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United States District Court  
For the Northern District of California

E-FILED on 1/9/2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SYNTHES USA, LLC (f/k/a SYNTHES  
(U.S.A.)); SYNTHES USA SALES, LLC; and  
SYNTHES, INC.,

Plaintiffs,

v.

SPINAL KINETICS, INC.,

Defendant.

No. C-09-01201 RMW

ORDERS ON: (1) PLAINTIFF'S MOTION TO  
REVIEW TAXATION OF COSTS AND  
REQUEST FOR STAY ON ANY  
EXECUTION REGARDING THE COSTS;  
AND (2) DEFENDANT'S MOTION FOR  
PARTIAL REVIEW OF THE CLERK'S  
TAXATION OF COSTS

The Clerk of the Court taxed costs in the amount of \$333,088.82 on June 6, 2012. Synthes has now moved to review the Clerk's taxation and to reduce the award to no more than \$199,852.37 and to stay execution on any award of costs pending resolution of all appeals. Spinal Kinetics opposes Synthes's motion and its request for a stay. Spinal Kinetics also moves for an increase in the amount the Clerk awarded for "fees for printed or electronically recorded transcripts necessarily obtained in the case" to \$205,592.92, thus making the total amount of costs awarded \$450,772.30. The court has reviewed the papers filed and hereby awards Spinal Kinetics costs in the amount of \$306,980.32. The court also denies Synthes' motion for a stay of execution.

Award of Costs and Denial of Stay  
No. C-09-01201

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**I. TABLE SHOWING CALCULATION AND AWARD OF COSTS**

<b>Category</b>	<b>Amount Awarded by Clerk</b>	<b>Court's Award</b>	<b>Explanation</b>
Fees for printed or electronically recorded transcripts	\$129,201.12	\$193,000.81	Costs requested by Spinal Kinetics fall within 28 U.S.C. §1920 and were necessarily incurred as required by Civ. L.R. 54-1(a) and (c), with the exception that costs for expedited delivery and shipping charges and some charges listed in Exhibits 166 and 167 lack support showing that they were necessarily incurred.
Fees for witnesses	\$23,669.12	\$15,690.74	Adjustments made on airfare to economy rates and minor adjustments to other witness fees.
Fees for exemplification and the costs of making copies	\$158,288.15	\$84,250.00	Adjustments made for costs falling outside of 28 U.S.C. § 1920 or not necessarily incurred as required by Civ. L.R. 54-3(d). Some animations not reasonably necessary to assist the jury or court.
Compensation of court-appointed experts	\$3,775.00	\$0.00	Mediator does not qualify as a court-appointed expert under 28 U.S.C. § 1920(6).
Compensation of Interpreters	\$18,155.43	\$14,038.77	Parties' agreement (Lusuardi deposition) and, in addition, inadequate showing of need (Lechmann and Richter depositions).
<b>Total Costs</b>	<b>\$333,088.82</b>	<b>\$306,980.32</b>	

Spinal Kinetics is awarded costs in the amount of \$306,980.32.

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**REQUEST FOR STAY**

Since the parties' post-trial motions have been resolved, the request for a stay is denied. No persuasive reason has been offered to justify a stay preventing Spinal Kinetics from collecting the costs awarded.

DATED: January 9, 2013

  
RONALD M. WHYTE  
United States District Judge