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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT E. LEVY,

Plaintiff,

v.

COUNTY OF ALPINE, et al.,

Defendants.

No. 2:13-CV-02643-RHW-DB

ORDER TAXING COSTS

The above-captioned matter began in trial on April 17, 2017. Upon conclusion of the Plaintiff’s case-in-chief, the Court directed a verdict in favor of Defendant on April 20, 2017. An order directing verdict was issued on April 25, 2017, ECF No. 150, and judgment was entered on the same day in favor of Defendant, ECF No. 151. On May 9, 2017, Defendant filed a Bill of Costs requesting a total of \$25,106.13. ECF No. 152. Plaintiff filed his Objections on May 16, 2017. ECF No. 153. Defendant filed a Response to Plaintiff’s Objections

1 on May 19, 2017. ECF No. 155. The Court is now fully informed, adjusts the Bill
2 of Costs, and directs tax against Plaintiff in the amount of \$23,934.74.

3 **I. Legal Standard**

4 FED. R. CIV. P. 54(d)(1) provides that costs, other than attorney’s fees,
5 should be awarded to the prevailing party following entry of judgment. While this
6 creates a presumption of award to the prevailing party, the district court has
7 discretion to refuse costs. *Ass’n of Mexican-American Educators v. Cal.*, 231 F.3d
8 572, 591 (9th Cir. 2003). This discretion is not unlimited, and a district court must
9 specify reasons for refusing costs. *Id.* at 592 (citing *Subscription Television, Inc. v.*
10 *Southern Cal. Theatre Owners Ass’n*, 576 F. 2d 230, 234 (9th Cir. 1978)). Courts
11 have refused to award costs based on the losing party’s limited financial resources,
12 misconduct by the prevailing party, and “the chilling effect of imposing such high
13 costs on future civil rights litigants.” *Id.* The burden is on the losing party to show
14 why the costs shouldn’t be awarded. *Save Our Valley v. Sound Transit*, 335 F.3d
15 932, 944-45 (9th Cir. 2003).

16 **II. Objections to Bill of Costs**

17 **a. Fees for service of summons and subpoena**

18 Defendant requests \$2,068.50 for summons and subpoena costs. ECF No.
19 152 at 1. Plaintiff argues this is “grossly inappropriate.” ECF No. 153 at 2. Plaintiff
20 notes that Alpine County is California’s smallest county, and therefore Defendant

1 should have had “easy access to all or nearly all” of the witnesses. *Id.* Plaintiff
2 asserts the reasonable amount for service should be \$438.50. *Id.* He arrives at this
3 number by disallowing \$835.00 for service to six witnesses and \$795.00 for
4 service to eight additional witnesses. *Id.*

5 Plaintiff provides no explanation as to why the costs to these specific
6 witnesses should be disallowed or why service would be cheaper simply because
7 of the small population of the County. ECF NO. 155 at 2. The Court previously
8 took judicial notice that Alpine County is 738.33 square miles in land area with a
9 population density of 1.6 people per square mile, as of 2010. ECF No. 114 at Ex.

10 B. Plaintiff fails to explain how, despite being a particularly rural county with low
11 population density, Alpine County’s small population makes it easier to service
12 easier. If anything, the low population density and mountainous terrain likely
13 makes service more complicated. Because Plaintiff has not advance a meaningful
14 argument, the Court **DENIES** Plaintiff’s request to lower costs for service.

15 **b. Fees for printed or electronically recorded transcripts necessarily**
16 **obtained for use in the case**

17 28 U.S.C. § 1920(2) provides for taxation of costs for printed or
18 electronically recorded transcripts “necessarily obtained for use in the case.” This
19 is echoed in the Eastern District of California’s Local Rule 292(f)(5). Deposition
20 transcripts may be among costs considered by district courts under this rule. *Alflex*

1 *Corp. v. Underwriters Laboratories, Inc.*, 914 F.2d 175 (9th Cir. 1990).

2 Documents need not be actually used at trial and made part of the record to receive
3 costs in this category. *See Haagen-Dazs, Inc. v. Double Rainbow Gourmet Ice*
4 *Creams, Inc.*, 920 F.2d 587, 588 (9th Cir. 1990).

5 Defendant requests \$16,960.86 for fees for printed or electronically recorded
6 transcripts. ECF No. 152 at 1. \$15,238.86 of the amount in this category is for
7 deposition transcripts. *Id.* at 3. Plaintiff argues that \$5,043.80 of the deposition
8 transcript costs should be disallowed because these costs were “unreasonably
9 incurred and not needed for defense of Plaintiff’s claims.” ECF No. 153 at 2.
10 Specifically, Plaintiff cites to depositions by Kris Hartnett, Buck McClelland,
11 Sharon Warkentin, Valerie Bolton, Martin Fine, Randall Gibson, Doug Rublaitus,
12 James Holdridge, Jared Zwickey, and Nancy Thornburg. *Id.* Plaintiff asserts that
13 none of these witnesses testified at trial, nor were their depositions needed for
14 mediation, settlement conference, or trial preparation. *Id.* at 2-3.

