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27 UNITED STATES DISTRICT COURT  
28 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

and

ADRIAN SCOTT DUANE,

Plaintiff Intervenor,

vs.

IXL Learning, Inc.,

Defendant.

Case No.: 3:17-cv-02979-VC

**PLAINTIFFS' OBJECTIONS/PROPOSED  
MODIFICATIONS TO PROPOSED JURY  
INSTRUCTIONS**

Courtroom: 4, 17<sup>th</sup> Floor  
Judge: Hon. Vince Chhabria

1 Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) and Plaintiff-Intervenor,  
 2 Adrian Scott Duane respectfully file this opposition to Defendant’s Bill of Costs (ECF No. 155)  
 3 pursuant to Fed. R. Civ. P. 54(d) and Civil Local Rule 54-3 because several of Defendant’s claimed  
 4 costs are not “allowed by law,” some claimed costs are duplicative and other claimed costs are  
 5 excessive. For the reasons set forth in greater detail below, Plaintiffs seek a reduction of \$13,897.38  
 6 of Defendant’s claimed costs because Defendant has failed to carry its burden of showing its  
 7 entitlement those costs.

## 8 I. INTRODUCTION

9 Federal Rule of Civil Procedure 54(d)(1) provides that the court may award or deny costs  
 10 against the United States and its agencies, but that any award may be imposed “only to the extent  
 11 allowed by law.” Title 28 U.S.C. § 1920 further “enumerates expenses that a federal court *may* tax  
 12 as a cost under the discretionary authority found in Rule 54(d).” *Crawford Fitting Co. v. J.T.*  
 13 *Gibbons Inc.*, 482 U.S. 437, 441-42 (1987) (emphasis added). In addition, Civil Local Rule 54-3  
 14 provides “standards for interpreting the costs” that §1920 allows. *Hesterberg v. United States*, 75 F.  
 15 Supp. 3d 1220, 1223 (N.D. Cal. 2014) (*citing Fowler v. Cal. Highway Patrol*, No. 13-cv-01026-  
 16 TEH, 2014 U.S. Dist. LEXIS 112540 at \*2 (N.D. Cal. Aug. 13, 2014)); *see also Plantronics, Inc. v.*  
 17 *Aliph, Inc.*, No. C 09-01714 WHA (LB), 2012 U.S. Dist. LEXIS 152297 (N.D. Cal. Oct. 23, 2012)  
 18 (finding no conflict between Local Civil Rules and statute because “Civil Local Rule 54-3 provides  
 19 guidance regarding the taxable costs in each category [of Section 1920].”). The party seeking costs  
 20 carries the burden to establish the amount of compensable costs and expenses to which it is entitled.  
 21 *City of Alameda v. Nuveen Mun. High Income Opportunity Fund*, No. C 08-4575 SI, 2012 U.S. Dist.  
 22 LEXIS 7403, at \*7 (N.D. Cal. Jan. 23, 2012) (internal quotation marks and citation omitted).  
 23 Defendant fails to make this showing in multiple instances.

## 24 II. Specific Objections

### 25 A. Fees of the Clerk (Line Items Nos. 2, 3)<sup>1</sup>

26 Defendant seeks to recoup costs associated with mailing courtesy copies to the Court. (ECF

27 <sup>1</sup>The EEOC attaches Exh. A to Sanghvi Declaration, which is a reproduction of Exhibit A attached  
 28 to Defendant’s Bill of Costs with two columns added for ease of reference: “Line Item No.” and  
 “Plaintiffs’ objections.”

1 No. 155-2 at p. 3, Exh. A, Line Item Nos. 2, 3). Local Rule 54-3(d)(3) expressly provides that “the  
2 costs of reproducing copies of motions, pleadings, notices, and other routine case papers is not  
3 allowable.” Civ. L.R. 54-3(d)(3); *see also Hesterberg*, 75 F. Supp. 3d at 1226-27. Defendant cites  
4 no authority to support the argument that it can recoup the cost of mailing courtesy copies of the  
5 papers via FedEx. Therefore, the claimed costs in the Fees of the Clerk section should be reduced by  
6 \$59.75.

