening Brief at 3–4, 15–16, 23–24. Additionally, on appeal, Rice argues that the City “knowingly attempted to make a fraudulent use of CCSF’s Bill of Costs in an effort to *induce* Rice to waive his right to appeal,” when after trial, the City offered to waive costs in exchange for Rice’s agreement not to appeal. Opening Brief at 14–15.

Despite Rice’s attempt to dissect the record and re-hash this litigation, he offers no factual basis to support his ad-hominem attacks against the City and counsel, and any inference of improper conduct lacks sufficient foundation in the record. Notably, Rice fails to mention that following the Ninth Circuit’s remand in 2020, the district court appointed competent pro bono counsel to represent him, including through fact and expert discovery and trial. Any case-related issues Rice now raises were presumably thoroughly litigated (or otherwise could have been raised) and ultimately tried before a jury, which found against Rice. That Rice is unsatisfied with the performance of his appointed lawyers or the outcome of trial does not constitute evidence of impropriety by the City. And Rice’s accusations of “deceit” and “fraud,” most of which center around the City’s defense in this case that Rice’s requested accommodation was not necessary nor reasonable under the Fair Housing Act, do not come close to bad-faith conduct recognized by courts when determining whether to assess costs under Rule 54(d)(1). For instance, other circuits have suggested that a denial of costs may be appropriate when the prevailing party has “call[ed] unnecessary witnesses, [raised] unnecessary issues or otherwise encumber[ed] the record, or ... [has] delay[ed] in raising [an] objection fatal to the plaintiff's case.” *Smith v. Se. Pennsylvania Transp. Auth.*, 47 F.3d 97, 99–100 (3rd Cir. 1995) (quoting *Institutionalized Juvs. v. Sec’y of Pub. Welfare*,

758 F.2d 897, 926 (3d Cir. 1985)). The City engaged in no such behavior, and Rice can point to no such conduct. Nor does Rice identify specific costs incurred as a result of alleged impropriety or bad faith. To the contrary, the City's costs relate only to discovery and trial-related expenses. Rice's accusations that the City acted with impropriety and bad faith are meritless, and the district court correctly concluded that they did not justify denying costs.

**B. Rice Failed To Meet His Burden Of Establishing He Is Indigent, Such That The District Court Should Have Departed From The General Rule Of Awarding Costs To The Prevailing Party**

District courts “should use their common sense” in deciding whether the losing party is indigent such that it makes sense to depart from the general rule. *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 463–464 (3rd Cir. 2000); *Chapman v. AI Transport*, 229 F.3d 1012, 1039 (11th Cir. 2000) (court “should require substantial documentation of a true inability to pay”). In his Motion to Deny Costs, Rice stated, without any evidentiary support, that his “financial position now is a zero or negative net worth.” 3-SER-418. He also referenced “a very significant increase in expenses for Rice’s physical and mental health care” resulting from the City’s actions. 3-SER-418. These statements were not evidence and would have been a wholly insufficient basis to deny costs. Rice also offered to provide the district court “very personal and private” details under seal or in a private discussion, which underscored that he had failed to meet his burden of establishing indigence. 3-SER-418, 2-SER-205.

On appeal, Rice argues that the district court erred in not requesting this additional financial information. Opening Brief at 9. But Rice bore the burden of establishing his indigency. And, Rice failed to submit *any* evidence, such as a declaration under the penalty of perjury or financial records, that he is “of modest means” or that the payment of costs would render him indigent. *See Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1080 (9th Cir. 1999); *see also Hashemi v. Bd. of*

*Trustees of California State Univ.*, No. SACV1401184JAKCWX, 2016 WL 11744959, at \*4 (C.D. Cal. Dec. 27, 2016). He could not. At trial, Rice testified that he owned his current place of residence near Austin, Texas. 3-SER-344, 3-SER-354–55. Rice also testified that he receives monthly benefits in the amount of approximately \$2,915 from the Department of Veteran Affairs and approximately \$940 from Social Security. 3-SER-344, 3-SER-348–51. Additionally, he testified that he received an inheritance from his mother and father. 3-SER-344, 3-SER-363. Rice’s motion did not present any evidence to the contrary.<sup>5</sup> Rice’s statements were conclusory at best and failed to support a finding of indigence in any manner whatsoever. The district court was not obligated to inquire further.

