

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:15-cv-61536-BLOOM/VALLE

KEISHA HALL,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant.

**DEFENDANT’S MEMORANDUM
IN SUPPORT OF ITS BILL OF COSTS**

Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 7.3(c), Teva Pharmaceuticals USA, Inc., (“Teva” or “Defendant”) by and through its attorneys hereby submits this Memorandum in Support of its Bill of Costs against Plaintiff Keisha Hall in the amount of **\$26,269.29**. Teva submits its Bill as the prevailing party in this matter in light of the Court’s September 30, 2016 Order granting summary judgment in favor of Teva on all of Plaintiff’s claims and entering final judgment in favor of Teva. ECF Nos. [88-89]. For the reasons set forth below, Teva respectfully requests that the Court enter an Order granting Teva’s Bill of Costs and taxing as costs **\$26,269.29** against Plaintiff Keisha Hall.

A. Process Service Fees (28 U.S.C. § 1920(1))¹

Date	Description	Amount
Jun. 27, 2016	Courier services fee to attempt service on Granick & Gendler CPAs (Plaintiff's accounting firm) (Ex. A) ²	\$65
TOTAL		\$65

B. Fees for Transcripts of Depositions and Hearings, and Printing Fees Necessarily Obtained for Use in the Case (28 U.S.C. § 1920(2), (3))

Date	Description	Amount
Apr. 8, 2016	Expedited transcript of April 7, 2016 Hearing on Plaintiff's Motions to Compel (Ex. B) ³	\$362.50
Jun. 1, 2016	Duplicating and printing incurred in connection with preparing exhibits for June 3, 2016 deposition of Keisha Hall (Ex. C) ⁴	\$324.96

¹ All references herein to "Ex. ___" are to exhibits to the Declaration of Sarah E. Bouchard, filed herewith.

² See *Powell v. Carey Int'l, Inc.*, 548 F. Supp. 2d 1351, 1356 (S.D. Fla. 2008) ("Pursuant to § 1920(1), '[f]ees of the clerk and marshal' may be taxed as costs. This includes service of process costs for the complaint, *as well as deposition and trial subpoenas.*"); *Burke-Thompson v. Baptist Health S. Florida, Inc.*, No. 06-20766, 2008 WL 4791018, at *3 (S.D. Fla. Nov. 3, 2008); *Procaps S.A., v. Patheon Inc.*, No. 12-2425, 2016 WL 411017, at *2 (S.D. Fla. 2016) (taxing costs "for subpoenas served for documents and/or for attendance at [of third-parties] at depositions"). The subpoena that was served on Granick & Gendler CPAs sought deposition testimony and documents to probe Plaintiff's contention at her deposition that her accountant "understood that [Jewel Miami] was a hobby" and that she "relied on the advice of [her] accountant" when she claimed for tax purposes that Jewel Miami was a business. Pl. Dep. 53:19-54:23. At his deposition, Plaintiff's accountant dispelled those assertions. See ECF No. [67] ¶ 23. Teva is seeking *only* \$65 – i.e., the minimum cost provided for the U.S. Marshal to effectuate service, see 28 C.F.R. § 0.114(a)(3) – of the costs it incurred in serving this subpoena. Plaintiff does *not* object to this cost.

³ The costs for Hearing transcripts are taxable, and costs for having transcripts expedited are taxable where necessary given the circumstances. *Procaps*, 2016 WL 411017, at *6 (finding expedited hearing transcript costs recoverable). This transcript was for a Hearing on two motions to compel filed by Plaintiff. During that Hearing, the Court agreed with Teva that Plaintiff's request for electronically stored information was "incredibly broad" (ECF No. [48] at 36:11-14) and ordered the parties to confer by April 21, 2016 (i.e., within two weeks) on an appropriate scope of ESI. Accordingly, Teva needed to order an expedited transcript to engage in that conferral process.

⁴ Many of the exhibits used during the deposition of Keisha Hall were ultimately cited in Teva's successful motion for summary judgment. See ECF No. [68] (Exs. A, J, L, M, N, O, P, Q and T to Teva's Motion for Summary Judgment were all cited as exhibits to Plaintiff's deposition). The costs of printing exhibits for depositions and trial are taxable. *Miccosukee*

