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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 I.P., A MINOR, BY AND THROUGH
12 HER GARDIAN AD LITEM, FACUNDO
13 PALACIO DIEZ; MICAELA
14 PALACIO,

15 Plaintiffs,

16 v.

17 UNITED STATES OF AMERICA,
18 Defendant.

No. 2:13-cv-01012-JAM-CKD

ORDER AWARDING COSTS

18 Plaintiff I.P. and her mother, Micaela Palacio,
19 (collectively, "Plaintiffs") sued the United States
20 ("Defendant"), alleging that the negligence of its doctors caused
21 I.P.'s brain damage. Following a bench trial, the Court awarded
22 damages to Plaintiffs, who now move for an award of costs. The
23 Court takes up Defendant's objections to that bill of costs
24 herein.¹

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27 ¹ The objections were determined to be suitable for decision
28 without oral argument. E.D. Cal. L.R. 230(g), 292(d). The
hearing was scheduled for March 22, 2016.

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Plaintiffs prevailed at trial against the United States on
3 the issue of negligence of its physician, Dr. Paul Davainis,
4 during the birth of Plaintiff I.P. Defendant prevailed on the
5 issue of negligence with respect to another physician it
6 employed, Dr. Paul Holmes. Plaintiffs previously sued Banner
7 Health (the hospital, for the alleged negligence of its nurses)
8 in state court and obtained a settlement.

9 Plaintiffs now seek costs from Defendant in the amount of
10 \$50,320.70 (Doc. #178). Defendant filed objections (Doc. #179),
11 and Plaintiffs provided a "supplemental declaration" of
12 Plaintiffs' counsel (Doc. #180). The Court sustains the
13 objections in part, as discussed below.

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15 II. OPINION

16 In general, costs "should be allowed to the prevailing
17 party." Fed. R. Civ. P. 54(d)(1). The party seeking costs must
18 attest that the fees were "necessarily incurred." L.R. 292(b).
19 The district court has discretion to refuse to award costs.
20 Ass'n of Mexican-Am. Educators v. California, 231 F.3d 572, 591
21 (9th Cir. 2000).

22 Defendant makes four objections to Plaintiffs' bill of
23 costs: (1) that Plaintiffs were not the prevailing party on the
24 issue of negligence in Dr. Holmes's resuscitation of I.P., and
25 are therefore not entitled to costs arising from litigation on
26 that issue; (2) that Plaintiffs may not recover costs for claims
27 against the Banner Health defendants; (3) that actual travel
28 expenses (as opposed to mileage) are the appropriate measure of

1 air travel costs; and (4) that costs for videotaping depositions
2 and "for movies at [an expert witness's] hotel" are not
3 recoverable.

4 First, the Court agrees that Defendant prevailed on the
5 claims related to Dr. Holmes's resuscitation of I.P. The costs
6 specifically related to that issue are therefore not recoverable
7 by Plaintiffs. These include travel and deposition costs for
8 expert witnesses opining about the resuscitation standard of care
9 (Drs. Rhine, Fredlich, and Sherman), totaling \$4,366.72. See
10 Bill of Costs at 6, 59. The Court therefore deducts those costs.
11 The Court finds however that the deposition of Dr. Holmes himself
12 was related not only to the resuscitation, but also to the claims
13 against Dr. Davainis, on which Plaintiff prevailed. Therefore,
14 his deposition fees are recoverable and the Court overrules the
15 objection as to Dr. Holmes's deposition.

16 As to the claims against Banner Health, the Court agrees
17 that such costs were not "necessarily incurred" as part of the
18 litigation against the United States. Plaintiffs therefore may
19 not recover these costs from Defendant. The Court accordingly
20 deducts deposition costs for Ms. Mahlmeister, Ms. Weeber, Mr.
21 Boukidis, Ms. Olzack, and Drs. Ross, BeDell, Kush, and Goldsmith.
22 These deductions total \$7,391.77. See Bill of Costs at 6-7.

23 Next, the Court agrees that Plaintiffs are only entitled to
24 actual travel costs for those witnesses who traveled by plane.
25 See 28 U.S.C. § 1821(c)(1). The Court therefore deducts the
26 originally-stated mileage costs for Drs. Lott, Manning, Formuzis,
27 and Montes (totaling \$6,029.45, see Bill of Costs at 53, 56, 62,
28 68), and adds the following actual travel costs: \$506.00 for Dr.

1 Lott, \$1,007.98 for Dr. Manning, \$506.00 for Dr. Formuzis, and
2 \$646.00 for Dr. Montes. See Suppl. Fagel Decl. ¶¶ 1-5; L.R.
3 292(d).

4 The Court also sustains the objection regarding videotaping.
5 In order to recover such costs, "the prevailing party must
6 demonstrate that a videotaped copy of the deposition was
7 necessary." Weco Supply Co. v. Sherwin-Williams Co., 2013 WL
8 56639, at *5 (E.D. Cal. Jan. 3, 2013). Here, Plaintiffs have not
9 explained why they needed to videotape three of the experts'
10 depositions or why they additionally needed to videotape
11 Plaintiffs' counsel questioning Defendant's witness. See Bill of
12 Costs at 7, 47. The Court therefore declines to award costs for
13 videotaping the depositions, and accordingly reduces the award by
14 \$1,430.00. See id.; Terry v. Allstate Ins. Co., 2007 WL 3231716,
15 at *3 (E.D. Cal. Nov. 1, 2007) ("Allstate is not entitled to
16 recover for [videotaping] costs because it failed to provide a
17 rationale justifying why [it was] necessary for the
18 litigation.").

19 Finally, the "TV Services" charges of \$17.99 during
20 Plaintiffs' expert witness's hotel stay will be deducted as
21 unnecessary to the litigation. See Bill of Costs at 63.

22 In sum:

23	Original amount of costs requested	\$50,320.70
24	Deduction for costs related to resuscitation negligence issue	-\$ 4,366.72
25	Deduction for costs associated with Banner Health claims	-\$ 7,391.77
26	Deduction for improper air travel costs	-\$ 3,363.47
26	Deduction for videotaping costs	-\$ 1,430.00
27	Deduction for TV services at hotel	-\$ 17.99
27	TOTAL costs awarded	\$36,646.73

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III. ORDER

For the reasons set forth above, the Court SUSTAINS the objections in part and awards costs for Plaintiffs in the amount of \$36,646.73.

IT IS SO ORDERED.

Dated: March 23, 2016


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE