

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

3  
4 CRS RECOVERY, INC., a Virginia  
corporation; and DALE MAYBERRY,

5                                    Plaintiffs,

6                                    v.

7 JOHN LAXTON, aka  
8 johnlaxton@gmail.com; and  
9 NORTHBAY REAL ESTATE, INC.,

10                                   Defendants.

No. C 06-7093 CW

ORDER DENYING  
DEFENDANTS' MOTION  
OBJECTING TO THE  
CLERK'S TAXATION  
OF COSTS (Docket  
No. 371)

11 \_\_\_\_\_/

12                                    Defendant Northbay Real Estate, Inc., through its Chapter 7  
13 Bankruptcy Trustee, Linda Green, seeks review of the Clerk's order  
14 taxing costs against it and Defendant John Laxton.<sup>1</sup> Laxton has  
15 not joined in the motion or separately objected to the taxation of  
16 costs. Plaintiffs CRS Recovery, Inc. and Dale Mayberry oppose  
17 Northbay's motion. The Court took the motion under submission on  
18 the papers. Having reviewed the papers filed by the parties, the  
19 Court DENIES the motion.

20                                    BACKGROUND

21                                    CRS Recovery, Inc. and Mayberry filed this action on November  
22 15, 2006, against, among others, Laxton and Northbay. Docket No.  
23 1. On October 30, 2007, Plaintiffs filed their second amended  
24 complaint (2AC). Docket No. 51. In the 2AC, they asserted claims

25 \_\_\_\_\_

26                                    <sup>1</sup> The motion purports to be filed on behalf of "Defendants,"  
27 although it does not specifically identify them. The motion is  
28 signed by George Donaldson, special counsel to Green, Trustee of  
Northbay's estate, and is not signed by Laxton, who is proceeding  
pro se in this action. In addition, only Northbay is identified  
in the heading of the document.

1 for conversion, intentional interference with contract,  
2 declaratory relief and unfair competition.

3 On September 26, 2008, the Court granted Plaintiffs' motion  
4 for summary adjudication on their claims against Laxton and  
5 Northbay for conversion and declaratory relief. Docket No. 170.  
6 The Court also dismissed Plaintiffs' claims for intentional  
7 interference with contract and unfair competition because, at the  
8 hearing, Plaintiffs agreed to dismiss these claims if they  
9 prevailed on the motion for summary adjudication of the other  
10 claims. Id. at 18. Subsequently, the Ninth Circuit reversed in  
11 part this Court's summary adjudication order, finding that, under  
12 the facts presented at that time, material disputes remained  
13 regarding the circumstances under which Mayberry lost control of  
14 rl.com, the domain name which is the subject of the dispute,  
15 including whether this was the result of theft, fraud or  
16 abandonment.

17 On October 13, 2010, Laxton filed for bankruptcy under  
18 Chapter 13. Docket No. 226-5. On November 15, 2010, Northbay  
19 filed for bankruptcy as well and Green was appointed as its  
20 bankruptcy trustee. Docket No. 236-1.

21 Subsequently, Plaintiffs filed, in Laxton's and Northbay's  
22 bankruptcy cases, motions to lift the automatic stay so that this  
23 case could be litigated to final resolution in this Court.  
24 Plaintiffs' motions were granted on February 25, 2011 and March 1,  
25 2011. Docket No. 25, In re John Douglas Laxton, Case No. 10-13957  
26 (Bankr. N.D. Cal.); Docket No. 15, In re Northbay Real Estate,  
27 Inc., Case No. 10-14390 (Bankr. N.D. Cal.).

28

1 On July 26, 2011, Laxton filed a motion to dismiss his  
2 bankruptcy case, asserting that a Chapter 13 plan had not been  
3 confirmed because he is not able to fund the plan. Docket No. 39,  
4 In re John Douglas Laxton, Case No. 10-13957 (Bankr. N.D. Cal.).

5 On August 7, 2011, the court dismissed his bankruptcy case.  
6 Docket No. 41, In re John Douglas Laxton, Case No. 10-13957  
7 (Bankr. N.D. Cal.).

