

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

)	Case No. 13-1418 SC
)	
FITBUG LIMITED,)	ORDER GRANTING IN PART AND
)	DENYING IN PART MOTION FOR
Plaintiff,)	REVIEW OF CLERK'S TAXATION OF
)	<u>COSTS</u>
v.)	
)	
FITBIT, INC.,)	
)	
Defendant.)	
)	
)	
)	

I. INTRODUCTION

Now before the Court is Plaintiff Fitbug Limited's ("Fitbug") motion for review of costs allowed by the Clerk of the Court ("Clerk"). ECF No. 108 ("Mot."); see also ECF Nos. 100 ("Bill of Costs"), 106 ("Cost Taxed"). The motion is fully briefed, ECF Nos. 112 ("Opp'n"), 114 ("Reply"), and appropriate for resolution without oral argument under Civil Local Rule 7-1(b). For the reasons set forth below, the motion is GRANTED in part and DENIED in part, and the Court taxes \$63,660.94 in costs.

II. BACKGROUND

This is a trademark infringement case between two companies that manufacture and sell portable electronic fitness tracking

1 devices. The Court granted summary judgment in favor of Defendant
2 Fitbit, Inc. ("Fitbit") on all the trademark claims, finding they
3 were barred by laches, ECF No. 96 ("SJ Order"), and thus entered
4 judgment in Fitbit's favor. ECF No. 97 ("Judgment"). Pursuant to
5 that judgment, Fitbit submitted a bill of costs as required by 28
6 U.S.C. Section 1920, which authorizes the Court or its Clerk to tax
7 as "costs" various "minor, incidental [litigation]
8 expenses" Taniguchi v. Kan Pac. Saipan, Ltd., 132 S. Ct.
9 1997, 2006 (2012).

10 In its bill of costs, Fitbit sought \$88,888.86 in costs.
11 Fitbug objected, ECF No. 103, and the Clerk ultimately taxed costs
12 of \$54,089.15. The Clerk declined to tax \$16,997.12 as "outside
13 the ambit of Civil Local Rule 54-3(c)," and \$17,802.59 as "outside
14 the ambit of Civil Local Rule 54-3(d)," which furnish the standards
15 for allowable deposition costs and reproduction and exemplification
16 costs, respectively. See Civ. L.R. 54-3(c)-(d).

17 Despite the Clerk's substantial reductions to Fitbit's costs,
18 Fitbug believes the amount taxed includes non-taxable items. As a
19 result, Fitbug asks the Court to either reject Fitbit's claimed
20 costs entirely or, at a minimum, reduce them by a further
21 \$27,468.58. Fitbit opposes any further reductions in its costs.

22

23 **III. LEGAL STANDARD**

24 Awarding costs is discretionary; however there is a
25 presumption in favor of awarding costs to prevailing parties. See
26 Ass'n of Mexican-Am. Educators v. State of Cal., 231 F.3d 572, 591
27 (9th Cir. 2000) (en banc); see also Jefferson v. City of Fremont,
28 No. C-12-0926 EMC, 2015 WL 1264703, at *2 (N.D. Cal. Mar. 19,

1 2015). Nonetheless, "[w]ith regard to individual itemized costs,
2 the burden is on the party seeking costs . . . to establish the
3 amount of compensable costs and expenses to which it is entitled."
4 City of Alameda v. Nuveen Mun. High Income Opportunity Fund, No. C-
5 08-4575 SI, 2012 WL 177566, at *1 (N.D. Cal. Jan. 23, 2012)
6 (internal quotation marks and citation omitted).

7 Federal Rule of Civil Procedure 54 provides for a party to
8 move for judicial review of costs taxed by the clerk. Fed. R. Civ.
9 P. 54(d)(1). The Court reviews the Clerk's taxation of costs de
10 novo. See Lopez v. San Francisco Unified Sch. Dist., 385 F. Supp.
11 2d 981, 1001 (N.D. Cal. 2005).

