IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHIRE DEVELOPMENT LLC, SHIRE PHARMACEUTICAL DEVELOPMENT INC., COSMO TECHNOLOGIES LIMITED, and NOGRA PHARMA LIMITED,	
Plaintiffs,	Case No. 8:12-cv-01190-CEH-AEP
v.	
MYLAN PHARMACEUTICALS INC. and MYLAN INC.,	
Defendants.	

DEFENDANTS' MOTION FOR THE TAXATION OF COSTS[1]

Pursuant to Federal Rule of Civil Procedure 54(d), Mylan moves for the taxation of costs against Shire.[2] In federal litigation, "the prevailing party is entitled to costs as a matter of course." *Powell v. Carey Int'l, Inc.*, 548 F. Supp. 2d 1351, 1355 (S.D. Fla. 2008); *accord Space Gateway Support, LLC v. Int'l Union of Sec. Police Fire Prof'ls of Am*., No. 605CV208ORLDAB, 2005 WL 2126469, at *1, n. 2 (M.D. Fla. Sept. 1, 2005). Mylan has

[1] Mylan originally requested to file this Motion to Tax Costs under seal, hand delivering a copy of the instant Motion to the Court on May 29, 2018 for its reference in deciding whether to grant the seal. (Dkt. 545). Mylan's request to file under seal was denied (Dkt. 550), and in denying the request, Judge Porcelli indicated that a copy of the Motion for Costs was not received (*id.* at n. 2). It is correct that Mylan did not deliver the Motion to Tax Costs to Judge Porcelli, but Mylan's courier has confirmed with Mylan's counsel that the attached correspondence directed to Judge Honeywell, including this Motion and its attachments, was hand delivered to Judge Honeywell's judicial assistant at 4:57pm on May 29, 2018. (*See* Composite Exhibit E, attaching receipt evidencing delivery, together with the materials delivered).

[2] "Mylan" refers, collectively, to Defendants Mylan Pharmaceuticals, Inc., and Mylan, Inc. "Shire" refers, collectively, to Plaintiffs Shire Development, LLC, Shire Pharmaceutical Development, Inc., Cosmo Technologies Ltd., and Nogra Pharma Ltd.

now prevailed not only in this Court but in the Federal Circuit Court of Appeals, which affirmed this Court's decision that Mylan did not infringe Shire's patent under Fed. Cir. R. 36 in less than twenty-four hours after oral argument. *See Shire Dev., LLC v. Mylan Pharm. Inc.*, No. 2017-2268 (Fed. Cir. Apr. 6, 2018). Mylan is thus entitled to recover the costs set out in 28 U.S.C. § 1920.

This is the right moment—immediately following the Federal Circuit's issuance of the mandate—for Mylan to file its motion for costs. Although a prevailing party is typically expected to move for costs within two weeks of entry of judgment, this case's unique procedural history—which included an initial final judgment, a motion for reconsideration, and an appeal challenging the validity of the Court's reconsideration in the first instance—created an unparalleled set of circumstances which we believe no other District Court has ever confronted. Now, and only now, that the Federal Circuit has issued its mandate, has any uncertainty (or uniqueness) surrounding the procedural posture of this case—a litigation spanning six years—been resolved. This Court may tax Mylan's costs at this juncture.

Mylan's filing of its motion for costs now does not prejudice Shire in any way, nor will granting costs delay or negatively affect this already-resolved case. While Mylan is cognizant that what it requests is a departure from run of the mill norms in this District, nothing subsequent to the initial final judgment has been run of the mill. And, the Federal Circuit's unqualified—almost immediate—affirmance of this Court's reconsideration decision exemplifies the merits of Mylan's case all along and why it respectfully *now* moves for costs.

RELEVANT BACKGROUND

In 2012, Shire sued Mylan alleging that one of Mylan's proposed generic drugs infringed claims of U.S. Patent No. 6,773,720 ("the '720 Patent"). Following years of litigation, this Court conducted a bench trial. After trial, the Court found that Mylan had infringed Shire's patent, and it issued an order and a final judgment of infringement. Mylan filed a timely notice of appeal. Dkt. 511. Shire did not file for costs or attorney's fees.