Even assuming Rice adequately established indigence or inability to pay, those are insufficient bases to deny costs to the City. While it is true that a court may depart from the general rule if the losing party is indigent, the losing party’s indigence *does not require* the reduction or denial of a costs award. *McGill v. Faulkner*, 18 F.3d 456, 459–60 (7th Cir. 1994); *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d at 463–464. Litigants of modest means should not be exempt from costs unless a court determines that it would be “unjust or inequitable to enforce Rule 54(d)(1). . . .” *Cherry v. Champion Int’l Corp.*, 186 F.3d 442, 447 (4th Cir. 1999). Besides conclusory characterizations of his net worth, Rice offered no evidence that he is of limited financial resources or would be subjected to hardship if

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<sup>5</sup> On appeal, Rice provides additional information, including: (1) he purchased his home in Austin, Texas with a VA home loan, presently has a mortgage, and speculates that the value of his home has decreased; (2) his monthly benefits have *increased*, and his current monthly VA and Social Security retirement benefits are \$3,737.85 and \$1,209, respectively; and (3) his inheritance from his mother went primarily towards a down payment for his former home, and his inheritance from his father has been spent on “enormous expenses that would not have existed *but for* CCSF’s . . . *multiple* knowing misrepresentations.” Opening Brief at 17–18. Rice could have provided these details to the district court in his Motion to Deny Costs or his reply brief, but did not, and he does not provide any explanation for his failure to do so. In any event, these facts do not justify a denial of costs.

ordered to pay the City's costs.<sup>6</sup> The district court correctly concluded that this factor weighed against Rice.

### C. Awarding Costs Will Not Deter Future Civil Rights Claims

Costs are to be awarded pursuant to Federal Rule of Civil Procedure 54(d) as a matter of course to the prevailing party in an ordinary case. While it is true that a court has discretion to deny costs against an unsuccessful plaintiff where the issues were of the “gravest public importance” and the costs “extraordinarily high,” and where awarding the costs to the defendant “might have the regrettable effect of discouraging potential plaintiffs” from bringing civil rights cases, this is not such a case. *Assn. of Mexican-Am. Educators v. State of California*, 231 F.3d at 593; *see Stanley*, 178 F.3d at 1079. Here, Rice contended that an award of costs would have a “chilling effect” on “civil rights plaintiffs of modest means” because he pursued “truthful and accurate facts” that the City violated the Fair Housing Act, and that such a violation would have been “shockingly obvious” to the district court but for the City’s “fraudulent ‘mendacity’ scheme.” 3-SER-422; *see* Opening Brief at 13–14, 18–19.) This argument is premised on Rice’s baseless accusations and is meritless. More importantly, Rice’s lawsuit deviates in significant respects from these extraordinary Ninth Circuit civil rights cases in which the prevailing defendant was not awarded its costs because of concerns of deterring future civil rights claims.

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<sup>6</sup> On appeal, Rice filed a motion to proceed in forma pauperis, which this Court granted. Rice did not file a fee waiver in the district court. Regardless, per 28 U.S.C. § 1915(e), and cases decided thereunder, costs may be taxed against a party who is permitted to proceed in forma pauperis. *Smith v. Se. Pennsylvania Transp. Auth.*, 47 F.3d at 100 (citing *Washington v. Patlis*, 916 F.2d 1036, 1039 (5th Cir. 1990)); *Harris v. Forsyth*, 742 F.2d 1277, 1278 (11th Cir. 1984); *Flint v. Haynes*, 651 F.2d 970, 973 (4th Cir. 1981), cert. denied, 454 U.S. 1151 (1982); *see also, Allen v. Kelley*, No. C-91-1635-VRW, 1995 WL 396860, at \*1 (N.D. Cal. June 29, 1995).

First, the City sought, and the district court awarded, costs of \$19,469.61, which is not “extraordinarily high.” This amount, which represents only costs expended by the City during discovery and trial, is not unreasonable, unnecessary, or unreasonably large. This is in contrast to the defendants in *Stanley* and *Association of Mexican-American Educators*, who sought \$46,710.97 and \$216,443.67, respectively.

Second, the issues presented in this case were not of grave public importance. In *Association of Mexican-American Educators*, minority educators brought a class-action lawsuit challenging the California Basic Education Skills Test (CBEST) for public school employment credentials. 231 F.3d at 577. The defendants prevailed at trial, but were denied costs. *Id.* at 579. The Ninth Circuit affirmed, recognizing that the plaintiffs were a group of individuals and nonprofit organizations with limited resources whose action presented issues of the gravest public importance impacting tens of thousands of Californians and the state’s public-school system as a whole. *Id.* at 593. The issues, including whether Title VII of the Civil Rights Act applied to CBEST, were close and complex and the plaintiffs’ claims were not without merit as the defendants substantially altered the test during the pendency of the litigation. *Id.* In *Stanley*, the plaintiff, former head coach of a woman’s basketball team, sued her university employer, alleging violations of the Equal Pay Act, Fair Employment and Housing Act, Title IX, and the California Constitution. Plaintiff lost on summary judgment. *Stanley*, 178 F.3d at 1073. The Ninth Circuit reversed an award of costs against the plaintiff, who established that payment of costs would render her indigent, and held imposition of costs in the amount of \$46,710.97 “on losing civil rights plaintiffs of modest means may chill civil rights litigation in this area.” *Id.* at 1079.

