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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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12 JASON NIELSEN,

NO. CIV. 2:09-960 WBS KJN

13 Plaintiff,

ORDER RE: COSTS

14 v.

15 TROFHOLZ TECHNOLOGIES, INC., a
16 California Corporation, ANDREW
17 PARKER, an individual, BRENN
18 PEDONE, an individual, YVONNE
19 GLENN, an individual, TROY
20 GLENN, an individual and DOES
21 1-10, inclusive,

22 Defendants.
23 _____/

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25 On November 2, 2010, the court entered final judgment
26 in this case in favor of defendants. (Docket No. 63.)
27 Defendants submitted a cost bill totaling \$6,434.19 (Docket No.
28 64), to which plaintiff has objected in part. (Docket No. 65.)

Rule 54(d)(1) of the Federal Rules of Civil Procedure
and Local Rule 292 govern the taxation of costs to losing
parties, which are generally subject to limits set under 28

1 U.S.C. § 1920. See 28 U.S.C. § 1920 (enumerating taxable costs);
2 Fed. R. Civ. P. 54(d)(1) ("Unless a federal statute, these rules,
3 or a court order provides otherwise, costs--other than attorney's
4 fees--should be allowed to the prevailing party."); Local R.
5 292(f); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437,
6 441 (1987) (limiting taxable costs to those enumerated in §
7 1920).

8 The court exercises its discretion in determining
9 whether to allow certain costs. See Amarel v. Connell, 102 F.3d
10 1494, 1523 (9th Cir. 1996) (holding that the district court has
11 discretion to determine what constitutes a taxable cost within
12 the meaning of § 1920); Alflex Corp. v. Underwriters Labs., Inc.,
13 914 F.2d 175, 177 (9th Cir. 1990) (same). The losing party has
14 the burden of overcoming the presumption in favor of awarding
15 costs to the prevailing party. See Russian River Watershed Prot.
16 Comm. v. City of Santa Rosa, 142 F.3d 1136, 1144 (9th Cir. 1998)
17 (noting that the presumption "may only be overcome by pointing to
18 some impropriety on the part of the prevailing party"); Amarel,
19 102 F.3d at 1523; see also Local R. 292(d) ("If no objection is
20 filed, the Clerk shall proceed to tax and enter costs.").

21 Plaintiff does not dispute the costs related to the
22 transcripts of depositions of Troy Glenn, Brenna Pedone, Jon
23 Rauer, Luanne Kelshiemer, Yvonne Glenn, and Andrew Parker, and
24 the court finds those costs to be reasonable.¹ Defendants have
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27 ¹ While plaintiff characterizes the undisputed costs as
28 totaling \$2,522.09, the court, in reviewing defendants' attached
invoices, finds that they totaled \$2,621.70. (See Bill of Costs
(Docket No. 64) at 5-11.)

1 withdrawn their request the for cost of condensed transcripts²
2 and costs associated with the unsuccessful service on John Avila
3 for \$520.05. The costs that remain disputed are the video
4 recording of plaintiff's deposition, the stenographic transcript
5 of plaintiff's deposition, shipping fees associated with the
6 other depositions, and witness fees for plaintiff's doctors.

7 Defendants claim \$1,082.00 in costs for video recording
8 of plaintiff's deposition. Section 1920(2) allows for recovery
9 of "[f]ees for printed or electronically recorded transcripts
10 necessarily obtained for use in the case." 28 U.S.C. § 1920(2).
11 Plaintiff objects to defendants' use of both stenographic
12 transcripts and video transcripts, arguing that defendants have
13 not shown why the use of both mediums was necessary. Courts have
14 awarded costs for both a videotaped and stenographic transcript
15 of a deposition when both were reasonably necessary for the
16 litigation. See Beamon v. Marshall & Ilsley Trust Co., 411 F.3d
17 854, 864 (7th Cir. 2005); BDT Prods., Inc. v. Lexmark Int'l,
18 Inc., 405 F.3d 415, 419-20 (6th Cir. 2005); Tilton v. Capital
19 Cities/ABC, Inc., 115 F.3d 1471, 1478 (10th Cir. 1997); Morrison
20 v. Reichhold Chems., Inc., 97 F.3d 460, 464-65 (11th Cir. 1996).

21 Defendants contend that the videotaped depositions were
22 necessary because plaintiff was a crucial witness who would need
23 to be impeached at trial. (Defs.' Reply in Supp. of Bill of
24 Costs at 4:5-7.) This rationale fails to explain why both a
25 videotaped and printed transcript were necessary, since a printed
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27 ² Defendants mistakenly state that condensed transcripts
28 cost only \$90.00, but they in fact cost \$105.00. (See Bill of
Costs (Docket No. 64) at 5-11.)

1 transcript alone could easily have been used to impeach
2 plaintiff. Something beyond "convenience or duplication to
3 ensure alternative methods for presenting materials at trial" is
4 needed to tax costs for both a printed and videotaped deposition
5 transcript. Cherry v. Champion Int'l Corp., 186 F.3d 442, 449
6 (4th Cir. 1999). Accordingly, the court will disallow the video
7 recording costs.

8 Defendants also seek to recover costs for the
9 transcript and one copy of plaintiff's deposition for \$1,816.55.
10 The court finds that this cost is reasonably necessary and will
11 allow it. See Alflex Corp., 914 F.2d at 177.

12 The court will allow shipping costs related to the
13 transcripts, as they are associated with court reporters' fees
14 and were necessarily incurred in order to obtain the transcripts.
15 See Local R. 292(f)(3), (5).

16 Finally, the court will allow the witness fees.
17 Plaintiff identified the three doctors as his medical care
18 providers, and it was reasonable for defendants to obtain their
19 records. (Defs.' Reply in Supp. of Bill of Costs at 5:15-19.)

20 After reviewing the bill, the court finds the following
21 costs to be reasonable:

22 Fees of Court Reporters for Transcripts:	\$2,621.70
23 Nielsen Stenographic Deposition:	\$1,816.55
24 Shipping Costs:	\$122.50
25 Fees for Witnesses:	\$164.00
26 Total	\$4,724.75

27 Accordingly, the cost of **\$4,724.75** will be allowed.

28 IT IS SO ORDERED.

1 DATED: December 8, 2010

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4 WILLIAM B. SHUBB

5 UNITED STATES DISTRICT JUDGE
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