7 **B. Service of Process Fees (Line Item Nos. 4-13)**

8 Defendant seeks to recover costs associated with its attempts to subpoena documents (ECF  
9 No. 155-2 at p. 3, line item nos. 4, 5, 9, 10, 11, 12, 13) and testimony (line item nos. 6, 7, 8) from  
10 non-party witnesses. None of these claimed costs are appropriate and the court should disallow the  
11 claim of \$2,120.32. First, Section 1920 does not identify subpoena costs as recoverable. 28 U.S.C.  
12 § 1920; *see also Meier v. United States*, No. C 05-04404 WHA, 2009 U.S. Dist. LEXIS 31391, at \*6  
13 (N.D. Cal. Apr. 13, 2009) (“Subpoena costs are not among those costs enumerated in Section  
14 1920.”). Second, the EEOC objected to the subpoenas referenced in line item numbers 4, 5 and 13,  
15 and the subpoenas became the subject of a discovery dispute.<sup>2</sup> By telephonic conference on April  
16 10, 2018, Magistrate Judge Illman resolved the discovery dispute in favor of the Plaintiffs and  
17 required IXL to narrow the scope of the third-party subpoenas and effect service on the narrowed  
18 subpoenas by April 20, 2018. (ECF Nos. 49, 50 & 60). Defendant did not object to the Magistrate’s  
19 ruling. Therefore, Plaintiffs should not be taxed for costs of legally unsupportable subpoenas.

20 Additionally, Defendant cannot recover costs related to the narrowed subpoenas for  
21 documents. (line item nos. 9, 10, 11, 12). Again, Section 1920 does not identify the cost of  
22 subpoenas for documents as taxable. Furthermore, Magistrate Judge Illman directed Defendant to  
23 effect service of substantially narrowed subpoenas by April 20, 2018 (already one week past the  
24 close of discovery). (ECF No. 60). However, the invoice for serving Nina Wu (ECF 115-3 at p. 14)  
25 reflects a “completed on” date of May 4, 2018. The invoice therefore suggests that Defendant is

26 \_\_\_\_\_  
27 <sup>2</sup> Defendant listed the date for service of Curiel’s subpoena as May 9, 2018 (line item no. 13), but a  
28 review of the actual invoice demonstrates that mailing occurred on April 3 (ECF No. 155-3 at p.16).  
Plaintiffs cannot determine from the invoice whether this was the deposition subpoena or the broader  
subpoena that Magistrate Judge Illman modified.

1 attempting to recoup costs for serving a subpoena after the court-imposed subpoena deadline of  
2 April 20, 2018 (line item no. 11).

3 In addition, Defendant also seeks costs for its attempts to subpoena documents from Jessica  
4 Morse. (presumably line item nos. 9 and 10). Such subpoena costs are already objectionable for the  
5 reasons set forth above. Moreover, the invoices regarding Jessica Morse do not provide sufficient  
6 information to justify reimbursement. They do not reflect whether the first invoice for \$125.00 (line  
7 item no. 9 with a corresponding invoice at ECF No. 155-3 at p. 12) is duplicated in the second  
8 invoice for \$375.00 (line item no. 10 with a corresponding invoice at ECF No. 155-3 at p. 13).  
9 Additionally, assuming *arguendo* that the Court allows one attempt at service of the subpoena,  
10 Plaintiffs should not be required to pay for multiple service attempts or rush service fees. Absent an  
11 indication of whether the service was successful or when it was attempted, Defendant cannot justify  
12 the need for these expenditures.

13 Also, the corresponding invoice for line item no. 12 (ECF No. 155-3 at p. 15) lists a \$150.00  
14 two-hour stake-out fee in addition to the \$50.00 process service fee. There is no support for taxing  
15 Plaintiffs for Defendant's stake-out fee, particularly since Defendant had already successfully  
16 completed service on Curiel as of April 10, 2018.

17 In sum, the court should disallow these document subpoena costs because: Section 1920 does  
18 not identify such costs as recoverable; some of Defendant's claimed subpoena costs were  
19 unnecessary and untimely pursuant to Magistrate Judge Illman's substantive and procedural rulings;  
20 and because Defendant failed to adequately document the bases for its remaining costs.

