BARBARA J. PARKER, City Attorney - SBN 069722
MARIA BEE, Chief Assistant City Attorney - SBN 167716
JAMILAH A. JEFFERSON, Supervising Deputy City Attorney - SBN 219027
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-7686
Facsimile: (510) 238-6500
jjefferson@oaklandcityattorney.org

STACEY M. LEYTON - SBN 203827
DANIELLE LEONARD - SBN 218201
JONATHAN ROSENTHAL - SBN 329638
EMANUEL WADDELL – SBN 350156
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
sleyton@altber.com
dleonard@altber.com
jrosenthal@altber.com
ewaddell@altber.com

Attorneys for CITY OF OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

OAKLAND BULK AND OVERSIZED TERMINAL, LLC, a California limited liability company, and OAKLAND GLOBAL RAIL ENTERPRISE, LLC, a California limited liability company

Plaintiffs,

v.

CITY OF OAKLAND, a California municipal corporation,

Defendant.

CITY OF OAKLAND

Counter-Plaintiff,

v.

OAKLAND BULK AND OVERSIZED TERMINAL, LLC, and CALIFORNIA CAPITAL INVESTMENT GROUP,

Counter-Defendants.

Consolidated Case Nos. RG18930929 / RG20062473

Unlimited Civil Case/Assigned to Dept. 21 (Hon. Noël Wise)

REPLY MEMORANDUM IN SUPPORT OF CITY OF OAKLAND'S MOTION TO TAX COSTS

Reservation No.: 472413722818
Hearing Date: April 3, 2024
Time: 10:00 AM
Dept.: 21

Table of Contents

Table of Authorities

Page(s)

Federal Cases

California Statues

INTRODUCTION

OBOT seeks here to use the West Gateway Ground Lease's fees and cost-shifting provision to recover contractual costs via a post-judgment statutory costs procedure, but that is contrary to governing law. The reason for this law is well-established: the costs that are available post-judgment are *entirely* a matter of statute, and trial courts lack jurisdiction to resolve post-judgment disputes regarding contract interpretation, even with respect to costs provisions. OBOT relies on one outlier Fourth District decision to argue that costs that go beyond the statute are available pursuant to a contract clause *after* judgment, but every other California court to address this issue since 1990 has held otherwise. There is no reason for this Court to break with the great weight of authority, including from the First District. OBOT has also failed to establish that many of its claimed costs are available under the costs statute, largely because they are either not reasonable in amount or not remotely necessary rather than convenient for counsel and client, and therefore unavailable. The City therefore respectfully requests the Court grant its motion to tax costs. As explained below, the total amount the City moves to tax in light of the information provided in OBOT's documentation now totals $569,784.50.

ARGUMENT

I. The City Does Not Dispute OBOT's Prevailing Party Status for Costs

Civil Code §1032 expressly establishes a multi-pronged standard for prevailing party with respect to post-judgment costs. As the City explained in its opening brief: "The City does not contest OBOT's and CCIG's recovery of costs in defending the City's claims as a prevailing party as of right." (*See* MPA iso City's Motion to Tax Costs ("City MPA") at 3:9–11.)[1] The City is correct, however, that OBOT is not automatically a prevailing party as of right with respect to its

[1] As the City explained in its opposition to Plaintiffs' attorneys' fees motion, the prevailing party standard under C.C.P. §1032 for post-judgment costs and under Civil Code §1717 for purposes of fees are different. (City Opp. at 5 n.3 (citing *McLarand, Vasquez & Partners, Inc. v. Downey Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1450, 1456). For this reason, the City does not contest OBOT's prevailing party with respect to costs but *does* contest OBOT's status with respect to fees, in light of the mixed result in which OBOT prevailed on some issues and the City prevailed on others, including res judicata and other limitations on OBOT's claims and largely *defeating* OBOT's damages and extremely expansive specific performance and declaratory relief requests.

own claims, for which it received no monetary recovery in the end, and only obtained a decidedly *mixed* result. Because OBOT recovered "other than monetary relief," with respect to its own breach claims as a result of its own remedies election, the plain language of the costs statute makes costs incurred discretionary with respect to those claims.

