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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 ANTHONY J. JOHNSON,) Case No. 37-2019-00002457-CU-BT-CTL
12)
Plaintiffs,) **DEFENDANTS’ OPPOSITION TO**
13) **JOHNSON’S MOTION TO STRIKE**
vs.) **OR TAX DEFENDANTS’**
14) **MEMORANDUM OF COSTS**
DAVID HUFFMAN; RICHARD TURNER;)
15) **IMAGED FILE**
MANUEL ALTAMIRANO; and DAVID)
KINNEY,)
16) Judge: Hon. Katherine Bacal
Defendants.) Dept.: C-69
17) Action Filed: January 14, 2019
18) Trial Date: Not Set Yet

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20 Defendants David Huffman, Richard Turner, Manuel Altamirano, David Kinney, and
21 David Smiljkovich (collectively, “Defendants”) hereby oppose Plaintiff Anthony Johnson’s
22 (“Johnson”) Motion to Strike or Tax Defendants’ Memorandum of Costs.

23 **I. INTRODUCTION**

24 On July 16, 2019, Defendants filed a Memorandum of Costs Summary accompanied by a
25 six (6) page detailed Worksheet setting forth the allowable costs under Cal. Civ. Proc. Code §
26 1033.5. In response, Plaintiff Anthony Johnson (“Johnson”) filed a motion to strike or tax cost
27 asserting the Defendants are not entitled to costs because, according to Johnson, they are not the
28 prevailing party and incurred no costs. In support of this position, Johnson cites to Cal. Corp.

DEFENDANTS’ OPPOSITION TO JOHNSON’S MOTION TO STRIKE OR TAX STORIX’S AND
DEFENDANTS’ MEMORANDUMS OF COSTS

1 Code § 317 and claims Defendants incurred no costs because Storix indemnified and advanced all
2 of their expenses. This claim is without merit as Defendants were parties in the above-captioned
3 case and incurred costs in defense.

4 Johnson also fails to properly challenge the specific costs set forth in Defendants cost bill.
5 Defendants are the prevailing party under Cal. Civ. Proc. Code § 1032 and as such are entitled to
6 their costs. Because the costs were incurred by Defendants as parties to the above-captioned case,
7 the burden is on the party challenging the cost to demonstrate the charges were unnecessary or
8 unreasonable. Johnson has not satisfied his burden and his motion to strike or tax costs should be
9 denied.

10 II. DISCUSSION

11 A. Johnson Failed to Satisfy His Burden to Demonstrate Defendants' Costs Were 12 Unnecessary or Unreasonable

13 A prevailing party's right to recover costs is governed by Cal. Civ. Proc. Code § 1032¹,
14 which provides, in subdivision (b), that "[e]xcept as otherwise expressly provided by statute, a
15 prevailing party is entitled as a matter of right to recover costs in any action or proceeding." For
16 the purpose of determining entitlement to recover costs, Section 1032 defines a prevailing party as
17 including, among others, "a defendant in whose favor a dismissal is entered" or a "defendant
18 against those plaintiffs who do not recover any relief against that defendant." Cal. Civ. Proc. Code
19 § 1032(a)(4). Items that are allowable costs under Section 1032 are set forth in Section 1033.5. If
20 the items appearing in a verified memorandum of cost appear to be proper charges, then the
21 memorandum is prima facie evidence the costs "were necessarily incurred by the defendant and
22 the burden of showing that an item is not properly chargeable or is unreasonable is upon the
23 objecting party." *Nelson v. Anderson*, 72 Cal.App.4th 111, 131 (1999) (citations omitted).

24 Johnson, as the objecting party to Defendants' verified memorandum of costs, bears the
25 burden of showing items of cost were unnecessary or unreasonable. To satisfy this burden, Johnson
26 claims: 1) Defendants should not be deemed the prevailing party; 2) Defendants did not incur
27 costs; and 3) Defendants already took 40% of all costs and fees from Johnson.

1 Johnson's motion to strike or tax Defendants' costs provides no detail sufficient to satisfy
2 his burden to demonstrate any of Defendants' costs were unnecessary to the litigation or
3 unreasonable. Johnson states, **without support**, that Defendants cost bill should be stricken because
4 they incurred no costs. This argument is without merit because the verified memorandum of costs
5 is **prima facie evidence the costs were incurred by the Defendants**.