12 Taxable costs are listed in 28 U.S.C. Section 1920 ("Section
13 1920"), and include: (1) filing fees and other court fees, (2) fees
14 for transcripts "necessarily obtained for use in the case;" (3)
15 costs of exemplification and copies also "necessarily obtained,"
16 (4) certain fees for printing and witnesses, (5) docket fees under
17 28 U.S.C. Section 1923, and (6) costs of court-appointed experts or
18 compensation for interpreters.

19 The Civil Local Rules provide additional guidance regarding
20 bills of costs. See Civ. L.R. 54-1(a); Civ. L.R. 54-3.
21 Specifically, the Local Rules require a party's bill of costs
22 "state separately and specifically each item of taxable costs
23 claimed." Civ. L.R. 54-1(a). Further, a party must provide an
24 affidavit stating that the items listed are "correct and [have]
25 been necessarily incurred in the case and that the services for
26 which fees have been charged were actually and necessarily
27 performed." 28 U.S.C. § 1924; see also Civ. L.R. 54-1(a)
28 (requiring a supporting affidavit stating that "the costs are

1 correctly stated, were necessarily incurred, and are allowable by
2 law").

3
4 **IV. DISCUSSION**

5 First, Fitbug argues that because Fitbit's declaration
6 supporting its bill of costs, ECF No. 100-1 ("First Wakefield
7 Decl."), does not state (as required by Civil Local Rule 54-1(a))
8 that its claimed costs are "allowable by law," all of Fitbit's
9 costs should be denied. However, Fitbit's declaration states it is
10 filed "in support of Fitbit's Bill of Costs" and is "in accordance
11 with Federal Rule of Civil Procedure 54, Local Rules 54-1 and 54-3,
12 and 28 U.S.C. § 1924." Id. at ¶ 2. While Fitbug apparently
13 believes "[n]o other words can tell it half so clearly," the
14 requirement a party say the "three little words," "allowable by
15 law," is merely a reminder that the Court expects them to submit
16 costs they believe are taxable, not a set of magic words necessary
17 to receive any costs. Cf. Sarah Vaughan, Three Little Words, on
18 Live at the London House (Mercury Records 1958), available at:
19 <https://www.youtube.com/watch?v=9WSZ6IRC-ys>. As the language of
20 Fitbit's declaration makes clear, Fitbit submitted these costs in
21 good faith and understood that doing so was a representation to the
22 Court and the Clerk that the costs were "allowed by law." Now the
23 Court must decide whether Fitbit was right or not. The Court
24 declines to elevate form over substance to avoid making that
25 decision.

26 The balance of Fitbug's motion takes issue with Fitbit's
27 claimed costs for shipping, electronic discovery and document
28 production, preparing demonstrative exhibits, and certain office

1 supplies. The Court also addresses the claimed costs for
2 deposition transcripts and, finally, photocopying and scanning.

3 **A. Shipping Charges**

4 Shipping or expedited delivery charges are not allowable as
5 costs. See SJA Amoroso Const. Co. v. Exec. Risk Indemn. Inc., No.
6 C 06-2572-SBA, 2009 WL 962008, at *4 (N.D. Cal. Apr. 8, 2009).
7 Fitbug rightly points out that Fitbit sought as costs \$324.28 for
8 FedEx shipping and messenger services. Further, Fitbug's objection
9 notes that shipping and handling for deposition transcripts are
10 also not allowable. See Obj. at 6-7; see also Blanton v. Cnty. of
11 Sacramento, No. 2:09-cv-01832-MCE-CKD, 2013 WL 3283216, at *2 (E.D.
12 Cal. June 27, 2013) ("[T]he court will not tax the cost of postage
13 and handling of the deposition transcripts, since those costs are
14 not enumerated in [28 U.S.C. Section 1920].") (internal quotation
15 marks and citation omitted). As a result, Fitbug's motion for
16 review is GRANTED and these costs will not be taxed.