21 Finally, Defendant has requested reimbursement for deposition subpoenas for Jenna Mandis  
22 (line item nos. 6, 7) and Nemo Curiel (line item no. 8). These requests should be denied because the  
23 fees are not enumerated in Section 1920. Furthermore, many of the related fees were not necessary.  
24 The EEOC disclosed Mr. Curiel as a percipient witness as early as August 15, 2017, and listed Ms.  
25 Mandis as a witness on April 13, 2018.<sup>3</sup> Defendant knew early in this case that Mr. Curiel had  
26 relevant information, yet waited until the week before the close of discovery to serve him with a  
27

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28 <sup>3</sup> Although the EEOC amended its Initial Disclosures on April 13, 2018, Mr. Duane identified Ms. Mandis during his deposition on March 27, 2018.

1 deposition subpoena. Therefore, assuming *arguendo* that the deposition subpoena service fee is  
2 appropriate, the related rush, stake-out, or other fees were caused by Defendant's delays. Since  
3 these fees were wholly unnecessary, they should not be charged against Plaintiffs.

4 With regards to Ms. Mandis, Defendant inexplicably charged rush processing fees and  
5 service fees for simultaneous service attempts at two different addresses, one of which was an  
6 incorrect address for her place of work. Moreover, Defendant failed to explain why, after effecting  
7 personal service on Ms. Mandis on April 5, 2018, it incurred two additional rush service fees at two  
8 different addresses on April 9, 2018. Therefore, Plaintiffs should not be taxed these costs.

9 **C. Hearing and Trial Transcripts (Line Item Nos. 14-16)**

10 Section 1920 provides that the court may tax “[f]ees for printed or electronically recorded  
11 transcripts necessarily obtained for use in [a] case[.]” 28 U.S.C. §1920(2). Civil Local Rule 54-3(b)  
12 restricts recovery of transcript costs to transcripts “necessarily obtained for an appeal” or when the  
13 transcript contains “a statement by a Judge from the bench which is to be reduced to a formal order  
14 prepared by counsel[.]” Civ. L.R. 54-3(b)(1)-(2). Here, the trial transcripts costs are not warranted  
15 because neither situation applies. Moreover, the rule disallows costs for any other transcripts  
16 “unless, before [the cost] is incurred, it is approved by a Judge or stipulated to be recoverable by  
17 counsel.” Civ. L.R. 54-3(b)(3). No such approval or stipulation exists here. The court should  
18 disallow this claimed cost of \$2,553.59 in its entirety.

19 **D. Deposition Transcripts and Video Recording Fees (Line Item Nos. 18, 20, 22, 23)**

20 Plaintiffs object to Defendant's claim of \$1,412.50 (line item no. 23), the cost for the  
21 videotaped recording of Mr. Duane's deposition because it is duplicative of the court reporter's  
22 transcription cost. Section 1920 only permits recovery for printed *or* electronically recorded  
23 transcripts, not both. 28 U.S.C. § 1920(2). In addition, the prevailing party must show that a  
24 videotape was necessary, such as witness unavailability at trial. *See Weco Supply Co., Inc. v.*  
25 *Sherwin-Williams Co.*, No. 1:10-cv-00171-AWI-BAM, 2013 WL 56639 \* 5 (E.D. Cal. Jan. 3, 2013).  
26 Defendant knew that Mr. Duane, a party, would appear at the trial, so the videotape was  
27 unnecessary. Moreover, courts have found that videotaping a deposition just to capture the  
28 expressions of the deponent does not justify reimbursement for videotaping costs. One court

1 reasoned:

2           The demeanor of any witness, including the plaintiff in an employment  
3 lawsuit, is important in any case. That general principle, however, should not  
4 automatically convert a videographer's fee into a recoverable item of cost where a  
5 court reporter also attended and transcribed the deposition and the party seeking to  
6 recover the videographer's cost does not offer one or more reasons specific to the  
7 case to justify an award of costs for both items. **Routinely allowing recovery of the  
8 cost incurred for both the court reporter's transcript and a separate  
9 videographic record of depositions duplicates deposition costs without purpose.  
10 Accordingly, the court denies Intel's request for this cost item.**

11 *Pullela v. Intel Corp.*, No. CV-08-1427-AC, 2010 WL 3361089 \*3 (D. Or. Aug. 25, 2010) (emphasis  
12 added); *see also Weco Supply Co., Inc. v. Sherwin-Williams Co.*, 2013 WL 56639 at \* 5 (disallowing  
13 videotaping cost which defendant-claimant said was necessary to "more clearly show" witness's  
14 "personality and spitefulness").

