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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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GENERAL CHARLES "CHUCK"  
YEAGER, (RET.), and GENERAL  
CHUCK YEAGER FOUNDATION,

NO. CIV. 2:08-102 WBS JFM

Plaintiffs,

v.

ORDER RE: COSTS

CONNIE BOWLIN, ED BOWLIN,  
DAVID MCFARLAND, AVIATION  
AUTOGRAPHS, a non-incorporated  
Georgia business entity,  
BOWLIN & ASSOCIATES, INC., a  
Georgia corporation,  
INTERNATIONAL ASSOCIATION OF  
EAGLES, INC., an Alabama  
corporation, SPALDING  
SERVICES, INC., and DOES 1  
through 100, inclusive,

Defendants.

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On January 6, 2010, the court entered final judgment in  
this case in favor of defendants pursuant to the court's January  
6, 2010 Order. Defendants Connie Bowlin, Ed Bowlin, Bowlin &  
Associates, Inc., and Aviation Autographs submitted a cost bill

1 totaling \$8,131.65 on January 19, 2010. (Docket No. 137.) On  
2 January 29, 2010, the court issued an Order allowing defendants'  
3 costs, noting that plaintiffs did not object. (Docket No. 139.)  
4 Plaintiff Charles Yeager ("Yeager") submitted objections to  
5 defendants' bill of costs on February 1, 2010. (Docket No. 140.)  
6 The court then vacated and set aside its January 29, 2010 Order  
7 to consider Yeager's objections the costs bill, giving defendants  
8 an opportunity to respond. (Docket No. 147.) Presently before  
9 the court are Yeager's objections to defendants' bill of costs.

10 Rule 54(d)(1) of the Federal Rules of Civil Procedure  
11 and Local Rule 292(f) govern the taxation of costs to losing  
12 parties, which are generally subject to limits set under 28  
13 U.S.C. § 1920. See 28 U.S.C. § 1920 (enumerating taxable costs);  
14 Fed. R. Civ. P. 54(d)(1) ("[C]osts other than attorneys' fees  
15 shall be allowed as of course to the prevailing party unless the  
16 court otherwise directs . . . ."); Local R. 292(f); Crawford  
17 Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441 (1987)  
18 (limiting taxable costs to those enumerated in § 1920).

19 The court exercises its discretion in determining  
20 whether to allow certain costs. See Amarel v. Connell, 102 F.3d  
21 1494, 1523 (9th Cir. 1997) (holding that the district court has  
22 discretion to determine what constitutes a taxable cost within  
23 the meaning of § 1920); Alflex Corp. v. Underwriters Labs., Inc.,  
24 914 F.2d 175, 177 (9th Cir. 1990) (same). The losing party has  
25 the burden of overcoming the presumption in favor of awarding  
26 costs to the prevailing party. See Russian River Watershed Prot.  
27 Comm. v. City of Santa Rosa, 142 F.3d 1136, 1144 (9th Cir. 1998)  
28 (noting that the presumption "may only be overcome by pointing to

1 some impropriety on the part of the prevailing party"); Amarel,  
2 102 F.3d at 1523; see also Local R. 292(d) ("If no objection is  
3 filed, the Clerk shall proceed to tax and enter costs.").

4 I. Objections to Fees for Service

5 Defendants claim costs of \$235.49 for service of  
6 subpoenas. Yeager objects to \$179.99 of these costs on the  
7 ground that no provision of 28 U.S.C. § 1920 provides for the  
8 recovery of postage or costs of overnight mail. However,  
9 defendants may recover for the costs in the private serving of  
10 summonses or subpoenas under § 1920(1). See Alfex Corp. v.  
11 Underwriters Lab., Inc., 914 F.2d 175, 178 (9th Cir. 1990) ("Now  
12 that the Marshal is no longer involved as often in the serving of  
13 summonses and subpoenas, the cost of private process servers  
14 should be taxable under 28 U.S.C. § 1920(1)."). Fees for service  
15 by private parties are taxable "to the extent they do not exceed  
16 the amount allowable for the same service by the Marshal." Local  
17 R. 292(f)(2).

