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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FADI SABA,
Plaintiff,
v.
UNISYS CORPORATION,
Defendant.

Case No. [14-cv-01310-WHO](#)

**ORDER GRANTING MOTION TO
REVIEW COSTS**

Re: Dkt. No. 163

After the clerk awarded defendant Unisys Corporation (“Unisys”) \$9,924.70 in costs, Unisys requests review of the award pursuant to Federal Rule of Civil Procedure 54(d)(1). *See* FED. R. CIV. P. 54 (“On motion served within the next 7 days, the court may review the clerk's action.”); Dkt. No. 163. Unisys asserts that the clerk erred by (i) excluding the costs of videotaping depositions; (ii) disallowing costs for service of process; and (iii) disallowing copying costs. Dkt. No. 163 at 1-2.

I GRANT Unisys’s request for the purpose of correcting the costs awarded for videotaping deposition and for copying fees. Unisys is entitled to the copying costs and costs of videotaping depositions that were disallowed, but not for its “same day” service of process.

DISCUSSION

I. COSTS

A. Videotaped Deposition Costs

The clerk taxed the cost for the written deposition transcripts, but not the costs associated with videotaping those depositions. Dkt. No. 159. Civil Local Rule 54-3(c)(1) states that “[t]he cost of an original and one copy of any deposition (including videotaped depositions) taken for any purpose in connection with the case is allowable.” My colleagues disagree whether parties are entitled to the cost of both a stenographic deposition transcript and a videotape of the same

1 deposition. *Kilopass Tech. Inc. v. Sidense Corp.*, No. C 10-02066 SI, 2013 WL 843104, at *3
 2 (N.D. Cal. Mar. 6, 2013) (recognizing that “courts in this district have reached divergent outcomes
 3 on this issue,” and concluding that “Local Rule 54–3(c) allows for the taxable costs of both the
 4 videotape and the transcript of a deposition”); *see also Apple Inc. v. Samsung Electronics Co.*, No.
 5 11-CV-01846-LHK, 2014 WL 4745933, at *6 (N.D. Cal. Sept. 19, 2014) (“Courts across the
 6 Northern District have struggled to interpret Civil Local Rule 54–3(c)(1)”). I join those that do
 7 consider those costs necessary for trial in the appropriate case. *Samsung Electronics Co.*, 2014
 8 WL 4745933, at *6; *Kilopass*, 2013 WL 843104, at *3; *Hynix Semiconductor Inc. v. Rambus Inc.*,
 9 697 F. Supp. 2d 1139, 1147 (N.D. Cal. 2010); *Meier v. United States*, No. C 05-04404 WHA,
 10 2009 WL 982129, at *1 (N.D. Cal. Apr. 13, 2009); *Fresenius Med. Care Holdings, Inc. v. Baxter*
 11 *Int'l, Inc.*, No. C 03-1431 SBA, 2008 WL 2020533, at *6 (N.D. Cal. May 8, 2008); *Pixion Inc. v.*
 12 *PlaceWare Inc.*, No. C 03-02909 SI, 2005 WL 3955889, at *2 (N.D. Cal. May 26, 2005).

13 Trial lawyers need to use some judgment in deciding whether a videotaped deposition is
 14 necessary. It is often more effective to show inconsistencies in the testimony of key witnesses on
 15 videotape than to simply impeach them with a deposition transcript. Here, Unisys has requested
 16 costs associated only with videotaping the depositions of Saba (for two days) and two of Saba’s
 17 experts. Dkt. No. 163 at 2. These were important depositions in the case. Moreover, Saba
 18 videotaped the same depositions and all others taken in this case. *Id.* at 3. Under these
 19 circumstances, the videotaping costs were necessary for Unisys’s defense. It is entitled to an
 20 additional \$5,095.76 in costs for the videotaped depositions. *See* Dkt. No. 163 at 2.

