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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER SLAIGHT, ET AL.,

Plaintiffs,

vs.

TATA CONSULTANCY SERVICES, LTD,

Defendant.

CASE NO. 15-cv-01696-YGR

**ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFFS' MOTION FOR
REVIEW OF CLERK'S TAXATION OF COSTS**

Re: Dkt. No. 710

Plaintiffs Christopher Slaight, Seyed Amir Masoudi, and Nobel Mandili, as well as the class they represent, have filed a Motion for Review of Clerk's Taxation of Costs of prevailing party, defendant Tata Consultancy Services, Ltd ("TCS"). (Dkt. No. 710 ("Motion").) Having carefully considered the papers submitted, and for the reasons set forth below, the Court hereby **GRANTS IN PART and DENIES IN PART** the motion as stated herein.

I. BACKGROUND

On January 2, 2019, following this Court's entry of partial judgment in favor of TCS based on the jury verdict rendered on November 28, 2018, TCS filed with the Clerk of the Court a Bill of Costs seeking \$489,576.17 in costs. (Dkt. No. 691 ("BOC").) On January 28, 2019, plaintiffs filed improperly generic objections to TCS's Bill of Costs.¹ (Dkt. No. 698.) On February 15, 2019, the Clerk of the Court issued an order awarding TCS \$489,537.60. (Dkt. No. 709.) The instant motion followed.

¹ As the Court noted in its February 12, 2019 order striking portions of plaintiffs' objection as well as TCS's response thereto, plaintiffs' objection that "the Court should exercise its discretion to decline to tax costs, as an award of costs would be inequitable," (*see* Dkt. No. 698 at 2:18-10:5) was not properly characterized as "specific objections to any item of cost claimed in [TCS's] bill, succinctly setting forth the grounds of each objection." (*See* Dkt. No. 708 (citing Civil L.R. 54-2(a)).) Accordingly, the Court instructed parties to comply with Federal Rule of Civil Procedure 54(d)(1) and Civil Local Rule 54-2. (*See id.*)

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II. LEGAL STANDARD

“An award of standard costs in federal court is normally governed by Federal Rule of Civil Procedure 54(d).” *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1022 (9th Cir. Idaho 2003) (denial upheld in breach of contract action). Rule 54(d)(1) states: “[u]nless a federal statute, these rules, or a court order provides otherwise, costs-other than attorney’s fees—should be allowed to the prevailing party” FRCP 54(d). The types of costs that may be awarded under Rule 54(d) are limited to those enumerated in 28 U.S.C. § 1920 (“Section 1920”). *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 572-73 (2012); *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-442 (1987). Those costs include:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920.

Local Rule 54-1 requires that a prevailing party claiming taxable costs serve a bill of costs no later than 14 days after entry of judgment, stating each item specifically and separately. Civ. L. R. 54-1(a). The bill of costs must be supported by an affidavit that the costs are stated correctly and incurred necessarily, and it must attach supporting documentation for each item claimed. *Id.*

The court reviews *de novo* the Clerk’s taxation of costs. *See Lopez v. San Francisco Unified School Dist.*, 385 F.Supp.2d. 981, 1001 (N.D. Cal. 2005). District courts have “wide discretion” in determining whether and to what extent prevailing parties may be awarded costs pursuant to Rule 54(d). *K-S-H Plastics, Inc. v. Carolite, Inc.*, 408 F.2d 54, 60 (9th Cir.1969).

Generally, Rule 54(d)(1) creates a presumption in favor of awarding costs to a prevailing party, but the district court may refuse to award costs within its discretion. *See* FRCP 54(d)(1); *Association of Mexican-American Educators v. California*, 231 F.3d 572, 591 (9th Cir. Cal. 2000)

1 (denial of costs upheld in action regarding allegedly discriminatory test by public school districts).
2 The losing party has the burden to “show why costs should not be awarded.” *Save Our Valley v.*
3 *Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003). However, the presumption in favor of
4 awarding costs to the prevailing party does not relieve that party from its obligation to itemize its
5 costs with sufficient detail to establish that each expense is taxable under section 1920. *See*
6 *Plantronics, Inc. v. Aliph, Inc.*, 09-cv-1714 WHA(LB), 2012 WL 6761576 at *3 (N.D. Cal. Oct.
7 23, 2012); *Oracle America, Inc. v. Google, Inc.*, No. C 10-03561 WHA, 2012 WL 3822129, at *3
8 (N.D. Cal. Sept.4, 2012); *accord In re Ricoh Co., Ltd. Patent Litig.*, 661 F.3d 1361, 1368 (Fed.
9 Cir. 2011) (applying Ninth Circuit law to deny costs to a prevailing party that “did not meet its
10 burden” to itemize costs with specificity). “Once a prevailing party establishes that the expense is
11 taxable under section 1920, then the presumption applies.” *Plantronics*, 2012 WL 6761576 at *3.

12 **III. ANALYSIS**

13 Under Federal Rule of Civil Procedure 54(d) there is a presumption in favor of awarding
14 costs to prevailing parties, and the losing party must show why costs should not be awarded even
15 in civil rights cases. *See Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003);
16 *see also Draper v. Rosario*, 836 F.3d 1072, 1090 (9th Cir. 2016). Because plaintiffs brought the
17 instant action pursuant to Title VII and 42 U.S.C. § 1981, both of which entitle a prevailing
18 defendant to recover costs, they are liable for such costs. *See NOW v. Bank of Cali., Nat’l Ass’n*,
19 680 F.2d 1291, 1294 (9th Cir. 1982).

20 Here, plaintiffs contend that the Clerk’s taxation of costs errs in three ways. Plaintiffs
21 contend that (A) TCS’s bill of costs contains non-taxable, unnecessary, and unsupported expenses;
22 (B) costs, no matter the amount, cannot be taxed against absent class members; and (C) the Court
23 should exercise its discretion to decline to tax costs based on equity. (*See Motion at 2.*)

24 **A. Sufficiency of TCS’s Bill of Costs**

25 First, plaintiffs argue that nearly every cost sought by TCS is without sufficient
26 explanation because TCS did not submit an affidavit explaining the costs it seeks and the reasons
27 they were incurred and therefore fails to meet its burden under the Civil Local Rule 54(d) and
28 Ninth Circuit precedent. (*Motion at 9.*) This argument fails because TCS’s bill of costs uses Form

1 CAND 133, the form provided by and available on the website of the United States District Court
2 for the Northern District of California. (*See* BOC.) The form includes the required affidavit
3 pursuant to 28. U.S. C. § 1924. (*Id.* at 2, item 10.)