18 The Marshal's Office charges \$8.00 per item for service  
19 by mail and \$55.00 per hour for personal service. See 28 C.F.R.  
20 §§ 0.114(2)-(3). Defendants' costs of \$165.59 for postage for  
21 service of thirty subpoenas averages approximately \$5.52 per  
22 item, well below the amount charged by the Marshal. Accordingly,  
23 these costs will be allowed. However, defendants' use of Federal  
24 Express for service of a subpoena on Victoria Yeager cost \$14.40,  
25 which is above the amount the Marshal's Office charges for  
26 service by mail. Accordingly, the court will only allow  
27 defendant to recover \$8.00 worth of the costs of this instance of  
28 service by mail, and disallow the additional cost.

1 II. Fees of Court Reporters for Transcripts Obtained for Use in  
2 the Case

3 Defendants claim costs of \$ 5,891.64 for fees of court  
4 reporters for transcripts obtained for use in the case. Yeager  
5 objects to these costs on the grounds that: (1) defendants  
6 provide no facts indicating these costs were necessarily obtained  
7 for use in the case, (2) the court reporter's invoice does not  
8 specify the services performed for the depositions of Yeager and  
9 Victoria Yeager ("the Yeagers"), and (3) the video recording of  
10 depositions was not necessary.

11 A. "Necessarily Obtained for Use in the Case"

12 The depositions taken of the Yeagers and defendants  
13 Connie and Ed Bowlin were necessarily obtained for use in this  
14 case. The Yeagers were critical witnesses and defendants relied  
15 heavily on these depositions in their motion for summary  
16 judgment. Accordingly, the court will not disallow the costs of  
17 the depositions on this ground.

18 B. Specification of Services Performed in the Yeagers  
19 Depositions

20 Yeager contends that it is impossible to determine if  
21 the costs for the Yeagers' depositions are reasonable because the  
22 invoices for the depositions supplied with the bill of costs do  
23 not contain an itemized assessment of the services performed at  
24 the depositions. However, defendants provided plaintiffs with  
25 such an itemized invoice on January 26, 2010, and the invoice was  
26 provided by Yeager's counsel in his objections. (See Docket No.  
27 140, Pl.'s Objections Ex. A.) Accordingly, the court will not  
28 disallow these costs.

1 C. Video Recording

2 Defendants claim \$2,407.50 in costs for video recording  
3 of the depositions of Victoria and Charles Yeager. § 1920(2)  
4 allows for recovery of “[f]ees for printed or electronically  
5 recorded transcripts necessarily obtained for use in the case.”  
6 Yeager objects to defendants’ use of both stenographic  
7 transcripts and video transcripts, arguing that defendants have  
8 not shown why the use of both mediums was necessary. Courts have  
9 awarded costs for both a videotaped and stenographic transcript  
10 of a deposition when both were reasonably necessary for the  
11 litigation. See Tilton v. Capital Cities/ABC, Inc., 115 F.3d  
12 1471, 1478 (10th Cir. 1997); Morrison v. Reichhold Chemicals,  
13 Inc., 97 F.3d 460, 464-65 (11th Cir. 1996); Beamon v. Marshall &  
14 Ilisley Trust Co., 411 F.3d 854, 864 (7th Cir. 2005); BDT Prods.,  
15 Inc. v. Lexmark Int’l, Inc., 405 F.3d 415, 419-20 (6th Cir.  
16 2005); Cherry v. Champion Int’l Corp., 186 F.3d 442, 449 (4th  
17 Cir. 1999).

18 Defendants contend that the videotaped depositions were  
19 necessary because the Yeagers were crucial witnesses who would  
20 need to be impeached at trial and there was concern that Yeager  
21 would be unable to testify at trial due to his advanced age.  
22 (Defs.’ Response 4:10-15.) This rationale fails to explain why  
23 both a videotaped and printed transcript were necessary, since a  
24 printed transcript alone could easily have been used to impeach  
25 the Yeagers and substitute for any inability of Yeager to  
26 testify. Something more beyond “convenience or duplication to  
27 ensure alternative methods of presenting materials at trial” is  
28 needed to tax costs for both a printed and videotaped deposition

1 transcript. Cherry, 186 F.3d at 449. Accordingly, the court  
2 will disallow the video recording costs.

3 III. Fees for Exemplification and Copies

4 Defendants claim \$1,890.82 in costs for copying and  
5 exemplification of papers. Yeager objects to these costs on the  
6 grounds that: (1) defendants provide no facts that the costs were  
7 necessarily obtained for use in the case, (2) costs for  
8 duplication of defendants' discovery documents were made out of  
9 convenience, not necessity, and (3) copying of documents from the  
10 Wild, Carter, & Tipton v. Yeager and Yeager v. Munger actions was  
11 unnecessary.