21 **B. Process Servers’ Fees**

22 Unisys requests \$295.75 for the process servers’ fees that it incurred in serving its
 23 subpoena on Aetna, which Magistrate Judge Ryu expressly allowed. Dkt. No. 163 at 3. While
 24 Unisys is entitled to costs for private process servers, these costs are only allowed “to the extent
 25 reasonably required and actually incurred.” Civil L.R. 54-3(a)(2). Here, the invoice submitted
 26 reflected a relatively high cost for service (\$295.75), stated that it used “same day” service, and
 27 was not itemized as to number of attempts, mileage, or other factors affecting cost or what would
 28 be considered reasonable. *See* Dkt. No. 140; *Affymetrix*, 2005 WL 2072113, at *2 (“Expedited

1 delivery or messenger fees . . . are not recoverable”); *Presidio Components, Inc. v. Am. Technical*
2 *Ceramics Corp.*, No. 08CV335-IEG NLS, 2011 WL 666881, at *2 (S.D. Cal. Feb. 17, 2011) (“In
3 its bill of costs, ATC did not break out the cost of expediting service, such that the Court cannot
4 determine what portion of the claimed cost is proper.”). Accordingly, because Unisys has not
5 presented adequate evidence that the fees for service of the Aetna subpoena were “reasonably
6 required,” its objection is DENIED.

7 **C. Copying Costs**

8 Unisys requests \$72.00 for costs incurred in copying documents produced to Saba in
9 discovery. Dkt. No. 163 at 4. Copying costs are taxable pursuant to Civil Local Rule 54-3(d)(2).
10 I do not see any reason to disallow the \$72.00 in copying costs submitted by Unisys, and
11 accordingly GRANT Unisys’s request for copying costs.

12 **D. Saba’s Objections**

13 Saba filed an objection to Unisys’s bill of costs before the clerk taxed the costs. Dkt. No.
14 146. The clerk considered these objections before awarding costs, and after reviewing the costs
15 taxed by the clerk, I am satisfied that the remaining costs awarded are appropriate. I am not
16 persuaded by Saba’s argument that I should exercise my discretion to deny an award of costs
17 entirely, and find that there is no compelling reason to do so.

18 **II. MOTION TO COMPEL UNISYS TO COMPLY WITH THE TERMS OF THE**
19 **PROTECTIVE ORDER**

20 Saba objected to Unisys’s bill of costs, asserting that he was unable to pay, among other
21 things. Dkt. No. 146. In response to Saba’s objection, Unisys filed a brief that included
22 information that Saba contends violates the parties’ protective order. Dkt. No. 155.

23 In its response, Unisys stated that Saba “earned a salary in the high five figures during his
24 last several years of employment with Unisys and, for at least five years during that period was . . .
25 also earning a six-figure salary.” Dkt. No. 155 at 1. It also asserted that he earned “almost
26 \$200,000 annually for at least 5 years.” *Id.* It further described the amount that Saba received
27 from a prior settlement, which was already part of the record, and described the rough amount
28 Saba earned each year at Unisys. *Id.* at 3. Finally, Unisys referred to a specific sum that Saba had

1 received from family, which was also part of the record. *Id.* at 4.

2 Saba objects to these disclosures, as well as his address and the names of his children.
3 However, he does not provide specific citations to the record that he objects to, or to the protective
4 order. None of the information at issue is covered by the parties' stipulated protective order. *See*
5 *Dkt. No. 26*. Much of it is already part of the record. Saba did not mark this information as
6 confidential and never requested that any of this information be filed under seal. However, Saba is
7 correct that the names of his minor children may be filed under seal in accordance with Federal
8 Rule of Civil Procedure 5.2.

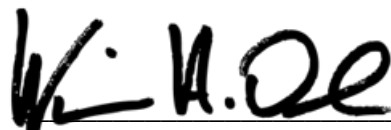
9 The procedure set forth in the protective order requires that a party mark information as
10 confidential and file a motion to seal when appropriate. *See Dkt. No. 26 at 8* ("If a Party wishes to
11 file a document designated "CONFIDENTIAL" with the Court, such document shall be filed
12 conditionally under seal until further order of the court. The party who requests the document be
13 filed under seal shall prepare the necessary order in compliance with Civil Local rule 79-5. The
14 filing Party shall serve the sealed document upon all parties of record by electronic mail or
15 pursuant to any authorized means of service."). If Saba wishes such information to be filed under
16 seal, he should file a motion to seal, along with a redacted and unredacted versions of the
17 document at issue, in accordance with Civil Local Rule 79-5.

18 **CONCLUSION**

19 For the above reasons, Unisys's motion to review costs is GRANTED. It is entitled to an
20 additional \$72.00 to reflect copying costs that the clerk disallowed, and to \$5,095.76 in costs for
21 videotaping the two expert depositions. It is not entitled to additional costs for the videotaped
22 depositions or the process servers' fees. Saba's motion to compel is DENIED.

23 **IT IS SO ORDERED.**

24 Dated: September 14, 2015

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26 WILLIAM H. ORRICK
27 United States District Judge
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