4 Next, plaintiffs argue that at least some of TCS’s costs are “affirmatively unallowable,”
5 and therefore the Court lacks discretion to award them, because those costs are not specifically
6 enumerated in 28 U.S.C. § 1920. (*Id.* at 9-10.) As noted above, the types of costs that may be
7 awarded under Rule 54(d) are limited to those enumerated in Section 1920. *Taniguchi*, 566 U.S.
8 at 572-73; *Crawford Fitting Co.*, 482 U.S. at 441-442. Those costs include:

- 9 (1) Fees of the clerk and marshal;
10 (2) Fees for printed or electronically recorded transcripts necessarily obtained
11 for use in the case;
12 (3) Fees and disbursements for printing and witnesses;
13 (4) Fees for exemplification and the costs of making copies of any materials
14 where the copies are necessarily obtained for use in the case;
15 (5) Docket fees under section 1923 of this title;
16 (6) Compensation of court appointed experts, compensation of interpreters, and
17 salaries, fees, expenses, and costs of special interpretation services under
18 section 1828 of this title.

19 18 U.S.C. § 1920. When construing these categories, courts must “hew closely to the statute’s
20 language, scheme, and context” because “[Section] 1920 is narrow, limited, and modest in scope,”
21 *Kalitta Air LLC v. Cent. Tex. Airborne Sys. Inc.*, 741 F.3d 955, 958 (9th Cir. 2013) (citing
22 *Taniguchi*, 566 U.S. at 572-73), and “[t]axable costs are limited to relatively minor, incidental
23 expenses.” *Taniguchi*, 566 U.S. at 573.

24 Plaintiffs assert that (1) TCS improperly categorizes many of its discovery expenses as
25 copying fees under Section 1920(4); (2) TCS’s deposition transcript costs exceed those allowed by
26 local rule; (3) TCS’s deposition exhibit printing costs exceed those allowed by local rule; (4)
27 TCS’s costs for reporter’s transcripts exceed those allowed by local rule and were not necessarily
28 obtained for use in the case; (5) TCS’s trial exhibit printing is not taxable and is insufficiently
documented; (6) TCS’s costs for trial visual-aid preparation exceed those allowed by local rule
and/or are not acts of copying or exemplification; and (7) TCS’s witness travel costs are
insufficiently documented and/or exceed the expenses allowed by statute. (Motion at 10-23.) The

1 Court addresses each argument in turn.

2 1. Discovery Expenses as Copying Fees

3 TCS's Bill of Costs includes \$300,383.57 in discovery costs. (BOC, Ex. A ("Index") at A-
4 96-A-196.) TCS describes each of these items as falling into the category of "Disclosure/Formal
5 Discovery Documents, Civil LR 54-3(d)(2)." (*Id.*) That portion of the local rule states that the
6 "cost of reproducing disclosure or formal discovery documents when used for any purpose in the
7 case is allowable." Civil L.R. 54-3(d)(2). Section 1920(4) permits taxation of "fees for
8 exemplification and the cost of making copies" but only if "necessarily obtained for use in this
9 case." 28 U.S.C. § 1920(4). Therefore, in order for the cost of reproduction to qualify for taxation
10 under Section 1920(4), the costs must be for "copying" and necessarily obtained for use in the
11 case. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 914, 929 (9th Cir. 2015).

12 a. *TCS's File Processing Costs*

13 TCS seeks \$216,213.04 for various discovery processing costs. (*See* Index at A-117-A-
14 120, A-122, A-149, A-150, A-152, A-153, A-156-A-158, A-166.)² Plaintiffs argue that these
15 costs are not for "copying" because they are processing charges for electronically stored
16 information ("ESI"). However, some processing charges for ESI do constitute "copying" and can
17 therefore be taxable under Section 1920(4). *Online DVD-Rental*, 779 F.3d at 930-32 (finding that
18 costs "attributable to optical character recognition ["OCR"], converting documents to TIFF, and
19 'endorsing activities[,]'" "which include the branding of image files with unique sequential
20 production numbers and confidentiality designations" are taxable costs). The types of processing
21 enumerated by TCS fall into this category. (*See* Index at A-117-A-120, A-122, A-149, A-150, A-
22 152, A-153, A-156-A-158, A-166 (including OCR of documents, TIFF conversion, processing of
23 native files, endorsing images, and branding). Accordingly, the Court finds that these ESI
24 processing costs constitute copying.

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27 ² *See also* BOC, Ex. B ("Receipts") at A-117 (\$50.44), A-118 (\$50), A-119 (\$50), A-120
28 (\$50), A-122 (\$665.18), A-149 (\$7.91), A-151 (\$27,330), A-152 (\$42,033), A-153 (\$133,832), A-
156 (\$50), A-157 (\$346.89), A-158 (\$4,635.75), A-166 (\$27,076).

1 Additionally, for the reasons stated above, the Court finds unpersuasive plaintiffs’ insistence that
2 TCS must explain the function of each act of processing. Accordingly, the Court finds TCS’s
3 TIFF conversion costs appropriate.

4 *c. TCS’s Hard Drive Costs*

5 TCS seeks \$18,561.86 for the purchase of 86 hard drives, including sales tax. (*See* Index
6 at A-110, A-151, A-153, A-158, A-159, A-163, A-165–A-167, A-175, A-178.)⁵ Plaintiffs argue
7 that because TCS produced only 13 hard drives containing documents to plaintiffs, and because
8 the invoices make clear that some of the hard drives were used in TCS’s data collection process
9 not its production process, the Court should reduce this request by \$15,756.71.⁶ (Motion at 15.)
10 TCS does not provide any response regarding the use of the 74 hard drives. Because costs
11 compensable under Section 1920 are only permitted for preparation and duplication of documents,
12 not the efforts incurred in assembling, collecting, or processing those documents, the Court
13 **GRANTS** plaintiffs’ motion and **REDUCES** TCS’s hard drive costs by \$15,756.71. *See Zuill v.*
14 *Shanahan*, 80 F.3d 1136, 1371 (9th Cir. 1996).

15 *d. TCS’s Costs Associated with Printing and Blowbacks*

16 TCS seeks \$57,390.61 for printing 355,276 pages of documents. (*See* Index at A-97, A-
17 101–106, A-108–116, A-125, A-126, A-128–135, A-137, A-139, A-141, A-143–147, A-149, A-
18 150, A-152, A-154–157, A-160–165, A-168–186.) Plaintiffs assert that because the case involved
19 no hard copy document production, these copies of discovery documents were created for the
20 convenience of counsel, rather than for production, and are therefore not necessarily obtained.
21 (Motion at 15.) Plaintiffs point to specific printing expenses as “created solely for the
22 convenience of counsel” and assert that for the remainder, TCS has not sufficiently documented the
23 costs to show what was printed and why. (*Id.* at 15-16.) Plaintiffs also argue that “certain line
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25 ⁵ *See also* Receipts at A-110 (15 hard drives, \$2,861.25), A-151 (21 hard drives,
26 \$4,005.75), A-153 (32 hard drives, \$6,104.00), A-158 (1 hard drive, \$190.75), A-159 (1 hard
27 drive, \$174.40), A-163 (1 hard drive, \$163.50), A-165 (1 hard drive, \$196.20), A-166 (6 hard
28 drive, \$2,289.00), A-167 (1 hard drive, \$321.55), A-175 (5 hard drives, \$1,907.50), A-178 (2 hard
drives, \$348.80).

⁶ Plaintiffs calculate this amount based on the average hard drive price of \$215.85.

1 items are clearly impermissible[,]” such as costs incurred for “premium printing services,”
2 including 38,578 pages printed in color. (*Id.* at 16.) TCS does not appear to contest this
3 argument. (*See* Opp. at 21-22 (specifically addressing only plaintiffs’ arguments about
4 \$216,213.04 in discovery processing costs and TIFF conversion expenses).) TCS does aver that
5 the costs sought each fall into the categories enumerated in the form CAND 133. (Opp. at 20
6 (citing BOC at ECF 4).) However, this chart lists the “kinds of document *production* costs [that]
7 are generally considered taxable” and therefore does not address plaintiffs’ argument that the
8 documents were not used for the purposes of production. (*See* BOC at ECF 4 (emphasis
9 supplied).) Accordingly, the Court **GRANTS** plaintiffs’ motion and **REDUCES** TCS’s costs for
10 printing and blowbacks by \$57,390.61.

11 2. Deposition Transcript Costs

12 TCS seeks \$62,688.15 in expenses related to deposition transcripts. (*See* Index at A-9-A-
13 54.) Local Rule 54-3(c)(1) allows taxation of costs of “an original and one copy of any deposition
14 (including videotaped depositions),” “[t]he cost of reproducing exhibits to depositions,” notary
15 fees, and “[t]he attendance fee of a reporter when a witness fails to appear[.]” Civil L.R. 54-
16 3(c)(1). Plaintiffs contend that TCS’s deposition transcript expenses extend beyond those allowed
17 by the rule because they include (a) shipping and handling costs, (b) videography expenses, and
18 (c) excess copies. (Motion at 17-18.)

19 a. Shipping and Handling Costs

20 TCS seeks shipping and handling costs for every deposition transcript, except for one.
21 (*See* Index A-10-A-54.) Plaintiffs argue that because the “cost of shipping deposition transcripts
22 . . . does not fall within the ambit of allowable costs[,]” the court should reduce TCS’s deposition
23 expenses \$1,425.00. (Motion at 17 (citing *Guerrero v. Cal. Dep’t of Corr. & Rehab.*, No. 13-
24 05671 WHA, 2017 WL 6270383, at *4 (N.D. Cal. Dec 9, 2017)).) The Court finds that although
25 the costs of shipping and handling are not *per se* unallowable, TCS fails to provide authority for
26 taxation of costs for *overnight* shipping. *See City of Alameda, Cal. v. Nuveen Mun. High Income*
27 *Opportunity Fund*, No. C 08-4575 SI, 2012 WL 177566, at *3 (N.D. Cal. Jan 23, 2012) (noting
28 that the “normal practice in the Northern District is to disallow any postage and handling charges

1 that exceed the rate of regular first-class mail plus handling” and sustaining objection to overnight
 2 delivery charges) (internal citations omitted).⁷ Because the Court cannot determine how much of
 3 the \$55.00 per deposition was for the expedited nature of the overnight delivery of the transcripts
 4 (*see* Receipts at A-10–A-54), and no alternative is provided, the Court **GRANTS** plaintiffs’ motion
 5 and **REDUCES** TCS’s shipping and handling costs by \$1,425.00.

6 b. *Videography Expenses*

7 TCS seeks \$21,472.50 for synchronization fees and \$1,623.80 for “transcript video
 8 surcharges.” (*See* Index A-15, A-16, A-18, A-19, A-21–A-25, A-29, A-34–A-37, A-40, A-42–A-
 9 45, A-53.)⁸ “[T]he costs of deposition editing and synchronizing are not authorized by § 1920.”
 10 *Kalitta Air L.L.C. v. Central Texas Airborne System Inc.*, 741 F.3d 955, 958 (9th Cir. 2013).⁹
 11 Accordingly, the Court **GRANTS** plaintiffs’ motion and **REDUCES** TCS’s deposition transcript
 12 expenses by \$21,472.50.