15           Furthermore, Plaintiffs oppose each of Defendant's claimed costs for expedited, rush or  
16 rough copies of deposition transcripts because Defendant has not shown the necessity of such costs.  
17 (Line Item Nos. 18, 20, 22) *See Plantronics, Inc. v. Aliph, Inc.*, No. C 09-01714 WHA LB, 2012  
18 WL 6761576, at \*6 (N.D. Cal. Oct. 23, 2012) (costs for expedited deposition transcripts are not  
19 taxable costs); *see also City of Alameda, Cal. v. Nuveen Mun. High Income Opportunity Fund*, No. C  
20 08-4575 SI, 2012 WL 177566, at \*3 (N.D. Cal. Jan. 23, 2012) (court disallowed costs of additional  
21 copies of deposition transcripts which included the costs of "rough" disks, "miniscripts" or expedited  
22 transcripts in addition to the cost of an original and one copy of a deposition permitted under Civil  
23 Local Rule 54-3(c)(1)). Plaintiffs request a reduction of each of the following claimed costs: (1)  
24 \$340.00 for "rough" transcript of David Keyes deposition (ECF No. 155-3 at p. 23); (2) \$204.00 for  
25 "rough" transcript of Jeremy Murphy deposition (ECF No. 155-3 at p. 25); (3) \$960.12 for 4-day  
26 expedited transcript of Adrian Scott Duane (ECF No. 155-3 at p. 27; and (4) \$310.40 for "rough  
27 ASCII" transcript of Adrian Scott Duane (ECF No. 155-3 at p. 27).

28           Ultimately, Plaintiffs seek a reduction of \$3,227.02 in deposition-related costs.

#### **E. Discovery Document Management Fees (Line Item No. 26)**

Plaintiffs also object to Defendant's claimed cost of \$4,510.00 for discovery management

1 fees. Defendant's claimed cost of maintaining defense firm Young Basile's database is not  
2 recoverable under 28 U.S.C. § 1920 because: (1) Defendant's invoices are not limited to costs for e-  
3 discovery production in this case; (2) the invoices are not itemized; (3) the costs for maintaining or  
4 uploading documents to the firm's e-discovery platform are not recoverable; (4) Defense counsel's  
5 firm would pay an annual flat rate for access to Logikcull's electronic management system  
6 irrespective of this lawsuit; and (5) there is nothing in the claimed amount that reflects that cost the  
7 law firm billed Defendant (a monthly charge of \$205.00) is at all proportionate to the amount of data  
8 stored in comparison to other cases in the law firm database. *See Phoenix Techs. Ltd. v. VMWare,*  
9 *Inc.*, No. 15-CV-01414-HSG, 2018 WL 4700347, at \*5 (N.D. Cal. Sept. 30, 2018) (overage costs  
10 and electronic database hosting fees were disallowed because such e-discovery storage costs or  
11 hosting fees are not taxable); *see also Kwan Software Eng'g, Inc.*, No. 12-CV-03762-SI, 2014 WL  
12 1860298, at \*4 (N.D. Cal. May 8, 2014); *Golden Bridge Tech., Inc. v. Apple Inc.*, No. 5:12-CV-  
13 04882-PSG, 2015 WL 13427805, at \*3 (N.D. Cal. Dec. 21, 2015), *aff'd*, 673 F. App'x 1010 (Fed.  
14 Cir. 2017). Therefore, Plaintiffs respectfully request that this court disallow the \$4,510.00 claimed  
15 by Defendant for document management fees.

