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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERONICA GUTIERREZ, ERIN
WALKER, and WILLIAM SMITH, as
individuals and on behalf of all others
similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

No. C 07-05923 WHA

**ORDER GRANTING
MOTION FOR
AMENDMENT TO
ORDER RESOLVING
BILL-OF-COSTS
OBJECTIONS AND
VACATING HEARING**

INTRODUCTION

In this certified consumer class action, plaintiffs move for an amendment to the order resolving defendant Wells Fargo’s objections to plaintiffs’ bill of costs. This order grants plaintiffs’ motion.

STATEMENT

After three years of litigation that resulted in a \$203 million judgment for the plaintiff class, plaintiffs filed a bill of costs on November 8, 2010. Defendant Wells Fargo filed objections to this bill of costs three weeks later. An order resolving the objections to the bill of costs was issued on December 3, 2010 (Dkt. No. 538).

A week later, plaintiffs filed a motion for an amendment to the order resolving the bill-of-costs objections; this motion has been fully briefed. Plaintiffs request reconsideration of

1 their entitlement to reimbursement for the costs of transcripts and trial exhibits. Defendants argue
2 that plaintiffs’ motion is procedurally improper and lacks substantive support for their requests.
3 Because the federal and local rules do not anticipate the present procedural circumstances,
4 plaintiffs’ motion will be deemed a proper motion for review of taxed costs pursuant to
5 FRCP 54(d)(1) and will be decided on the merits.

6 **ANALYSIS**

7 Plaintiffs’ motion concerns both the cost of transcripts and the cost of trial exhibits. These
8 two items will be considered in turn.

9 **1. Transcripts**

10 Civil Local Rule 54-3(b) sets forth the standards for taxing the cost of reporters’
11 transcripts. It states:

- 12 (1) The cost of transcripts necessarily obtained for an
13 appeal is allowable.
- 14 (2) The cost of a transcript of a statement by a Judge from
15 the bench which is to be reduced to a formal order prepared by
16 counsel is allowable.
- 17 (3) The cost of other transcripts is not normally allowable
18 unless, before it is incurred, it is approved by a Judge or stipulated
19 to be recoverable by counsel.

20 Civ. Loc. Rule 54-3(b). Wells Fargo objected to plaintiffs’ claim of \$20,631.68 for transcripts of
21 court proceedings that were listed on the attachment to plaintiffs’ bill of costs as having been
22 “obtained for the use of trial.” Because plaintiffs had not demonstrated that the transcripts were
23 obtained for the purposes or under the circumstances that Rule 54-3(b) enumerates as allowable,
24 Wells Fargo’s objection was sustained (Dkt. No. 538 at 2).

25 Plaintiffs now argue that “these trial transcripts are patently necessary for litigating the
26 appeal in this case” because “[t]he appeal issues . . . are largely based on testimony and evidence
27 documented by the trial transcripts and the Court’s Findings of Fact and Conclusions of Law,
28 which themselves are based largely on the trial transcripts” (Reply Br. 3). Plaintiffs’ new
argument is persuasive; this order finds that plaintiffs now have shown that the transcripts are
necessary to litigating the appeal. If plaintiffs had not ordered the transcripts previously “for the
use of trial,” then they now would obtain them necessarily for the appeal. Accordingly, the cost is
allowable pursuant to Rule 54-3(b)(1).

1 None of Wells Fargo’s arguments to the contrary are availing. *First*, Wells Fargo seeks to
2 limit plaintiffs to the attachment filed with the bill of costs, but the local rules explicitly provide
3 for submission of supplemental documentation rebutting objections, and the federal rules provide
4 for challenges to the taxing of costs. FRCP 54(d)(1); Civ. Loc. Rule 54-4(a). *Second*, Wells
5 Fargo also attacks the evidentiary basis for plaintiffs’ new argument, but plaintiffs’ multitudinous
6 examples of transcript citations in the appellate record, along with common sense and experience,
7 confirm that transcripts of the proceedings below will be central to the appeal. *Third*, Wells
8 Fargo urges the Court to exercise its discretionary authority “to refuse to tax costs that are
9 allowable under 28. U.S.C. 1920” (Opp. 5), but the only reason offered for doing so — plaintiffs’
10 supposed dearth of evidentiary support — already has been disposed of by this order.

11 Because plaintiffs now have demonstrated that their claimed cost of \$20,631.68 for
12 transcripts of court proceedings is allowable pursuant to Civil Local Rule 54-3(b)(1), their motion
13 to amend is **GRANTED** with respect to this item. Wells Fargo’s objection to plaintiffs’ claimed
14 cost of \$20,631.68 for transcripts of court proceedings is now **OVERRULED**.

15 2. Trial Exhibits

16 Civil Local Rule 54-3(d)(4) provides: “The cost of reproducing trial exhibits is allowable
17 to the extent that a Judge requires copies to be provided.” Civ. Loc. Rule 54-3(d)(4). Wells
18 Fargo objected to plaintiffs’ claim of \$4,165.67 for the copying of trial exhibits. Noting that only
19 a single binder of key exhibits was required from each party in this action, the order resolving the
20 objections found that this binder should have cost no more than \$200.00 and sustained Wells
21 Fargo’s objection as to the costs of copying trial exhibits in excess of that amount (Dkt. No. 538
22 at 2–3).

23 Plaintiffs now submit that, in addition to the single binder of key exhibits, the parties were
24 required to jointly prepare a full set of all trial exhibits for the official record. To support this
25 argument, plaintiffs quote relevant language from the Guidelines for Trial and Final Pretrial
26 Conference in Civil Jury Cases Before the Honorable William Alsup. Plaintiffs request
27 entitlement to recover the full amount claimed for the copying of trial exhibits in order to cover
28 their share of the cost of this joint submission (Br. 2–3). Wells Fargo opposes plaintiffs’ request

1 but does not dispute that the cited portion of the Guidelines required the parties to submit a joint
2 set of official trial exhibits in addition to their key-exhibit binders (Opp. 5).

3 Because plaintiffs now have demonstrated that their full claimed cost of \$4,165.67 for the
4 copying of trial exhibits is allowable pursuant to Civil Local Rule 54-3(d)(4), their motion to
5 amend is **GRANTED** with respect to this item. Wells Fargo's objection to plaintiffs' claimed cost
6 of \$4,165.67 for the copying of trial exhibits is now entirely **OVERRULED**.

7 **CONCLUSION**

8 Plaintiffs' motion for amendment to the order resolving Wells Fargo's objections to
9 plaintiffs' bill of costs is **GRANTED**. Wells Fargo's objection to plaintiffs' claimed cost
10 of \$20,631.68 for transcripts of court proceedings is now **OVERRULED**. Wells Fargo's objection
11 to plaintiffs' claimed cost of \$4,165.67 for the copying of trial exhibits is now entirely
12 **OVERRULED**.

13 The clerk is directed to tax the previously disallowed cost of \$20,631.68 for transcripts of
14 court proceedings and the full cost of cost of \$4,165.67 (instead of the more limited previous
15 figure of \$200.00) for the copying of trial exhibits.

16 The hearing on plaintiffs' motion set for January 20, 2011 is **VACATED**.

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18 **IT IS SO ORDERED.**

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20 Dated: January 13, 2011.

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23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE
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