13 Plaintiffs argue that the Court should also reduce TCS’s deposition expenses by \$1,623.80.
 14 (Motion at 18.) Specifically, plaintiffs contend that “transcript video surcharges” represent either
 15 a service fee, which, plaintiffs argue, should be disallowed under *Kalitta*, or a charge for the video
 16 itself. (*Id.*) If the surcharge does represent a charge for the video itself, plaintiffs argue that the
 17 video constitutes a *third* copy and therefore exceeds the costs allowed under Local Rule 54-
 18 3(c)(1). (*Id.*) The Court agrees. Accordingly, the Court **GRANTS** plaintiffs’ motion and **REDUCES**

20 ⁷ TCS’s citation to this Court’s decision in *Kranson v. Federal Express Corporation* does
 21 not persuade. (Opp. at 19 (citing No. 11-cv-05826-YGR, 2013 WL 6503308, at 13 (N.D. Cal.
 22 Dec. 11, 2013).) In *Kranson*, the Court approved taxation of costs associated with shipping and
 23 handling fees in the amount of \$145.25. *Kranson*, 2013 WL 6503308, at 13. Here, TCS seeks
 24 \$1,425.00 in such fees.

25 ⁸ *See also* Receipts A-15 (\$77.70 and 1,092.50), A-16 (\$81.30 and \$1,325.00), A-18
 26 (\$73.80 and \$1,286.25), A-19 (\$45.30 and \$860.00), A-21 (\$40.50 and \$898.75), A-22 (\$51.00
 27 and \$666.25), A-23 (\$29.10 and \$705.00), A-24 (\$48.90 and \$1,015.00), A-25 (\$68.10 and
 28 \$976.25), A-29 (\$113.00 and \$1,268.75), A-34 (\$91.50 and \$1,015.00), A-35 (\$60.00 and
 \$787.50), A-36 (\$40.00 and \$612.50), A-37 (\$136.40 and \$1,400.00), A-40 (\$160.00 and
 \$1,443.75), A-42 (\$60.60 and \$1,131.25), A-43 (\$85.80 and \$1,015.00), A-44 (\$70.50 and
 \$1,480.00), A-45 (\$110,80 and \$1,015.00), A-53 (\$179.50 and \$1,487.50).

⁹ Each of the cases to which TCS cites in support of its assertion that videography
 expenses should be taxed predate the Ninth Circuit’s decision in *Kalitta*. (*See* Opp. at 19.)

1 TCS's deposition transcript expenses by \$1,623.80.

2 c. *Excess Copies*

3 Plaintiffs contend that TCS seeks costs for more than two copies of the transcripts from
4 TSG Reporting. (*See* Receipts at A-10–A-14, A-17, A-20, A-26–A-28, A-33, A-41, A-54.)
5 Therefore, they argue, the Court should reduce TCS's deposition transcript costs by one third, or
6 \$1,787.75. (Motion at 18.) Plaintiffs further assert that the invoices for A-17, A-26, and A-54
7 each contain a fourth rough transcript in addition to the three-transcript package. (*See id.* at A-17,
8 A-26, A-54.) Therefore, they argue, the Court should further reduce TCS's deposition transcript
9 costs by an additional \$826. (Motion at 18.)

10 Although the Court agrees that Local Rule 54-3(c)(1) allows taxation of costs for only one
11 original and one copy, the Court does not find evidence of taxation of the third and fourth copies
12 asserted by plaintiffs in the relevant invoices.¹⁰ Accordingly, the finds TCS's costs for deposition
13 transcripts for "excess copies" appropriate.

14 3. Deposition Exhibit Printing Costs

15 TCS seeks \$10,903.59 for "deposition exhibit printing." (*See* Index at A-56–A-95.)
16 Plaintiffs assert that these costs exceed the deposition exhibit costs from the deposition invoices
17 that total \$1,772.25.¹¹ (Motion at 19.) Plaintiffs contend that this "excess results from TCS's
18 attempt to tax printing costs for a large number of documents printed in anticipation of the
19 deposition[,]” which fall outside the ambit of reproducing exhibit to dispositions. (*Id.*) Plaintiffs
20 further argue that "most of these copies were not necessarily obtained for use in this case because
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22 ¹⁰ *See* Receipts at A-10–A-14 (invoice reflects one certified transcript); A-17 (invoice
23 reflects certified transcript, certified transcript – 3 day delivery, and rough transcript, but Index at
24 A-17 shows amount taxed for certified transcript, rough transcript, and shipping and handling
25 only); A-26 (same, for A-26); A-27 (invoice reflects "Certified_MPEG"); A-28 (invoice reflects
one certified transcript); A-33 (same); A-41 (invoice reflects "Certified – MPEG" marked as
"complimentary"); A-54 (invoice reflects one certified and one rough transcript).

26 ¹¹ Plaintiffs calculate a total based on the following totals: Receipts at A-15 (\$84.60), A-
27 16 (\$76.70), A-18 (\$36.55), A-19 (\$10.35), A-21 (\$29.35), A-22 (\$26.10), A-23 (\$32.40), A-24
28 (\$76.20), A-25 (\$27.90), A-29 (\$29.15), A-34 (\$33.55), A-35 (\$68.20), A-36 (\$11.55), A-37
(\$73.15), A-40 (\$69.30), A-42 (\$79.60), A-43 (\$51.00), A-44 (\$47.25), A-45 (\$69.20), A-53
(\$28.05).

1 TCS printed an extraordinary number of unnecessary documents that were not introduced at the
2 depositions.” (*Id.*) Therefore, plaintiffs request that the Court reduce TCS’s deposition exhibits
3 costs by \$9,131.34. (*Id.*)

4 Plaintiffs are correct that under the Local Rules, “[t]he cost of reproducing exhibits to
5 depositions is allowable if the cost of the deposition is allowable.” (Motion at 18-19 (citing Civil
6 L.R. 54-3(c)(3)).) However, the Local Rules also provide for the “cost of reproducing disclosure
7 of formal discovery documents when used *for any purpose in the case.*” Civil L.R. 54-3(d)(2).
8 Plaintiffs have not presented any authority to suggest that TCS’s stated purpose of use in
9 anticipated deposition does not so qualify. Accordingly, the Court finds TCS’s costs for
10 deposition exhibit printing are appropriate.

11 4. Reporter’s Transcripts

12 TCS seeks \$9,681.36 in costs for transcripts of the court reporter. (*See* Index at A-1–A-8.)
13 Civil Local Rule 54-3(b) permits taxation of “[t]he costs of transcripts necessarily obtained for an
14 appeal.” Civil L.R. 54-3(b)(1). The same rule also provides that “[t]he cost of other transcripts is
15 not normally allowable unless, before it is incurred, it is approved by a Judge or stipulated to be
16 recoverable by counsel.” Civil L.R. 54-3(b)(3). Plaintiffs argue that these costs are improper
17 because (a) several of these transcripts are for “miscellaneous hearing[s,]” (b) the costs include
18 daily trial transcripts, and (c) TCS seeks costs for two copies of those daily trial transcripts.
19 (Motion 19.)