This matters only as to the second phase of trial, which *only* pertained to OBOT's affirmative claims. In that second phase of trial, the City did not contest the availability of or OBOT's evidence pertaining to a specific performance extension of the Initial Milestone deadline. OBOT failed to achieve all of the other expansive injunctive and declaratory relief it sought (including moving the Commencement Date for the entire contract). OBOT unsuccessfully sought $20 million in incidental "delay" damages and $160 million in contract damages, consuming the parties' and Court's time with expert testimony that was unreliable and inadmissible under clearly established standards directly from the California Supreme Court. In other words, OBOT obtained a pyrrhic victory in the remedies phase at best. The City urges the Court to consider this context when analyzing OBOT's costs memorandum, and to exercise its discretion in determining what costs were reasonably necessary in this litigation accordingly.

II. The Ground Lease Does Not Expand Post-Judgment Statutory Costs

OBOT relies first and foremost on the language of the Ground Lease to justify its largely overbroad costs memorandum, and argues that the contract allows it to recover *any* costs now. That position is contrary to California law. Regardless of whether the parties agreed to a cost-shifting contract provision, the post-judgment procedure OBOT now invokes is limited to *statutory costs.* OBOT rails against this law as unfair and contrary to the parties' agreement, but OBOT and its counsel must comply with the long-standing law regarding *when* to seek costs pursuant to such a contract clause. OBOT had the opportunity to claim contractual costs in the manner set forth in countless California decisions but simply failed to do so, and cannot now hijack the post-judgment statutory costs procedures to seek something it has waived.

First, as the Supreme Court has explained: "Under the common law rule, parties to litigation must bear their own costs. The right to recover any of such costs is determined entirely

by statute. 'It is axiomatic that the right to recover costs is purely statutory, and, in the absence of an authorizing statute, no costs can be recovered by either party.'" (*Davis v. KGO-T.V., Inc.* (1998) 17 Cal.4th 436, 439, *disapproved of on other grounds by Williams v. Chino Valley Indep. Fire Dist.* (2015) 61 Cal. 4th 97 (quoting *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 732, 34 Cal.Rptr.2d 283).) Many cases decided both before and after *Davis* have held the same. (*See Anthony v. City of Los Angeles* (2008) 166 Cal.App.4th 1011, 1014 ("The right to recover any of the costs of a civil action 'is determined entirely by statute'" (quoting *Davis*, (1998) 17 Cal.4th 436, 439); Brown v. Desert Christian Center (2011) 193 Cal.App.4th 733, 737–738 ("The right to recover costs is entirely a creature of statute … and section 1032 is 'the fundamental authority for awarding costs in civil actions.'") (quoting *Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1108) (internal citation omitted); *Ladas v. California State Auto. Ass'n*, 19 Cal.App.4th 761, 774 ("[B]ecause the right to costs is governed strictly by statute … a court has no discretion to award costs not statutorily authorized.") (internal citation omitted).)

As the City explained in its opening brief, California courts have repeatedly confirmed that this principle applies notwithstanding a contractual cost-shifting provision that may be more expansive than statutory costs. (City MPA at 4.) This is because the party seeking costs is invoking a contractual *remedy*, in the form of special contract damages, that requires contract interpretation. (*Ripley v. Pappadopoulos* (1994) 23 Cal.App.4th 1616, 1627; *First Nationwide Bank v. Mountain Cascade, Inc.* (2000) 77 Cal.App.4th 871, 879 ("the proper interpretation of a contractual agreement for shifting litigation costs is a question of fact that 'turns on the intentions of the contracting parties.'")) As such, "[a]dverse parties must be put on notice through the pleadings that this contractual theory will be asserted, and the issue must be submitted to the trier of fact for resolution pursuant to a prejudgment evidentiary proceeding, not a summary post-judgment motion." (*First Nationwide Bank*, *supra*, 77 Cal.App.4th at 879.)