Two weeks after final judgment, the Federal Circuit Court of Appeals issued its opinion in *Shire Development, LLC v. Watson Pharmaceuticals, Inc.*, 848 F.3d 981 (Fed. Cir. 2017) ("Watson II"). There, the Federal Circuit found that the accused product did not infringe Shire's same '720 patent. Mylan moved for reconsideration based on *Watson II*, arguing that the decision required this Court to find that Mylan's product also did not infringe the '720 patent as a matter of law. The Court heard oral argument, and ultimately agreed with Mylan. It vacated its previous order and final judgment, and issued a new final order and a second final judgment. Dkt. 536, 537. Shire then filed its own notice of appeal. Dkt. 539. Thus, in the span of a few months, the docket displayed two different final orders, two different notices of appeal, and two different final judgments.

The Federal Circuit heard Shire's appeal on April 5, 2018. The very next day, the Federal Circuit affirmed this Court. On May 14, 2018, the Federal Circuit issued its mandate and returned jurisdiction to this Court. Dkt. 543. After a diligent vetting of the litigation related expenses incurred over the past six years, Mylan now respectfully requests reimbursement for those expenses. Indeed, as set forth below, Mylan seeks those costs that are taxable under long established Eleventh Circuit precedent.

ARGUMENT

I. Mylan Is Presumptively Entitled to Recover Its Costs

Under Federal Rule of Civil Procedure 54(d), Mylan is presumptively entitled to recover the costs set out in 28 U.S.C. § 1920. Rule 54(d) states that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs . . . *should* be allowed to the prevailing party." Fed. R. Civ. P. 54(d) (emphasis added). The rule's directive creates "a strong presumption that the prevailing party will be awarded costs." *Mathews v. Crosby*, 480 F.3d 1265, 1276 (11th Cir. 2007). That presumption applies not just to *some* costs but to the "full amount of costs incurred by the prevailing party." *Chapman v. AI Transp.*, 229 F.3d 1012, 1039 (11th Cir. 2000). The presumption is so strong that the Eleventh Circuit considers the denial of costs to be "in the nature of a penalty for some defection on [the prevailing party's] part in the course of the litigation." *Id.* So while a district court may deny costs, its discretion "is not unfettered," and it can "defeat the presumption and deny full costs" only if it has a "sound basis for doing so." *Id.*

Mylan has conducted this litigation cooperatively and in good faith both in the district court and in the Federal Circuit. None of its actions warrant the Court to deny costs as a "penalty." Thus, Mylan is entitled to the strong presumption that it can recover its full costs. The presumption applies no less here merely because the Court granted Mylan's motion for reconsideration. If Mylan had not requested reconsideration, it would have won on appeal, and the presumption would have applied to Mylan once the Court entered judgment for it on remand. There is no practical difference between that situation and the one here, in which the Federal Circuit unreservedly affirmed this Court's reconsidered judgment. Regardless of

the procedural technicalities, Mylan is the prevailing party, and it should be allowed to recover the full amount of its costs.

II. Mylan May File for Costs Now Due to the Unique Circumstances of These Proceedings

Although the Court previously issued a final judgment, the Court should nonetheless deem Mylan's motion for costs timely in large part due to this case's one of a kind posture. Further, since the substantive proceedings are over, Shire will not be prejudiced by this motion, and the motion will not undermine efficient judicial administration. In light of the strong presumption that prevailing parties may recover their costs, this Court should permit Mylan's motion.

A. The Standard for Extending Time Is Elastic and Forgiving

Although litigants in the Middle District of Florida generally must move for costs "not later than 14 days following the entry of judgment" (M.D. Fla. L.R. 4.18.), courts in this District have applied a liberal standard on several occasions to excuse a prevailing party's delay ("neglect") and allow more time to move for costs. *See, e.g., Peeler v. KVH Indus., Inc.*, 13 F. Supp. 3d 1241, 1261 (M.D. Fla. 2014) (allowing more time based on plaintiff's confusion over whether court issued final judgment).

To determine whether a moving party's departure from the traditional 14 day rule is excusable, this Court considers four factors:

1. the danger of prejudice to the nonmovant party;
2. the length of delay and its potential impact on judicial proceedings;
3. the reason for the delay, including whether it was within the reasonable control of the movant; and

4. whether the movant acted in good faith.