Unlike in *Association of Mexican-American Educators* and *Stanley*, the imposition of the City’s costs is appropriate in this case because it will not deter

future civil rights claims under the Fair Housing Act. This is not an extraordinary case. The City had legitimate reasons for denying Rice’s requested accommodation for a rent-paying roommate in his affordable housing condominium; it was unreasonable and would have fundamentally altered the nature of the City’s housing program. The jury agreed. The City’s denial of Rice’s highly individualized request does not affect anyone beyond Rice. As such, this case, which raised case-specific issues, does not create a chilling effect on future litigants, and did not warrant the district court’s departure from the general rule of awarding costs to the prevailing party.

**D. The Closeness Or Difficulty In This Case Did Not Support A Departure From The General Rule Of Awarding Costs To The Prevailing Party**

The district court correctly concluded that this case was not sufficiently close or difficult to justify a denial of costs. Rice argues that the district court should not have cited to *Ogbechie v. Covarrubias*, No. 5:18-cv-00121-EJD, 2021 WL 2865183, at \*3 (N.D. Cal. July 8, 2021), because it is not a fair housing or disability case and because it was reversed.<sup>7</sup> The district court cited *Ogbechie* for the general proposition that “issues are close or difficult when the decision turns on careful evaluation of witness testimony and circumstantial evidence.” 1-SER-7. This general principle is still good law and applies here. *See Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1248 (9th Cir. 2014).

Here, although the Ninth Circuit found there were factual disputes requiring a jury trial, the issues were not close. Rice testified at trial that he received no mental health benefit from a roommate while he was away from home, and he testified he traveled extensively. 3-SER-344, 3-SER-360–62, 3-SER-352–33. The

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<sup>7</sup> The Ninth Circuit did not reverse this order awarding costs, but reversed the prior decision granting summary judgment to the defendants. *See Ogbechie v. Covarrubias*, No. 20-16936, 2021 WL 3523460 (9th Cir. Aug. 11, 2021) (unpublished).

district court did not abuse its discretion in concluding this case did not warrant a departure from the general rule of awarding costs.

**E. This Case Does Not Present A Landmark Issue Of Importance**

Finally, the district court correctly concluded that this case did not present issues of landmark importance. Rice contended that this case presents two landmark issues: (1) whether the City can rely on its own policies and ignore the Fair Housing Act to determine whether he can lease a portion of his home to a rent-paying roommate to address his mental health disability, and (2) whether punitive damages may be awarded against a municipality for violation of the Fair Housing Act. 3-SER-425. Rice’s arguments are without merit. This case was straightforward; it concerned only whether Rice’s requested accommodation for a rent-paying roommate was necessary to afford him the equal opportunity to enjoy his condominium, and whether it was reasonable. Contrary to Rice’s assertion, the City’s affordable housing policies determined whether Rice’s request was reasonable because it would have imposed a fundamental alteration to the program, which was designed to provide housing to low-to-moderate income individuals who wished to live and reside in San Francisco. Furthermore, the facts of this case do not support a finding of punitive damages against the City. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 260 n.21 (1981) (with regard to municipalities, “no punitive damages are allowed unless expressly authorized by statute”); 42 U.S.C. § 3613(c)(1) (authorizing punitive damages but not mentioning municipalities). And there is a “presumption against imposition of punitive damages on governmental entities.” *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 784–85 (2000).

## CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court affirm the district court's award of costs to the City.

Dated: August 28, 2024

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**9th Cir. Case Number(s)** 24-2217

The undersigned attorney or self-represented party states the following:

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- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:  
23-16013 – Allison Barton Rice v City and County of San Francisco

Dated: August 28, 2024

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**9th Cir. Case Number(s)** 24-2217

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I am the attorney or self-represented party.

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Signature /s/ Renée E. Rosenblit Date August 28, 2024  
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I, ANNAMARIE DAVIS, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System on August 28, 2024.

**APPELLEES' OPPOSITION BRIEF**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed August 28, 2024, at San Francisco, California.

*/s/ Annamarie Davis*

\_\_\_\_\_  
ANNAMARIE DAVIS