20 a. *Miscellaneous Hearings*

21 Plaintiffs assert that because the transcripts invoiced in A-2 and A-4–A-8 relate to
22 miscellaneous hearings, TCS’s reporter’s transcript costs should be reduced by \$1,551.20.
23 (Motion at 19.) The “miscellaneous hearings” reflected in these transcripts include the pretrial
24 conference (*see* A-2; Dkt. No. 616); a further case management conference during which the Court
25 addressed a then-pending motion to strike an amended complaint (*see* A-4; Dkt. No. 69); the
26 hearing on defendant’s motion for summary judgment as well as plaintiffs’ motions to strike, for
27 leave to file a fourth amended complaint, and to certify a class (*see* A-5; Dkt. No. 229); the
28 hearing on plaintiffs’ motions for approval of class notice, for judgment on the pleadings, and for

1 invalidation of release agreements (*see* A-6; Dkt. No. 410); a discovery hearing regarding requests
2 from plaintiffs that the court force defendant to answer informal questions about previously
3 produced documents and appoint a third-party to gather and secure data from defendant (*see* A-7;
4 Dkt. Nos. 172, 174); a discovery hearing regarding production of a privilege log (*see* A-8; Dkt.
5 No. 302). The Court finds that these hearings were not “miscellaneous” and, in fact, concern
6 issues relevant to this pending motion and the motion for a new trial. The Court finds these
7 transcripts were necessarily obtained for the purposes of appeal.

8 *b. Daily Trial Transcripts*

9 Plaintiffs assert that because daily trial transcripts were not necessarily obtained for use in
10 the case, and daily delivery was not necessarily obtained for appeal, those costs should be
11 disallowed.¹² (Motion at 20.) “[V]arious courts in the Northern District tax the costs for pretrial
12 hearing transcripts for claim construction and summary judgment hearings.” *Apple Inc. v.*
13 *Samsung Elecs. Co., Ltd.*, No. 11-CV-01846, 2014 WL 4745933, at *7 (N.D. Cal. Sept. 19, 2014)
14 (citations omitted). While the costs of other transcripts are not usually recoverable, parties
15 “reasonably could incur the expense of obtaining transcripts of all of the court proceedings” where
16 a case is “contentiously litigated, and the parties ... often made arguments based on the words very
17 recently spoken by participants or by the court, sometimes using strained interpretations of the
18 words or pulling them out of context.” *Affymetrix, Inc. v. Multilyte Ltd.*, No. C-03-03779 WHA,
19 2005 WL 2072113, at *2 (citing *Intermedics, Inc. v. Ventritex*, No. C-90-20233 JW (WDB), 1993
20 WL 515879, at *4 (N.D. Cal. Dec. 2, 1993)). The instant action certainly falls into the latter
21 category. Accordingly, the Court finds that the daily trial transcripts were necessarily obtained for
22 use in the case and daily delivery was appropriate.

23 *c. Two Copies of Daily Trial Transcripts*

24 Plaintiffs contend that TCS seeks costs for two copies of the daily trial transcripts and that
25 its transcript expenses should therefore be reduced by \$1,150.80 to deduct the additional copies.
26 (Motion at 20.) However, the relevant invoice indicates that TCS seeks costs for “ORIGINAL
27

28 ¹² In any event, plaintiffs do not provide a calculation of by how much they would like to reduce TCS’s reporter transcript costs.

1 PLUS ONE (TWO),” which plaintiffs concede allowed by Local Rule 54-3(b). Accordingly the
2 Court finds TCS’s costs for reporter transcripts appropriate.

3 5. Trial Exhibit Printing

4 The Clerk of the Court taxed \$52,783.18 of the \$52,821.76 TCS sought for trial exhibit
5 printing. (*See* Index at A-187–A-209.) Under the Local Rules, “[t]he cost of reproducing trial
6 exhibits is allowable to the extent that a Judge requires copies to be provided.” Civil L.R. 54-3(d).
7 Per the Court’s standing order regarding pretrial instructions in civil cases, for a jury trial, the
8 parties must provide two printed sets of exhibits, one for use in the trial and to be provided to
9 jurors and one for the Court, which may also take the form of witness binders.

10 a. *Plaintiffs’ Exhibits*

11 TCS seeks \$5,192.97 for printing copies of plaintiffs’ exhibits. (*See* Index at A-190.) TCS
12 does not contend (*see* Opp. at 22), and the Court will not assume, that TCS was responsible for
13 printing the plaintiffs’ portion of the two required sets of trial exhibits in addition to its own.
14 Accordingly, the Court **GRANTS** plaintiffs’ motion and **REDUCES** by \$5,192.97 TCS’s trial exhibit
15 printing costs.

16 b. *Defendant’s Exhibits*

17 The Clerk of the Court taxed \$47,590.21 of the \$47,628.79 TCS sought for printing its own
18 exhibits. (*See* Index at A-187–A-189, A-191–209.) Plaintiffs contend that TCS not only seeks
19 costs beyond the single set of exhibits required by the Court, but also avers that TCS’s single set
20 (A-208) is unreasonable. (Motion at 21.) Specifically, plaintiffs argue that TCS’s effort to seek
21 over \$36,000 for printing all of the documents listed on its 1,713-page exhibit list, which totaled
22 120,000 pages, is unjustified as it includes printing 23,354 pages of documents that appear to
23 correspond to the excluded termination files at a cost of \$3,970 as well as 19,708 pages of color
24 printing at the cost of \$18,722.60. (*Id.*) Plaintiffs further aver that TCS provides no explanation
25 of the exhibits printed or their purpose and therefore fails to meet its burden to show that the costs
26 are taxable. (*Id.*) Accordingly, plaintiffs ask that the Court deny in full TCS’s costs for
27 preparation of trial exhibits. (*Id.* at 22.) The Court agrees. As mentioned during pretrial hearings,
28 defendant’s approach to trial exhibits was unreasonable.