Advanced Estimating System, Inc. v. Riney, 130 F.3d 996, 997-98 (11th Cir. 1997); *United States ex rel. Miller v. Rose Radiology, Inc.*, No. 8:13-CV-2757-T-35AAS, 2016 WL 3477190, at *3 (M.D. Fla. June 27, 2016). Each factor supports an extension of time for Mylan to move for costs.

B. Mylan's Filing Will Not Prejudice Shire or This Court's Proceedings

The Eleventh Circuit has recognized that the first two factors are the most important: "the absence of prejudice to the nonmoving party and to the interest of efficient judicial administration." *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996). Both factors warrant an extension of time for Mylan.

First, this motion will not prejudice Shire. Shire is not financially harmed by Mylan's filing for costs now: the costs that Shire should pay are the same today as they were last month, or last year. Further, as this Court has recognized, a belated motion for costs will not prejudice a party if it still has the "opportunity to contest the reasonableness of the hourly rates, hours, costs, and expenses requested." *See Miller*, 2016 WL 3477190 at *3. Here, Shire will be able to contest the costs equally well now as it would have before (notwithstanding the fact that the cost award requested is wholly supported in fact and law). If anything, Shire has benefited from the postponement, since it deferred Shire's payment of costs until resolution of the appeal.

Second, because this Court entered final judgment last year, the proceedings will not be adversely affected by granting this motion now. Once the Court decided the reconsideration motion and Shire filed its appeal to the Federal Circuit, there was nothing

substantive left for this Court to do. So "[t]he delay in filing the Motion for Fees has not had any impact on the proceedings in this case," *id.*, and the motion necessarily cannot undermine the "interest of efficient judicial administration." *Cheney*, 71 F.3d at 850. In fact, efficient judicial administration is promoted when courts determine costs after the appeal concludes. Another judge in this District has previously recognized this efficiency by instructing parties to wait until the appeal was over before moving for costs. *See* Ex. A (Steele, J. Remittitur Order).

C. Mylan's Filing Is Supported by the Compelling Circumstances of this Case and Mylan's Good Faith

The third and fourth factors in *Riney* also weigh in favor of extending time for Mylan's motion. Mylan had several compelling "reason[s] for the delay" in filing for costs. *Riney*, 130 F.3d at 998. The validity of the Court's entry of a second final judgment was at the heart of Shire's appeal to the Federal Circuit. Shire argued that the second judgment was *invalid* because "[t]here was no basis for the district court to have reconsidered" its decision based on *Watson II*, which dealt with a different product than Mylan's. Ex. B (Shire Opening Br. at 30). As Shire argued to the Federal Circuit, no other district court had previously "entered a Final Judgment of infringement following trial and then relied on a factual determination of non-infringement in another case, on a different product" to reconsider that determination and enter a new final judgment. Ex. C (Shire Reply Br. at 1). Shire asked for the "Rule 60 Judgment [to] be reversed and [the first] Final Judgment and Permanent Injunction [to be] reinstated." Ex. B (Shire Opening Br. at 30).

Although the "pendency of an appeal" generally does not "postpone the filing of a timely application," M.D. Fla. L.R. 4.18, Shire's appeal presented a unique challenge to the

integrity of a final judgment. These unusual circumstances not only raised the specter of reversal but created uncertainty about whether the second final judgment was validly entered.[3] The possibility of a remand was also at play. (Ex. B, Shire Opening Br. at pp. 34-35 & 47; Ex. C, Shire Reply Br. at pp. 15-16 & 25). These questions were not (and could not be) resolved until the Federal Circuit issued the mandate on May 14.

Notably, the reasons that justify extensions of time for motions such as these need not be exceptional; they can be simple. For example, the Eleventh Circuit found that "a failure in communication between the associate attorney and the lead counsel" justified a late filing. *Cheney*, 71 F.3d at 850. Another Florida district court extended time because an attorney did not "appreciate the thirty day limitation" to file a motion. *Skyywalker Records, Inc. v. Navarro*, 742 F. Supp. 638, 639 (S.D. Fla. 1990). And last year, this Court extended time for a party to file for costs because she was confused about the effect of a settlement agreement and voluntary dismissal on the deadline. *Miller*, 2016 WL 3477190 at *3. Mylan's reasons go well beyond these.

