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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 JAIRO CERVANTES, *et al.*,

11 Plaintiffs,

12 v.

13 SAN DIEGO POLICE CHIEF
14 SHELLEY ZIMMERMAN, *et al.*,

15 Defendants.

16 BRYAN PEASE,

17 Plaintiff,

18 v.

19 SAN DIEGO COUNTY SHERIFF
20 WILLIAM GORE, *et al.*,

21 Defendants.

CONSOLIDATED ACTIONS:

Case No. 17-cv-1230-BAS-AHG
Case No. 18-cv-1062-BAS-AHG

**ORDER DENYING PLAINTIFFS'
MOTION TO RE-TAX COSTS**

(ECF No. 185)

22 Following Defendants' successful summary judgment motion, County Defendants
23 were awarded costs in the amount of \$7,696.75 and City Defendants were awarded costs
24 in the amount of \$10,046.41. (ECF No. 184.) Plaintiffs now file a Motion for Re-taxation
25 of these Costs. (ECF No. 185.) Defendants oppose. (ECF Nos. 186, 187.) For the reasons
26 stated below, the Court **DENIES** Plaintiffs' request to reconsider the costs awarded.

1 **I. BACKGROUND**

2 The claims in these consolidated civil rights actions arise from protests at a campaign
3 rally for then presidential candidate Donald Trump at the San Diego Convention Center.
4 (Fourth Amended Complaint (“FAC”), ECF No. 89.) Plaintiffs sued San Diego Police
5 Department (“SDPD”) officials, including then SDPD Chief of Police, Shelley
6 Zimmerman (“the City Defendants”), and San Diego Sheriff’s Department (“SDSD”)
7 officials, including Sheriff William Gore (“the County Defendants”), for violating their
8 civil rights by preventing their peaceful assembly and arbitrarily arresting peaceful
9 protesters. (*Id.*)

10 The City Defendants and the County Defendants were slightly differently situated:
11 the County Defendants merely provided back-up and assisted the City Defendants with
12 booking individuals into custody post-arrest. Both the City Defendants and the County
13 Defendants brought separate Motions for Summary Judgment (“MSJ”). (ECF Nos. 127,
14 127.) Plaintiffs then brought Cross MSJ. (ECF No. 139.)

15 In their MSJ, the City Defendants cited to depositions taken of Plaintiffs Sanchez,
16 Goodman, Cervantes, Goodman, and Pease. (ECF No. 126.) The City Defendants also
17 cited depositions of City Defendants Zimmerman, Radasa, and Euler, and of witnesses
18 Sharki, Sharp, and Myers. (*Id.*) In their MSJ, the County Defendants cited to the
19 depositions of Plaintiff Steinberg, as well as County Defendant Cinnamo, City Defendants
20 Zimmerman and Radasa, and witness Sharki. The County Defendants also relied heavily
21 in their MSJ on a compilation video, including clips and screenshots taken from this video,
22 of the protests and arrests. (*Id.*) Plaintiffs, in their Cross MSJ, cited depositions of
23 Plaintiffs Cervantes, Goodman, Sanchez, and Steinberg. (ECF No. 139.) Plaintiffs also
24 cited depositions of Defendants Cinnamo, Euler, and Maraschiello, as well as witnesses
25 Boudreau, Miller, Myers, Sharki, and Sharp. (*Id.*)

26 The Court granted the County Defendants’ MSJ in its entirety, granted the City
27 Defendants’ MSJ in part, and dismissed the remaining state law claims filed by the City
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1 Defendants without prejudice to refile the claims in state court. (ECF No. 171.) The
2 court denied Plaintiffs' Cross MSJ. (*Id.*)

3 The City Defendants and the County Defendants filed separate requests for costs
4 (ECF Nos. 173, 175), both of which were objected to by Plaintiffs. (ECF Nos. 177, 181.)
5 After a hearing, the Court Clerk taxed costs in the amount of \$10,046.41 to the City
6 Defendants and \$7,696.75 to the County Defendants. (ECF Nos. 183, 184.) This motion
7 ensued. (ECF No. 185.)

8 **II. LEGAL STANDARD**

9 Under the Federal Rules of Civil Procedure, costs, other than attorney's fees, should
10 be awarded to the prevailing party in an action. Fed. R. Civ. P., Rule 54(d). Thus, "there
11 is a presumption that the prevailing party will be awarded its taxable costs." *Dawson v.*
12 *City of Seattle*, 435 F.3d 1054, 1070 (9th Cir. 2006). "To overcome this presumption, a
13 losing party must establish a reason to deny costs." *Id.* "There is a 'prevailing party' when
14 there has been a 'material alteration of the legal relationship of the parties.'" *Miles v. State*
15 *of Calif.*, 320 F.3d 986, 989 (9th Cir. 2003).

16 Specifically, under this district's local rules, "[i]t is the custom of the Court" to allow
17 "costs incurred in connection with taking depositions including . . . the cost of an original
18 and one copy of any deposition . . . necessarily obtained for use in the case." CivLR 54.1
19 (b)(3)(a). Similarly, this district customarily allows costs of copies "necessarily obtained
20 for use in the case" if the copies "were used as court exhibits, either admitted into evidence,
21 or attached to a motion." CivLR 54.1(b)(6)(a)(2). However, "if the depositions were
22 merely useful for discovery [as opposed to necessary for use in the case], then they [are]
23 not taxable items and their expense should [be] borne by the party taking them as incidental
24 to normal preparation for trial." *Independent Iron Works, Inc. v. U.S. Steel Corp.*, 322 F.2d
25 656, 678 (9th Cir. 1963). Expense of a copy of a party's own depositions taken by an
26 adversary should be allowed as costs because it might be used to impeach the party at trial
27 and thus was clearly necessary for use in the case. *Id.*

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1 Finally, costs are customarily awarded for the costs of videotapes and other visual
2 aids used as exhibits “if such exhibits are reasonably necessary to assist the jury or the
3 Court in understanding the issues at trial.” CivLR 54.1(b)(7)(a).