1 TCS fails to provide any information regarding trial exhibits in response to plaintiffs’
2 motion. Therefore the Court presumes that defendant concedes that plaintiffs are correct that the
3 costs described at A-208 represents the set delivered to the Court pursuant to the Court’s pretrial
4 standing order. It appears, based on the date of the invoices and the accompanying emails, that
5 some of the costs described at A-187–A-189, A-191–A-207, and A-209 represent might represent
6 costs associated with creating the witness binders that constitute the Court set of exhibits required
7 by the Court’s pretrial standing order, TCS has made no effort to describe or identify these costs
8 as such. Accordingly, the Court **GRANTS** plaintiffs’ motion and **REDUCES** to an appropriate
9 amount for TCS’s costs for printing its own trial exhibits to the \$36,172.10 presented in A-208
10 less an additional fifty (50) percent for a total of \$18,086.05.

11 6. Trial Visual Aid Preparation

12 TCS seeks \$36,093.75 in visual-aid costs for “on-site support” and “communication
13 design.” (*See* Index at A-210, A-211.) Section 1920 permits taxation of “fees for
14 exemplification” but only if “necessarily obtained for use in this case.” 28 U.S.C. §1920(4).
15 Under the Local Rules, “[t]he cost of preparing charts, diagrams, videotapes and other visual aids
16 to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the
17 Court in understanding the issues at the trial.” Civil L.R. 54-3(d)(5).

18 Plaintiffs contend that both “on-site support” and “communication design” constitute
19 untaxable “intellectual effort.” (Motion at 22 (citing *Ancora Techs., Inc. v. Apple, Inc.*, No. 11-
20 06357-YGR, 2013 WL 4532927, at *5 (N.D. Cal. Aug. 26, 2013).) Plaintiffs point to the 56.75
21 hours TCS billed to the “communication design” work as well as the qualifications of person who
22 did the work, a lawyer without a graphic design degree, as further evidence that the costs are more
23 than simply the time to produce the graphics and instead include the intellectual effort needed to
24 create the content. (*Id.* at 23.) Plaintiffs also argue that TCS’s invoices fail to explain the nature
25 of the work and therefore did not meet its burden to show the costs it seeks are taxable. (*Id.*) The
26 Court disagrees. As TCS points out, the \$36,093.75 in visual aid costs reflect those costs charged
27 by TCS’s vendor, TrialGraphix. (*See* Receipts at A-210, A-211.) Moreover, TCS requests only
28 those costs that relate to creating the exhibits. (*See id.*) Accordingly, the Court finds TCS’s visual

1 aid costs appropriate.

2 7. Witness Travel Costs

3 TCS seeks \$13,792.40 for witness’s airfare. (*See* Index at A-236.) Section 1920 permits
4 taxation of “fees and disbursement for printing and witnesses[.]” 28 U.S.C. § 1920(3). Plaintiffs
5 argue that the Court should reduce these costs because (a) the ticket prices suggest that the
6 witnesses flew first or business class; (b) TCS provided only self-created spreadsheet as
7 documentation; (c) with respect to costs related to Mr. Srinivasan, both of his flights were well
8 before and after his November 8 testimony; and (d) with respect to Mr. Ganapathy, he appeared as
9 TCS’s corporate representative so his expenses are not taxable. (Motion at 24-25.)

10 The Court agrees that TCS’s provision of an internal spreadsheet does not suffice to
11 provide documentation of the costs incurred. From a practical perspective, invoices for airline
12 travel are not difficult to obtain. Moreover, the authority on which TCS relies for the proposition
13 that “a receipt is not always required” is inapposite as each case cited deals only with Section 1920
14 and does not address the added requirements dealing with witness per diem and travel under 28
15 U.S.C. § 1821. Section 1821(c)(1) provides that a witness who travels by common carrier shall be
16 paid for the actual expenses of travel and that he or she must furnish a receipt or “other evidence
17 of actual cost.” 28 U.S.C. § 1821; *see also* Civil L.R. 54-3(e) (per diem, subsistence, and mileage
18 (travel) payments are allowable to the extent reasonably necessary and provided for by 28 U.S.C.
19 § 1821). Therefore, it follows that TCS should likewise furnish a receipt or other *evidence*, rather
20 than an internal undated spreadsheet. Accordingly, the Court **GRANTS** plaintiffs’ motion and
21 **REDUCES** TCS’s costs by \$13,792.40.

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Based on the preceding analysis, the summary of the Court’s findings are as follows:

Costs Requested	\$489,576.17	
Costs Taxed	\$489,537.60	
Amount of Costs Tax in Categories Not at Issue in Motion	\$97,406.22	
Amount of Costs Taxed in Categories at Issue in Motion	\$392,131.38	
<i>Category at Issue in Motion</i>	<i>Amount Requested</i>	<i>Reduction</i>
<u>Discovery Costs</u>		
file processing	\$216,213.04	none
TIFF conversion	\$6,697.15	none
hard drive costs	\$18,561.86	\$15,756.71
costs (printing/blowbacks)	\$57,390.61	\$57,390.61
<u>Deposition Transcript Costs</u>		
shipping	\$1,425.00	\$1,425.00
videography	\$21,472.50	\$21,472.50
surcharges	\$1,623.80	\$1,623.80
additional copies	\$2,613.75	none
<u>Deposition Exhibit Printing</u>		
	\$10,903.59	none
<u>Reporter’s Transcript</u>		
	\$9,681.36	none
<u>Trial Exhibit Printing</u>		
plaintiffs’ exhibits	\$5,192.97	\$5,192.97
defendant’s exhibits	\$47,590.21	\$36,172.10
<u>Trial Visual Aid</u>		
	\$36,093.75	none
<u>Witness Travel</u>		
	\$13,792.40	\$13,792.40
<u>Total Reduction</u>		\$152,826.09
<u>Total Allowable Costs</u>		\$336,711.51

As noted, the Clerk of the Court taxed \$489,576.17 in costs. Less the reduction of \$152,826.09 outlined above, the allowable costs total \$336,711.51.