8 A four day trial was held in the instant action on May 7  
9 through 10, 2012. Docket Nos. 339-42. On the first day of trial,  
10 Plaintiffs moved to dismiss voluntarily their claim for  
11 intentional interference with contract, which motion the Court  
12 granted. Docket No. 381, 4:17-20. Defendants did not object to  
13 the dismissal.

14 On May 10, 2012, the jury returned a verdict that Plaintiffs  
15 proved that Laxton and Northbay had converted rl.com. Docket No.  
16 345. The jury also found that Defendants had not proved either of  
17 their affirmative defenses. Id. After the jury returned its  
18 verdict, Plaintiffs voluntarily dismissed their claim for  
19 violation of California's Unfair Competition Law (UCL), Cal. Bus.  
20 & Prof. Code section 17200, with the Court's permission. Docket  
21 No. 384, 565:15-24. Defendants did not object to the dismissal.

22 On May 29, 2012, Plaintiffs filed their bill of costs,  
23 seeking \$25,589.67. Docket No. 348.

24 On May 31, 2012, Northbay filed a renewed motion for judgment  
25 as a matter of law pursuant to Federal Rule of Civil Procedure  
26 50(b). Docket No. 349. On June 4, 2012, Laxton joined in the  
27 motion. Docket No. 352.

28

1 On June 11 and 12, 2012, Defendants filed notices of appeal  
2 and each paid the appellate fee of \$455. Docket Nos. 353-55.  
3 Neither Defendant sought in forma pauperis status for the appeal.

4 On June 13, 2012, Northbay filed objections to Plaintiffs'  
5 bill of costs. Docket No. 357.<sup>2</sup>

6 On June 14, 2012, the Clerk taxed costs in the amount of  
7 \$20,767.99 against Defendants. Docket No. 360.

8 On June 21, 2012, Northbay first filed the instant motion.  
9 Docket No. 367. However, at that time, Northbay filed the  
10 document incorrectly and was directed by the Clerk to re-file it.  
11 Docket No. 370. On June 25, 2012, Northbay refiled the motion.  
12 Docket No. 371.

13 On July 18, 2012, Plaintiffs filed their opposition to  
14 Northbay's motion. Docket No. 379.<sup>3</sup>

15 On today's date, the Court denied the renewed motion for  
16 judgment as a matter of law.

17 DISCUSSION

18 I. Objection to Taxing of Exemplification and Copying Expenses

19 Northbay objects to the taxation of \$13,181.80 for  
20 exemplification and copies.

21

22

---

23 <sup>2</sup> In violation of Civil Local Rule 54-2(a), Northbay filed  
24 its objections to Plaintiffs' bill of costs fifteen days after  
25 Plaintiffs filed and served it. The Court exercises its  
26 discretion to excuse the tardiness of Northbay's submission.

27 <sup>3</sup> In violation of Civil Local Rule 7-3(a), Plaintiffs filed  
28 their opposition more than fourteen days after Northbay filed its  
29 motion. Plaintiffs explain that their delay in filing their  
30 opposition was in part due to confusion about the due date because  
31 Northbay filed an amended notice of the hearing date for its  
32 motion on July 2, 2012. See Docket No. 372. The Court exercises  
33 its discretion to excuse the tardiness of Plaintiffs' filing.

1 Federal Rule of Civil Procedure 54(d)(1) provides, "Unless a  
2 federal statute, these rules, or a court order provides otherwise,  
3 costs--other than attorney's fees--should be allowed to the  
4 prevailing party." Title 28 U.S.C. § 1920 provides in relevant  
5 part that a judge or clerk may tax as costs "[f]ees for  
6 exemplification and the costs of making copies of any materials  
7 where the copies are necessarily obtained for use in the case."  
8 28 U.S.C. § 1920(4). Civil Local Rule 54-3(d) sets forth certain  
9 standards for taxing costs for reproduction and exemplification,  
10 stating in part,

11 (4) The cost of reproducing trial exhibits is allowable  
12 to the extent that a Judge requires copies to be  
provided.