These circumstances also demonstrate that Mylan acted in good faith throughout the case, the last factor Courts look to in assessing a motion such as this. *Riney*, 130 F.3d at 998. Mylan has not "sought an advantage by filing late" or "deliberately disregarded" the local rule. *Cheney*, 71 F.3d at 850. (To the contrary the delay has only inured to Shire's benefit). Thus, there is no windfall to be had. As noted above, if the procedural posture of this case had simply been an appeal of this Court's original finding of infringement, it is undisputed

[3] This Court even noted during the April 26, 2017 Reconsideration Hearing: "I do think that the [original] opinion that I issued is overwhelmingly supported by the evidence at trial." Dkt. 524 at 52:21-23.

that Mylan would now be entitled to its costs. Respectfully, Mylan should not be deprived of that right simply because it appropriately sought reconsideration after the Federal Circuit's decision in *Watson II*.

Indeed, the strong presumption that prevailing parties can recover costs supports extending time for Mylan to file its motion. *See Mathews*, 480 F.3d at 1276. Absent prejudice to the Court or the nonmoving party, the spirit of that presumption is best served by the Court addressing Mylan's motion for costs on the merits. *See Touzout v. Am. Best Car Rental KF Corp.*, No. 15-61767-CIV, 2017 WL 5957664, at *5 (S.D. Fla. Nov. 30, 2017) (finding excusable neglect regarding a local rule because court preferred "to adjudicate the claim for attorney's fees on the merits of the parties' arguments rather than on a technicality which has not prejudiced Defendants"); *cf. Villano v. City of Boynton Beach*, 254 F.3d 1302, 1309-10 (11th Cir. 2001) (allowing recovery of reasonable compensation under statute despite violation of local rule because "[a] local rule . . . cannot eviscerate a statutory right"). Here, the Court need only look to the Federal Circuit's affirmance in less than twenty four hours after the oral argument to recognize the merits of Mylan's case and why it is entitled to a costs award. Because all the relevant factors support Mylan, Mylan respectfully requests the Court enter its Motion and permit it to recover its costs.[4]

[4] It may also bear noting that the Court entered the first final judgment "on all counts of the Complaint," but it entered the second final judgment "on all counts of the *Amended* Complaint." Dkt. 504 ¶ 1; Dkt. 537 ¶ 1 (emphasis added). To the best of Mylan's knowledge, no such Amended Complaint exists. Under Federal Rule of Civil Procedure 60(a), a "court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." By entering a corrected final judgment, the Court could promote clarity in future disputes involving these parties, particularly if questions of claim or issue preclusion arise.

III. The Costs Identified in the Exhibits to this Motion Are Justified

Mylan has thoroughly reviewed all invoices related to costs incurred in having to defend itself against Shire over the past six years. What it now seeks to be reimbursed for are the reasonable legal costs that Mylan incurred in this defense. While Mylan cannot be made whole, it nonetheless seeks this Court's indulgence in being reimbursed for only those expenses expressly provided for under Eleventh Circuit precedent.

A. Trial and Hearing Transcripts

Charges for trial and hearing transcripts reasonably necessary are recoverable. *Wahl v. Carrier Mfg. Co.*, 511 F.2d 209, 217 (7th Cir. 1985). Indeed, when a transcript is "necessary for use in the case," including to maintain an accurate record of the case or to preserve rulings throughout pretrial or trial, it falls within § 1920 and is allowed as a taxable cost. *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 2001 WL 862642, at *2-3 (M.D. Fla. May 4, 2001). In *Maris*, Judge Hodges also held that the costs of trial transcripts were taxable because the trial was lengthy and complex and the transcripts were indispensable. *Id.* at *3.

Mylan incurred **$459.90** for the transcript from the Claims Construction hearing before the Court. That transcript was necessary to maintain an accurate record of the case, as reflected in the declaration of Deepro Mukerjee, attached hereto as Exhibit D ("Mukerjee Declaration"). Mylan also incurred costs in the amount of **$4,329.50** for trial transcripts, which were necessary for at least the preparation of Mylan's Motion for Reconsideration. Lastly, Mylan incurred **$48.60** in court reporter fees associated with the Reconsideration hearing in March 2017. The Mukerjee Declaration confirms these costs are correct, were actually charged, and were necessarily incurred in the case. In total, Mylan seeks to recover

$4,838.00 for taxable hearing and trial transcripts. The invoices reflecting these taxable costs are attached as Exhibit 2 to the Mukerjee Declaration.