17 **B. Electronic Discovery and Document Production**

18 Next, Fitbug takes issue with several costs associated with
19 electronic discovery and document production.

20 Section 1920 was enacted in 1853 and as a result does not
21 speak directly on the taxability of electronic discovery costs.
22 See Alzheimer's Inst. of Am. Inc. v. Elan Corp. PLC, No. C-10-
23 00482-EDL, 2013 WL 8744216, at *2 (N.D. Cal. Jan. 31, 2013). Nor
24 has the Ninth Circuit or Supreme Court spoken on how Section 1920
25 should be interpreted in this context, aside from remarking that
26 (in a distinct context, see id. at *1 (distinguishing this general
27 statement)) "[t]axable costs are limited to relatively minor,
28 incidental expenses." Taniguchi, 132 S. Ct. at 2006.

1 In this vacuum, courts have analogized the language of Section
2 1920(4), which authorizes the taxation of "[f]ees for
3 exemplification and the costs of making copies of any materials
4 where the copies are necessarily obtained for use in the
5 case . . . ," to a variety of electronic discovery expenses. See,
6 e.g., Ancora Techs., Inc. v. Apple, Inc., No. 11-CV-06357 YGR, 2013
7 WL 4532927, at *2-4 (N.D. Cal. Aug. 26, 2013) (allowing costs for
8 converting electronic documents into usable formats while denying
9 costs for hosting electronic data and technical support);
10 Pacificorp v. Nw. Pipeline GP, No. 3:10-cv-00099-PK, 2012 WL
11 6131558, at *7-8 (D. Or. Dec. 10, 2012) (concluding that conversion
12 of electronic documents into a database is taxable); Tibbie v.
13 Edison Int'l, No. CV 07-5359 SVW (AGRx), 2011 WL 3759927, at *6
14 (C.D. Cal. Aug. 22, 2011) (taxing costs for technical experts
15 required to prepare and produce electronic discovery documents).

16 1. Charges for "FW Litigation Support -- Data
17 Extraction and Processing

18 The first electronic discovery expense Fitbug disputes is five
19 charges for "FW Litigation Support -- Data Extraction and
20 Processing" apparently totaling \$23,464.98. Mot. at 6. However,
21 one of these charges, described in Fitbug's moving papers as \$23.78
22 claimed for "FW Litigation Support -- Data Extraction and
23 Processing," id., does not actually appear in Fitbit's submissions.
24 On the contrary, the only \$23.78 item Fitbit submitted is an
25 already-disallowed shipping charge, dated November 18, 2013. See
26 First Wakefield Decl. Ex. B at 8. Even though this charge is also
27 wrongly dated in both Fitbug's objection and motion, the Court
28 surmises that Fitbug likely meant to challenge a different charge

1 (also for "FW Litigation Support -- Data Extraction and
2 Processing") dated November 30, 2013 and totaling \$8,840.85. As a
3 result, the correct total for these objected-to charges is
4 \$32,282.05.

5 The First Wakefield Declaration avers that these costs relate
6 "to collection, scanning and conversion of documents, and related
7 processes necessary to the eDiscovery process," and these entries
8 specifically "concern document collection, including scanning and
9 related processes." In a subsequent declaration, Wakefield
10 provides more information about these costs, stating that they were
11 necessary to prepare discovery documents for production to Fitbug
12 in the format to which the parties agreed. See ECF No. 112-1
13 ("Second Wakefield Decl.") at ¶¶ 9-10; see also ECF No. 23
14 (stating, in a joint case management statement, that the parties
15 agreed to a particular format for electronic documents).

16 As Fitbit points out, several other courts have taxed similar
17 electronic document processing costs where, as here, the parties
18 agreed to a particular format for production and the costs incurred
19 were necessary for compliance with that agreement. See Ancora,
20 2013 WL 4532927, at *2; eBay v. Kelora Sys., LLC, No. C 10-4947 CW
21 (LB), 2013 WL 1402736, at *7-8 (N.D. Cal. Apr. 5, 2013).
22 Initially, Fitbug argued that these costs were impermissible
23 because they included non-taxable costs for data hosting, metadata
24 extraction, and printing documents to serve on opposing counsel.
25 See ECF No. 108-1 ("Rosenberg Decl.") ¶¶ 3-4. However, subsequent
26 submissions by Fitbit have clarified that such charges are not
27 included in Fitbit's claimed costs with the exception of metadata
28 extraction, which Fitbit states was necessary to comply with the

1 parties' agreement regarding the production of electronic
2 documents. See Second Wakefield Decl. ¶ 9, 11, 18.

