

<b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited</b>	Entered by:
TITLE OF CASE: <b>Robert Torrez vs William Atkins</b>	
<b>LAW AND MOTION MINUTE ORDER</b>	Case Number: <b>17CECG02818</b>

Hearing Date: **September 4, 2020**      From Chambers      **Re: Motion- for order on Transcripts**  
Department: **501**      Judge: **D. Tyler Tharpe**  
Court Clerk: **S. Nunez**      Reporter: **Not Reported**

<b>Appearing Parties:</b>	
Plaintiff: <b>No Appearances</b>	Defendant: <b>No Appearances</b>
Counsel:	Counsel:

Off Calendar

Continued to     Set for \_\_\_ at \_\_\_ Dept. \_\_\_ for \_\_\_

Submitted on points and authorities with/without argument.     Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted     in part and denied in part.     Motion is denied     with/without prejudice.

Taken under advisement

No party requested oral argument pursuant to Local Rule 2.2.6 and CRC 3.1308(a)(1).

**Tentative ruling becomes the order of the court. No further order is necessary.**

**Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.**

**Service by the clerk will constitute notice of the order.**

**See attached copy of the Tentative Ruling.**

Judgment debtor \_\_\_ sworn and examined.

Judgment debtor \_\_\_ failed to appear.  
Bench warrant issued in the amount of \$ \_\_\_

**JUDGMENT:**

Money damages     Default     Other \_\_\_ entered in the amount of:  
Principal \$\_\_\_ Interest \$\_\_\_ Costs \$\_\_\_ Attorney fees \$\_\_\_ Total \$\_\_\_  
 Claim of exemption     granted     denied. Court orders withholdings modified to \$\_\_\_ per \_\_\_

**FURTHER, COURT ORDERS:**

Monies held by levying officer to be     released to judgment creditor.     returned to judgment debtor.  
 \$\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.  
 Levying Officer, County of \_\_\_, notified.     Writ to issue

**Other: The matter having been under advisement, the court now rules as follows: Tentative Ruling is adopted without modifications.**

(03)

**Tentative Ruling**

Re: **Torrez v. Atkins**  
Superior Court Case No. 17CECG02818

Hearing Date: September 3, 2020 (Dept. 501)

Motion: by Plaintiffs for Order Requiring CSR to Provide Copy of  
Deposition Transcript to Party for a Reasonable Rate

**Tentative Ruling:**

To grant plaintiffs' motion for an order requiring the certified shorthand reporter US Legal Support, Inc., (US Legal) to provide plaintiffs with a copy of the subject deposition transcript for a reasonable rate. (Code Civ. Proc. § 2025.510, subd. (c); *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1036.) The court intends to find that \$2.50 per page is a reasonable rate to charge for the transcript. The court also intends to find that plaintiffs are not required to pay for additional charges such as "litigation packages" and "condensed copies" if they have not requested them. Finally, the court intends to deny the request for attorney's fees and costs against US Legal.

**Explanation:**

Under Code of Civil Procedure section 2025.510, subdivision (c), the party noticing the deposition (in this case defendants) bears the cost of the transcription. (Code Civ. Proc. § 2025.510, subd. (c).) Accordingly, U.S. Legal has already been paid for its transcription services. At issue is the amount U.S. Legal can charge for a copy of the transcript that has already been prepared.

A non-noticing party has a statutory right to obtain a copy of deposition transcripts and exhibits at a "reasonable rate." (Code Civ. Proc. § 2025.510, subd. (c); *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1036.) The non-noticing party may challenge the "reasonableness" of the rate by motion in the court in which the action is pending. (*Id.* at p. 1020.) That court has authority to set the rate under its inherent authority to control the conduct of ministerial officers in pending actions in order to protect the administration of justice. (Code Civ. Proc. § 128, subd. (a)(5); *Serrano*, at p. 1029.) "[T]he court in the pending action is in the best position to resolve that dispute in a timely fashion. To defer the determination to a later separate proceeding would be impractical and inefficient and would undermine the trial court's necessary authority under section 128, subdivision (a)(5)..." (*Serrano, supra*, at pp. 1038-1039.)

"The amount that the court requires a party to pay to obtain a copy of a transcript in a pending action pursuant to section 2025.510, subdivision (c) must be a reasonable amount for that service, regardless of any other services that the deposition reporter may have provided for which the party requesting a copy is not responsible... The cost of transcription must be borne by the party noticing the deposition, unless the court on motion and for good cause orders otherwise (§ 2025.510, subd. (b)), so a reasonable fee for a copy of the transcript would not include any amount that compensates the

deposition reporter for the cost to expedite the transcription... Although the reporter ordinarily sets the fee in the first instance, the reasonableness of the 'expense' (*id.*, subd. (c)) that a court may require a party to pay to obtain a copy of the transcript in a pending action is a question within the sound discretion of the trial court... Our holding is limited to circumstances where (1) there is no relevant contractual relationship between the deposition reporter and the non-noticing party relating to the cost of a copy of the deposition transcript and (2) court intervention is required to ensure that the deposition reporter provide a copy of a deposition transcript to a non-noticing party in a pending action where the reporter has either refused to provide such a copy or is willing to do so only on the condition that the non-noticing party pay what it believes to be an unreasonable fee." (*Id.* at p. 1038.)