B. Deposition Transcripts

Deposition expenses may also be recovered as costs if the deposition was "necessarily obtained for use in the case." *Dominguez v. Metropolitan Miami-Dade Cnty.*, 2005 WL 5671449, at *2 (S.D. Fla. Apr. 15, 2005). It is neither necessary for a deposition to be used at trial or for a witness to be called to testify at trial for the deposition costs to be taxable. *See Dillon v. Axxsys Int'l, Inc.*, No. 8:98CV2237T23TGW, 2006 WL 3841809, at *5–7 (M.D. Fla. Dec. 19, 2006), *aff'd*, 233 F. App'x 982 (11th Cir. 2007). Costs for deposition exhibits are likewise recoverable if the exhibits are essential to understanding an issue in the case. *See Tampa Bay Water v. HDR Eng'g, Inc.*, 2012 WL 5387830, at *19 (M.D. Fla. Nov. 2, 2012). Court reporter appearance fees and delivery fees for deposition transcripts are also taxable costs. *Frost v. McNeilus*, No. 8:14-CV-81-T-24 MAP, 2015 WL 1730244, at *2 (M.D. Fla. Apr. 14, 2015) (attendance fee taxable); *George v. GTE Directories Corp.*, 114 F.Supp.2d 1281, 1298 (M.D. Fla. 2000) (holding that reasonable costs associated with depositions, such as postage for the mailing of transcripts, may be taxed); *Ferguson v. Bombardier Services Corp.*, No. 03–544–CV, 2007 WL 601921, at *4 (M.D. Fla. Feb. 21, 2007) (holding handling, processing, and delivery fees for deposition transcripts are taxable).

Further, the costs for videotaping depositions and the videographer's fees are also recoverable. *PODS Enterprises, LLC v. U-Haul Int'l, Inc.*, No. 8:12-CV-01479-T-27, 2015 WL 5021668, at *1 (M.D. Fla. Aug. 24, 2015) (citing *Cardinale v. S. Homes of Polk Cnty., Inc.*, No. 8:06–cv–1295, 2008 WL2199273, at *1 (M.D.Fla. May 27, 2008)). The costs

incurred for interpretation services during depositions are also taxable under Section 1920. *See* 28 U.S.C. § 1920(6) (2008). *Pushko v. Klebener*, No. 3:05-CV-00211-J-25, 2009 WL 9988121, at *3 (M.D. Fla. Dec. 8, 2009) (allowing costs for interpreter).

As reflected in the Mukerjee Declaration, the transcripts and videotapes for the depositions of Tara Bielski, Howard Martin, Srini Tenjarla, Stephen Talton, Scott Chervenick, Jason Harper, Massimo Pedrani, Mauro Ajani, Luigi Moro, Abhijit Deshmukh, Roberto Villa, Manoj Pananchukunnath, Mayur Loya, Chetan Rajasekhar, Nagarai Amminabavi, Andrew Stautberg, Sergio Baroni, Steven Neau, Neil Spingarn, Alan Paul, and Patrick Sinko were necessary for the defense of this case. Moreover, the interpretation services for Massimo Pedrani (**$6,920.00**) and Sergio Baroni (**$1,390.00**) were necessary in order to conduct the needed depositions; invoices in support of these interpretation services are included among the deposition-related invoices attached as Exhibit 3 to the Mukerjee Declaration. Mylan has highlighted the taxable costs itemized in the deposition-related invoices (Mukerjee Dec. at Ex. 3), including costs for transcripts, exhibits, appearance fees, postage, video, and interpretation services, which are all taxable under 28 U.S.C. § 1920, and total **$74,046.36**.

C. Witness Fees

Section 1920(3) allows reimbursement for witness fees. A witness's actual expenses for travel by common carrier "at the most economical rate reasonably available," taxi fares, and parking fees are recoverable. § 1821(c)(1)–(3). Additionally, a "subsistence allowance" may be recovered "when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto

from day to day." § 1821(d)(1). Expenses in the amount of **$2,405.04** were incurred by Mylan's expert witness, Dr. Spingarn, during his four days at trial. These costs were necessary as explained in the Mukerjee Declaration, and the invoice reflecting these costs is attached as Exhibit 4 to the Mukerjee Declaration.

