

1 cross-motion to re-tax costs is **DENIED**. Defendants are awarded **\$13,084.65** in taxable costs
2 pursuant to Rule 54(d)(1).

3 Taxable costs are taxed by the Clerk rather than the Court. Fed. R. Civ. Proc. 54(d)(1); Civ.
4 Local Rule 54.1. “The categories of taxable costs are circumscribed by 28 U.S.C. Section 1920,”
5 which “enumerates expenses that a federal court may tax as a cost under the discretionary authority
6 found in Rule 54(d).” *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-42 (1987); *see*
7 *also* Civ. Loc. Rule 54.1. Under Rule 54(d)(1), “Unless a federal statute, these rules, or a court order
8 provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.” The
9 rule creates a presumption in favor of awarding taxable costs to a prevailing party, but vests in the
10 district court discretion to refuse to award them. *The Association of Mexican-American Educators*
11 *v. State of California*, 231 F.3d 572, 579, 591 (9th Cir. 2000) (*en banc*).

12 Copies

13 Defendants requested \$8,318.63 for copies and were awarded the full amount by the Clerk over
14 Plaintiff’s objection. In her motion to re-tax, Plaintiff argues that all but \$1,070.40 for photocopy
15 costs should be denied.

16 As pertinent, Civil Local Rule 54.1(b)(6)(a) allows for taxation of “[t]he cost of copies
17 necessarily obtained for use in the case . . . if one or more of the following criteria are met: [¶] (1)
18 copies are provided either to the court or to opposing counsel either by court order, rule or statute.
19 [¶] (2) copies were used as court exhibits, either admitted into evidence, or attached to a motion. [¶]
20 (3) [t]he fee of an official for certification, or proof regarding nonexistence of a document is taxable.”
21 The rules expressly prohibit taxation of “[t]he cost of copies submitted in lieu of originals because of
22 the convenience of offering counsel or client,” “[t]he cost of reproducing copies of motions, pleadings,
23 notices and other routine case papers,” and “[t]he cost of copies obtained for counsel’s own use.” *Id.*
24 Rule 54.1(b)(6)(b). The burden of showing that the cost of copies meets the above criteria is on the
25 requesting party:

26 The party seeking recovery must present documentary evidence in the form of
27 affidavits describing the documents copied, to whom they were provided, the number
28 of pages copied, and the cost per page, and the use of or intended purpose for the items
copied. If documents were provided only to the party seeking recovery, that party
must specify the purpose of acquisition and photocopying of the documents served.
In the absence of a specific showing, recovery must be denied.

1 *Id.* Rule 54.1(b)(6)(c) (emphasis added).

2 Defendants' affidavits and exhibits do not make the specific showing required by the Local
3 Rules. Accordingly, they have not met their burden of making a specific showing required for
4 taxation of copying costs. This alone is sufficient to deny Defendants' request. *See* Civ. Loc. Rule
5 54.1(b)(6)(c).

6 Nevertheless, Plaintiff agrees that the taxable copy costs amount to \$1,070.40 for 8,857 pages
7 of documents produced to Plaintiff in discovery and 1,847 pages of documents filed as motion
8 exhibits. Plaintiff used an estimated cost of \$.0.10 per copy, which Defendant does not dispute.

9 Defendants were also required to provide copies of the 1,847 pages of motion exhibits to the
10 Court pursuant to The Electronic Case Filing Administrative Policies and Procedures Manual, Section
11 2(e). This amounts to \$184.70, which Defendants also can recover.

12 In addition, the Court's record shows that Defendants filed several pleadings under seal¹ and
13 therefore had to provide hard copies to the Court. The total number of those pages is 117, which
14 amounts to \$11.70 for copying.

