

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/31/2024

TIME: 03:20:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Michael T. Smyth

CLERK: Herlinda Chavarin

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2017-00020661-CU-CO-CTL** CASE INIT.DATE: 06/07/2017

CASE TITLE: **San Diego Patients Cooperative Corporation Inc vs Razuki Investments LLC**

[IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 05/31/24 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

FINAL ORDER

Plaintiffs San Diego Patients Cooperative Corporation, Inc. and Bradford Harcourt's Motion to Tax and/or Strike is **GRANTED** as to all costs other than \$435 in filing fees and \$1,366.66 in mediation costs which were sufficiently substantiated through the invoices on file with the court at ROA 823.

Defendants Razuki Investments, LLC and Salam Razuki filed a memorandum of costs seeking \$21,876.29. Of the two, only Salam Razuki was a prevailing party eligible to receive his costs.

"A prevailing party who is represented by the same counsel as a nonprevailing party may only recover those costs the prevailing party incurred and were reasonably necessary to the prevailing party's conduct of the litigation, not the other jointly represented parties' conduct of the litigation. Whether to award costs that were incurred by both the prevailing party and the nonprevailing party, and were reasonably necessary to the conduct of the litigation for both the prevailing and nonprevailing party, is left to the trial court's sound discretion based on the totality of the circumstances. . . [W]hen allocating costs between jointly represented parties, the court must examine the reason each cost was incurred, whether the cost was reasonably necessary to the conduct of the litigation on behalf of the prevailing party, and the reasonableness of the cost." (*Charton v. Harkey* (2016) 247 Cal.App.4th 730, 744-745.)

Generally, "a properly verified memorandum of costs is considered prima facie evidence that the costs listed in the memorandum were necessarily incurred." (*Bach v. Cnty of Butte* (1989) 215 Cal.App.3d 294, 308.) But "if the costs have been but in issue via a motion to tax costs [] supporting documentation [must] be submitted." (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267; see also *Bach, supra*, 215 Cal.App.3d at 308 ["Documentation must be submitted only when a party dissatisfied with the costs claimed in the memorandum challenges them by filing a motion to tax costs."].) Where there is a

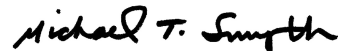
question of allocation among prevailing and nonprevailing parties, the mere filing of a motion to tax costs invoking such an objection is sufficient to place costs at issue. (*Fennessy v. Deleuw-Cather Corporation* (1990) 218 Cal.App.3d 1192, 1195-1996 [motion to tax questioning entitlement to deposition costs incurred by all six defendants represented by the same counsel was sufficient to place the cost at issue without additional declarations or affidavits].) Here, costs were placed at issue, and the burden of proof shifted to Defendants to justify their costs by providing evidence and supporting documentation that the costs were reasonable and necessarily incurred. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774; *Jones, supra*, 63 Cal.App.4th at 1267.)

Defendants have only submitted a bare declaration, without any documentation, stating that Mr. Razuki "paid the costs claimed." There is no breakdown of the costs or supporting documentation such as invoices. The court is unable to determine what costs were reasonable and necessarily incurred or whether costs should be allocated between Razuki Investments, LLC and Razuki. However, the court recognizes that Defendant Razuki would have been required to pay the initial filing fee regardless of whether he had co-defendants and so the court will deny the motion as to the \$435 requested for those costs.

At the hearing, Defense counsel also argued that the costs requested were substantiated by reference to the invoices submitted by Plaintiffs in opposition to Defendants' motion to strike, heard on May 24, 2024. Notwithstanding the fact that Defendants did not attempt to raise this point or reference those documents in its papers, the court has reviewed the invoices and finds that the mediation costs are partially substantiated in the amount of \$1,366.66 and that those costs are awardable in full given there is no evidence that costs would have been reduced had the mediation been only as to Razuki.

As to all other costs, Plaintiffs' motion to strike is granted.

IT IS SO ORDERED:



Judge Michael T. Smyth