15 Plaintiff’s argument does not support the majority of his claims. Several of
16 the challenged depositions were formally lodged with the Court: Kris Hartnett,
17 Sharon Warkentin, Valerie Bolton, Martin Fine, Randall Gibson, and James
18 Holdridge. ECF No. 82. Further, Kris Hartnett’s deposition was actually read in
19 part during trial as Plaintiff’s witness. ECF No. 141. Likewise, Defendant filed
20 notice that portions of Nancy Thornburg’s deposition were intended to be read at

1 trial, ECF No. 124, James Holdridge and Jared Zwickey, the County's expert, were
2 scheduled to testify. Defense was prepared to proceed with the deposition and live
3 testimony if not for the directed verdict.

4 The Court agrees with Plaintiff on two depositions, however. Buck
5 McClelland and Doug Rublaitus neither appear on the witness lists nor in the
6 lodged deposition transcripts. Mr. McClelland is an Alpine County citizen who
7 allegedly would have supported Plaintiff's run for sheriff, ECF No. 155 at 2-3, but
8 this was not the only individual who offered such testimony, nor does it appear that
9 either party needed or intended to use his statements at trial. Doug Rublaitus was
10 among the individuals alleged by Plaintiff to have been a victim of age
11 discrimination during employment with Alpine County. ECF No. 155 at 2-3.
12 Again, Mr. Rublaitus was not the only witness to provide information on age
13 discrimination, which also was not the basis for the remaining claim at trial and
14 thus limited in testimony, and it does not appear his testimony was to be
15 considered in trial preparation. Accordingly, the Court finds these deposition
16 transcripts were not necessarily obtained for use in the case.

17 Accounting is complicated because of the records provided by Defendant in
18 the Bill of Cost. The actual costs billed by the reporter for Buck McClelland's
19 deposition are \$415.15. ECF No. 152, Ex. A at 1. However, some costs on the
20 invoice are shared with Kris Hartnett's deposition costs, *id.*, and in the interest of

1 fairness, the Court shall divide evenly. Half of the shared costs is \$83.43, which
2 added to \$415.15 is \$498.58. Likewise, the actual costs billed by the reporter for
3 Doug Rublaitus' deposition are \$255.75. *Id.* at 4. The invoice is shared by
4 deposition costs of five other individuals. *Id.* One-sixth of the shared costs is
5 \$81.10, which added to \$255.75 is \$336.85. In addition, Mr. McClelland received
6 \$50 and Mr. Rublaitus received \$52 for deposition fees and travel expenses. *Id.* at
7 Ex. C at 2, 11.

8 The total deposition-related costs for Mr. McClelland and Mr. Rublaitus are
9 \$937.43, which shall be deducted from the total amount Defendant requests for
10 fees for printed or electronically recorded transcripts necessarily obtained for use
11 in the case.

12 **c. Witness compensation**

13 Travel expenses for out-of-town witnesses must be reasonable. *Majeske v.*
14 *City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000). Local Rule 292(f)(8) provides
15 for "per diem, mileage, and subsistence for witnesses." Plaintiff argues that it was
16 unreasonable to request fees for witnesses that did not testify, but Plaintiff
17 overlooks that Defendant had their witnesses present and prepared to testify absent
18 the trial's early conclusion. Defendant requests \$4,286.50 for travel fees and
19 witness fees. ECF No. 152 at 1. Plaintiff takes specific issue with the charges
20 assessed for Tom Sweeney, Teola Tremayne, Donald Jardine, James Holdridge,

1 Randi Makley, and Rick Stephens, all of whom were scheduled to testify but did
2 not when the trial ended on directed verdict. ECF No. 153 at 3.

3 While many of the witnesses were actually in Sacramento three nights,
4 Defendant only requests two nights. Defense counsel Manning declares that the
5 defense team needed their witnesses in Sacramento beginning Tuesday, April 18 so
6 that the transition would be seamless between the Plaintiff's case and the defense,
7 and that it was unclear if Plaintiff would rest his case April 19 or April 20. ECF
8 No. 152-1 at ¶ 7. This is a reasonable interpretation of the events and respectful of
9 the Court's direction to avoid lengthy gaps in the trial for witness travel. All parties
10 were expected to expeditiously continue the trial if not for the directed verdict.

11 Defendants also request expenses related to airfare for Randi Makley. Ms.
12 Makley was scheduled to testify Monday, April 24. Defendant states that Ms.
13 Makley, who lives in Colorado, was scheduled to fly to California for a wedding
14 on April 22, and she extended her return to Colorado so that she would be able to
15 testify on Monday. ECF No. 152-1 at ¶ 7. The only evidence presented in the Bill
16 of Costs attachments, however, is a one-way flight to California from Denver. ECF
17 No. 152, Ex. E at 20-21. Defendant has presented no evidence of the return flight
18 or that Ms. Makley incurred additional costs for her return to Colorado. Thus, the
19 Court reduces Defendant's request for witness expenses by \$233.96 for Ms.
20 Makley's changed airfare costs because this is unsupported.