3 Fitbug believes the Court should disregard these subsequent
4 documents because they provide details not included with Fitbit's
5 submissions to the Clerk. However, the Local Rules allow the Clerk
6 to "require and consider further affidavits and documentation as
7 necessary to determine allowable costs." Civ. L.R. 54-4(a). If
8 the Clerk may consider such supplemental submissions, the Court
9 cannot imagine why it cannot do so as well. See Gutierrez v. Wells
10 Fargo Bank, N.A., No. C 07-05923 WHA, 2011 WL 115481, at *2 (N.D.
11 Cal. Jan. 13, 2011) ("First, [Fitbug] seeks to limit [Fitbit] to
12 the attachment filed with the bill of costs, but the local rules
13 explicitly provide for submission of supplemental documentation
14 rebutting objections, and the federal rules provide for challenges
15 to the taxing of costs.") (citations and emphasis omitted); see
16 also Emblaze Ltd. v. Apple Inc., No. 5:11-cv-01079-PSG, 2015 WL
17 1304779, at *6 (N.D. Cal. Mar. 20, 2015) (considering arguably
18 untimely supplementation of the record because it was a "good-faith
19 attempt to provide the court with all information necessary to make
20 a reasoned determination about whether to tax costs").

21 Thus, the Court finds these expenses are properly taxed as
22 exemplification costs necessarily incurred in complying with the
23 parties' agreement. Moreover, to the extent the costs of metadata
24 extraction are included, these too are necessarily incurred,
25 allowable exemplification costs because they were incurred not for
26 the convenience of counsel, but to comply with the parties'
27 agreement. Compare Computer Cache Coherency Corp. v. Intel Corp.,
28 No. C-05-01766 RMW, 2009 WL 5114002, at *4 (N.D. Cal. Dec. 18,

1 2009) (denying costs for metadata extraction costs merely for the
2 convenience of counsel), with eBay, 2013 WL 1402736, at *12
3 (allowing such costs where the parties agreement provided for
4 metadata extraction, Bates numbering, and native file links). As a
5 result, Fitbug's motion for review of the Clerk's taxation of these
6 costs is DENIED, and these \$32,282.05 in costs will be taxed.

7 **2. Charges for "FW Litigation Support -- Production**
8 **Deliveries"**

9 Next, Fitbug challenges seven items for "FW Litigation Support
10 -- Production Deliveries" totaling \$4,466.91. Initially, Fitbit
11 argued these charges are taxable because they "relate to production
12 of documents." First Wakefield Decl. at ¶ 5. Subsequently, Fitbit
13 has elaborated that these charges include costs for converting
14 document formats as required by the parties' agreement, as well as
15 providing Bates numbers and confidentiality designation, preparing
16 load files, and loading the information onto physical media for
17 delivery to Fitbug. Second Wakefield Decl. at ¶ 14. Furthermore,
18 contrary to Fitbug's chief objection, Fitbit now avers that the
19 costs of shipping or physical deliveries of these materials are not
20 included in these charges. Id. at ¶ 15.

21 These costs are properly taxed as well because they are
22 expressly contemplated by the parties' agreement and are
23 necessarily incurred exemplification costs. See eBay, 2013 WL
24 1402736, at *7, 12. As Magistrate Judge Beeler found, such costs
25 are necessarily incurred because without the conversion and
26 organization of these files, "any copy is relatively useless." Id.
27 at *7. While Fitbug reiterates its complaints that Fitbit did not
28 provide a fuller explanation of these charges in its initial

1 submissions and again made statements in the parties' meet and
2 confer that are contradicted by its subsequent submissions, the
3 Court rejected these arguments as to the other discovery costs and
4 does so here as well. See Civ. L.R. 54-4(a); Gutierrez, 2011 WL
5 115481, at *2. As a result, Fitbug's motion for review of the
6 Clerk's taxation of these costs is DENIED and this \$4,466.91 will
7 be taxed.

