

1 DOUGLAS JAFFE, ESQ. Bar No. 170354
2 LAW OFFICES OF DOUGLAS JAFFE
3 501 West Broadway, Suite 800
4 San Diego, California 92101
5 Telephone: (619) 400-4945
6 Facsimile: (619) 400-4947

7 Attorneys for Razuki Investments, LLC,
8 Salam Razuki

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO - CENTRAL

11 SAN DIEGO PATIENTS COOPERATIVE)
12 CORP, et. al.,)

13 Plaintiffs,)

14 vs.)

15 RAZUKI INVESTMENT L.L.C., et. al.,)

16 Defendants.)
17)
18)

Case No.: 37-2017-00020661-CU-CO-CTL

**REPLY IN SUPPORT OF MOTION TO
TAX AND/OR STRIKE COSTS**

DATE: May 24, 2024

TIME: 9:00 a.m.

DEPT.: 67

JUDGE: Hon. Michael T. Smyth

19 Defendants Razuki Investments, LLC and Salam Razuki (the “Razuki Defendants”)
20 submit their Reply In Support Of The Motion To Tax And/Or Strike Costs as follows:

21
22 **I. The Motion Was Timely Filed And Served**

23 The Memorandum Of Costs was filed on February 29, 2024.

24 The Memorandum Of Costs was served by mail according to the proof of service
25 accompanying the Memorandum Of Costs. Therefore the 15 calendar days to March 15, 2024
26 for the Razuki Defendants to file a motion to tax and/or strike costs was extended by 5 calendar
27 days (to March 20, 2024). *See*, Court Rule 3.1700(b)(1)(“If the cost memorandum was served
28 by mail, the period is extended as provided in Code of Civil Procedure section 1013”).

1 The Memorandum Of Costs was also served by electronic service according to the proof
2 of service accompanying the Memorandum Of Costs. Therefore the 15 calendar days to March
3 15, 2024 for the Razuki Defendants to file a motion to tax and/or strike costs was extended by 2
4 court days (to March 19, 2024). See, Court Rule (b)(1) (“If the cost memorandum was served
5 electronically, the period is extended as provided in Code of Civil Procedure section
6 1010.6(a)(4)”, which is now by amendment CCP section 1010.6(a)(3)). March 16 and 17, 2024
7 were not court days.

8 The Motion To Tax/Strike costs was timely filed and served on March 19, 2024 (2 court
9 days after March 15, 2024).

10 It is Plaintiffs who have made a bad faith legal argument without legal support regarding
11 the due date for the filing and service of the motion to tax and/or strike costs.

12 13 **II. Plaintiffs Are Not The Prevailing Parties**

14 The Opposition does not dispute that Plaintiffs sued Defendants Razuki Investments,
15 LLC, Salam Razuki, Keith Henderson, Ninus Malan, Balboa Ave Cooperative, American
16 Lending and Holdings, LLC, San Diego United Holdings Group, LLC and California Cannabis
17 Group.

18 The Opposition does not dispute that Plaintiffs were completely unsuccessful (including
19 non-suit motions and dismissed parties) as to Defendants Salam Razuki, Ninus Malan, Balboa
20 Ave Cooperative, American Lending and Holdings, LLC, San Diego United Holdings Group,
21 LLC and California Cannabis Group, and settled with Keith Henderson at trial.

22 The Opposition does not dispute that Plaintiff San Diego Patients Cooperative Corp.
23 recovered nothing.

24 This is a “mixed-result” case for Plaintiffs, allowing this Court discretion to “allow costs
25 or not” to Plaintiffs. See, CCP section 1032(a)(4) (“If any party recovers other than monetary
26 relief and in situations other than as specified, the "prevailing party" shall be as determined by
27 the court, and under those circumstances, the court, in its discretion, may allow costs or not and,
28 if allowed, may apportion costs between the parties on the same or adverse sides pursuant to

1 rules adopted under Section 1034.”); *See, Marina Pacifica Homeowners Ass'n v. S. Cal. Fin.*
2 *Corp.*, 20 Cal.App.5th 191, 208 (Cal. Ct. App. 2018).

3 Plaintiffs’ citation to *Mitchell v. Olick* (1996) 49 Cal. App. 4th 1194 and *Vought Const.*
4 *Inc. v. Stock* (2022) 84 Cal. App. 5th 622 are misplaced as those cases involved a party not
5 prevailing on all its causes of action and not, as in this case, Plaintiffs pursuing claims dismissed
6 by Plaintiffs, and parties which prevailed against Plaintiffs.

7 This case is already on appeal.

8
9 **III. Plaintiffs Have Requested Improper And Unreasonable Costs, Without Any**
10 **Supporting Documentation**

11 Code of Civil Procedure section 1033.5(c)(2) and (3) provide that allowable costs must
12 be “reasonably necessary to the conduct of the litigation rather than merely convenient or
13 beneficial to its preparation” and allowable costs must be “reasonable in amount”. *See also,*
14 *Ladas v. California State Automobile Association* (1993) 19 Cal. App. 4th 761, 774; *Perko’s*
15 *Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal. App. 4th 238, 244-245.

