

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Special Set Law and Motion Calendar

Judge: HONORABLE SUSAN GREENBERG

Department 3

400 County Center, Redwood City

Courtroom 2B

Thursday, December 19, 2023

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. EMAIL Dept3@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING, OR
 2. YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
- AND
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a) (1) .

Failure to do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by Zoom, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 828 3335

Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case

Title / Nature of Case

02:00

CHRISTOPHER KIDWELL VS. SALLY EVANS, ET AL

CHRISTOPHER KIDWELL
SALLY EVANS

JOHN J. ROACH
ARTHUR J. CASEY

MOTION TO TAX COSTS

TENTATIVE RULING:

Defendant's Motion to Tax Costs is GRANTED IN PART AND DENIED IN PART. The request to tax costs in the amount of \$39,659.02 is GRANTED. The request to tax costs in the amount of \$14,378.16 is DENIED with prejudice.

This case concerned personal injuries sustained by Plaintiff following an automobile accident involving Defendant. As per their Amended Memorandum of Costs, Plaintiff sought \$79,562.29 in costs following entry of judgment in their favor. In opposition to this Motion, Plaintiff has adjusted their total claimed costs to \$69,944.00. Defendant seeks to tax \$54,037.18 of these costs.

A prevailing party is entitled to certain costs as of right. CAL. CIV. PROC. CODE § 1032(b). Such costs include the taking and transcribing of necessary depositions as well as court reporter fees as established by statute. *Id.* at § 1033.5(a)(3), (11). Costs related to the electronic presentation of exhibits, including costs of rental equipment and electronic formatting, may be allowed as a matter of right if they were reasonably helpful to aid the trier of fact. *Id.* at subd.(a)(13). Fees of experts and transcripts of court proceedings are not recoverable as of right unless ordered by the court. *Id.* at subd.(b)(1), (5).

Costs recoverable as of right are awarded subject to two conditions imposed by the Code of Civil Procedure. These require that such costs are (1) reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its purpose, and (2) that those costs are reasonable in amount. *Id.* at subd. (c)(2) - (3). The trial court has discretion to determine the reasonableness of costs claimed as of right when ruling on a motion to tax costs and to disallow recovery of costs that it determines were incurred unnecessarily. *Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 244-245.

This Court may determine whether a cost allowed as of right, as detailed in a properly filed Memorandum of Costs, appears proper on its face. *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131. If an item appears proper, the burden lies on the party moving to tax costs to demonstrate that they were unreasonable or unnecessary. If an item is properly objected to, the burden lies on the party claiming costs to prove that the disputed costs were reasonable or necessary. *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.

Item No. 4 (Deposition Costs)

Defendant moves to tax the \$10,591.98 in deposition costs which Plaintiff claimed in their Amended Memorandum of Costs. Plaintiff in Opposition now claims \$11,451.12 as recoverable deposition costs. Defendant disputes \$4,150.00 of this amount, representing \$1,150.00 in costs for depositing life care planner expert Chris Daniel and the \$3,000.00 in costs for depositing spine expert Rayshad Oshtory, as well as \$2,504.90 in transcript costs for these depositions.

Plaintiff asserts that these costs are allowable as of right as costs associated with the taking of necessary depositions under CCP § 1033.5(a)(3). The Court finds that these costs represent the fees which Plaintiff paid to these expert witnesses for their time spent sitting for their depositions. Such fees are not recoverable absent Court order under CCP § 1033.5(b)(1). *Gorman*, which is binding upon this Court, is in accord with the Code--expert fees paid by a plaintiff to compensate defense experts for their time spent in a deposition are not recoverable costs absent Court order. *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 73-74. The Court finds that these depositions were not necessary, and Plaintiff may not recover the associated transcript costs. Accordingly, the court GRANTS Defendant's motion to tax costs as to Item No. 4 in the amount of \$4,150.00. Plaintiff can therefore recover \$6,654.90 for this item.

Item No. 11 (Court Reporter Fees as established by Statute)

Defendant moves to tax \$15,646.38 of the \$23,188.88 in court reporter fees which Plaintiff listed in Item No. 11 of their Amended Memorandum of Costs. In subsequent briefing, Plaintiff deducted \$12,101.94 in voided charges from their claimed costs for Item No. 11, now claiming \$11,086.94 in costs for this item. Defendant challenges \$3,544.44 in costs for items including "Rough Transcript Page Rate," "Court Trial Page Rate," "Expedite Rate - 5 Days at 60%," "Transcript Production & Processing," "CR Hotel Fee," and "Electronic Transcript Fee." Defendant challenges the transcript costs as unnecessary. As to the "CR Hotel Fee," the parties dispute whether they agreed to share the cost of hotel fees for the court reporter in this case, whom Plaintiff hired less than a week prior to commencement of trial. The Court finds these items recoverable pursuant to CCP § 1033.5(a)(9). Both parties should equally bear the court reporter's costs. Accordingly, Defendant's Motion to Tax Costs is DENIED as to the challenged costs under Item No. 11.

Item No. 12 (Models, Enlargements, and Photocopies of Exhibits)

Defendant seeks to tax the \$23,170.00 which Plaintiff claims in costs under this item. These include expenses pertaining to medical animations, PowerPoint presentations, and trial exhibit binders which Plaintiff used at trial.

Expenses incurred for "models, the enlargements of exhibits and photocopies of exhibits, and the electronic presentation of exhibits" are recoverable only if

they were "reasonably helpful to aid the trier of fact." CCP § 1033.5(a)(13). Costs may be recoverable for some demonstratives that were reasonably helpful and disallowed for others that were not. See *Science Applications Internat. Corp. v. Sup. Ct.* (1995) 39 Cal.App.4th 1095, 1103-05 (awarding costs for graphic exhibits but disallowing costs for a graphics communication system used to present those exhibits).

Plaintiff has failed to establish that any of their animations and exhibits were reasonably helpful to the jury. These demonstratives were used to illustrate Plaintiff's need for future damages to support further medical treatment. As the jury declined to award Plaintiff any future economic or non-economic damages, Plaintiff's demonstratives were not reasonably helpful to the jury. Plaintiff's Counsel relies on conversations with two jurors following issuance of the verdict to show that the animations were reasonably necessary. These statements are hearsay under Evid. Code § 1200, and the Court shall not consider them for the truth of the matter asserted therein. While Plaintiff may recover for the costs incurred in preparing exhibit binders for trial, their claimed costs of \$1,612.02 are not reasonable. Accordingly, the Court GRANTS Defendant's motion to tax costs as to the medical animations and trial demonstratives in their entirety. As to the exhibit binders, the Court DENIES Defendant's motion to tax costs. Plaintiff can therefore recover \$1,612.02 in claimed costs under this item.

Item No. 16 (Other)

Defendant moves to tax Item No. 16 in its entirety, arguing that the \$20,668.24 which Plaintiff spent on the equipment and trial technician services used at trial were not reasonably necessary or reasonable in amount, and are therefore recoverable under CCP § 1033.5(c). However, Defendant leveraged both of these services at trial while presenting their case. If Defendant did not want to bear their share of the costs as to this item, they should have disputed these services prior to trial or otherwise refrained from using them to present their case to the jury. As such, Defendant's Motion to Tax Costs is GRANTED in part and DENIED in part as to Item No. 16. Plaintiff shall recover \$10,334.12 in costs for Item No.16 from Defendant; the remaining \$10,334.12 shall be taxed.

If this tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312.