B. Taxation of Costs Against the Class

The Court agrees, and TCS does not appear to contest, that costs should not be taxed against unambiguously *absent* class members, as they are passive participants in the litigation. (See Dkt. No. 721 (“Opp.”) at 2.) By contrast, TCS argues that the thirty-one (31) class members who later elected to participate in the litigation by choosing to return their severance payments should be responsible for costs. See Opp. at 5. The Court disagrees. This case presented a unique

1 situation where, at the last minute, certain class members who had *not* been properly advised of
2 the litigation were provided an opportunity to participate in the final trial stages upon return of
3 severance payments. These class members had no role in *any* of the pre-trial litigation. By all
4 accounts, they are properly considered de-facto absent class members despite the last-minute
5 election. Accordingly, costs will only be taxed against the three named class members.

6 **C. Equity of the Taxation of Costs**

7 Next, plaintiffs assert equitable reasons to deny costs. “Appropriate reasons for denying
8 costs include: (1) the substantial public importance of the case, (2) the closeness and difficulty of
9 the issues in the case, (3) the chilling effect on future similar actions, (4) the plaintiff’s limited
10 financial resources, and (5) the economic disparity between the parties.” *Escriba v. Foster Poultry*
11 *Farms, Inc.*, 743 F.3d 1236, 1247-48 (9th Cir. 2014) (citing *Ass’n of Mex.-Am. Educators*, 231
12 F.3d at 591-93). “Each of the factors listed above is an appropriate reason for denying costs, or
13 for a reduction in the amount awarded to the prevailing party. In addition, the amount of costs is
14 relevant in determining whether a district court’s cost award is an abuse of discretion.” *Draper*,
15 836 F.3d at 1089 (internal citations and quotations omitted). Plaintiffs contend that each of these
16 factors, including the amount of the costs, weigh in favor of denying the taxation of costs against
17 them on equity grounds. (*See* Motion at 3-9.) The Court addresses each.

18 Factor 1: Public Importance of the Case

19 Plaintiffs contend that their case presents the issue of “discrimination affecting over a
20 thousand class members and countless other current and former TCS employees nationwide.”
21 (Motion at 3.) Plaintiffs argue that their action therefore presents “an issue ‘of the gravest public
22 [concern].’” (*Id.* (citing *Ass’n of Mex.-Am. Educators*, 231 F.3d at 593).)¹³ Specifically, plaintiffs
23 assert that this action “addresses a major concern in the IT industry—the proliferation of IT
24 companies (including TCS, Infosys, Wipro, Cognizant, and others) that appear to favor South
25 Asians (particularly South Asian visa workers) in hiring, employment, and termination decisions.”

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27 ¹³ Plaintiffs also cite *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1080 (9th Cir. 1999);
28 *Darensburg v. Metro Transp. Comm’n*, No. 05-01597-EDL, 2009 WL 2392094, at *2 (N.D. Cal.
Aug. 4, 2009); *Zeen v. City of Sonoma*, No. 17-02056-LB, 2018 WL 4944889, at *9, 12 (N.D. Cal.
Oct. 11, 2018).

1 (*Id.* at 4.) The Court finds this argument unpersuasive.

2 In *Ass’n of Mex.-Am. Educators*, the court found that *several* factors, including the number
3 of potential plaintiffs, rendered the case “extraordinary” – plaintiffs were a group of individuals
4 and nonprofit organizations with limited resources, the action affects tens of thousands of
5 Californians and the state’s public school system, and plaintiffs’ claims were not without merit as
6 defendants substantially altered their behavior during the pendency of the litigation. 231 F.3d at
7 593 (finding no abuse of discretion in district court’s denial of taxation of costs in action claiming
8 that the California Basic Education Skills Test, which is a prerequisite to employment in
9 California public schools, discriminated against Mexican-America, Asian-America, and African-
10 American educators and would-be educators in California).

11 This case does not involve any public school system or public institution at all. Here, the
12 alleged “major concern” is in the IT industry and the allegedly problematic behavior by a number
13 of IT companies, including defendant. (Motion at 4.) Although plaintiffs do not provide any basis
14 for their assertion that other IT companies, including Infosys, Wipro, and Cognizant, have
15 engaged in the alleged behavior, the Bloomberg article to which plaintiffs subsequently cite lists
16 class action litigation against each of these companies. (*See id.* (citing Laura Francis, *Tata*
17 *Immigration Case Could Shake IT Companies to ‘Very Core,’* BLOOMBERG L. (Sept. 12, 2018)).)
18 The Court has reviewed the dockets for each of these actions and found that plaintiffs’ counsel in
19 this case, the Washington, D.C. firm of Kotchen & Low LLP, is lead counsel for plaintiffs in each
20 of these other actions.¹⁴ Plaintiffs have not provided, and the Court cannot find, or conceive of,
21 authority that would allow the fact of a handful of lawsuits brought by the same law firm to
22 substantiate a claim that any one of those actions therefore addresses an issue of the gravest public
23 concern simply by virtue of the existence of the other actions. Accordingly, the Court finds that
24

25 ¹⁴ Plaintiffs did not advise the Court of this fact. *See Kohler et al v. Infosys Technologies*
26 *Limited Incorporated*, Case No. 2:13-cv-00885-PP-DEJ, Eastern District of Wisconsin (docket
27 identifying Daniel A. Kotchen of Kotchen & Low as Lead Attorney); *Phillips et al v. Wipro, Ltd.*,
28 Case No. 4:18-cv-00821, Southern District of Texas (docket identifying Daniel Lee Low of
Kotchen & Low as Lead Attorney); *Christy Palmer et al v. Cognizant Technology Solutions*
Corporation et al, Case No. 2:17-cv-06848-DMG-PLA, Central District of California (docket
identifying Daniel A. Kotchen of Kotchen & Low as Lead Attorney).

1 the instant action does not present an issue of the “gravest public concern.” *See by contrast Ass’n*
2 *of Mex.-Am. Educators*, 231 F.3d at 593 (finding an issue of gravest public concern raised by
3 action claiming that the California Basic Education Skills Test, which is a prerequisite to
4 employment in California *public* schools, discriminated against Mexican-America, Asian-
5 America, and African-American educators and would-be educators in California); *Darensburg*,
6 2009 WL 2392094, at *2 (finding an issue of gravest public concern raised by action alleging
7 racial discrimination in *public* transit funding in the San Francisco Bay Area on behalf of tens of
8 thousands of minority rides of AC Transit); *Zeen*, 2018 WL 4944889, at *4 (finding an issue of
9 gravest public concern in an action involving *police response* to a 911 call for a mental-health
10 welfare check).¹⁵ This factor does not weigh in favor of denying or reducing costs.