13 (5) The cost of preparing charts, diagrams, videotapes  
14 and other visual aids to be used as exhibits is  
15 allowable if such exhibits are reasonably necessary to  
assist the jury or the Court in understanding the issues  
at the trial.

16 Civil Local Rule 54-3(d)(4),(5).

17 In their bill of costs, Plaintiffs sought \$16,181.30 for  
18 these expenses. Docket No. 348. With the bill of costs,  
19 Plaintiffs submitted evidence that they incurred \$630.17 for the  
20 cost of preparing trial exhibit binders as required under the  
21 Court's standing order and \$15,551.13 for graphics for use at  
22 trial. Docket No. 348-7. When taxing costs, the Clerk reduced  
23 this amount by \$2,999.50, or approximately nineteen percent, and  
24 awarded \$13,181.80. Docket No. 360. The Clerk explained that  
25 costs were adjusted to exclude those "outside ambit of L.R. 54-  
26 3(d)." Id.

27 Northbay argues that Plaintiffs have not shown that the  
28 exemplification materials were reasonably necessary for use in the

1 case, that "electronic methods of exemplification" are not  
2 recoverable under 28 U.S.C. § 1920(4), and that the expenses  
3 incurred "are facially exorbitant, particularly given that the  
4 trial only lasted two and a half days." Mot. at 3. Northbay  
5 appears to challenge the costs requested for demonstratives and  
6 graphics and not those requested for preparation of trial exhibit  
7 binders.

8 The Ninth Circuit has recognized that, in the context of 28  
9 U.S.C. § 1920(4), "'exemplification and copies of papers' has been  
10 interpreted to include all types of demonstrative evidence,  
11 including photographs and graphic aids" and has held that "the  
12 common meaning of the phrase 'exemplification and copies of  
13 papers' may under certain circumstances encompass illustrative  
14 materials if 'necessarily obtained for use in the case.'" Maxwell  
15 v. Hapag-Lloyd Aktiengesellschaft, 862 F.2d 767, 770 (9th Cir.  
16 1988). Thus, to the extent that Plaintiffs incurred these  
17 expenses to produce demonstratives, including graphic aids, that  
18 were reasonably necessary at trial, they are allowable under 28  
19 U.S.C. § 1920(4) and Civil Local Rule 54-3(d)(4).

20 Northbay's proffered authority does not hold to the contrary.  
21 The court in Fells v. Va. Dept. of Transp., 605 F. Supp. 2d 740  
22 (E.D. Va. 2009), did not address whether a prevailing party could  
23 recover the cost of preparing demonstratives for use at trial.  
24 Instead, the district court declined to allow recovery of expenses  
25 incurred to create electronically searchable documents, in  
26 contrast with reproducing paper documents in electronic form, in  
27 order to create an electronic database to assist in discovery.  
28 Id. at 741, 743-44.

1 Here, Plaintiffs seek reimbursement of costs for the creation  
2 large boards and electronic graphics for display at trial and  
3 state that the "vast majority--if not all--of these graphics were  
4 displayed during trial to assist with their understanding of the  
5 facts and issues in this case." Lisi Decl. ¶ 3. Plaintiffs used  
6 the graphics extensively during the trial and they appear to have  
7 been reasonably necessary in assisting the jury to understand the  
8 events, timeline and technology at issue in this matter. The  
9 costs do not appear "exorbitant" for the graphics actually  
10 produced and used, as Northbay argues. However, it is not clear  
11 whether Plaintiffs in fact used during the course of the trial all  
12 of the graphics for which they seek costs, and any graphics that  
13 were not actually displayed during trial cannot be said to have  
14 been necessarily obtained for use in the case. Accordingly, the  
15 Court finds it reasonable to reduce Plaintiffs' costs for graphics  
16 prepared for Plaintiffs for use at trial by about nineteen  
17 percent, from \$15,551.13 to \$12,551.63. Because Northbay does not  
18 challenge on this basis the amount requested for the preparation  
19 of trial exhibit binders, \$630.17, and the amount requested for  
20 that expense appears justified, the Court does not apply the same  
21 reduction to that amount.