16 If items claimed as costs are objected to, “they are put in issue and the burden of proof is
17 on the party claiming them as costs”. *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624; *Oak*
18 *Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699. Whether a cost
19 item was reasonably necessary to the litigation presents a question of fact for the trial court. *See,*
20 *Lubetzky v. Friedman* (1991) 228 Cal.App.3d 35, 39. Because the right to costs is governed
21 strictly by statute, a court has no discretion to award costs not statutorily authorized. *Ladas v.*
22 *California State Automobile Association* (1993) 19 Cal. App. 4th 761, 774; *Hogan v. Ingold*
23 (1952) 38 Cal.2d 802, 814.

24 Each of the following requested costs should be taxed and/or stricken:
25
26
27
28

1 A. Memorandum Of Costs Item # 1 (Filing and motion fees)
2 Amount To Be Taxed: \$435

3 The Opposition does not dispute that Plaintiffs filed this action against multiple
4 Defendants.

5 The Opposition does not dispute that Plaintiffs were unsuccessful as to Defendants Salam
6 Razuki, Ninus Malan, Balboa Ave Cooperative, American Lending and Holdings, LLC, San
7 Diego United Holdings Group, LLC and California Cannabis Group, and settled with Keith
8 Henderson at trial.

9 The initial filing fee of \$435 should not be awarded as Plaintiffs were not the prevailing
10 parties in this mixed result case as set forth above. If items claimed as costs are objected to,
11 “they are put in issue and the burden of proof is on the party claiming them as costs”. *Melnyk v.*
12 *Robledo* (1976) 64 Cal.App.3d 618, 624; *Oak Grove School Dist. v. City Title Ins. Co.* (1963)
13 217 Cal.App.2d 678, 698-699. Plaintiffs have failed to meet their burden.

14
15 B. Memorandum Of Costs # 2 (Jury Fees)
16 Amount To Be Taxed: \$2,655.78

17 There are no provisions in the California Statutes, Court Rules, or Local Rules for more
18 than one advance jury deposit of \$150.

19 The time spent at trial with regard to parties for which Plaintiffs were unsuccessful
20 resulted in a much longer trial and more jury time and therefore much larger jury fees. The jury
21 fees were increased by Plaintiffs pursuing parties and claims which were rejected by the jury.
22 Those jury fees should not be the responsibility of Razuki Investments.

23 Again, Plaintiffs filed this action against multiple Defendants. Plaintiffs were
24 unsuccessful as to Defendants Salam Razuki, Ninus Malan, Balboa Ave Cooperative, American
25 Lending and Holdings, LLC, San Diego United Holdings Group, LLC and California Cannabis
26 Group, and settled with Keith Henderson at trial.

27 The jury fees requested in the amount of \$2,655.78 should also not be awarded as
28 Plaintiffs were not the prevailing parties in this mixed result case as set forth above.

1 Awarding any amount higher than requested in the Memorandum Of Costs would violate
2 the deadlines contained in Court Rule 3.1700 and violate basic due process to Razuki
3 Investments.

4 C. Memorandum Of Costs # 4 (Deposition Costs)
5 Amount To Be Taxed: \$16,151.99

6 The Opposition refers to Plaintiffs' "recovery against the Razuki Defendants". Again,
7 "Plaintiffs" did not obtain a recovery. Plaintiff San Diego Patients Cooperative Corp. recovered
8 nothing, and both Plaintiffs recovered nothing as against Salam Razuki.

9 The Opposition does not address or dispute that the alleged deposition costs were
10 increased by Plaintiffs pursuing parties and claims which were rejected by the jury.

11 Plaintiffs request for travel costs for the deposition of Ninus Malan demonstrates their
12 overreaching with regard to costs. "Routine expenses for local travel by attorneys or other firm
13 employees are not reasonably necessary to the conduct of litigation". *Ladas v. California State*
14 *Auto. Assn.* (1993) 19 Cal. App. 4th 761, 775-776. The Opposition demonstrates that the
15 decision of Plaintiffs to have one of their attorneys fly from Colorado, instead of having the
16 deposition handled by their counsel in California or simply having the deposition taken by
17 Zoom, was not "reasonably necessary to the conduct of the litigation rather than merely
18 convenient or beneficial to its preparation". *See*, Code of Civil Procedure section 1033.5(c)(2).
19 There are also no invoices for the alleged costs of travel.

20 The Opposition admits that Plaintiffs did not use any portions of the videos of any
21 depositions at trial and therefore the videos were only convenient or beneficial to their
22 preparation. Code of Civil Procedure section 1033.5(c)(2) and (3) provide that allowable costs
23 must be "reasonably necessary to the conduct of the litigation rather than merely convenient or
24 beneficial to its preparation" and allowable costs must be "reasonable in amount". *See also*,
25 *Ladas v. California State Automobile Association* (1993) 19 Cal. App. 4th 761, 774; *Perko's*
26 *Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal. App. 4th 238, 244-245.