It appears to the court that US Legal has charged an excessive and unreasonable rate for a copy of a document that it has already prepared, and that defendants have already paid for. Plaintiffs are simply requesting a copy of a transcript that has already been prepared. There does not appear to be any legitimate reason it should cost almost \$550 for plaintiff to obtain a 112-page transcript. US Legal has also added costs for a "litigation package" and "condensed copy", even though plaintiffs' counsel did not request these items. Thus, it appears that US Legal has attempted to grossly pad the bill with additional charges.

While US Legal argues that its rates include charges for certain overhead, such as provided certified copies and fielding questions from the parties, it does not state how it calculates the costs of the overhead. Indeed, US Legal has only provided one declaration to support its opposition, which provides no details about how its rates are actually calculated. (Jason Bovard decl.)<sup>1</sup> There is also no information about how much the noticing party is charged for transcripts, even though US Legal contends that it charges the noticing party significantly more than the non-noticing party for transcripts. (*Id.* at ¶¶ 9, 10.) Therefore, US Legal has failed to provide the court with evidence showing that the rates it charges to non-noticing parties are reasonable.

US Legal argues that plaintiffs' counsel should be estopped from arguing that its rates are unreasonable, since he has paid those rates in prior cases without objection, and he also offered to pay \$384.40 for the transcript at issue here. There is no estoppel.

Under Evidence Code section 623, "[w]henver a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." Here, plaintiffs' counsel paid US Legal's standard rates for transcripts in other cases. However, there is no indication that plaintiffs in the present case were parties in any of the other cases where plaintiffs' counsel paid for transcripts, so counsel's payment does not bind plaintiffs here. Also, there is no evidence

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<sup>1</sup> Plaintiffs' counsel has objected to the declaration of Mr. Bovard and Exhibit B thereto, on the grounds of lack of foundation, relevance, and "misleading conclusions." The court will overrule the objections, as it appears that Mr. Bovard, who is the Senior Operations Director for the West Region of US Legal, has sufficient personal knowledge of the facts that he alleges, and that he has laid a sufficient foundation for his statements. As Operations Director of the company, he would presumably be familiar with the rates and procedures used by his own company as well as close competitors. Therefore, the court will overrule the objections.

that US Legal relied upon plaintiffs' counsel's payment of its rates, so the doctrine of estoppel does not apply here. Likewise, while plaintiffs' counsel did offer to pay a lower amount than US Legal had billed him for the transcript in the present case, US Legal rejected that offer and never relied upon it. As a result, there is no basis for finding that plaintiffs' counsel should be estopped from challenging the rates now.

US Legal also argues that plaintiffs' proposed rate of \$0.25 per page is unreasonable, especially given that plaintiffs' counsel had previously offered to pay \$384.40 for the same transcript. However, the fact that plaintiffs' counsel made a previous offer to pay \$384.40 for the transcript does not necessarily mean that he believes that US Legal's rates are reasonable. It appears that plaintiffs' counsel was attempting to compromise with US Legal by offering pay just for the transcript itself, without the supplemental materials that he had not requested and did not want to purchase. Since US Legal immediately rejected his offer, it is unclear why the offer is relevant at this time.

US Legal has further argued that its rates are equal to or lower than the rates charged by its competitors in the same marketplace, and thus its rates are reasonable. (Bovard decl., ¶ 14.) The fact that other companies in the marketplace also charge high rates for providing copies of transcripts does not necessarily establish that those rates are reasonable. If all court reporting companies are charging unreasonably inflated rates for transcripts, that does not make their rates reasonable. Without an explanation of how US Legal calculates its rates for noticing and non-noticing parties, US Legal has not shown that its rates are reasonable, especially given that the non-noticing party should only be charged for the reasonable cost of copies of the transcripts. (Code Civ. Proc. § 2025.510, subd. (c).)

Therefore, the court intends to grant plaintiffs' motion to order US Legal to provide the transcript at a reasonable rate. However, it does not appear that plaintiffs' proposed rate of \$0.25 per page is necessarily a reasonable amount. As US Legal points out in its opposition, its rates reflect overhead charges for providing certified copies and fielding questions from parties. US Legal needs to pay staff to provide these services, as well as providing facilities for staff. (Bovard decl., ¶ 10.) Thus, simply charging a basic copy rate of \$0.25 per page would be inadequate under the circumstances.

The court intends to set the reasonable rate for providing copies of the transcript to plaintiffs at \$2.50 per page, which should provide additional money to cover the overhead costs for US Legal. The court also intends to find that plaintiffs are not required to pay for additional costs of "litigation package" and "condensed transcript" if they do not want these extra features. Finally, the court intends to deny plaintiffs' request for attorney's fees and filing fees related to the motion, as plaintiffs have not cited any legal authority for imposing such fees and costs on US Legal here.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** Judge Tharpe **on** 9/1/2020.

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: <b>Robert Torrez vs William Atkins</b></p>	
<p style="text-align: center;"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER: <b>17CECG02818</b></p>

I certify that I am not a party to this cause and that a true copy of the:

**Minute Order from chambers and Tentative Ruling**

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 09/08/2020

Clerk, by \_\_\_\_\_, Deputy

  
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Clerk's Certificate of Mailing Additional Address Page Attached