16 To the extent that Defendant's costs for the actual production of electronic documents are  
17 taxable, Defendant has the burden of documenting such costs. Here, Defendant has failed to meet  
18 this burden. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 914, 928 (9th Cir. 2015) (a party  
19 required to produce electronic documents in a particular format or with particular characteristics  
20 intact per 28 U.S.C. § 1920(4) must still describe and establish the costs with sufficient specificity,  
21 particularity and clarity to permit a determination that the costs of creating the produced documents  
22 were actually necessary for the case); *see also Country Vintner v. E. & J. Gallo Winery, Inc.*, 718  
23 F.3d 249, 260 n. 19 (4th Cir. 2013) ("If, for instance, a case directly or indirectly required production  
24 of ESI-unique information such as metadata, we assume, without deciding, that taxable costs would  
25 include any technical processes necessary to copy [electronically stored information] in a format that  
26 includes such information."). "Document production' and other similarly generic statements on the  
27 invoices are unhelpful in determining whether those costs are taxable." *In re Ricoh*, 661 F.3d at  
28 1368. Defendant cannot justify seeking these costs and Plaintiffs seek a reduction of the full

1 \$4,510.00.

2 **F. Trial Exhibit Fees (Line Item Nos. 27, 32)**

3 Plaintiffs object to Defendant's claimed cost of \$364.34 from United Litigation Discovery  
4 because Defendant failed to explain the purpose of this expense. (ECF No. 155-3 at p. 37). The  
5 parties used the vendor Digital One for all trial exhibits and witness binders, so this expense is  
6 unclear. It is not taxable to the extent it relates to the creation of working copies for Defense  
7 counsel's use. Therefore, Plaintiffs do not understand the purpose for this expense and cannot be  
8 taxed for it.

9 Plaintiffs similarly object to costs associated with copying transcripts of Nemo Curiel's  
10 deposition for use at trial because Defendant did not call him as a witness. (line item no. 32 with a  
11 corresponding invoice at ECF No. 155-3 at p. 42) As a result, Plaintiffs should only for taxed for the  
12 costs associated with the reproduction of Maricela Prado's 151-page transcript and Jenna Mandis'  
13 35-page transcript, which total \$51.21. Plaintiffs seek a reduction of \$30.60 from this line item.

14 Finally, Plaintiffs also object to the \$128.46 cost for the reproduction of Scott Duane's  
15 transcript, which was only 204 pages. (line item no. 34 with a corresponding invoice at ECF No.  
16 155-3 at p. 44). The reproduction of two copies at \$0.10/page with the binding and tax is \$49.69 and  
17 therefore Plaintiffs seek a reduction of \$78.77.

18 In conclusion, Plaintiffs seek a total reduction of trial exhibit fees of \$473.71.

19 **G. Witness Fees (Line Item Nos. 40-46)**

20 Plaintiffs also oppose the amounts claimed for Jeremy Murphy (ECF No. 155-2 at p. 3),  
21 because the claimed costs do not meet the requirements of 28 U.S.C. §§ 1821(c)(1) and 1924.

22 First, Defendant claims three days of witness fees and travel costs for Jeremy Murphy, a  
23 current IXL employee, to travel from Raleigh, North Carolina to San Francisco, California for trial.  
24 The travel costs for Mr. Murphy are excessive and should be reduced by \$1,128.49. Title 28 U.S.C.  
25 § 1821(c)(1) provides:

26 A witness who travels by common carrier shall be paid for the actual expenses of  
27 travel on the basis of the means of transportation reasonably utilized and the distance  
28 necessarily traveled to and from such witness's residence by the shortest practical  
route in going to and returning from the place of attendance. Such a witness shall

1 utilize a common carrier at the most economical rate reasonably available. A receipt  
2 or other evidence of actual cost shall be furnished.