California courts are *unanimous* on this issue, save one decision from the Fourth District discussed below: "Recovery of costs provided by contract must be specially pleaded and proven at trial, and not awarded posttrial..." (*Hsu v. Semiconductor Sys., Inc.* (2005) 126 Cal.App.4th

1330, 1341–42; *see also, e.g.*, *Ripley*, 23 Cal.App.4th at 1627 (same); *Benson v. Kwikset Corp.* (2007) 152 Cal.App.4th 1254, 1281 (declining to award contractual expenses based on a cost-shifting clause because they were not pleaded and proven as damages); *Carwash of Am.-PO LLC v. Windswept Ventures No. I* (2002) 97 Cal.App.4th 540, 544 (same); *Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542 (same).)[2]

Against all of this, OBOT invokes only a 2010 decision from the Fourth District Court of Appeal: *Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC* (2010) 185 Cal.App.4th 1050. But *Thrifty Payless* is a lone outlier in a sea of cases holding that OBOT is wrong and that decision need not and should not be followed by this Court.[3]

First, the Court in *Thrifty Payless* failed to acknowledge, let alone grapple with, all of this contrary authority, and no published decision since *Thrifty Payless* has adopted its rationale. Instead, the rationale in *Thrifty Payless* has already been considered and rejected by courts. The Fourth District was concerned with giving effect to the intent of the contracting parties, which is a fair point but not dispositive of the question of *when* to address such costs. The *Thrifty Payless*

---

[2] OBOT makes the spurious argument that *all* of this precedent should be rejected because some courts addressed contract provisions awarding expert costs, but the distinction between types of extra-statutory costs has been explicitly rejected by the courts:

> Our conclusion with respect to the expenses of copying documents, Federal Express and postage charges, and telecopy/fax charges *must be the same*. Although such expenses are more rarely shifted to the losing party by express statutory provision, they, like expert witness fees, are expressly disallowed as costs unless expressly permitted by law. (Code of Civ. Proc., § 1033.5, subd. (b)(1), (2) & (3).) *We perceive no more reason to ignore this statutory provision with respect to these expenses than we do with respect to expert witness fees.*

(*Ripley*, 23 Cal.App.4th at 1627–28 (emphasis added).) Nor do any of these cases turn on the level of sophistication of the parties. (OBOT Opp. at 9-10 (attempting and failing to distinguish *Hsu* on the inapposite ground that it involved an "employer" and "employee").)

[3] OBOT also cites *Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co*. (1996) 47 Cal. App.4th 464, 492 here (Opp. at 8:9), but "in *Arntz* the costs were pleaded and proved pursuant to a procedure stipulated by the parties." (*Jones*, *supra*, 127 Cal.App.4th at 551.) Likewise, OBOT cites a federal decision (*Grouse River Outfitters Ltd. V. Oracle Corp*. (N.D. Cal. Dec. 6, 2019) 2019 WL 6682842) (Opp. at 8:12-13) but that court was not asked and did not resolve the question of *when* a party must seek contractual, extra-statutory costs under California law.

court was also caught up in practical considerations regarding the procedures needed to plead and prove litigation costs as damages before judgment. But other Courts of Appeal have correctly determined that "this is a policy consideration and as such is a matter addressed to the Legislature," not courts, which "may not reject the Legislature's view of appropriate policy by ignoring clear statutory language." (*Ripley*, *supra*, 23 Cal.App.4th at 1627.)[4]

This Court should reject OBOT's reliance on *Thrifty*, for good reason. The present is a stellar example of why a party seeking to obtain contractual costs must prove those costs before judgment, in a merits proceeding to resolve competing contractual interpretations. OBOT argues that the Ground Lease's reference to "any and all costs and expenses incurred" means that *any* expense OBOT or its counsel incurred during this litigation—including snacks and candy for counsel, courier deliveries of documents to clients' and counsel's houses, dry cleaning, and travel for witnesses and counsel alike—is recoverable. OBOT now also argues that the Ground Lease supersedes the Code's unconditional requirement that any costs award *shall* be reasonably necessary to the conduct of the litigation *and* reasonable in amount, notwithstanding the parties' use of the (undefined) term "reasonable" to describe costs.[5] (C.C.P. §1033.5(c).) But this is not what the Lease says and the City reasonably argues that it is not what the parties intended.