27 The Opposition provides no support for the very high alleged costs for the depositions of
28 Keith Henderson, Ninus Malan, Far West PMK, and Claudia Garcia. Most of the invoices

1 provided give no prices per page of the deposition transcripts or other needed information to be
2 able to judge the reasonableness of the costs requested.

3 The Opposition gives no legal or factual support for claiming deposition costs with
4 regard to Douglas Jaffe, counsel for Razuki Investments and Salam Razuki, since no such
5 deposition took place. There was no basis for allegedly attempting to subpoena counsel for
6 Razuki Investments and Salam Razuki, and alleged subpoena costs are not deposition costs.

7 The deposition fees requested in the amount of \$16,151.99 should also not be awarded as
8 Plaintiffs were not the prevailing parties in this mixed result case as set forth above.

9 Awarding any amount higher than requested in the Memorandum Of Costs would violate
10 the deadlines contained in Court Rule 3.1700 and violate basic due process to Razuki
11 Investments.

12 D. Memorandum Of Costs # 5 (Service Of Process)
13 Amount To Be Taxed: \$1,197.50

14 The Opposition refers to an Exhibit 15 in support of this cost, but there is no Exhibit 15.

15 Plaintiffs have still given no legal or factual support for an alleged cost of \$1,197.50 to
16 serve Razuki Investments, LLC, especially since Razuki Investments, LLC was, during this
17 action, a California limited liability company with a registered agent. Plaintiffs are improperly
18 attempting to collect costs for serving Salam Razuki, when Plaintiffs lost all claims as against
19 Salam Razuki.

20 The Opposition fails to address that the costs allowable for service of process are
21 restricted by CCP section 1033.5(a)(4).

22 Awarding any amount higher than requested in the Memorandum Of Costs would violate
23 the deadlines contained in Court Rule 3.1700 and violate basic due process to Razuki
24 Investments.

1 E. Memorandum Of Costs # 8 (Ordinary Witness Fees)
2 Amount To Be Taxed: \$215.75

3 The Opposition admits that the only ordinary witness fee was \$35 to Alison McCloskey.
4 There is no legal support, or factual support by an invoice, for claiming an alleged \$180.75 for
5 alleged “subpoena filing fees”.

6 F. Memorandum Of Costs # 11 (Court Reporter Fees as established by statute)
7 Amount To Be Taxed: \$222.75

8 The Opposition admits that the requested cost was not a court reporter fees as established
9 by statute, as required by CCP section 1033.5(a)(11). *See also*, CCP section 1033.5(b)(5)(costs
10 relating to transcripts of proceedings not ordered by the Court are not recoverable).

11 If items claimed as costs are objected to, “they are put in issue and the burden of proof is
12 on the party claiming them as costs”. *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624; *Oak*
13 *Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699.

14 G. Memorandum Of Costs # 12 (Models, enlargements, and photocopies of exhibits)
15 Amount To Be Taxed: \$6,908.34

16 The Opposition at Exhibit 8 reveals that the costs requested are exorbitant copy charges
17 for at least twice the costs of the exhibits that actually went to the jury, and many exhibits did not
18 go the jury due to the claims which Plaintiffs withdrew and/or were decided by non-suit.

19 The Opposition at Exhibit 9 reveals that the costs requested are hourly fees for an
20 assistant to Plaintiffs allegedly regarding exhibits. That is not a cost allowable pursuant to Code
21 of Civil Procedure section 1033.5(a)(12).

22 H. Memorandum Of Costs # 16 (Other)
23 Amount To Be Taxed: \$1,366.66

24 The Opposition does not dispute that the alleged cost of mediation was substantial (for 8
25 hours of time) because Plaintiffs filed this action against multiple Defendants. Plaintiffs were
26 unsuccessful as to Defendants Salam Razuki, Ninus Malan, Balboa Ave Cooperative, American
27 Lending and Holdings, LLC, San Diego United Holdings Group, LLC and California Cannabis
28 Group, and settled with Keith Henderson at trial.

1 Plaintiffs have failed to meet their burden since costs when are objected to, “they are put
2 in issue and the burden of proof is on the party claiming them as costs”. *Melnyk v. Robledo*
3 (1976) 64 Cal.App.3d 618, 624; *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217
4 Cal.App.2d 678, 698-699.

5 **IV. Conclusion**

6 Defendants Razuki Investments, LLC and Salam Razuki request the Court tax/strike the
7 costs disputed as set forth above, and for such other and further relief as the Court deems proper.
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9 Dated: May 17, 2024

LAW OFFICES OF DOUGLAS JAFFE

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11 s/ Douglas Jaffe
12 Douglas Jaffe
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