8 **C. Demonstrative Exhibit-Related Charges**

9 Next, Fitbug challenges numerous costs related to Fitbit's
10 preparation of demonstrative exhibits.

11 Civil Local Rule 54-3(d)(5) provides that the "costs of
12 preparing charts, diagrams, videotapes, and other visual aids to be
13 used as exhibits is allowable if such exhibits are reasonably
14 necessary" The "costs of preparing" demonstrative exhibits
15 are limited to "the cost of physical preparation of
16 demonstratives," not "costs associated with the intellectual effort
17 involved in creating the content of demonstratives." Ancora, 2013
18 WL 4532927, at *5 (quoting Computer Cache, 2009 WL 5114002, at *1-
19 2) (additional citations omitted).

20 Here, only some of the costs claimed by Fitbit are taxable.
21 For instance, generic entries like "Meeting with counsel" or
22 "Travel to[]/from SF" are either not taxable or likely include both
23 taxable and non-taxable components. Others, like "[a]ll-day
24 meeting, review, and development of Defense slide deck" likely
25 include some taxable expenses, however the Court finds Fitbit has
26 not sufficiently shown that these costs stem from the physical
27 preparation of the demonstrative exhibits and not the "creation and
28 preparation of the content of demonstrative exhibits," which is not

1 taxable. See Pixion Inc. v. Placeware, Inc., No. C 03-02909 SI,
2 2005 WL 3955889, at *4 (N.D. Cal. May 26, 2005). On the other
3 hand, the charges labelled "Defense Template," "Cut depo clips,"
4 and "Database administration" all refer to the physical acts of
5 preparing a slide template for use with Fitbit's demonstratives, or
6 the physical act of editing videos of depositions and are thus
7 taxable. Id.; see also Second Wakefield Decl. at ¶¶ 22, 24.
8 Similarly, the physical acts of incorporating comments from counsel
9 and making stylistic changes, referred to Fitbit's invoices as
10 "Continue Slide Deck Revisions . . ." and "Review of PowerPoint
11 Draft . . ." are taxable because they reflect the physical
12 preparation of the contents separately decided upon by counsel.
13 Second Wakefield Decl. ¶ 24. The remaining costs are either not
14 taxable or not sufficiently described for the Court to determine if
15 they are taxable, and thus will be excluded from the costs taxed.
16 See In re Ricoh Co., Ltd. Patent Litig., 661 F.3d 1361, 1368 (Fed.
17 Cir. 2011) (applying Ninth Circuit law in disallowing
18 insufficiently described costs for document production). As a
19 result, the motion for review is GRANTED in part and DENIED in part
20 as to these charges, and \$5,859.00 will be taxed.

21 **D. Supplies**

22 Next, Fitbug challenges Fitbit's claimed costs for the
23 creation of folders, compact discs, index tabs, and other office
24 supplies.

25 Fitbug is right to object to the majority of these charges,
26 which are simply non-taxable office supplies. See Oyarzo v.
27 Tuolumne Fire Dist., No. 1:11-cv-01271-SAB, 2014 WL 1757217, at *21
28 (E.D. Cal. Apr. 30, 2014) ("[T]he costs of office supplies are not

1 taxable under [S]ection 1920.") (citing Duhn Oil Tool, Inc. v.
2 Cameron Int'l Corp., No. 1:05-cv-01411-MLHGSA, 2012 WL 4210104, at
3 *5 (E.D. Cal. Sept. 12, 2012)). As a result, Fitbug's motion is
4 GRANTED as to items such as "Manila Folder," "Copying:Custom Tabs
5 on Folders," or "Index Tabs." Mot. at 7-8. These and other
6 similar costs, for instance slipsheets and binders, will not be
7 taxed. See, e.g., First Wakefield Decl. Ex. A at 14 (including
8 \$0.48 for slipsheets and \$19.00 for three-ring binders).