Jun. 23, 2016	Transcript of June 3, 2016 deposition of Keisha Hall (Ex. D) ⁵	\$1,904.10
Jul. 26, 2016	Video of June 3, 2016 deposition of Plaintiff Keisha Hall (Ex. E) ⁶	\$1,025.00
Aug. 11, 2016	Transcript of deposition of July 22, 2016 Salvador Torralbas (Ex. F) ⁷	\$1,017.45
Aug. 16, 2016	Transcripts of August 5, 2016 depositions of Dennis Lowe (of Granick & Gendler CPA, Plaintiff's accounting firm) and continued deposition ⁸ of Keisha Hall (Ex. G) ⁹	\$947.99
Aug. 20, 2016	Video deposition fees for continued deposition of Keisha Hall (Ex. H) ¹⁰	\$597.50
Oct. 1, 2016	Parking for M. Massa and H. McEvilly (court reporter and videographer) for August 5, 2016 deposition of Dennis Lowe and August 5, 2016 continued deposition of Keisha Hall)) (Ex. I)	\$45.00
TOTAL		\$6,224.50

Tribe of Indians of Fla. V. Kraus-Anderson Const. Co., No. 04-22774, 2007 WL 2254931, at *2 (S.D. Fla. Aug. 2, 2007) (copies of documents used for the purposes of discovery are recoverable under § 1920(4)); *Procaps*, 2016 WL 411017, at *6 (same).

⁵ See *Parrot, Inc. v. Nicestuff Dist. Int'l, Inc.*, No. 06-61231, 2010 WL 680948, at *14 (S.D. Fla. Feb. 24 2010) ("Recoverable costs include deposition transcript costs and attendance fees of the court reporter or per diem."); *Barrera v. Weiss & Woolrich S.*, 900 F. Supp. 2d 1328, 1335 (S.D. Fla. 2012) (awarding costs for court reporter's appearance fee and transcript, and noting that costs for an expedited or rough transcript may be recoverable where necessary); *Kearney v. Auto-Owners Ins. Co.*, No. 06-00595, 2010 WL 1856060, at *2 (M.D. Fla. May 10, 2010) (holding that it was "necessary to obtain expedited transcripts or rough draft transcripts for 12 witnesses deposed shortly before the August 14, 2009 discovery deadline").

⁶ *PODS Enterprises, LLC v. U-Haul Intern., Inc.*, No. 12-01479, 2015 WL 5021668, at *1 (M.D. Fla. 2015) ("costs of videotaping depositions" are "taxable as a part of the cost of a videotaped deposition"); *Morrison v. Reichold Chem., Inc.*, 97 F. 3d 460, 464-65 (11th Cir. 1996) (costs of a videographer may be taxed if the party noticed the deposition to be recorded by non-stenographic means, or by both stenographic and non-stenographic means, and no objection was raised at that time by the other party).

⁷ See n. 5 *supra*.

⁸ Because Plaintiff arrived more than one hour late for her initial deposition, Teva was forced to continue her deposition on a later date. See Ex. P.

⁹ See n. 5 *supra*. Teva needed to order 5-day delivery of these transcripts, as it was in the midst of drafting its Summary Judgment papers that were due four weeks later. Teva relied upon testimony from this transcript in its summary judgment papers. See ECF Nos. [66 and 67].

¹⁰ See n. 5 *supra*.

C. Electronically Stored Information (“ESI”) Discovery (28 U.S.C. § 1920(4))

The costs listed in this section are all costs charged to Teva by an outside vendor for the conversion of electronic documents into reviewable format, storage and access of that electronic data, and conversion of responsive documents to a producible format. Courts routinely hold that these costs are taxable, especially where, as here, the prevailing party incurred the costs due to the non-prevailing party’s overbroad (or, in Judge Valle’s words, “incredibly overbroad,” ECF No. [48] at 36:11-14) discovery requests. *O’Donnell v. Genzyme Corporation et al.*, No. 14-1767, 2016 WL 1165156 (N.D. Ohio Mar. 25, 2016) (awarding defendant in single-plaintiff whistleblower case over \$29,000 in ESI-related costs for *hosting ESI data, making productions, and ESI database user fees* because “Plaintiff made the discovery requests that caused Defendants to create and keep electronically stored information at Defendants’ expense” and “Plaintiff argued against Defendants’ efforts to reduce the ESI costs,” so “Plaintiff appropriately bears these costs”); *Comprehensive Addiction Treatment Ctr., Inc. v. Leslea*, No. 11-3417, 2015 WL 638198, at *2 (D. Colo. Feb. 13, 2015) (noting that “courts have recognized that 28 U.S.C. § 1920(4) *includes e-discovery related costs*” and finding that defendant’s ESI costs incurred of over \$57,000 were taxable (emphasis added)); *eBay Inc. v. Kelora Sys., LLC*, No. 10-4947, 2013 WL 1402736, at *7 (N.D. Cal. Apr. 5, 2013) (finding the following ESI costs taxable under § 1920(4): electronic scanning and conversion to PDF, TIFF conversion, OCR, image endorsement/Bates stamping, slip sheet preparation, blowback scanning paper documents, media hardware used for production, electronically stamping Bates numbers, slipsheet preparation, blowback preparation, and OCR conversion, certain processing costs tied to specific productions as part of the copying process, productions in agreed-to native format, and load files); *Country Vintner of N.C., LLC v. E.J. Gallo Winery, Inc.*, 718 F.3d 249, 260 (4th Cir. 2013) (holding that §

1920(4) includes ESI-costs of “converting electronic files to non-editable formats and burning the files onto discs”).