15 The parties also attended a meeting of counsel pursuant to Civil Local Rule 16.1(f)(4), which
16 required them to exchange trial exhibits. According to Defendants' counsel, he provided copies of
17 Defendants' exhibits to Plaintiff on a CD per Plaintiff's request. (Decl. of Gabe P. Wright in Supp.
18 of Opp'n to Pl.'s Mot. to Re-Tax Costs ("Wright Opp'n Decl.") at 4-5.) Plaintiff does not dispute this.
19 Based on the case management order and defense counsel's declaration, which set forth the
20 approximate date of the meeting, the cost of producing this CD can be roughly estimated from the

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22 ¹ These pleadings are: (1) Memorandum of Points and Authorities in Support of
23 Defendant Rancho Dorado Homeowners Association's Motion for Partial Summary Judgment, filed
24 May 6, 2011; (2) True and Correct Copy of the Declaration of Scott Mercer, M.D. in Support of
25 Defendant Rancho Dorado Homeowners Association's Motion for Partial Summary Judgment, filed
26 May 6, 2011; (3) Memorandum of Points and Authorities in Support of Defendant The Prescott
27 Companies' Motion for Partial Summary Judgment, filed May 6, 2011; (4) True and Correct Copy of
28 the Declaration of Scott Mercer, M.D. in Support of Defendant The Prescott Companies' Motion for
Partial Summary Judgment, filed May 6, 2011; (5) Objections by Rancho Dorado Homeowners
Association and The Prescott Companies to Evidence Submitted by Plaintiff in Support of Opposition
to Motion for Partial Summary Judgment, filed June 27, 2011; (6) Reply Brief of Rancho Dorado
Homeowners Association to Plaintiff's Opposition to Motion for Partial Summary Judgment, filed
June 27, 2011; (7) Reply Brief of The Prescott Companies in Support of Motion for Partial Summary
Judgment, filed June 27, 2011; and (8) Reply Brief of Rancho Dorado Homeowners Association and
The Prescott Companies to Plaintiff's Opposition to Motion to Exclude Expert Testimony and
Exhibits, filed June 27, 2011.

1 exhibits attached to Defendants' Bill of Costs. (See Order Granting in Part and Denying in Part Joint
2 Mot. to Extend Dates for Exch. of Experts' Reports and Related Mot. Deadlines, filed Feb. 25, 2011,
3 at 4; Wright Opp'n Decl. at 4-5.) Based on the Bill of Costs, Plaintiff estimated the cost of scanning
4 Defendants' trial exhibits to a CD to be \$239.90. Accordingly, this amount shall be included in
5 taxable costs.

6 Finally, the Court agrees with Defendants that they should recover for copying Plaintiff's
7 medical and other records subpoenaed from third parties. According to Defendants, the charges for
8 on-site copying of those documents were paid to Cal Express (Wright Opp'n Decl. at 4) and can be
9 estimated from Defendants' Bill of Costs (see Decl. of Gabe P. Wright in Supp. of Defs' Bill of Costs
10 ("Wright Bill of Costs Decl.") Ex. A-5 to 7 & A-11). Included are charges for certificates of no
11 records, which are expressly recoverable pursuant to Civil Local Rule 54.1(b)(6)(a)(3). These taxable
12 costs amount to \$2,474.81.

13 Beyond that, the Court cannot ascertain from Defendants' affidavits and exhibits whether or
14 to what extent Defendants' remaining copying costs meet the criteria of Civil Local Rule 54.1(b)(6).
15 Accordingly, Plaintiff's motion to re-tax copying costs is granted in part and denied in part. The
16 taxable amount of copying costs is reduced to a total of \$3,981.51.

17 **Depositions**

18 Defendants requested \$22,215.03 for transcripts. In this regard, the Clerk granted in part
19 Plaintiff's objection to the Bill of Costs and awarded Defendants \$14,943.50. The Clerk declined to
20 tax costs for expedited and rough deposition transcripts and for the transcript of a motion hearing. In
21 their cross-motion to re-tax costs, Defendants seek to recoup the costs for expedited transcripts and
22 correct an alleged error in calculating the cost of a rough ASCII disc for the deposition of Jan
23 Saltzman. Plaintiff, on the other hand, seeks to reduce the deposition costs taxed by the Clerk to
24 \$1,591.45.

25 Initially Plaintiff argues that to the extent depositions were taken for discovery only, as
26 opposed to trial preparation, the costs should be excluded. "Depositions need not be introduced in
27 evidence or used at trial to be taxable so long as at the time it was taken it could reasonably be
28 expected that the deposition would be used for trial, rather than mere discovery." Civ. Loc. R.