4 **III. ANALYSIS**

5 In this case, the Court granted the County Defendants’ MSJ. The Court also granted
6 in part the City Defendants’ MSJ and dismissed the remaining state law claims against the
7 City Defendants without prejudice. And, finally, the Court denied Plaintiffs’ Cross MSJ.
8 This was clearly a “material alteration of the legal relationship of the parties,” and the
9 parties agree that, therefore, the Defendants are the prevailing parties entitled to costs.

10 Plaintiffs, however, object to the costs awarded for deposition transcripts and to the
11 costs awarded to the County Defendants for video-production of the video compilation
12 attached to the County Defendants’ MSJ.

13 **A. Request by the City Defendants**

14 The City Defendants requested costs for the original deposition transcript plus one
15 certified copy of each Plaintiff’s deposition, as well as the deposition of Plaintiff’s expert
16 David Myers. The City Defendants cited to each of these depositions in their MSJ and the
17 Court finds they were not merely useful for discovery but “necessarily obtained for use in
18 the case.” Thus, Plaintiffs’ objections to recovery of costs for these deposition transcripts
19 is denied.

20 Similarly, the City Defendants requested costs for one certified copy of each of their
21 named Defendants’ depositions including Zimmerman, Euler, Maraschiello, and Radasa.
22 Again, the City Defendants cited to the deposition transcripts of Zimmerman, Euler, and
23 Radasa in their MSJ. Plaintiffs’ Cross MSJ cited to Maraschiello’s deposition transcript.
24 All four of these deposition transcripts were “necessarily obtained for use in the case.”

25 Additionally, the City Defendants requested costs for one certified copy of the
26 depositions of Officers Sharki and Sharp. These officers testified about events that either
27 happened at the protest or at the command center. Their deposition testimony was cited
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1 both by the City Defendants in their MSJ and by the Plaintiffs in their Cross-MSJ. The
2 deposition transcripts were necessarily obtained for use in the case.

3 Finally, the City Defendants requested costs for the original plus one certified copy
4 of the deposition transcript of witness Dawn Miller. Ms. Miller was a participant in the
5 protest and had critical information about what went on during the protest. Her deposition
6 transcript was cited by Plaintiffs in their Cross MSJ. As such, the City Defendants were
7 entitled to the cost of copies of the deposition transcript as necessarily obtained for use in
8 the case.

9 **B. Request by the County Defendants**

10 County Defendants requested costs for one certified copy of four of the five Plaintiffs
11 (Cervantes, Sanchez, Steinberg, and Pease), as well as Plaintiffs' expert Myers. The
12 County Defendants cited to the deposition of Plaintiff Steinberg in their MSJ, and
13 Plaintiffs' Cross MSJ cited the depositions of Cervantes and Sanchez, as well as their
14 expert Myers. Additionally, the City Defendants cited to the deposition of all five Plaintiffs
15 and the Plaintiffs' expert Myers in their MSJ. The Court finds these deposition transcripts
16 were necessarily obtained for use in the case.

17 Additionally, County Defendants requested costs for a certified copy of their named
18 Defendant Cinnamo, which they cited in their MSJ. The Court finds this was necessarily
19 obtained for use in the case.

20 County Defendants also requested costs for one certified copy of the deposition
21 transcript of City Defendants Euler and Radasa. They cited to the Radasa transcript in their
22 MSJ, and Plaintiffs cited to the Euler transcript in their Cross MSJ. These were both
23 necessarily obtained for use in the case.

24 Finally, County Defendants request costs for one certified copy of the deposition
25 transcripts of witnesses Sharki, Sharp, and Boudreau. As discussed above, Sharki and
26 Sharp testified about events happening at the protest or the command center. Boudreau
27 testified about training given to County Defendants on unlawful assembly. The County
28 Defendants cited excerpts from the Sharki deposition in their MSJ, and Plaintiffs cited

1 excerpts from all three depositions in their Cross MSJ. These depositions were necessarily
2 obtained for use in the case.

3 Plaintiffs also object to the \$690.00 in costs submitted by County Defendants for
4 preparation of the video excerpts prepared for submission to the Court as an exhibit for
5 their MSJ, showing clips and stills of the protest. Plaintiffs do not argue that this video
6 was not reasonably necessary to assist the Court in understanding the issues on MSJ.
7 Instead, Plaintiffs argue that the County Defendants paid too much for this service. County
8 Defendants submit an invoice from Seacoast Multimedia, detailing the costs of this service.
9 Plaintiffs provide no evidence that the service could have been provided cheaper elsewhere.
10 Thus, Plaintiffs objection on this ground is overruled.

11 **IV. CONCLUSION**

12 To the extent Plaintiffs object to the costs awarded Defendants for the costs of
13 depositions and for the costs of preparing the videotape exhibit, the objection is overruled
14 and the Motion to Re-tax Costs (ECF No. 185) is **DENIED**. Defendants provide adequate
15 support for their requests for costs. The Court finds these costs were all necessarily
16 obtained for use in the case. Therefore, as the prevailing party, Defendants are entitled to
17 these costs. The Court awards costs in favor of the City Defendants and against Plaintiffs
18 in the amount of \$10,046.41, and in favor of the County Defendants and against Plaintiffs
19 in the amount of \$7,696.75.

20 **IT IS SO ORDERED.**

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22 **DATED: February 8, 2021**


Hon. Cynthia Bashant
United States District Judge