9 Fitbug also objects to charges for two other items,
10 "EDD:Folder Creation" and "EDD:CD Initial Master," arguing that
11 these are non-taxable organizational or indexing tasks. See MEMC
12 Elec. Materials v. Mitsubishi Materials, No. C-01-4925 SBA (JCS),
13 2004 WL 5361246, at *3, 12 (N.D. Cal. Oct. 22, 2004) (concluding
14 that "Local Rule [54-3(d)] does not authorize costs for . . .
15 special services such as indexing . . ."), report and
16 recommendation adopted, 2004 WL 5363614 (N.D. Cal. Nov. 22, 2004).
17 Fitbit does not defend charges for these items on a June 5, 2014
18 invoice, which it later discovered was erroneously included in the
19 bill of costs.¹ Second Wakefield Decl. at ¶ 29. Fitbit does,
20 however, argue that two of these charges are appropriately taxed
21 because they were "incurred . . . in scanning and otherwise
22 organizing the documents collected" from a third-party former

23
24 ¹ The Second Wakefield Declaration states that "one invoice for
25 \$53.75 billed on June 4, 2014 was assigned to the wrong case number
26 and billed in error, and should not have been included in the bill
27 of costs," id. at ¶ 29, however the invoice itself includes two
28 other potentially taxable charges, one for scanning and the other
for copying. See First Wakefield Decl. Ex. B at 34. Because the
Court cannot determine from the record whether these remaining
charges were properly included in the bill of costs or were also
erroneously charged, these charges will not be taxed. See id.

1 Fitbit employee, Mark Bult, for production in response to Fitbug's
2 subpoena of Mr. Bult. Second Wakefield Decl. ¶ 27. These costs
3 are permissible under both Civil Local Rule 54-3(d)(2), which
4 states that the cost of reproducing "formal discovery documents
5 . . . is allowable," and cases allowing for the taxation of the
6 costs of producing discovery documents where those costs were
7 necessarily incurred and do not include "intellectual efforts"
8 involved in the production. See eBay, 2013 WL 1402736, at *5
9 (citations omitted). As a result, Fitbug's motion for review is
10 GRANTED in part and DENIED in part, and only the \$28.25 incurred in
11 responding to the Bult subpoena will be taxed. The other folder or
12 CD creation charges have not been sufficiently explained by Fitbit,
13 and as a result will not be taxed. See In re Ricoh, 661 F.3d at
14 1368.

15 **E. Depositions**

16 Finally, while Fitbug did not seek review of the Clerk's
17 taxation of deposition costs, it did argue in its objection that
18 certain deposition costs should not be taxed. Given that the Court
19 reviews the Clerk's taxation of costs de novo, the Court addresses
20 these costs as well.

21 Section 1920 provides for the taxation of "[f]ees for printed
22 or electronically recorded transcripts necessarily obtained for use
23 in the case" Id. at (2). Civil Local Rule 54-3(c)
24 provides for the taxation of the costs of an original and one copy
25 of deposition transcripts "including videotaped depositions," as
26 well as "[n]otary fees incurred in connection with taking
27 depositions" See Civ. L.R. 54-3(c)(1), (3).

28 First, Fitbug notes that Fitbit seeks costs for "Transcript

1 Packages" from a vendor, Esquire Solutions, for the depositions of
2 Mark Bult, James Park,² and Amy McDonough. Fitbug argues these
3 packages contain more than the single original and copy permitted
4 by the Local Rules because, according to Esquire Solutions'
5 website, the transcript packages contain a bound paper transcript,
6 and a CD containing four versions of the full or condensed
7 transcripts. See ECF No. 103-1 ("Second Rosenberg Decl.") Ex. 1.
8 Although "the trend among courts in this District appears to allow
9 a party to recover costs for the original deposition transcript and
10 a copy -- no matter what format the copy is in," Fitbug is right
11 that these transcript packages contain more than an original and a
12 single copy, as permitted by the Local Rules, and accordingly
13 cannot be fully taxed. See Hesterberg v. United States, -- F.
14 Supp. 3d --, 2014 WL 7184246, at *4 (N.D. Cal. 2014). The Court
15 finds that taxing only 40 percent of the transcript packages is the
16 best potential solution because Esquire does not itemize the costs
17 of each additional format. Accordingly, the Court taxes \$348.15
18 for the deposition of Amy McDonough and \$235.65 for the deposition
19 of Mark Bult. As explained in footnote two, above, the Court taxes
20 \$1,471.80 for the deposition of James Park.