Finally, the costs statute itself does not create an exception to the requirement that a party

---

[4] In *Thrifty Payless*, the court was focused on these practical considerations perhaps because it was confronted with a situation in which "a defendant prevailed outside of or before trial." (185 Cal.App.4th at 1067.) Obviously, that was not the case here, when OBOT had ample opportunity—including a standalone remedies phase—to put on evidence proving the costs it now seeks. (*See Applied Medical Distribution Corporation v. Jarrells* (Cal. Ct. App., Mar. 8, 2024, No. G062056), ___Cal.Rptr.3d___, 2024 WL 1007523, at *15 (refusing to apply *Thrifty Payless* because "*Thrifty Payless* was resolved via a nonsuit motion during trial, so it would not have been possible for the prevailing party to prove its expert fees").)

[5] OBOT also argues that this Court should reject the City's precedent because "there would be no mechanism for awarding costs when a party prevails pretrial, such as on summary judgment." That is not this case, of course. But OBOT also fails to understand what these courts are saying: costs are a contract *remedy*. If there is any dispute as to this or any other remedy, summary judgment should not be awarded. And, if there is any real concern that a dispute *solely* as to costs would preclude a more efficient pre-trial resolution, the Code provides parties and courts with tools to efficiently organize and resolve such matters. (*E.g.,* C.C.P. §437c(f)(1), (t).)

prove all contractual remedies at trial. Section 1033.5 does not, as OBOT claims, incorporate any costs provided by *contract* into those available by statute, by way of the phrase "except when expressly authorized by law." (§1033.5(b).) The Supreme Court has stated that this phrase is intended to reference legislative enactments, *not* contractual agreements. (*See, e.g.*, *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1149 (citing *Davis*, *supra*, 17 Cal.4th at 442)); *see also Ripley*, 23 Cal.App.4th at 1627–28.) OBOT cites no contrary authority.

For all these reasons, OBOT's costs memorandum turns on the straightforward question of whether the costs are available pursuant to §1033.5, as in every other case considering a costs memorandum. As addressed in the following section, OBOT's arguments largely fall short.

III. OBOT Fails to Meet its Burden to Establish Statutory Costs

Significantly, OBOT bears the burden of justifying the costs to which the City has objected. (*See Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774 ("[I]f the items [in a costs bill] are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs."); *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Thus, to the extent the City identified items that were improper, unnecessary, or unreasonable in this motion, and OBOT failed to provide any justification for those costs in its opposition, OBOT cannot now be awarded those costs as a matter of law.

A. Category 4: "Deposition Costs." OBOT claimed $105,673.75; the City moved to tax the $13,844.90 incurred as a result of expert depositions. Per the statute, these costs must be reasonably necessary, as determined by the nature of the case and the claims. (*Garcia v. Tempur-Pedic N. Am., LLC* (2024) 98 Cal.App.5th 819, 901–02; C.C.P. §1033.5(a)(3)(a).) OBOT fundamentally misconstrues the City's argument: these costs should be taxed not merely because OBOT failed to recover damages at trial. This case is more extreme: OBOT persisted with an expert report on damages that were barred by the plain terms of a contract and expert opinions that were plainly inadmissible and unreliable under California law—this is not hindsight, it should have been *foresight* by OBOT, but was not. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747; *People v. Sanchez* (2016) 63 Cal.4th 665; December 22, 2023

SOD re Damages at 26, n.22.) OBOT's refusal to comply with well-established law cost the Court and the parties time and these expenses that were *not* reasonably necessary.

B. Category 5: "Service of Process." Of the $1620.40 sought by OBOT, the City has moved to tax $919.50 for personal service of three third-party deposition subpoenas for depositions that never occurred, on parties that had no relevant evidence. Again, this should have been foresight, not hindsight: all of these individuals/entities are represented (and so this cost was not necessary *at all*), and OBOT served then withdrew the subpoenas. None of these witnesses had remotely relevant evidence to give, whether viewed at the time or later. And, these were not the City's witnesses it later withdrew. (*Garcia, supra*, 98 Cal.App.5th at 824*; see also Nelson*, *supra*, 72 Cal.App.4th at 132 (same; the witness "had been designated by [the party seeking to tax costs,] and that party "therefore bore the burden to prove the cost unnecessary.").) Counsel should be encouraged to serve represented parties *through their counsel* (which is, of course, free), and there is a limit to the reasonableness of counsel's discovery activity.