3 (bold added). A search on [www.google.com/flights](http://www.google.com/flights) shows that round trip air fare from  
4 Raleigh/Durham, NC to San Francisco, CA is approximately \$447.00.<sup>4</sup> Thus, Defendant is seeking  
5 \$577.99 more than the round-trip cost for a “common carrier at the most economical rate reasonably  
6 available.” Defendant also has not shown why Mr. Murphy did not return to Raleigh/Durham on  
7 October 26, 2018 after he was excused at 10:09 a.m. Instead, Mr. Murphy stayed overnight before  
8 returning to Raleigh/Durham, incurring additional per diem costs. This is further proof that his  
9 travel expenses were needlessly inflated. At the very least, the amount of air fare for Mr. Murphy  
10 should be reduced to the “most economical rate reasonably available” and his lodging and meal  
11 expenses should be further reduced by one entire day, reducing the amount claimed by another  
12 \$375.00.

13 Therefore, Plaintiffs seek a reduction of \$952.99 (which represents: an airfare cost reduction  
14 of \$577.99, a per diem reduction of \$375) leaving a taxable cost of \$1,198.08.

### 15 **III. CONCLUSION**

16 Plaintiffs seek the following reductions of costs in each section of Defendant’s claimed costs:

17 <b>Section</b>	<b>Reduction Sought</b>
18 Fees of the Clerk	\$59.75
19 Service of Process Fees	\$2,120.32
20 Hearing and trial transcripts	\$2,553.59
21 Deposition transcripts and video recording 22 fees	\$3,227.02
23 Discovery Document Management Fees	\$4,510.00
24 Trial Exhibit Fees	\$473.71

25  
26 <sup>4</sup>See <https://goo.gl/flights/mjGU3>, last accessed Nov. 27, 2018 (using a hypothetical travel date of  
27 December 11-14, 2018, *e.g.*, non-holiday as would have been applicable for the October 22-26, 2018  
28 trial in the present situation).

1	Witness Fees	\$952.99
2	<b>TOTAL REDUCTION SOUGHT</b>	\$13,897.38

3 Respectfully submitted,

4 Dated: November 27, 2018

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

6 By: /s/ Ami Sanghvi  
AMI SANGHVI, Senior Trial Attorney  
Attorney for Plaintiff EEOC

8 Dated: November 27, 2018

THE MAREK LAW FIRM

9 By: /s/ David Marek  
DAVID MAREK  
Attorney for Plaintiff-Intervenor Duane

11 **LOCAL RULE 5-1(i)(3) ATTESTATION**

12 I, Ami Sanghvi, am the ECF User whose ID and password are being used to file the  
13 Plaintiffs' Objections to Defendant's Claim for Costs. In compliance with Local Rule 5-1(i)(3), I  
14 hereby attest that David Marek concurred in this filing.

15 Dated: November 27, 2018

/s/ Ami Sanghvi  
AMI SANGHVI, Senior Trial Attorney

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26 *Attorney for Plaintiff-Intervenor Duane*

27 UNITED STATES DISTRICT COURT  
28 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

and

ADRIAN SCOTT DUANE,

Plaintiff Intervenor,

vs.

IXL Learning, Inc.,

Defendant.

Case No.: 3:17-cv-02979-VC

**DECLARATION OF AMI SANGHVI IN  
SUPPORT OF PLAINTIFFS'  
OBJECTIONS/PROPOSED  
MODIFICATIONS TO PROPOSED JURY  
INSTRUCTIONS**

Courtroom: 4, 17<sup>th</sup> Floor  
Judge: Hon. Vince Chhabria

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I, Ami Sanghvi, declare as follows:

1. I am an attorney for the Plaintiff in this action, the U.S. Equal Employment Opportunity Commission (EEOC). I am the lead attorney responsible for the litigation of the above-captioned case.

2. Attached hereto and incorporated herein as **Exhibit A** is reproduction of Exhibit A to Defendant’s Bill of Costs with two columns added for ease of reference: “Line Item No.” and “Plaintiffs’ objections.” In all other respects, the exhibits are the same.

3. The EEOC disclosed Nemo Curiel as a percipient witness in its initial disclosures as early as August 15, 2017. The EEOC also listed Jenna Mandis as a witness in amended disclosures dated April 13, 2018.

4. The EEOC did not enter into any stipulations with Defendant regarding the prevailing party’s ability to recover the costs of trial transcripts in this case.