1 54.1(b)(3)(a). Defendants contend that all deponents, with the exception of Drs. Deborah Donie-
2 Seligson and Scott Carstens, were listed in Plaintiff's pre-trial disclosures as witnesses Plaintiff
3 intended to call at trial. (Wright Opp'n Decl. at 2.) Plaintiff identified Dr. Carstens in her disclosures
4 as a physician who would support her medical claims. (*Id.*) In her deposition, Plaintiff identified Dr.
5 Donie-Seligson as treating her for emotional distress. (*Id.*) Plaintiff claimed damages for emotional
6 distress in her amended complaint. (*Id.*) Plaintiff does not dispute this, but nevertheless seeks to
7 exclude costs for Dr. Donie-Seligson's transcript, volume four of Plaintiff's transcript, and transcripts
8 of unspecified other witnesses who were deposed for discovery purposes only. Based on the reasons
9 presented by Defendants, Plaintiff's argument is rejected.

10 Next, Plaintiff contends she should not be taxed for depositions of Jan Saltzman, the President
11 of Defendant Rancho San Dorado Homeowners Association, James Reynolds, the contractor in charge
12 of landscaping for the homeowners' association, and Lori Chotiner, the homeowners' association's
13 counsel. These depositions were noticed and taken by Plaintiff rather than Defendants, and Plaintiff
14 ordered and paid for an original transcript and one certified copy of the transcripts. (Decl. of Dare
15 DeLano in Supp. of Pl.'s Mot. to Re-Tax Defs' Costs ("DeLano Decl.") at 2.) Plaintiff had the
16 original of the transcripts sent to defense counsel. (Reply at 3.) Defendants do not dispute this,
17 although they assert that they nevertheless ordered transcripts and their counsel questioned Ms.
18 Chotner and Mr. Reynolds. (Wright Opp'n Decl. at 3.) The local rules allow for taxing the cost of
19 an original and one copy a deposition transcript. Civ. Loc. R. 54.1(b)(3)(a). "Counsel's copies . . .
20 in excess of the original and one copy are not taxable, regardless of which party took the deposition."
21 *Id.* Because Plaintiff paid for an original and one copy of these transcripts and had the originals sent
22 to Defendants, Plaintiff should not be taxed for the Saltzman, Reynolds and Chotiner depositions.
23 Accordingly, the deposition costs taxed to Plaintiff shall be reduced by \$1,078.45.² (*See* Wright Bill
24 of Costs Decl. Ex. B-35 to B-36.)

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27 ² The cost of depositing Jan Saltzman is not included in this amount, because, for other
28 reasons, the Clerk did not award any costs associated with it. (*Cf.* Order Taxing Costs & Wright Bill
of Costs Decl. Ex. B-34.) To the extent Defendants argue in their cross-motion that the Clerk erred
in excluding all of the costs for Jan Saltzman's deposition, their argument is moot.

1 Plaintiff also objects to the taxation of costs for deposing Drs. James Dahlgren and Edward
2 J. Faeder, which appear to be disproportionately high in comparison with other depositions taken in
3 this case. According to the invoices, these depositions cost \$3,487 and \$3,658.70, respectively.
4 (Wright Opp'n Decl. Ex. A.) Defendants counter simply that this is what the depositions cost and that
5 they were under no obligation to shop for a less expensive rate. (*Id.* at 2 & Ex. A; Defs' Opp'n at 7-8.)
6 Defendants are not entitled to unreasonable deposition costs, but to "[t]he *reasonable* expenses of the
7 deposition reporter." Civ. Loc. R. 54.1(b)(3)(c) (emphasis added). In contrast to all other depositions,
8 these two depositions stand out as disproportionately expensive. (*Cf.* Wright Bill of Costs Decl. Ex.
9 B.) Because the invoices are not itemized and Defendants provided no explanation for the
10 disproportionate expense, the requested amounts are deemed unreasonable. Moreover, Defendants
11 have provided the Court with no information to determine the reasonable cost of these depositions.
12 The burden of substantiating taxable costs is on the requesting party. Cav. Loc. Rule 54.1(a).
13 Defendants have not met their burden with respect to the depositions of Drs. Dahlgren and Faeder.
14 (*See* Wright Opp'n Decl. at 2.) Plaintiff estimated the reasonable cost of these depositions to be
15 \$1,240.09 for Dr. Dahlgren and \$783.70 for Dr. Faeder, which this Court adopts. (Decl. of M. Dare
16 DeLano in Supp. of Pl.'s Opp'n to Defs' Bill of Costs at 2 & Ex. 1.) Accordingly, Defendants shall
17 recover a total of \$2,023.79 for these depositions. Defendants' objections to Plaintiff's estimate are
18 rejected. (*See* Defs' Opp'n at 5-6.) The taxable costs shall therefore be reduced to reflect the
19 reasonable cost of the depositions. In their cross-motion to re-tax costs, Defendants suggest that the
20 Clerk already excluded these depositions in their entirety. (Defs' Mot. at 4-5.) However, review of

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1 the Order Taxing Costs and Defendants' exhibits in support of their Bill of Costs negates this
2 assertion.³ Accordingly, the deposition costs taxed to Plaintiff shall be reduced by \$5,121.91.

