

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

IXL LEARNING, INC.,

Defendant.

Case No. [17-cv-02979-VC](#)

ORDER RETAXING COSTS

Re: Dkt. No. 175

IXL's motion for review of the Clerk's taxation of costs is granted. The bill of costs is revised consistent with this order. In total, IXL is awarded \$15,912.77, increasing the Clerk's initial award by \$1,631.99.

1. IXL's request for an additional \$4,510.00 in costs for electronic document management is denied. Electronic storage costs and hosting fees are not taxable. *Phoenix Techs. Ltd. v. VMWare, Inc.*, No. 15-CV-01414-HSG, 2018 WL 4700347, at *5 (N.D. Cal. Sept. 30, 2018). IXL argues that this sum includes document production costs that are taxable. But IXL has not provided adequate documentation for these costs, because the invoices it submitted are not itemized and show only that it paid a flat fee for all electronic document management services.

2. IXL requests \$1,676.71 in costs for preparing exhibits for use at trial. These costs are generally taxable, to the extent that the Court required copies to be made. *See* 28 U.S.C. § 1920(4); Civil L.R. 54-3(d)(3). This sum is reduced by \$473.71, which reflects (1) a reduction of \$364.34, because IXL did not explain what this line-item was for or why it is taxable; (2) a reduction of \$30.60 in costs for copying a deposition for a witness who was never called at trial;

and (3) a reduction of \$78.77 for unexplained fees associated with copying Duane's deposition transcript. The Clerk's award is revised to add an additional \$1203.00 for this category.

3. IXL's request for \$428.99 in costs associated with Jeremy Murphy's travel expenses is granted. IXL has submitted documentation establishing that these expenses were actually incurred. The EEOC argues that Murphy's airfare was not at "the most economical rate reasonably available." 28 U.S.C. § 1821(c)(1). But the EEOC has not shown that a lower fare was available for the relevant dates. *See MEMC Elec. Materials v. Mitsubishi Materials*, No. C-01-4925, 2004 WL 5361246, at *8 (N.D. Cal. Oct. 22, 2004).

4. The EEOC's request for a further reduction of \$29.00 is denied. The EEOC's cited authority does not establish that these costs are not taxable. *See* 28 U.S.C. § 1821(d)(2) ("A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance . . . for official travel[.]").

IT IS SO ORDERED.

Dated: April 10, 2019



VINCE CHHABRIA
United States District Judge