D. Photocopies & Exemplifications

Costs for exemplification and photocopies are recoverable if the copies were necessarily obtained for use in the case. *Maris Distrib., 2001 WL 862642, at *5; Peeler v. KVH Indus., Inc.*, No. 8:12-CV-1584-T-33TGW, 2014 WL 12617558, at *5 (M.D. Fla. June 16, 2014) (holding the cost of demonstrative aid may be taxed as an "exemplification" under section 1920(4)). As required, Mylan herein "present[s] evidence regarding the documents copied including their use or intended use." *Peeler*, 2014 WL 12617558, at *5 ("Because 'the prevailing party alone knows the purpose of the copies . . . the prevailing party must provide information regarding the purpose of the copies charged so that the Court may address the relevant factual issues.'").

Mylan utilized an e-discovery vendor to assist with document production in this case. Most courts agree that electronic scanning and imaging of documents is the modern-day equivalent of "exemplification and copies" of paper. *See Fast Memory Erase, LLC v. Spansion, Inc.*, No. 3-10-CV-0481-M-BD, 2010 WL 5093945, at *5 (N.D. Tex. Nov. 10, 2010), *report and recommendation adopted*, 2010 WL 5093944 (N.D. Tex. Dec. 13, 2010), *aff'd sub nom. Fast Memory Erase, LLC v. Intel Corp.*, 423 F. App'x 991 (Fed. Cir. 2011). Accordingly, e-discovery costs that constitute the "making of copies" are taxable under § 1920(4).

The Southern District of Florida has made the following determinations concerning taxable e-discovery costs. These are:

> 1. Formatting is a recoverable cost (i.e., converting documents to a uniform production format (such as TIFF)).
>
> 2. If a party is required to create an image of the original source first and then apply special techniques to extract documents while preserving all associated metadata, then those costs are recoverable.
>
> 3. Costs incurred in preparing to copy, such as source code planning, are not recoverable.
>
> 4. Tasks such as project management, keyword searching, statistical previews auditing and logging of files and extraction of proprietary data are not recoverable because they are not the costs of making copies. Instead, they are "part of the large body of discovery obligations" which Congress did not include in section 1920(4).
>
> 5. Costs incurred in acquiring, installing and configuring a data-hosting server are not recoverable.
>
> 6. Deduplication (i.e., the culling of a set of documents to eliminate duplicate copies of the same document) is not covered by Section 1920(4).
>
> 7. Costs for the creation of "load files" are covered to the extent that the files contain information required by the requested production. [The Court explained that some of the basic information in load files is comparable to the slip sheets used to separate distinct documents in a paper production].

Procaps v. Patheon Inc., No. 12-24356-CIV, 2016 WL 411017, at *12–13 (S.D. Fla. Feb. 2, 2016) (citing *CBT Flint Partners, LLC v. Return Path, Inc.*, 737 F.3d 1320, 1329-33 (Fed. Cir. 2013)).

In accordance with the Federal Circuit's guidance, Mylan has annotated its e-discovery invoices to reflect only costs that may be considered "making copies" under § 1920(4). Those invoices (in redacted form) are attached as Exhibit 5 to the Mukerjee Declaration and reflect taxable costs in the amount of **$22,244.61**. Mylan also incurred

traditional copying costs associated with discovery and blowbacks for trial in the amount of **$4,538.22**, attached as Exhibit 6 to the Mukerjee Declaration. The Mukerjee Declaration demonstrates that in each instance, the copying charges were reasonable and were necessary in the defense of this lawsuit.

IV. Conclusion

For the foregoing reasons, Mylan respectfully requests the taxation of costs against Shire. This Court should deem Mylan's motion timely in light of the lack of prejudice to the Court's proceedings and to Shire, the case's unusual procedural history, and the strong presumption in favor of allowing prevailing parties to recover costs. It is fair and equitable that Mylan be awarded the preceding costs based on the Bill of Costs and Mukerjee Declaration submitted. Accordingly, Mylan requests the Court should award costs in the amount of **$108,072.23**.

Respectfully submitted,

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Rule 3.01(g) Certification

Pursuant to Local Rule 3.01(g), counsel for Defendant has conferred with counsel for the Plaintiffs, who has advised that the Plaintiffs oppose the relief sought in this Motion.

s/ Benjamin H. Hill, III
Attorney