22 Thus, the Court denies Northbay's motion as to the  
23 exemplification and copying expenses. The Clerk's order awarding  
24 \$13,181.80 for these costs is affirmed.

## 25 II. Objection to Taxing of Expenses in General

26 Northbay argues that Defendants should not be required to pay  
27 costs at all, or the costs should be significantly reduced,  
28 because Plaintiffs did not pursue their requests for damages and

1 abandoned their claims for intentional interference with contract  
2 and unfair competition at "the very end of trial." Mot. at 2.  
3 Northbay also points to Defendants' lack of financial resources.

4 "Federal Rule of Civil Procedure 54(d)(1) creates a  
5 presumption in favor of awarding a prevailing party its costs  
6 other than attorneys' fees, but vests in the district court the  
7 discretion to refuse to award such costs if the district court  
8 gives specific reasons explaining why the case is not ordinary and  
9 why it would be 'inappropriate or inequitable to award costs.'" Jack Russell Terrier Network v. Am. Kennel Club, Inc., 407 F.3d  
10 1027, 1038 (9th Cir. 2005) (quoting The Ass'n of Mexican-Am.  
11 Educators v. California, 231 F.3d 572, 591, 593 (9th Cir. 2000)  
12 (en banc)). "Proper grounds for denying costs include (1) a  
13 losing party's limited financial resources; (2) misconduct by the  
14 prevailing party; and (3) the chilling effect of imposing . . .  
15 high costs on future civil rights litigants, as well as  
16 (4) whether the issues in the case were close and difficult;  
17 (5) whether the prevailing party's recovery was nominal or  
18 partial; (6) whether the losing party litigated in good faith; and  
19 (7) whether the case presented a landmark issue of national  
20 importance." Quan v. Computer Sciences Corp., 623 F.3d 870,  
21 888-89 (9th Cir. 2010) (internal quotation marks and citations  
22 omitted).

23  
24 Northbay contends that, because Plaintiffs abandoned their  
25 claims for intentional interference with contract and unfair  
26 competition, which Northbay characterizes as "meritless," and  
27 their claim for damages, Plaintiffs should not be awarded costs as  
28 prevailing parties. Northbay cites Barber v. T.D. Williamson,

1 Inc., 254 F.3d 1223 (10th Cir. 2001), in which the court discussed  
2 situations where the plaintiffs were "only partially successful,"  
3 "where neither side entirely prevailed, or when both sides  
4 prevailed," as examples of when courts may exercise their  
5 discretion to reduce or deny an award of costs. However, Northbay  
6 offers no examples where a plaintiff withdrew certain claims and  
7 prevailed on the remaining claims and costs were denied.

8 Further, the facts of this case do not support the outcome  
9 that Northbay urges. Here, the primary issue was the  
10 determination of the owner of the domain name rl.com, and that  
11 issue was decided in Plaintiffs' favor. In addition, Northbay's  
12 suggestion that Plaintiffs acted in bad faith by dismissing their  
13 other claims at the end of the trial is not well-taken.  
14 Plaintiffs dismissed their intentional interference claim at the  
15 start of the trial and had previously provided notice that they  
16 would not pursue that claim at the trial. Plaintiffs dismissed  
17 the UCL claim, which would have been tried to the Court, after the  
18 jury verdict because they had already obtained their desired  
19 relief through the favorable verdict on their other claims. Thus,  
20 there was no reason for the Court to rule on the UCL claim.

21 Northbay also argues that Plaintiffs should be denied costs  
22 because of Defendants' indigent status. Northbay points out that  
23 it is in Chapter 7 bankruptcy proceedings and is represented here  
24 by its bankruptcy trustee and that Laxton had been in bankruptcy  
25 shortly before trial. Northbay also contends that denial of costs  
26 appropriate because Laxton was not repaid for the amount he  
27 expended in purchasing rl.com or the amount he incurred in  
28 successfully defending the domain name against a challenge by