Teva recognizes that *Procaps v. Patheon Inc.*, a decision from Magistrate Judge Goodman, indicates that, while many ESI-related costs are taxable, “a number of preparatory or ancillary costs” incurred with ESI discovery are not. 2016 WL 411017 at *11 (S.D. Fla. 2016). Here, none of the ESI-related costs that Teva seeks here was “preparatory or ancillary” to its production of ESI; rather, each cost was necessary to making the electronic production. Indeed, the bulk of the ESI costs that Teva requests here – processing native files, hosting data, and user fees to access the database hosting the data – were necessary to produce the ESI data requested by Plaintiff. *Procaps* did not address whether any of these specific costs are taxable. Further, to the extent that the Court believes that some of these costs are “preparatory or ancillary,” Teva respectfully submits that Judge Goodman’s analysis – which expressly notes that it is *not* based on “any on-point Eleventh Circuit law” – runs contrary to the prevailing view taken by courts to address which ESI costs are taxable (*See supra, O’Donnell, Comprehensive Addiction, eBay, Country Vinter*).

Finally, Teva notes that it is *not* seeking many of the costs that it incurred relating to ESI-discovery. For example, due the breadth of Plaintiff’s ESI discovery requests, Teva was forced to engage an outside vendor to assist with its ESI-discovery process. That required Teva to incur costs for (among other things): Relativity Analytics (Ex. L); a Technical Analyst (Ex. K); monthly costs for a Project Manager (Exs. J-O); and document review attorneys. Teva has not included any of these costs in its Bill. For the Court’s convenience, Teva has highlighted in yellow all costs in its ESI vendor’s invoices that it is seeking to tax.

Accordingly, Teva submits that the following ESI-costs should be taxed to Plaintiff under 28 U.S.C. § 1920(4):

Date	Description	Amount
Mar. 2016	ESI pre-filtering costs (Ex. J) ¹¹	\$1,405.60
Apr. 2016	ESI native file processing (Ex. K) ¹²	\$3,654.00
	ESI create searchable text for processed data (Ex. K)	\$5,514.26
	ESI document review hosting – Relativity (Ex. K)	\$412.65
	ESI review user monthly fee – Relativity (Ex. K)	\$600.00
May 2016	ESI pre-filtering (Ex. L)	\$454.65
	ESI native file processing (Ex. L)	\$1,333.85
	ESI create searchable text for processed data (Ex. L)	\$68.34
	ESI document review hosting – Relativity (Ex. L)	\$563.55
	ESI review user monthly fee – Relativity (Ex. L)	\$300.00
Jul. 2016	ESI document review hosting – Relativity (Ex. M)	\$1,369.95
	ESI review user monthly fee – Relativity (Ex. M)	\$450.00
	ESI non review storage-ingestion (Ex. M)	\$213.04
Aug. 2016	ESI document review hosting – Relativity (Ex. N)	\$1,369.95
	ESI review user monthly fee – Relativity (Ex. N)	\$450.00
Sept. 2016	ESI review hosting – Relativity (Ex. O)	\$1,369.95
	ESI review user monthly fee – Relativity (Ex. O)	\$450.00 ¹³
TOTAL		\$19,979.79
GRAND TOTAL		\$26,269.29

¹¹ Pre-filtering is the ingestion of all data received into the ESI vendor's data processing tool, which also includes de-duplication and extraction of metadata.

¹² Native file processing refers to the cost to upload onto the review platform (here Relativity) a more limited pool of data, after search terms and date filtering has been applied.

¹³ To the extent that Plaintiff appeals this Court's decision granting Teva's Motion for Summary Judgment (ECF No. [88]), it will be necessary for Teva to continue hosting this data through the pendency of the appeal. Should this become necessary, Teva will file a supplemental bill of cost to account for those additional costs incurred. *See O'Donnell*, 2016 WL 1165156, at *1 (granting request to tax ESI hosting costs through pendency of Plaintiff's appeal).