12 A. Necessarily Obtained for Use in the Case

13 Defendants presented a detailed bill of costs that  
14 indicated the date each copy was made and a description of the  
15 items copied. Many of these documents were used in defendants'  
16 motion for summary judgment, or at the very least in preparation  
17 for the motion. The court will not deny defendants' copying  
18 costs on the basis of this overarching objection. Defendants  
19 have, for the most part, presented standard copying costs  
20 necessary for trial. See Haagen-Dazs Co., Inc. v. Double Rainbow  
21 Gourmet Ice Creams, Inc., 920 F.2d 587, 588 (9th Cir. 1990).

22 B. Duplication of Defendants' Discovery Documents

23 Yeager objects to the \$170.63 cost for copying of  
24 defendants' discovery documents. "Recovery is allowed for costs  
25 of copies reasonably and necessarily procured in connection with  
26 discovery and use in presenting arguments and evidence to the  
27 Court, but not for in-house copying made for the convenience of  
28 counsel." Royal Specialty Underwriting v. Himax Furniture Indus.

1 Corp., No. 03-6586, 2005 U.S. Dist. LEXIS 28712, at \*16 (E.D.  
2 Cal. Nov. 17, 2005). It is not clear that defendants' copying of  
3 their own discovery documents was necessary for use in the case.  
4 While defendants contend that some of these copies were made  
5 pursuant to plaintiffs' requests and some were made in an effort  
6 to pursue informal resolution of the case, it is not clear which,  
7 if any, of these copies were made for the purpose of presenting  
8 any argument to the court or complying with discovery requests.  
9 Defendants' statement in their response does not persuade the  
10 court that these copies were made for anything but defendants'  
11 own convenience in communicating with plaintiffs' counsel.  
12 Accordingly, the court will disallow these costs.

13 C. Costs of Copies of the *Wild, Carter, & Tipton v. Yeager*  
14 and *Yeager v. Munger* Actions

15 Defendants acquired copies of documents from two  
16 previous court actions involving Charles Yeager. *Wild, Carter, &*  
17 *Tipton v. Yeager* was an attorney fee dispute and cross-claim for  
18 malpractice between Yeager and his former attorney, Robert  
19 Eliason. Defendants claim they obtained copies of documents  
20 related to this action in an effort to identify potential  
21 admissions of statute of limitations problems with their claims  
22 in this case by plaintiffs. In Yeager's malpractice claim in the  
23 *Wild, Carter, & Tipton* action, Yeager claimed that Eliason failed  
24 to timely file a number of lawsuits on his behalf, including an  
25 action against defendants for the claims underlying this case.  
26 Defendants used portions of these court documents in their motion  
27 for summary judgment to bolster their statute of limitations  
28 arguments. Accordingly, these documents were necessarily used in

1 this case and taxation of costs for the Wild, Carter, & Tipon  
2 copies will be allowed.

3 Yeager v. Munger was a state court action by Yeager in  
4 which he sued Munger for infringement of his right to publicity.  
5 Defendants claim that copies of documents from this case were  
6 "likely to be relevant to assessing the merits of [p]laintiffs'  
7 claims against [d]efendants in this case." (Defs.' Response  
8 6:23-24.) It is unclear to the court how this previous,  
9 unrelated lawsuit by Yeager was relevant or necessary to  
10 assessing the merits of an entirely different infringement claim.

11 Accordingly, the court will not allow defendants' costs of  
12 \$332.90 for copies of documents in the Munger case.

13 IV. Summary

14 After reviewing the bill, the court finds all other  
15 costs to be reasonable. In sum, the court allows:

16	Fees for Service:	\$	229.09
17	Fees of Court Reporters for Transcripts:		3,484.14
18	Fees for Witnesses:		113.70
19	Fees for Exemplification and Copies:		1,387.29
20			<hr/>
21	<b>Total</b>		<b>\$5,214.22</b>

22 Accordingly, the cost of **\$5,214.22** will be allowed.

23 IT IS SO ORDERED.

24 DATED: February 25, 2010

25 

26 WILLIAM B. SHUBB  
27 UNITED STATES DISTRICT JUDGE  
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