5. On November 27, 2018, I searched [www.google.com/flights](http://www.google.com/flights) to research the cost of airfare from Raleigh/Durham, NC to San Francisco, CA to ascertain the most economical rate of travel for defense witness, Jeremy Murphy. I researched roundtrip airfare for hypothetical travel dates of December 11-14, 2018 which are non-holiday travel dates, as was the case for Mr. Murphy who traveled between October 22 and October 26, 2018. I learned that a roundtrip ticket could be purchased for approximately \$447.00 on United Airlines, which is \$577.99 less than the cost claimed by Defendant.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on November 27, 2018 in San Francisco, CA.

Respectfully submitted,

Dated: November 27, 2018

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

By: /s/ Ami Sanghvi  
AMI SANGHVI, Senior Trial Attorney  
Attorney for Plaintiff EEOC

# **EXHIBIT A**

Line Item		Fees of the Clerk			Plaintiffs' Objection
1	10/6/2017	Imai, Tadlock, Et Al., LLP	Court filing services pursuant to stipulation and order by designated defense counsel re motion to intervene	\$15.00	No objection
2	2/14/2018	FedEx	Delivery of courtesy copies of Answer to Complaint to Judge	\$29.53	Objection: LR 54-3(d)(3)
3	10/10/2018	FedEx	Delivery of courtesy copies of Motions in Limine to Judge, as required per chamber	\$30.22	Objection: LR 54-3(d)(3)
		Subtotal \$74.75			

Service of Process Fees					
4	3/26/2018	S & R Services	Fee for service of subpoena on Nemo	\$80.00	Objection: see brief
5	4/6/2018	S & R Services	Fee for service of subpoena on Jessica	\$80.00	Objection: see brief
6	4/10/2018	S & R Services	Fee for service of subpoena on Jenna	\$195.00	Objection: see brief
7	4/10/2018	S & R Services	Fee for service of subpoena on Jenna	\$281.47	Objection: see brief
8	4/11/2018	S & R Services	Fee for service of subpoena on Nemo	\$466.37	Objection: see brief
9	4/13/2018	HPS inc	Fee for service of Subpoena on Jessica	\$125.00	Objection: see brief
10	4/20/2018	HPS inc	Fee for service of Subpoena on Jessica	\$375.00	Objection: see brief
11	5/4/2018	S & R Services	Fee for service of subpoena on Nina Wu	\$285.00	Objection: see brief
12	5/4/2018	S & R Services	Fee for service of subpoena on Nemo	\$200.00	Objection: see brief
13	5/9/2018	FedEx	Fee for service by mail of subpoena on	\$32.48	Objection: see brief
		Subtotal \$2,120.32			

Hearing and Trial Transcripts					
14	10/17/2018	Official US Court	Copies of pretrial conference transcript	\$214.57	Objection: LR 54-3(b)
15	10/30/2018	Official US Court	Original and first copy of trial transcripts	\$1,812.86	Objection: LR 54-3(b)
16	11/12/2018	Official US Court	Closing argument transcript	\$526.16	Objection: LR 54-3(b)
		Subtotal \$2,553.59			

Deposition Transcripts and Video Recording Fees					
17	3/21/2018	California Deposition	1 certified copy of deposition transcript of Isidora Milin	\$491.25	No objection
18	3/21/2018	California Deposition	1 certified copy of deposition transcript of David Keyes	\$1,069.25	Objection to cost of rough transcript
19	3/21/2018	California Deposition	1 certified copy of deposition transcript of Paul Mishkin	\$956.75	No objection
20	3/21/2018	California Deposition Reporters	1 certified copy of deposition transcript of Maricela Prado and 1 certified copy of deposition transcript of Jeremy Murphy	\$1,328.00	Objection to cost of rough transcript
21	3/23/2018	California Deposition Reporters	1 certified copy of deposition transcript of Gary Yee and 1 certified copy of deposition transcript of Kate Mattison	\$1,043.00	No objection
22	4/9/2018	Esquire Deposition Solutions	1 certified copy of deposition transcript of Scott Duane	\$2,910.62	Objection to cost of rough transcript
23	4/11/2018	Esquire Deposition Solutions	Video of deposition of Scott Duane	\$1,412.50	Objection: video not used at trial
24	4/18/2018	California Deposition	1 certified copy of deposition transcript of Jennifer Gu	\$2,667.75	No objection
25	4/30/2018	Esquire Deposition Solutions	1 certified copy of deposition transcript of Jenna Mandis and 1 certified copy of deposition transcript of Nemo Curiel	\$860.55	No objection
		Subtotal \$12,739.67			

