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2 NOT FOR PUBLICATION  
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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
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8 In re Case No. 11-62509-A-7  
9 Shaver Lakewoods Development, Inc.  
10 Debtor.  
11 \_\_\_\_\_/

12 Randell Parker, Adv. No. 14-01076-A  
13 Plaintiff, KDG-1

14 vs.

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16 Verlyn Gaines,  
17 Defendant.  
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23 MEMORANDUM  
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1 Chapter 7 trustee Randell Parker ("Parker") seeks to tax costs  
2 of \$1,632.49 to defendant Verlyn Gaines ("Gaines") after prevailing  
3 at trial.

#### 4 **FACTS**

5 Shaver Lakewoods Development, Inc., filed a chapter 7  
6 bankruptcy. Parker was appointed the trustee. Parker brought an  
7 adversary proceeding against Gaines to determine the nature, extent  
8 and validity of Gaines's lien, as well as the existence and amount of  
9 his claim. Parker prevailed at trial and was awarded costs under  
10 Federal Rule of Bankruptcy Procedure 7054(b).

11 Parker filed a Ex Parte Application to Tax Costs<sup>1</sup> in the amount  
12 of \$1,632.49. Gaines opposes Parker's right to tax (1) transcript  
13 costs of \$692.69 because they were not "necessarily obtained for use  
14 in the case," 28 U.S.C. § 1920(2); and (2) witness costs of \$336.45  
15 for Robert Rodriguez and Angela Rodriguez, who were not called as  
16 witnesses, nor present, at trial, 28 U.S.C. § 1920(3).<sup>2</sup>

#### 17 **JURISDICTION**

18 This court has jurisdiction. See 28 U.S.C. §§ 1334, 157(a); 11  
19 U.S.C. § 523; General Order No. 182 of the U.S. District Court for  
20 the Eastern District of California. This a core proceeding. See 28  
21 U.S.C. § 157(b)(2)(B),(K).

#### 22 **DISCUSSION**

##### 23 **I. Legal Standards**

24 Costs may be taxed to the non-prevailing party in an adversary  
25 proceeding. 28 U.S.C. § 1920; Fed. R. Bankr. P. 7054(b); L.R. 292,  
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27 <sup>1</sup> Requests to tax costs are not properly submitted by ex parte  
28 application, but rather by Bill of Costs with supporting  
documentation. See L.R. 292(b), *incorporated by* LBR 1001-1(c).

<sup>2</sup> Gaines opposition does not comply with LBR 9014-1(c)(4)(omission of  
the docket control number, i.e., KDG-1).

1 incorporated by Fed. R. Bankr. P. 1001(c). Unless authorized by  
2 other statute or by contract, 28 U.S.C. § 1920 defines and limits the  
3 types of costs that may be taxed. *Crawford Fitting Co. v. J.T.*  
4 *Gibbons, Inc.*, 482 U.S. 437, 440-42 (1987). As applicable here, the  
5 prevailing party may recover costs for court reporter's fees, 28  
6 U.S.C. § 1920(2)), and for witness fees, 28 U.S.C. § 1821. L.R.  
7 292(f).

## 8 **II. Costs Allowed and Disallowed**

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10 The prevailing party must itemize its costs with sufficient  
11 detail to allow the court to independently conclude that each expense  
12 is of the species taxable under § 1920. *Plantronics, Inc. v. Aliph,*  
13 *Inc.*, 2012 WL 6761576 at \* 3 (N.D. Cal. October 23, 2012). Once it  
14 does so, the costs are presumptively taxable. *Id.* And it is the  
15 responsibility of the party to be taxed to demonstrate that the costs  
16 are either not taxable or unreasonable in amount. *Majeske v. City*  
17 *of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000).

### 18 **A. Transcripts**

19 Transcripts are taxable, provided they were "necessarily  
20 obtained for use in the case." 28 U.S.C. § 1920(2); *Manildra Milling*  
21 *Corp. v. Ogilvie Mills, Inc.*, 76 F.3d 1178, 1184 (Fed. Cir. 1996);  
22 *Summit Technology, Inc. v. Nidek Co., Ltd.*, 435 F.3d 1371, 1380-81  
23 (Fed. Cir. 2006). Transcripts obtained for discovery or  
24 investigative purposes are not recoverable. *Coats v. Penrod Drilling*  
25 *Corp.*, 5 F.3d 877, 891 (5th Cir. 1993). The deposition of the  
26 adverse party, Gaines, is necessary to ascertain the nature and  
27 extent of his knowledge and to pin him down to a story. Costs of  
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1 \$456.04 will be allowed. Transcripts of the meetings of creditors  
2 and of the courts findings after trial were convenient, not  
3 necessary. Costs of \$236.65 are disallowed.

4 **B. Witnesses Neither Called, Nor Present**

5 Section 1821 conditions payment on physical appearance by the  
6 witness on the date and at the place of trial. 28 U.S.C.  
7 § 1821(a)(1) ("a witness in attendance"); *Jones v. Unisys Corp.*, 54  
8 F.3d 624, 633 (10th Cir. 1995); *Coats v. Penrod Drilling Corp.*, 5  
9 F.3d 877,, 891 (5th Cir. 1993). Neither Rodriguez was called to  
10 testify at trial, nor otherwise attended trial. As a result, \$336.45  
11 is disallowed.

12 **CONCLUSION**

13 For each of these reasons, the motion will be granted in part  
14 and denied in part. Costs of \$1,059.39<sup>3</sup> will be taxed against Gaines.  
15 The court will issue a separate order.

16 Dated: September 30, 2015

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18 Fredrick E. Clement  
19 United States Bankruptcy Judge  
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28 <sup>3</sup> That amount is calculated by deducting \$573.10 (costs disallowed)  
from \$1,632.49 (costs prayed).