

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WANDA JOHNSON, *et al.*,
Plaintiffs,
v.
BAY AREA RAPID TRANSIT DISTRICT,
et al.,
Defendants.

AND RELATED ACTIONS.

No. C-09-0901 EMC
CONSOLIDATED CASES
C-09-4014 EMC (Grant)
C-09-4835 EMC (Bryson, *et al.*)
C-10-0005 EMC (Caldwell)

ORDER RE DISCOVERY DISPUTE
(Docket No. 331)

Pending before the Court is a discovery dispute that has arisen between Defendant Pirone and Plaintiff Oscar Grant, Jr. Counsel for Plaintiff has noticed the deposition of John Polito – Defendant’s expert – for April 21, 2014 at 10:00am in San Francisco, California. *See* Dkt. No. 329. Defendant requested either that (1) Plaintiff pay for Mr. Polito’s airfare costs and reasonable travel time or (2) permit Mr. Polito to appear via videoconference from Burbank, California. Dkt. No. 328. Plaintiff’s counsel denied both requests, stating that “Plaintiff will pay Mr. Polito for his time spent in responding to deposition questions and nothing more.” Dkt. No. 329, at 1.

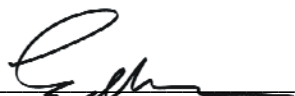
Federal Rule of Civil Procedure 26(b)(4)(E) governs the payment of expert expenses incurred in responding to discovery. In relevant part, this provision provides that “[u]nless manifest injustice would result, the court must require that the party seeking discovery . . . pay the expert a reasonable fee for time spent in responding to” depositions. *See* Fed. R. Civ. P. 26(b)(4)(E).

1 The Court **ORDERS** Plaintiff to pay Mr. Polito’s reasonable travel fees and expenses.
2 Courts have consistently held that such expenses are covered by Rule 26(b)(4)(E). *See, e.g., Stewart*
3 *v. City of Houston*, No. H-07-4021, 2010 WL 1524015, at *1 (S.D. Tex. Apr. 14, 2010) (recognizing
4 that the fees allowed under Rule 26 “include time spent in preparing for the deposition, in traveling
5 to the deposition, and in the deposition”); *Nilssen v. Osram Sylvania, Inc.*, No. 01 C 3585, 2007 WL
6 257711, at *4 (N.D. Ill. Jan. 23, 2007) (“Travel costs are also recoverable [under Rule 26].”); *Handi-*
7 *Craft Co. v. Action Trading, S.A.*, No. 4:02 CV 1731 LMB, 2003 WL 26098543, at *16 (E.D. Mo.
8 Nov. 25, 2003) (“In this manner, expenses incurred during travel are compensable under Rule
9 26(b)(4)(C) so long as they are reasonable.”); *McBrian, Inc. v. Liebert Corp.*, 173 F.R.D. 491, 493
10 (N.D. Ill. 1997) (“It would seem logical that if an expert witness is brought to the moving attorney
11 instead of the attorney going to the witness, the witnesses’ travel expenses should be paid by the
12 moving party.”); *Bonner v. American Airlines, Inc.*, No. 96CIV.4762, 1997 WL 802894, at *1
13 (S.D.N.Y. Dec. 31, 1997) (“[T]he weight of authority appears to hold that Rule 26(b)(4)(C) permits
14 recovery of fees for an expert’s travel time and preparation time in connection with a deposition,
15 along with the expert’s out-of-pocket expenses.”).

16 The parties are further reminded that this Court’s standing order requires that the parties
17 meet and confer regarding discovery matters *in person* or, if good cause is shown, by telephone.
18 Meet and confer via letter, e-mail, or the like will not be accepted in the future.

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20 IT IS SO ORDERED

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22 Dated: April 16, 2014

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EDWARD M. CHEN
United States District Judge

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