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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

G.M., a minor, by and through  
his Guardians ad Litem, KEVIN  
MARCHESE and LYNDI MARCHESE;  
KEVIN MARCHESE, an  
individual, and LYNDI  
MARCHESE, an individual,

Plaintiffs,

v.

DRYCREEK JOINT ELEMENTARY  
SCHOOL DISTRICT,

Defendant.

No. 2:10-cv-00944-GEB-GGH

**ORDER**

Defendant filed a Bill of Costs on September 21, 2012,  
"request[ing] to tax" \$3,005.89 in costs. (Def.'s Bill of Costs,  
ECF No. 88.) The total costs allegedly comprise \$135.00 in  
witness fees and \$2,870.89 in "fees for . . . transcripts." (Id.)

Plaintiffs filed Objections to the Bill of Costs on  
September 28, 2012, arguing, *inter alia*:

[Defendant's] Bill of Costs, as submitted to  
the Court . . . is defective . . . since it  
lacks any particularized affidavit or  
verification supporting the . . . bills that  
were attached to the Eastern District Bill of  
Costs (01/11) revised form.  
Consequently, . . . there is no evidentiary  
foundation for the Bill of Costs/attachment  
of [Defendant's] unverified self-serving  
documents.

1 (Pls.' Objections 5:27-6:5, ECF No. 89.) Plaintiffs further argue  
2 that Defendant's deposition costs "were unnecessary" because each  
3 of the persons deposed "provided their testimony in the  
4 underlying administrative case." (Id. at 6:19-7:2.)

5 "Federal Rule of Civil Procedure 54(d)(1) and . . .  
6 Local Rule 292[] govern the taxation of costs, other than  
7 attorney's fees, awarded to the prevailing party in a civil  
8 matter." Gregorie v. Alpine Meadows Ski Corp., No. CIV S-08-259-  
9 LKK/DAD, 2011 WL 590605, at \*2 (E.D. Cal. Feb. 10, 2011).  
10 "Federal Rule of Civil Procedure 54(d) . . . provides in relevant  
11 part: 'Unless a federal statute, these rules, or a court order  
12 provides otherwise, costs—other than attorney's fees—should be  
13 allowed to the prevailing party.'" Taniguchi v. Kan Pacific  
14 Saipan, Ltd., 132 S. Ct. 1997, 2001 (2012) (quoting Fed. R. Civ.  
15 P. 54(d)(1)). "Rule 54(d)(1) codifies a venerable presumption  
16 that prevailing parties are entitled to costs. Notwithstanding  
17 this presumption, the word 'should' makes clear that the decision  
18 whether to award costs ultimately lies within the sound  
19 discretion of the district court." Marx v. Gen. Revenue Corp.,  
20 133 S. Ct. 1166, 1172 (2013) (footnote omitted).

21 28 U.S.C. "§ 1920 defines the term 'costs' as used in  
22 Rule 54(d)." Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S.  
23 437, 441-42 (1987). Section 1920 prescribes, in relevant part: "A  
24 judge or clerk of any court of the United States may tax as costs  
25 the following: . . . (2) Fees for printed or electronically  
26 recorded transcripts **necessarily obtained for use in the case;**  
27 [and] (3) Fees and disbursements for printing and witnesses."  
28 (emphasis added). Section 1920(2) includes "an award of costs

1 associated with the taking of depositions" that are "reasonably  
2 necessary." Barber v. Ruth, 7 F.3d 636, 645 (7th Cir. 1993)  
3 (superseded by statute on other grounds). However, "courts may  
4 not tax the costs of transcripts of depositions provided merely  
5 for the convenience of the requesting attorney." Id. Further,  
6 "[i]f the depositions are for investigatory or for discovery  
7 purposes only, rather than for presentation of the case, courts  
8 have found that they are not taxable." Gregorie, 2011 WL 590605,  
9 at \*2 (citing 10 Wright, Miller, & Kane Federal Practice and  
10 Procedure § 2676 (3d ed. & Supp. 2010)).

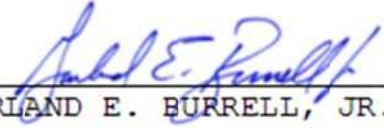
11 "While the [costs enumerated in § 1920] are presumed  
12 to be taxable, the Court must exercise discretion in assessing  
13 the costs, only allowing taxation of costs for materials that are  
14 'necessarily obtained for use in the case,' and in an amount that  
15 is reasonable." Berryman v. Hofbauer, 161 F.R.D. 341, 344 (E.D.  
16 Mich. 1995) (citation omitted). "'The burden is on the prevailing  
17 [party] to establish the amount of compensable costs . . . to  
18 which they are entitled [under Rule 54]. Prevailing parties  
19 necessarily assume the risks inherent in a failure to meet that  
20 burden.'" English v. Colo. Dept. of Corrs., 248 F.3d 1002, 1013  
21 (10th Cir. 2001) (quoting Mares v. Credit Bureau of Raton, 801  
22 F.2d 1197, 1208 (10th Cir. 1986)); accord Plantronics, Inc. v.  
23 Aliph, Inc., No. C 09-01714 WHA (LB), 2012 WL 6761576, at \*3  
24 (N.D. Cal. Oct. 23, 2012) ("Nothing about . . . Rule 54(d)'s  
25 presumption excuses a prevailing party from itemizing its costs  
26 with enough detail to establish that each expense is taxable  
27 under section 1920."); Berryman, 161 F.R.D. at 344 ("[T]he  
28 prevailing party has the burden of establishing that the expenses

1 he seeks to have taxed as costs are authorized by applicable  
2 federal law, including proof of necessity and reasonableness  
3 under 28 U.S.C. § 1920." ).

4 Here, Defendant has not shown that the claimed costs  
5 are allowable under Rule 54(d)(1) and § 1920. Defendant neither  
6 "itemize[d] the costs claimed," nor "supported [its Bill of Costs  
7 with] a memorandum of costs," as required by Local Rule 292. E.D.  
8 Cal. R. 292(b). Instead, Defendant filed the Bill of Costs form  
9 with attached invoices, and the attached invoices total less than  
10 the costs requested. Further, the attached February 1, 2012  
11 correspondence from the California Office of Administrative  
12 Hearings references a "final cost to process [an] order [of]  
13 \$349.30[,]" but does not state what the final cost comprises.  
14 (See ECF No. 88-1.)

15 "Defendant[] ha[s] given the Court no basis to analyze  
16 the reasonableness of [its] request or the necessity of the costs  
17 for which taxation is sought." Berryman, 161 F.R.D. at 344  
18 (indicating that a conclusory averment that "each item of  
19 cost . . . . claimed . . . has been necessarily incurred" is  
20 insufficient when the opposing party challenges the  
21 reasonableness and necessity of the requested costs). Therefore,  
22 Defendant's request to tax costs is denied.

23 Dated: November 6, 2013

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27 GARIAND E. BURRELL, JR.  
28 Senior United States District Judge