Discovery Document Management Fees					
26	1/2017-10/2018	Logik Systems, Inc.	Online document management charges re discovery	\$4,510.00	Objection: statutorily impermissible cost
		Subtotal \$4,510.00			

Trial Exhibit Fees					
27	10/18/2018	United Litigation Discovery	Copies of trial exhibits	\$364.34	Objection: Exceeds necessary copies
28	10/26/2018	Digital One Legal	Copies of exhibits for David Keyes and	\$481.85	No objection
29	10/26/2018	Digital One Legal	Copies of exhibits for Scott Duane and	\$467.09	No objection
30	10/26/2018	Digital One Legal Solutions	Copies of exhibits for Scott Duane and Judge with changes and additions	\$167.58	No objection
31	10/26/2018	Digital One Legal	Affixing stamps to exhibits	\$150.00	No objection
32	10/28/2018	United Litigation Discovery	Copies of deposition transcripts of Maricela Prado, Jenna Mandis, and Nemo Curiel for Judge and Witnesses as	\$81.81	Objection: cost should not include Curiel transcript
33	10/29/2018	Digital One Legal	Copies of exhibit 170	\$75.00	No objection
34	10/29/2018	United Litigation Discovery	Copies of deposition transcript of Scott Duane for Judge and Witnesses as required per chamber rules for	\$128.46	Objection: cost should only be for two copies of transcript
35	10/30/2018	Digital One Legal	2 copies of exhibits for court clerk	\$1,703.88	No Objection
Subtotal \$3,620.01					

Witness Fees					
36		Paul Mishkin	1 day of attendance at trial at \$40.00/day per 28 U.S.C. 1821(b)	\$40.00	No objection
37		Paul Mishkin	68.8 Miles/day X 1 day X \$0.545/mile per 28 U.S.C. 1821(c)(2) (GSA rate of \$0.545/mile for privately owned automobile) See map in Exhibit H: 34.4 miles from Paul Mishkin residence to Phillip Burton Federal Building	\$37.50	No objection
38		Paul Mishkin	1 day of parking fees per 28 U.S.C. 1821(c)(3) See parking receipts in Exhibit	\$18.00	No objection
39		David Keyes	2 days of attendance at trial at \$40.00/day per 28 U.S.C. 1821(b)	\$80.00	No objection
40		Jeremy Murphy	1 day of attendance at trial and 2 travel days at \$40.00/day per 28 U.S.C. 1821(b)	\$120.00	Objection
41		Jeremy Murphy	Cab to airport per 28 U.S.C. 1821(c)(1) See cab receipt in Exhibit H	\$23.12	No objection
42		Jeremy Murphy	Flight from Raleigh/Durham to San Francisco per 28 U.S.C. 1821(c)(1) See flight receipt in Exhibit H	\$516.79	Objection: see brief
43		Jeremy Murphy	Flight from San Francisco to Raleigh/Durham per 28 U.S.C. 1821(c)(1) See flight receipt in Exhibit H	\$508.20	Objection: see brief
44		Jeremy Murphy	Cab from airport per 28 U.S.C. 1821(c)(1) See cab receipt in Exhibit H	\$19.46	Objection: see brief
45		Jeremy Murphy	Lodging expenses for 2 nights per 28 U.S.C. 1821(d)(2) (GSA rate of \$299.00/night for San Fransico in 10/2018)	\$598.00	Objection: see brief
46		Jeremy Murphy	Meal expenses for 3 days per 28 U.S.C. 1821(d)(2) (GSA rate of \$76.00/day and \$57.00 for first and last day of travel for San Fransico in 10/2018)	\$190.00	Objection: see brief
Subtotal \$2,151.07					
<b>Total \$27,769.41</b>					