6 To the point, Johnson has failed to identify any particular cost that was either **unreasonable**
7 **or unnecessary** and has cited to no authority or fact to satisfy his burden. *See Jones v. Dumrichob*,
8 63 Cal.App.4th 1258, 1266 (1998) ("**mere statements in the points and authorities accompanying**
9 **its notice of motion to strike cost bill and the declaration of counsel are insufficient** to rebut the
10 prima facie showing that the costs were necessarily incurred.") (citations omitted). As such,
11 Johnson's motion to strike or tax the Defendants memorandum of cost should be denied.

12 **B. Defendants Incurred Costs Reasonably Necessary for the Litigation**

13 **Voluntary dismissal by Johnson, within the meaning of Section 1032, is in favor**
14 **Defendants entitling them to their costs.** Cal. Civ. Proc. Code § 1032; *see Santisas v. Goodin*, 17
15 Cal.4th 599, 606 (1998). Defendants submitted a cost bill detailing the first appearance fees and
16 **filing fees** necessary in defense of the lawsuit filed by Johnson. Johnson has not placed any
17 particular cost item at issue but merely argues Defendants are not the prevailing party and incurred
18 no costs. This argument is without merit and his motion, on its face, does not satisfy his burden.

19 Johnson's motion to tax should be dismissed.

20 **C. Defendants Are Entitled to Their Costs as a Matter of Right**

21 Unless another statute otherwise provides, **the trial court is without discretion to deny**
22 **Defendants costs allowable under Section 1032 and enumerated under Section 1033.5.** *See Crib*
23 *Retaining Walls, Inc. v. NBS/Lowry*, 47 Cal.App.4th 886, 890 (1996). As set forth above, Johnson
24 has the burden to dispute the reasonableness or necessity of a particular cost. Unsubstantiated
25 argument is insufficient to satisfy this burden as are claims that "Defendants took millions of
26 dollars from Johnson by directing all of his income for the last 4 years to litigation against him."
27 Johnson's failure to adhere to Cal. Rules of Court 3.1700(b)(2) is fatal to his motion to strike or
28 tax costs of Defendants.

1 **D. Defendants Memorandum of Costs Should Be Considered Timely**

2 Cal. Rule of Ct. 3.1700(b) allows the court to extend the time to file a cost memorandum
3 for a period not to exceed 30 days. Cal. R. 3.1700(b)(3). “Under this rule, a trial court may grant
4 the extension on its own motion.” *Cardinal Health 301, Inc. v. Tyco Electronics Corp*, 169
5 Cal.App.4th 116, 155 (2008). citing *Adam v. DeCharon*, 31 Cal.App.4th 708, 713 (1995). “The
6 rule does not require that the party expressly request the extension, or that the court specifically
7 state that it granted the extension. A trial court is presumed to know and understand the applicable
8 law.” *People v. Coddington*. 23 Cal.4th 529, 644 (2000).

9 Here, on May 30, 2019, Johnson filed his request for dismissal and a notice of entry of
10 dismissal (unconformed). (ROA Nos. 71, 72.) Defendants were never served the notice of entry
11 of dismissal identified at ROA No. 72. (Declaration of Marty B. Ready (“Ready Decl.”), ¶ 2.) On
12 the contrary, Defendants’ counsel only became aware of the dismissal on June 17, 2019, when
13 informed by his client, Rich Turner, who had reviewed the ROA that day to see the status of this
14 matter. (Ready Decl., ¶ 3.) Defendants then waited to receive service of the notice of entry of
15 dismissal to trigger the fifteen day time limit to file a cost memorandum. Unfortunately, as a result
16 of inadvertence, the June 22, 2019 Notice of Entry of Dismissal, mail-served by Johnson, was
17 mistakenly misfiled in the firm’s mailroom resulting in Defendant’s counsel not becoming aware
18 of the Notice until July 16, 2019. (Ready Decl., ¶ 4.) Defendants immediately prepared and filed
19 its cost memorandum that same day. (*Ibid.*) Defendants respectfully request the Court consider
20 the two-day late cost memorandum timely pursuant to its ability to extend the time within which
21 to file a cost memorandum under Rule 3.1700(b)(3).

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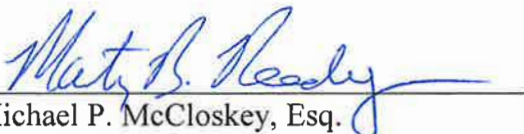
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1 **III. CONCLUSION**

2 Johnson has failed to satisfy his burden to demonstrate any of Defendants costs were
3 unreasonable or unnecessary. Absent such a showing, Defendants respectfully request the Court
4 deny Johnson's Motion to Strike or Tax Costs in its entirety.

5 Dated: October 15, 2019

**WILSON, ELSER, MOSKOWITZ,
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6
7 By: 

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