C. Category 11: "Court Reporter Fees As Established by Statute." The City moved to tax the entire $83,012.50 in light of OBOT's lack of documentation. The statute plainly permits only the fees for court reporter time, §1033.5(a)(11), and precludes the cost of transcripts not ordered by the Court, §1033.5(b)(5). OBOT's evidence confirms that it conflated multiple charges by the court reporter service in its calculated costs. In light of OBOT's documentation, the City reduces its motion to only tax a total of **$30,922.50.** Of this, $17,819.00 was for the cost of real time transcription, which is a luxury and not reasonably necessary (evidenced by the fact that counsel for City did not need or use this extra service during trial); and $4,881.50 was for pre-trial *transcripts*, not court reporter *fees,* which were not transcripts ordered by this Court. The City maintains its request that this Court also tax all fees and transcript costs beyond one day of the remedies phase of trial as not reasonably necessary for this litigation, an additional $8,222.00 (80% of the five-day total, $10,277.50).

D. Category 12: "Models, Enlargements, and Photocopies of Exhibits." The City initially moved to tax the entire $59,125.55 OBOT seeks to recover in this category in light of

OBOT's initial documentation. The City has no objection to the cost of demonstratives and copying of exhibits used at trial. But OBOT's further documentation and briefing confirms it seeks prohibited costs for exhibit-related copying and expenses totaling **$19,338.00**.

First, OBOT cannot recover the $9,232.58 in costs it incurred for time of staff and cost of copying for the "preparation" of potential deposition exhibits in 2020 and 2021—if anything this is overhead. (*See* Opposition at 13:1-2; Lee Decl. Ex. 4 (and accompanying invoices, claiming *hours* of staff time, and copying and delivery costs).)[6] Section 1033.5 expressly prohibits the recovery of costs for photocopying charges except for *trial* not deposition exhibits, §1033.5(b)(3), and only "if they were reasonably helpful to aid the trier of fact." (§1033.5(a)(13).) The City also moves to tax the following substantial 2023 exhibit costs as clearly not necessary and not helpful to the trier of fact: $6,528.69 to prepare and deliver documents to Phil Tagami's business address, and $3,576.73 to prepare and deliver documents to Skyler Sanders.

E. Category 14: "Fees for Electronic Filing or Service." OBOT agrees with the City that, because this Court never required or ordered electronic filing or service of documents, OBOT is not entitled to the claimed $17,538.63 in costs as of right. (*See Segal v. ASICS America Corp.* (2022) 12 Cal.5th 651; §1033.5(a)(14) (permitting fees for electronic filing where court-ordered).) The additional documentation OBOT has provided, however, does not carry its burden. Most significantly, OBOT's documentation proves that much of the costs it seeks are *not for electronic filing or service at all*, but are instead for the convenience of messenger services used in lieu of counsel's own staff. Further, the documentation largely does not distinguish between the costs of electronic filing and the cost of delivery, and OBOT's opposition makes no effort to do so. Finally, OBOT failed to justify the facially unreasonable amounts it seeks to recover for filings, such as $1,172.25 for one delivery of courtesy copy documents and $1,429.40 for the retrieval of boxes from the courtroom. The City thus moves to tax this entire amount.

F. Category 15: "Fees for Hosting Electronic Documents." The statute previously permitted this type of cost for documents a court ordered the parties to maintain (because of lack

[6] Counsel also neglects to explain that the depositions (and exhibits used therein) were entirely virtual and electronic in 2020 and 2021, making the over $9,000 in costs a continued mystery.

of court capacity), but that sunsetted as of January 1, 2022 (a fact the 2017 standard costs form has yet to update). (§1033.5(a)(15); *see Nelson*, *supra*, 72 Cal.App.4th at 132.) And, there is no dispute here that the Court never ordered the parties to electronically store any documents.