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion (here, Plaintiff).

Specifically, on October 19, 2016, Teva's counsel sent to Plaintiff's counsel a draft of its Bill of Costs and supporting papers, and, pursuant to Local Rule 7.3(c), asked for Plaintiff's position on each of the costs sought. On October 24, 2016, Plaintiff's counsel responded and noted Plaintiff's objection, in whole or in part, to every single cost sought. Teva's counsel responded the next day. Set forth below is the copy-and-pasted text of the substantive portions of that email chain (with Plaintiff's positions in black and Teva's responses in **red**). A true and correct copy of the entire email chain is attached hereto as **Exhibit Q**.

Plaintiff objects to the following costs:

1. On Ex. A, private process server fees are recoverable only up to the statutory rate (which I think is currently \$65). Plaintiff objects to the balance.
 - **In the interest of compromise and narrowing issues for the Court, we will reduce the requested costs for the Granick & Gendler subpoena to \$65, and note that Plaintiff does not object to this cost.**
2. On Ex. B, plaintiff objects to this cost as incurred for the convenience of counsel. Alternatively, plaintiff objects to the additional charge incurred for expedited service.
 - **We are not sure why Plaintiff believes that requesting a transcript of the Hearing on Plaintiff's motions to compel – which were in large part denied – was for the convenience of counsel. As set forth in our draft papers, this is especially so because the Court, in light of Plaintiff's "incredibly broad" request for ESI, ordered the parties to confer on a narrowed scope of ESI and submit within two weeks a proposal on that narrowed scope. We will include this cost in our Bill.**
3. On Ex. C, plaintiff objects to these costs as the supporting invoice does not sufficiently identify the purported costs to enable plaintiff to determine whether the costs were necessarily incurred as envisioned by 11th Circuit precedent interpreting section 1920.
 - **We are not sure what is unclear about the costs that Teva is seeking in Exhibit C. In our draft papers, we make clear that the costs reflected in Exhibit C are for duplicating and printing incurred in preparing exhibits for Plaintiff's deposition. The costs of printing exhibits for depositions are taxable. *Miccosukee Tribe of Indians of Fla. v. Kraus-Anderson Const. Co.*, No. 04-22774, 2007 WL 2254931, at**

***2 (S.D. Fla. Aug. 2, 2007) (copies of documents used for the purposes of discovery are recoverable under § 1920(4)); Procaps, 2016 WL 411017, at *6 (same). We will include this cost in our Bill.**

4. On Exs. D, E, F, G and H, plaintiff objects to the costs for exhibits/delivery/shipping charges and the litigation package/burning costs on the grounds that these costs were incurred for the convenience of counsel and not recoverable in the 11th Circuit.
 - **Again, we are not sure why Plaintiff contends that routine costs incurred in connection with deposition transcripts and exhibits (and, in the case of Plaintiff's deposition, a videotaped deposition) are not taxable. One of these depositions (Mr. Torralbas's) was noticed by Plaintiff. Further, the delivery charges for Mr. Lowe (Plaintiff's accountant) and for Plaintiff's second day of deposition were necessary in light of Teva's impending deadline to file its summary judgment brief (which was just four weeks from the date of those depositions). Teva was forced to take those depositions so close to its summary judgment brief deadline because (a) Plaintiff arrived more than an hour late to her initial deposition and produced documents the day of that deposition (b) Plaintiff's accountant and good friend claimed that he was on vacation for three weeks in July such that Teva could not take his deposition in July. We will include these costs in our Bill.**
5. On Ex. I, plaintiff objects to these parking costs as not recoverable under section 1920.
 - **This was part of the Court reporter's costs and, thus, taxable under Section 1920. We will include this cost in our Bill.**
6. Finally, plaintiff objects to all of the costs incurred by Teva associated with its choice to hire a third party e-discovery vendor.
 - **Teva did not "choose" to hire a third-party e-discovery vendor; rather, it was forced to do so given the "incredibly broad" request for ESI made by Plaintiff. Teva could not internally manage the incredibly large amount of data implicated by Plaintiff's discovery requests, and use of third-party vendors is standard practice when dealing with such broad requests for data. Moreover, even if Teva somehow could have internally managed the ESI discovery of this case, it would have incurred much of the same costs (i.e., pre-filtering, native file processing, creating searchable texts of processed data, hosting, storage ingestion). We will include these costs in our Bill.**

Dated: October 25, 2016

Respectfully submitted,

s/ Carol A. Field

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed with the United States District Court for the Southern District of Florida and thereby electronically transmitted to counsel of record this 25th day of October, 2016.

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