21 For the remaining depositions, the Court finds the only
22 allowable costs are one transcript copy, one additional copy (in
23 most cases a video copy), exhibit costs, and a reporter

24 _____
25 ² Fitbit submitted two invoices from Esquire for the deposition of
26 Mr. Park. One merely refers to a single copy of the transcript,
27 while the other contains the same objectionable transcript package.
28 See First Wakefield Decl. Ex. A at 16-18. The Court taxes the full
cost of the single copy, 20 percent of the transcript package as
the second copy, and a single set of exhibits, for a total of
\$1,471.80.

1 certification if not otherwise included in the cost of the
 2 transcript. See Civ. L.R. 54-3(c)(1)-(4); Ancora, 2013 WL 4532927,
 3 at *5-6 (concluding there is "no reason to deny costs which conform
 4 to [Civil Local Rule 54-3(c)(1)], even if the second copy is a
 5 rough ASCII or a video"). Fitbug rightly objects that the other
 6 charges for shipping and handling of transcripts, "Interactive
 7 Realtime," rough ASCII copies, and transcript CDs either fall
 8 outside Section 1920 or exceed the number of copies permitted by
 9 Civil Local Rule 54-3(c)(1). Accordingly, the Court taxes the
 10 following deposition costs:

<u>Deponent</u>	<u>Items</u>	<u>Amount</u>
Mark Bult	Transcript Package (taxed at 40%)	\$155.90
	Exhibits	\$79.75
Dennis Skigen	Transcript	\$1,050.00
	Exhibits	\$276.20
	Reporter Certification	\$20.00
	Video	\$570.00
Paul Landau	Transcript	\$1,527.20
	Exhibits	\$283.30
	Reporter Certification	\$20.00
	Video	\$760.00
James Park	Transcript	\$926.25
	Exhibits	\$357.10
	Transcript Package (taxed at 20%)	\$188.45
Fergus Kee	Transcript	\$1,070.70

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Exhibits	\$233.80
	Reporter Certification	\$20.00
	Video	\$855.00
Woody Scal	Transcript	\$471.25
	Exhibits	\$11.75
	Video (1 of 4)	\$125.00
Eric Friedman	Transcript	\$591.50
	Exhibits	\$193.10
	Video	\$500.00
Amy McDonough	Transcript Package (taxed at 40%)	\$240.40
	Exhibits	\$107.75
Sundeep Sangany	Transcript	\$1,657.50
	Exhibits	\$25.20
	Reporter Certification	\$20.00
	Video	\$760.00
E. Deborah Jay	Transcript	\$413.80
	Exhibits	\$106.00
Bruce Issacson	Transcript	\$1,306.40
	Exhibits	\$658.80
	Reporter Certification	\$20.00
David Haas	Transcript	\$1,004.50
	Exhibits	\$140.50
	Video	\$1,742.50
Michael J. Jeffords	Videos (2 of 4)	\$250.00
<u>TOTAL DEPOSITION COSTS TAXED:</u>		\$18,739.60

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. Remaining Exemplification Costs

In addition to the foregoing contested costs, Fitbit also sought \$2,210.24 for photocopying and \$74.89 for scanning. Because these costs are necessarily incurred exemplification costs, see 28 U.S.C. Section 1920(4), they will be taxed as well.

V. CONCLUSION

For the reasons set forth above, Fitbug's motion for review of the Clerk's taxation of costs is GRANTED in part and DENIED in part and the Court taxes the following costs:

<u>Category</u>	<u>Amount</u>
Deposition transcripts, video transcripts, reporter certifications, and exhibits	\$18,739.60
Photocopying and scanning	\$2,285.13
Electronic discovery and document production costs	\$36,748.96
Preparation of demonstrative exhibits	\$5,859.00
Production costs for Bult subpoena	\$28.25
TOTAL COSTS TAXED:	\$63,660.94

IT IS SO ORDERED.

Dated: May 13, 2015


UNITED STATES DISTRICT JUDGE