3 In their cross-motion to re-tax costs, Defendants argue the Clerk erred in denying their request
4 for taxation of deposition costs to the extent they reflected expedited processing. The Local Rules of
5 this District do not allow for taxation of costs incurred for expedited processing. See Civ. Loc. Rule
6 54.1(b)(3). It is not error for the Court or the Clerk to rely on local rules for taxation of costs, so long
7 as the local rules stay within the confines of 28 U.S.C. Section 1920. See *Alflex Corp. v. Underwriters*
8 *Labs., Inc.*, 914 F.2d 175 (9th Cir. 1990). Neither side suggests that any of the applicable provisions
9 of Civil Local Rule 54.1 authorize taxation of costs beyond the scope of section 1920. Accordingly,

11 ³ The Order Taxing Costs states in pertinent part:

12 All expedited transcripts that show a detail invoice will be reduced and calculated at
13 a rate of \$4.25 per page with all other items in the invoice allowed. Transcripts
14 delivered on an expedited basis without any way to extract the cost of the expedited
15 service are denied in their entirety. The cost request in the amount of \$646.46 itemized
16 for deposition transcript fees for Jan Saltzman . . . are denied The cost request .
17 . . for deposition transcript fees for Karan Zopatti, vol. 4 . . . is reduced by \$299.00 .
18 . . Defendants cost request in the amount of \$87.50 itemized for transcript of a motion
19 hearing . . . is denied

17 Based on the foregoing, the Clerk taxed \$14,943.50 for deposition transcripts out of \$22,215.03
18 requested by Defendants. The Clerk arrived at the taxed amount by deducting \$7,271.53 from
19 \$22,215.03 as follows:

19	Expedited service for Karan Zopatti transcript, vol. 1:	\$680.00
20	Expedited service for Karan Zopatti transcript, vol. 2:	348.50
21	Expedited service for Karan Zopatti transcript, vol. 3:	714.00
22	Expedited service for Dr. Dan Harper transcript:	513.22
23	Expedited service for Christopher Zopatti transcript (entire invoice):	1,688.09
24	Expedited service for Alan Kaplan, M.D. transcript (entire invoice):	1,174.29
25	Expedited service for Scott Carstens, M.D. transcript (entire inv.):	651.22
26	Expedited service for Piyush Kumar, M.D. transcript (entire inv.):	469.25
27	Jan Saltzman transcript (see Order):	646.46
28	Karan Zopatti transcript, vol. 4 (see Order):	299.00
	Motion hearing transcript (see Order):	<u>87.50</u>
	Total	\$7,271.53

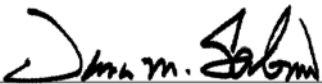
27 Accordingly, the Clerk excluded neither Dr. Dahlgren's nor Dr. Faeder's depositions. The Clerk did
28 not exclude Dr. Dahlgren's transcript, although it should have been excluded pursuant to the terms
of the Order Taxing Costs, because the invoice indicates the cost "reflects a 1-day expedited rate."
(See Wright Bill of Costs Decl. Ex. B-26.)

1 the Clerk did not err by following the local rules in excluding costs for expedited processing.
2 Defendants' argument is therefore rejected.

3 Based on the foregoing, Plaintiff's motion to re-tax costs is **GRANTED IN PART AND**
4 **DENIED IN PART**. Defendants' cross-motion to re-tax costs is **DENIED**. Plaintiff's motion to re-
5 tax costs is granted in part, whereby Plaintiff shall pay a total of **\$13,084.65** in taxable costs to
6 Defendants as follows: \$3,981.51 for copies, \$360 for witness fees, and \$8,743.14 for depositions.

7 **IT IS SO ORDERED.**

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9 DATED: January 10, 2012

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12 HON. DANA M. SABRAW
13 United States District Judge
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