This Court should decline OBOT's invitation to dramatically increase the cost of defending litigation by permitting OBOT to impose its document-hosting fees, which it has not justified as reasonable *in amount* at all, on the City. By arguing *only* that these fees were reasonably incurred, OBOT fails to meet its burden as to amount. OBOT has not provided even the most basic information including actual invoices for fees or costs or even the rate charged for these services, asking this Court to take the reasonableness of these amounts on faith.[7]

The vendor-based electronic hosting of documents is an extremely variable cost that cannot be easily policed by courts attempting to analyze whether costs were necessary and reasonable. These services often charge by the amount of data stored (*e.g.*, per gigabyte) and impose other fees, and there is often no way to know whether the party seeking to recover costs for that storage was reasonably circumspect or extremely overbroad in its document collection. Here, in addition to providing no evidence of the *rates* charged, OBOT's counsel now claims to have over 850,000 documents in storage—far more than were ever exchanged in discovery or listed on privilege logs in this case. (*See* Lee Decl. in Support of Attorneys' Fees at ¶¶18, 20.) Neither the City nor this Court has any way of knowing whether OBOT's counsel acted reasonably in its document collection or client billing. OBOT has not met its burden and the Court should exercise its discretion to tax these amounts in their entirety.

G. Category 16: "Other." The City moved to tax $277,630.07 of the $285,638.59 in

[7] OBOT has provided the Court with *no actual invoices from the document vendor* to justify over $200,000 in costs, only cross-referencing on Manatt's bills to OBOT passing on these charges. (Opp. at 14; Lee Decl. at ¶13.) Counsel now implies that the costs were *only* for hosting, while the information submitted with OBOT's attorneys' fees motion states that the "fees and costs" for the document vendor "such as the cost of hosting" were passed on to the client. (*Compare* Lee Decl. in Support of Opp. ¶13, *with* Lee Decl. in Supp. Of Attorneys Fees ¶19.) Fees charged by such services can vary widely, and can include technical support time assisting counsel or resolving technical issues. The Court has no way of measuring what Manatt was actually charging OBOT for here, let alone the reasonableness of the rates and amounts for any fees.

additional discretionary costs sought by OBOT. As explained below, in light of OBOT's documentation, the City reduces the amount sought to be taxed to **$271,430.07.** OBOT largely attempts to fall back on the language of the Ground Lease but, as the City has explained *supra*, that argument fails. OBOT's other arguments and evidence do not meet its burden.

1. *Food and other trial expenses*. OBOT does not address the meals and snacks and laundry (Starbucks cake pops and lattes, Reese's, Twizzlers, and Sour Patch Kids, and dry cleaning for counsel) beyond the blanket assertion that they were reasonably necessary simply *because* they had to go to trial. That is not the standard, and these conveniences should be denied.

2. *Delivery*. OBOT argues only that its exorbitant charges for the convenience of delivering materials to counsel's houses by courier are permitted because "no category of costs can be barred." That is wrong, and these conveniences are not reasonable or reasonably necessary.

3. *Travel for out-of-town counsel*. OBOT has not met its burden of showing that over $90,000 in travel expenses for out-of-town attorneys and staff were reasonably necessary or reasonable in amount. It strains credulity to argue, for example, that *no* local associates or staff from Manatt's San Francisco office were available for trial, particularly when the vast majority of trial work was handled by OBOT's two local partners. Further, OBOT does not even attempt to justify the exorbitant costs it seeks, such as a $1,597.10 flight (including seat upgrades) for counsel, or travel costs for attorneys who are only observing proceedings. (*See* City MPA at 13.)

4. *Research*. These costs have been unavailable for over 30 years. (City MPA at 14:1–9.)

5. *Transcribing and proofreading*. This is overhead, and OBOT has no response.

6. *Trial Equipment and Tech*. The City initially moved to tax the entire $139,507.21, because OBOT did not differentiate between the costs of equipment, which is allowable under section 1033.5(a)(13), and the cost of an on-site technician to present electronic documents, which is a luxury that is convenient to alleviate burdens on administrative staff but is not necessary. OBOT has now documented $6,200 for equipment, to which the City has no objection. The City therefore amends its motion to tax only the remaining **$133,307.21** in trial tech costs as not reasonably necessary to the litigation.

CONCLUSION

For the foregoing reasons, the Court should grant the City's Motion to Tax Costs, as amended by this reply, in its entirety, and tax a total of **$569,784.50** costs claimed by OBOT.

Dated: March 26, 2024

Respectfully submitted,

ALTSHULER BERZON LLP
Stacey M. Leyton
Danielle Leonard
Jonathan Rosenthal
Emanuel Waddell

By: /s/ Danielle Leonard
Attorneys for CITY OF OAKLAND