11 Factor 2: Closeness and Difficulty of the Issues Presented in the Case

12 Plaintiffs next argue that the case “was more than close” as “the jury’s verdict for TCS was
13 against the great weight of the evidence[.]” (Motion at 4.) In support of that assertion, plaintiffs
14 contend that they presented “overwhelming (and unrebutted) statistical evidence that alone was
15 sufficient to prove their claims” as well as “substantial corroborating evidence through the
16 testimony of TCS’s executives, contemporaneous documents, and testimony from class members
17 regarding their personal experiences of discrimination.” (*Id.* at 5.) Plaintiffs also point to the
18 Court’s comments following the return of the verdict, the implication of “hotly contested” legal
19 issues, the 10-hour duration of jury deliberations, and their defeat of TCS’s motion for summary
20 judgment as further evidence of the closeness and difficulty of the issues presented in the case.
21 (*Id.* at 4-6.) Defendant, not surprisingly, disagrees.

22 The arguments in this regard parallel those discussed in detail in the accompanying order
23 denying plaintiffs’ motion for a new trial. The Court adopts its evaluation of the evidence here. In
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25 ¹⁵ The Court notes that although plaintiffs also cite to *Stanley*, the court in that opinion did
26 not address or otherwise mention the concept of “gravest public concern” and found instead, that
27 the district court abused its discretion in awarding taxation of costs in light of the plaintiff’s
28 indigency and the chilling effect of imposing such high costs on future civil rights litigants. 178
F.3d at 1079 (concluding that the district court abused its discretion “particularly based on [its]
failure to consider two factors: Stanley’s indigency, and the chilling effect”).

1 short, the Court concludes that this was a triable case. In terms of complexity, the class action
2 *Teamsters* nature of the matter increased its complexity. Rarely are these cases tried. As such, the
3 Court and parties required extra effort to formulate a multi-phased approach to jury deliberations
4 and instructions and evidentiary issues required complicated balancing to ensure the rights of
5 competing interests were addressed. Accordingly, the Court finds this factor weighs in favor of
6 denying or reducing costs.

7 Factors 3 & 4: Chilling Effect on Future Similar Actions and Plaintiffs' Limited
8 Financial Resources

9 Plaintiffs reiterate their assertion regarding the importance of this case and contend that
10 “[i]mposing a nearly half-million-dollar bill of costs on three terminated former employees who
11 sought to advance the claims of over a thousand class members in an important civil rights case
12 would almost certainly discourage future such actions.” (Motion at 7.) Here, the Court has
13 calculated appropriate costs of \$333,711.51 or \$111,237.17 per person.

14 With respect to the financial resources of the three named plaintiffs, plaintiffs assert that (i)
15 Slaight earned approximately \$74,000 a year at TCS and was then out of work for three months
16 before finding another job that paid approximately \$52,000 a year and now earns just over
17 \$65,000 a year; (ii) Mandili earned approximately \$92,000 a year at TCS and then “out of work
18 for weeks and spent years looking for permanent, long-term employment,” during which he made
19 approximately \$42,000 (2016) and \$28,000 (2017); and (iii) Masoudi earned approximately
20 \$70,000 a year at TCS, was unemployed for about a month, and then secured another reposition
21 that paid approximately \$135,000, but was forced to find employment again when that company
22 closed.¹⁶ (Motion at 8.) Therefore, according to plaintiffs, the cost award, divided by three,
23 “would exceed each of plaintiffs’ yearly incomes [and] would cause them significant financial
24 strain[.]” (*Id.* at 9.)

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27 ¹⁶ Plaintiffs do not indicate Mandili’s or Masoudi’s current income or Mandili’s income
28 for the year 2018.

1 The Court agrees that assessing costs against employees where corporations are alleged to
2 discriminate systematically would chill litigation if the Court assessed costs in a lawsuit equaling
3 well-over a plaintiff’s annual salary. This factor weighs in favor of denying or reducing the
4 request for costs.

5 Factor 5: Economic Disparity Between the Parties

6 Plaintiffs assert that TCS “is a multi-national corporation that generated \$18.6 billion in
7 revenue and pocketed \$3.9 billion in profit (after taxes) last year, with comparable revenues and
8 profits in prior years[,]” while three named plaintiffs are “terminated employees with relatively
9 limited resources.” (Motion at 8.) The Court agrees that there is a disparity between the assets
10 and income of the parties. This factor weighs in favor of denying or reducing the request for costs.

11 In summary, four of the five factors weigh in favor of reducing or denying the taxation of
12 costs. As the Court has analyzed the details of the requested cost award and the factors for
13 reducing or denying the same. The Court finds that a substantial reduction is appropriate.
14 Accordingly, an award of \$100,000 in costs, or approximately 30% of the total allowable costs, is
15 appropriate. Divided between the three named plaintiffs, each would be assessed \$33,000. *See*
16 *Haldeman v. Golden*, No. 05-00810-DAE-KSC, 2010 WL 2176089, at *4 (D. Haw. May 28,
17 2010) (finding that the imposition of \$22,235.08 in costs in a civil rights case would not “have a
18 chilling effect on future litigants as the costs accumulated in the instant case after years of
19 unsuccessful litigation are not unreasonably high”). This amount is reasonable given plaintiffs’
20 financial abilities. Moreover, the Court notes that of the \$336,711.51 of appropriate costs,
21 \$233,813.78 related to document productions and copies that the Court repeatedly warned
22 defendant was excessive and unreasonable.

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IV. CONCLUSION

For the reasons stated herein, the Court **GRANTS IN PART** and **DENIES IN PART** plaintiffs' motion for review of the clerk's taxation of costs. Defendant shall recover \$100,000 in costs.

This Order terminates Docket Number 710.

IT IS SO ORDERED.

Dated: August 20, 2019


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE