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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESIREE MARTINEZ,

 Plaintiff,

 v.

CITY OF CLOVIS, et al.

 Defendants.

No. 1:15-cv-00683-JAM-SKO

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS CITY
OF CLOVIS, CITY OF SANGER,
HERSHBERGER, YAMBUPAH, SANDERS
AND HIGH'S BILL OF COSTS**

The City of Sanger, the City of Clovis, Officers Hershberger, Yambupah, Sanders, and High ("Defendants") request \$14,999.66 in costs after the Court granted summary judgment in their favor. Bill of Costs, ECF No. 212. Desiree Martinez ("Plaintiff") opposed awarding many of these costs. See Opp'n, ECF No. 213. For the reasons stated below, the Court grants in part and denies in part Defendants' bill of costs.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for March 15, 2022.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 In 2015, Plaintiff sued Defendants, among others, for their
3 handling of her domestic abuse complaints. First. Am. Compl.,
4 ECF No. 6. In August 2017, Defendants moved for summary
5 judgment, which the Court granted in part and denied in part.
6 Order Granting in Part and Denying in Part Mot. for Summ. J., ECF
7 No. 94. Specifically, the Court granted summary judgment to the
8 City of Clovis, the City of Sanger, Hershberger, Yambupah, and
9 Sanders. Id. at 2. With respect to High, the Court granted
10 summary judgment on the Equal Protection claim but denied summary
11 judgment on the Due Process claim. Id. Plaintiff appealed the
12 grant of summary judgment in favor of the City of Clovis, the
13 City of Sanger, Hershberger, Yambupah, and Sanders, which the
14 Ninth Circuit affirmed. Ninth Circuit Order, ECF No. 123.
15 Thereafter, Defendant High again moved for summary judgment on
16 the Due Process claim. High's Mot. for Summ. J., ECF No. 206.
17 The Court granted High's renewed motion. Order Granting High's
18 Renewed Mot. for Summ. J, ECF No. 210. Defendants subsequently
19 submitted this bill of costs.

20 II. OPINION

21 A. Legal Standard

22 Federal Rule of Civil Procedure 54(d) allows for a
23 prevailing party to be awarded taxable costs other than
24 attorneys' fees. Fed. R. Civ. P. 54(d)(1). This rule creates a
25 presumption that costs will be taxed against the losing party,
26 but "vests in the district court discretion to refuse to award
27 costs" if the losing party shows why costs should not be
28 awarded. Ass'n of Mexican-Am. Educators v. State of California,

1 231 F.3d 572, 591-92 (9th Cir. 2000) (en banc). "Although a
2 district court must 'specify reasons' for its refusal to tax
3 costs to the losing party [the Ninth Circuit has] never held
4 that a district court must specify reasons for its decision to
5 abide the presumption and tax costs to the losing party." Save
6 Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003)
7 (internal citations omitted) (emphasis in original).

8 28 U.S.C. § 1920 generally defines the expenses that may be
9 taxed as costs under Rule 54(d). See Crawford Fitting Co. v.
10 J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987). Pursuant to 28
11 U.S.C. § 1920, a judge or court clerk may tax as costs: fees of
12 the clerk and marshal; fees for printed or electronically
13 recorded transcripts necessarily obtained for use in the case;
14 fees and disbursements for printing and witnesses; fees for
15 copies of necessary papers; docket fees; and compensation of
16 court appointed experts. 28 U.S.C § 1920.

17 B. Analysis

18 1. Transcripts

19 Fees for printed or electronically recorded transcripts are
20 recoverable so long as they were "necessarily obtained for use
21 in the case." 28 U.S.C. 1920(2). A document need not be
22 offered as evidence to have been necessarily obtained for use in
23 the case. Haagen-Dazs Co., Inc. v. Double Rainbow Gourmet Ice
24 Creams, Inc., 920 F.2d 587, 588 (9th Cir. 1990). However,
25 depositions "merely useful for discovery" are not taxable "and
26 their expense should have been borne by the party taking them,
27 as incidental to normal preparation for trial." Indep. Iron
28 Works, Inc. v. U.S. Steel Corp., 322 F.2d 656, 678 (9th Cir.

1 1963). “When a deposition is not actually used at trial or as
2 evidence on some successful preliminary motion, whether its
3 costs may be taxed generally is determined by deciding if the
4 deposition reasonably seemed necessary at the time it was
5 taken.” 10 Charles Alan Wright, Arthur R. Miller & Mary Kay
6 Kane, Federal Practice and Procedure § 2676 (4th ed. 2022).

7 Defendants seek \$3,398.90 in deposition transcript
8 expenses, \$5,126.67 for the cost of the transcript of a related
9 criminal proceeding, \$315.25 for the summary judgment hearing
10 transcript, and \$260.50 for the cost of transcribing a telephone
11 recording. Plaintiff disputes all but \$2,083.20 - the costs for
12 the depositions of Plaintiff, Kristina Hershberger, Angela
13 Yambupah, Kyle Pennington, and Channon High - which were used in
14 their summary judgment motions. Opp’n at 3. Plaintiff opposes
15 the remaining \$7,018.07, on the grounds that Defendants have not
16 shown why those materials reasonably seemed necessary at the
17 time. Id. The Court agrees. Defendants offer no explanation
18 for why these other depositions and transcripts seemed necessary
19 at the time. However, the Court will allow \$315.25 for the
20 summary judgment hearing transcript, which was also used in a
21 dispositive motion. Ex. A. to Def. High’s Motion for Summ. J.,
22 ECF No. 206-3. The Court therefore reduces the taxable costs
23 for depositions and transcripts from \$9,101.32 to \$2,398.45.

24 2. Witness Fees

25 Section 1821(b) limits witness fees, other than court-
26 appointed experts, to “an attendance fee of \$40 per day” at a
27 deposition or trial, plus other travel expenses where
28 applicable. Here, Defendants seek \$1,255 in witness fees.

1 Because they have not indicated their witness costs with
2 sufficient specificity for the Court to determine which costs
3 are allowable as attendance fees, travel expenses, or
4 subsistence allowances the Court does not grant Defendants these
5 costs.

6 3. Other Costs

7 Defendants also seek reimbursement for \$1,833.34 in
8 mediation expenses, \$292.81 for Federal Express expenses, and
9 \$2,525.22 for the costs of obtaining files from another
10 attorney. However, Defendants do not offer any authority or
11 explanation for why such fees are taxable as costs.
12 Accordingly, the Court declines to award this additional
13 \$4,651.37.

14 4. Final Reductions

15 As explained above, the Court finds Defendants are entitled
16 to \$2,398.45 in costs. However, Defendants Jesus Santillan and
17 Ralph Salazar were dismissed in June 2017, conditioned upon a
18 mutual waiver of costs and fees. Stip. and Order Dismissing
19 Defs. Santillan and Salazar, ECF No. 70. Accordingly, the Court
20 reduces the deposition transcript costs by one-fourth, from
21 \$2,083.20 to \$1,562.40, to account for their share of the costs.
22 That, plus the \$315.25 cost for the summary judgment hearing
23 transcript, incurred after Defendants Santillan and Salazar were
24 dismissed, amounts to \$1,877.65.

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III. ORDER

For the reasons set forth above, the Court awards costs to Defendants in the amount of \$1,877.65.

IT IS SO ORDERED.

Dated: April 26, 2022



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE