UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	
v.	)	**C.A. No. 08-cv-0827 GBL-JFA**
CACI PREMIER TECHNOLOGY, INC.,	)	
Defendant	)	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' BILL OF COSTS

Defendants, CACI International, Inc. and CACI Premier Technology, Inc. ("CACI"), who together make up a multibillion dollar corporate enterprise, seek to collect costs against four individual Iraqi torture and abuse victims, following this Court's dismissal on jurisdictional and choice-of-law grounds. CACI's application should be denied.

First, CACI's application is far out of time. This District's local rules require a party to file a bill of costs within 11 days of the entry of a judgment. Defendants filed their bill of costs more than a month following the Court's June 25, 2013 Order dismissing the remainder of Plaintiffs' claims (the "Final Order") and the Clerk's closing of the case – and even after the Plaintiffs' Notice of Appeal was docketed with the Fourth Circuit Court of Appeals (appeal no. 13-1937). Defendants claim that, despite the plain finality of this Court's June 25th Final Order, the Clerk did not yet enter a separate "entry of judgment" in the case, such that their application is not time barred. If Defendants' interpretation of the Rules were accurate (which it is not, *see infra*) Defendants' application would be subject to denial as premature.

Should the Court consider the merits of Defendants' application, it should deny an award of costs to Defendants as unjust in light of the particular circumstances in this case. On the one hand, Plaintiffs have very limited financial means, even by non-U.S. standards, and dramatically so when compared to the corporate defendants in this case. At the same time, Plaintiffs' serious claims of torture, cruel, inhuman and degrading treatment, and war crimes were dismissed on very close, difficult – and only recently arguable – grounds. The law authorizes denial of costs under these circumstances.

Further, should the Court decide to assess the merits of Defendants' bill of costs now, it will find that many of the costs for which Defendants seek recovery are precluded by 28 U.S.C. § 1920 and this District's guidelines on taxable costs.

PROCEDURAL BACKGROUND

In 2008, Plaintiffs, four Iraqis who were detained in Abu Ghraib brought suit against CACI International, Inc. and CACI Premier Technology, Inc. for the role their interrogators played in the war crimes, torture, and cruel, inhuman and degrading treatment Plaintiffs suffered at the prison. After nearly five years of litigation,[1] on June 25, 2013, the Court dismissed their claims brought under the Alien Tort Statute on jurisdictional grounds. Dkt. 460. That decision followed the Court's reinstatement of Plaintiffs' ATS claims on November 1, 2012. Dkt. 159. The Court also dismissed, in the same order, Plaintiff Al Shimari's state law claims, finding that Iraqi law applied to his claim and that, under Iraqi law, Defendant CACI Premier Technology, Inc. had immunity. Dkt. 460. The Court had also previously dismissed Plaintiffs Al-Zuba'e,

[1] Proceedings in this Court were delayed by CACI's premature appeal of the Court's 2009 decision denying, in part, its motion to dismiss, dkt .94. *See Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205 (4th Cir. 2012) (en banc).

Rashid, and Al Ejaili's state law claims on the grounds that they were untimely, dkt. 226, and all claims against CACI International, Inc., dkt. 215.

Accordingly, the Court's June 25th Final Order fully dismissed and disposed of any and all of the claims remaining in the case. On this basis, Plaintiffs timely filed a notice of appeal on July 24, 2013. Dkt. 461. The Court of Appeals docketed the case on July 26, 2013, without demanding a separate entry of judgment by the Clerk. Suhail Al Shimari v. CACI Premier Technology, Inc., 13-1937 (4th Cir. *appeal docketed* July 26, 2013). On July 31, 2013, Defendants filed a bill of costs, dkt. 464, which Plaintiffs now oppose.

ARGUMENT

A. Defendants' Bill of Costs Is Out of Time

Under Local Rule 54(D), "The party entitled to costs shall file a bill of costs as provided in 28 U.S.C. §§ 1920 and 1924 within eleven (11) days from the entry of judgment, unless such time is extended by order of the Court." Local Rule 54(D). The Court's order of dismissal was signed on June 25, 2013. Dkt. 460. On that date, the Clerk closed the case. *See* Declaration of Baher Azmy, Esq., dated August 12, 2013 ("Azmy Decl.") Exh. A at 1 (listing as date case terminated June 25, 2013). Thus, Defendants' bill of costs was due no later than July 8, 2013. Plaintiffs filed their Notice of Appeal on July 24, 2013, and the Court of Appeals docketed the appeal on July 26, 2013. Without seeking a Court-ordered extension, Defendants filed their bill of costs on July 31, 2013 – 23 days late. Dkt. 464. As such, the application is untimely and should be dismissed on that basis.

Defendants appear to believe that their obligation to file a bill of costs is not triggered until the Clerk enters a separate paper judgment in the case. Koegel Decl. ¶ 2.[2] Yet, under this view, Defendants' filing of a bill of costs would be defective,[3] because the Clerk has not issued any such separate judgment. In any event, Defendants' view is incorrect. While the Clerk did not enter a separate judgment in this case, "Rule 54(a) contemplates that court orders serve as judgments, and neither Rule 54 nor Rule 58 requires such an order to be in a specific format." *Hamilton Beach Brands, Inc. v. Sunbeam Prods.*, Action No. 3:11-CV-345, 2012 U.S. Dist. LEXIS 161317, at *6 (E.D.Va. Nov. 9, 2012). The Court's June 25th Final Order contains "the 'essentials of the judgment.'" *Id*. (quoting *Hughes v. Halifax County School Board*, 823 F.2d 832, 835 (4th Cir. 1987)). While the Fourth Circuit generally contemplates that the order "be separate from the court's opinion or memorandum," *id*., this requirement is not mandated given other factors demonstrating finality, *Hughes*, 823 F.2d at 835-36. "[W]hen a district court

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[2] In fact, it appears that Defendants simply were not aware of the local rule governing the time requirements for filing. On July 19, 2013, counsel for Defendants wrote to Plaintiffs' counsel seeking to meet and confer on the appropriateness of a variety of costs Defendants indicated they would claim in a bill of costs. *See* Azmy Decl. Exh. B. In that correspondence, Defendants' counsel attached a proposed declaration in support of the bill of costs that made no attempt to connect the timing of the proposed filing to a separate judgment entered by the Clerk. *Id*. at ¶ 2. Only after Plaintiffs' counsel pointed out that Defendants were out of time under the Local Rules, did Defendants shift course and adopt the view that a separate entry of judgment, rather than the Court's Final Order triggers the obligation to file. *Compare id*. at ¶ 2 (Defendants' proposed filing: "As reflected in this Court's Order [Dkt. #460], issued on June 25, 2013, Defendant CACI PT prevailed against Plaintiffs in this proceeding.") *with* Koegel Decl. at ¶ 2 (Defendants' actual filing: "As reflected in this Court's Order [Dkt. #460], issued on June 25, 2013, Defendant CACI PT prevailed against Plaintiffs in this proceeding. *The Clerk has not yet entered judgment in this case.*") (emphasis added)).

[3] The only way the Court could view Defendants' bill of costs as timely filed is if the Court does not view its June 25th Final Order as a final entry of judgment. If that is the case, Defendants' bill of costs would be premature as costs can only be taxed when there is a judgment. Local Rule 54(D). Defendants would have to separately move this Court to enter a final judgment, and the Court would have to do so, before they may file a bill of costs.

intends a judgment to be final, and simply fails to create a separate document setting forth that judgment, a party can rely on the intent of the court to make the judgment final." *Srinivasan v. Snow*, 211 Fed. Appx. 186, 189 (4th Cir. 2006).[4]

Here, the Court's June 25th Order clearly terminated the case. No claims remain in the case. The Court followed its Memorandum Opinion with a separately designated "ORDER" succinctly stating its ruling on each of the remaining motions in the case. Dkt. 460 at 29-30. Based on this separately stated disposition, there could be no ambiguity that no claims remained in the case and that the order was final. Accordingly, the Clerk recorded on the docket that the case was closed on the date the order was entered. Azmy Dec. Exh. A at 1. *See Hummer v. Dalton*, 657 F.2d 621, 624 (4th Cir. 1981) ("The decisions of the district court in this case were plainly intended to be 'final decisions in the case,' were duly recorded on the 'Clerk's docket,' and were understood and accepted by the plaintiff as final for purposes of appeal.").

Based on plain finality of the Court's Final Order, Plaintiffs filed a notice of appeal within 30 days, as mandated by Federal Rule of Appellate Procedure 4(a)(1)(A). *See Martone v. Connecticut General Life Ins. Co.*, No. 92-1336, 1992 U.S. App. LEXIS 33557, at *4 n.2 (4th Cir. 1992) (separate document requirement waived where the plaintiff filed a timely appeal and "the district court clearly evidenced its intent that its order would represent the final decision"). Further, the Court of Appeals docketed Plaintiffs' appeal. Suhail Al Shimari v. CACI Premier Technology, Inc., 13-1937 (4th Cir. *appeal docketed* July 26, 2013).

[4] Indeed, the Federal Appellate Rules expressly contemplate that the time limit to file a Notice of Appeal is triggered by a final order, and does not necessarily depend on entry of a final judgment. *See* Fed. R. App. P. 4(a)(1)(A) ("In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.").

Given that this Court's Final Order is sufficiently conclusive to trigger an appeal, even absent a separate entry of judgment by the Clerk, *see* Fed. R. App. P. 4(a)(7)(B), it would make little sense for this Court to treat the June 25th Final Order differently. Likewise, a determination by this Court that a separate judgment should be entered many weeks after a plainly final order was issued and a case closed by the Clerk would also likely sow confusion in future cases, making unclear for future litigants whether or when to file appeal notices or bills of costs.

B. The Court Should Exercise Its Discretion to Deny Defendants' Bill of Costs to Avoid Injustice

Should the Court evaluate the application on the merits, the Court should deny it. The Court "has the discretion to deny an award of costs," where "there would be an element of injustice in a presumptive cost award." *Ellis v. Grant Thornton LLP*, 434 Fed. Appx. 232, 235 (4th Cir. 2011). In exercising this discretion, courts generally consider five factors: "(1) misconduct by the prevailing party; (2) the unsuccessful party's inability to pay the costs; (3) the excessiveness of the costs in a particular case; (4) the limited value of the prevailing party's victory; or (5) the closeness and difficulty of the issues decided." *Id*. The second and fifth factors weigh heavily towards the denial of Defendants' bill of costs under the circumstances of this case. *See Levy v. Lexington County*, C/A No. 3:03-3093-MBS, 2012 U.S. Dist. LEXIS 180782, at *7-9 (D.S.C. Dec. 20, 2012) (denying defendants' bill of costs where "the issues were close and difficult," the claims were "of paramount importance, and the court is of the opinion that Plaintiffs were sincere in advancing the within litigation," and "Plaintiffs contend that they are of modest means").

First, Plaintiffs would be financially unable to pay the costs itemized by Defendants. Three of the Plaintiffs live in the outlying villages of Baghdad, Iraq. Iraqi government officials

estimated in 2012 that the average income in Iraq was $4,000 a year, or approximately $333 per month.[5] Plaintiff Al-Shimari is a schoolteacher who earns a modest income of approximately $500 per month. Plaintiffs Al-Zuba'e and Rashid are self-employed, as a livestock trader and construction worker, respectively, earning inconsistent and unreliable incomes, amounting to around $200 to $300 in good months and even less in slower months. In pursuing this litigation to seek justice for the torture and grave mistreatment they suffered, all four Plaintiffs lost income during trips to Erbil (Northern Iraq) and Turkey to meet with their attorneys. Additionally, Plaintiff Al-Ejaili incurred costs when taking unpaid time off from work to travel to the United States to attend a deposition and medical exam conducted by Defendants. *See Musick v. Dorel Juvenile Group, Inc.*, Case No. 1:11CV00005, 2012 U.S. Dist. LEXIS 17734, at *3-4 (W.D. Va. Feb. 13, 2012) (denying award of costs where plaintiff had a "modest income" and the issues in the case were "close and difficult").

Second, the issues in the case "were close and difficult." *Ellis*, 434 F. App'x at 235 (holding that the district court did not abuse its discretion by refusing to award costs to the prevailing defendant, on the basis of plaintiff's inability to pay, where the issues in the case were "close and difficult"). The question resulting in the dismissal of the Plaintiffs' ATS claims could not have been anticipated by the parties or this Court. After all, the question was so novel that it was raised *sua sponte* by the U.S. Supreme Court. *Kiobel v. Royal Dutch Petroleum Co.*, 132 S.Ct. 1738 (2012) ("Parties are directed to file supplemental briefs addressing the following question: 'Whether and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1350,

[5] "Minister of Planning: Average Individual Annual Income Increases by $100 to $4,000" DinarVets.com (June 21, 2012) *at* http://dinarvets.com/forums/index.php?/topic/120816-minister-of-planning-average-annual-per-capita-income-in-iraq-rose-from-100-to-4-thousand-dollars/ (English) (accessed Aug. 12, 2013).

allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.'"). Before the Supreme Court's decision was handed down on April 17, 2013 – more than four and half years after the Plaintiffs filed the present litigation – the Supreme Court had never questioned the extraterritorial reach of the ATS as a general matter. *See Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (citing with approval a number of lower court cases where the conduct at issue occurred in foreign territory, including exclusively in foreign territory);[6] *Samantar v. Yousuf*, 130 S.Ct. 2278 (2010) (ATS claim brought by Somali plaintiffs against a former Somali government official residing in the United States for his conduct in Somalia not foreclosed by extraterritoriality).

Additionally, every federal circuit court to address the issue until the Supreme Court's decision on April 17 had held the statute to apply extraterritorially, without qualification or limitation. *See Flomo v. Firestone Nat. Rubber Co., LLC*, 643 F.3d 1013, 1025 (7th Cir. 2011) ("no court to our knowledge has ever held that [ATS] doesn't apply extraterritorially"); *see also*, *e.g.*, *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 24-26 (D.C. Cir. 2011). In fact, this Court reinstated the Plaintiffs' ATS claims on November 1, 2012, while the decision on the question of extraterritoriality was pending in *Kiobel*. Dkt. 159. *Compare Liberty Mut. Fire Ins. Co. v. J.T. Walker Indus.*, Civil Action No. 2:08-2043-MBS, 2012 U.S. Dist. LEXIS 141200 (D.S.C. Sept. 28, 2012) (denying award of costs due to the "closeness and difficulty of the issues decided in this case," and an issue was certified to the South Carolina Supreme Court).

Although dismissing the present action in light of *Kiobel,* this Court nonetheless acknowledged that, "[a]dmittedly, Plaintiffs' reading of *Kiobel* is a fair one." *See* dkt. 460 at 18

[6] The Seventh Circuit later observed that "*Sosa* was a case of nonmaritime extraterritorial conduct yet no Justice suggested that therefore it couldn't be maintained." *Flomo*, 643 F.3d at 1025.

And, this Court's June 25th opinion represented one of the first decisions interpreting the Supreme Court's newly-created presumption against extraterritorial application of the ATS. Indeed, there was no clear law of the case for any of the issues that resulted in the dismissal of Plaintiffs' claims. *Musick*, 2012 U.S. Dist. LEXIS 17734, at *3-4 ("A case's closeness is judged not by whether one party clearly prevails over another, but by the refinement of perception required to recognize, sift through and organize relevant evidence, and by *the difficulty of discerning the law of the case*.") (internal quotations omitted) (emphasis added); *accord Liberty Mut. Fire*, at *11. For example, the Court initially determined in 2009 that Plaintiffs Al-Zuba'e, Rashid, and Al Ejaili's state law claims were not time-barred, dkt. 76, but then held that they were so barred in 2013, dkt. 226. Likewise, the Court first held that the conspiracy allegations against Defendants were sufficiently pleaded, dkt. 94 at 65-68, but then held that they were not, dkt. 215.

In sum, where Plaintiffs of modest means presented claims of war crimes, torture, and cruel, inhuman and degrading treatment in the context of the notorious and universally condemned Abu Ghraib scandal (grounded in part on U.S. military reports implicating Defendants), and saw them dismissed on close and difficult questions of law, awarding costs from these Plaintiffs to CACI, a multibillion dollar corporation, would be unjust. *See Levy*, 2012 U.S. Dist. LEXIS 180782, at *7-9.[7]

[7] At minimum, the Court should defer assessment of costs until the appellate process has been completed. *See* 1993 Advisory Committee notes to Fed. R. Civ. P. 54(d) ("[i]f an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved."); *Dunklin v. Mallinger*, Case No. 11-cv-01275-JCS, 2013 U.S. Dist. LEXIS 85340, at *3 (N.D. Cal. June 17, 2013) (Advisory Committee's notes on attorneys' fees applies equally to considerations of bill of costs). Given the parties' comparative financial status, Defendants would suffer no prejudice from such a process. *See Dunklin*, at *3-4. *See also*, *e.g.*, *Kiska Constr. Corp.-USA v. Wash. Metro. Area Transit*

C. The Costs Defendant May Recoup Are Limited

The prevailing party "bears the burden of showing that the requested costs are allowable under [28 U.S.C.] § 1920." *Nobel Biocare USA, LLC v. Technique D'Usinage Sinlab Inc.*, 1:12cv730 (LMB/TCB), 2013 U.S. Dist. LEXIS 30851, at *2 (E.D. Va. Mar. 4, 2013) (internal quotations omitted). Defendants failed to meet this burden for many of their itemized costs. For the below reasons, $10,027.33 of their petition for costs are not recoverable.

1. Fees for *pro hac vice* admissions

Defendants seek to recover $600.00 in costs for the fees it incurred for counsels' *pro hace vice* admissions to the Southern District of Ohio and this Court. Koegel Decl. ¶ 4. However, "[t]he *pro hac vice* fee is an expense of counsel, not the client, and is thus not recoverable." *Schmitz-Werke GMBH & Co. v. Rockland Indus.*, 271 F. Supp. 2d 734, 735 (D. Md. 2003). They are not included in the list of taxable costs for this category in this District's guidelines. *See* Taxation of Costs Guidelines at 1, *published at* http://www.vaed.uscourts.gov/formsandfees/documents/TaxationofCostsGuidelines1-28-11.pdf (hereinafter E.D. Va. Guidelines).

Even if the Court were to consider such fees recoverable, they would have to be limited to lead counsel. *See*, *e.g.*, *Nobel Biocare*, 2013 U.S. Dist. LEXIS 30851, at *4-5. Thus, however the Court interprets "fees of the clerk" under 28 U.S.C. § 1920, it could not interpret it to include the *pro hac vice* admission fees ($75.00 each) for Linda Ellen Caisley Bailey and David Michael Crane. Koegel Decl. Ex. A at A-4, A-5.

Authority, Civil Action No. 97-2677 (CKK/JMF), 2002 U.S. Dist. LEXIS 4116, at *3 (D.D.C. Mar. 11, 2002).

2. Costs incident to depositions necessary for trial

Defendants seek to recover $9,720.47 in costs they incurred incident to depositions necessary for trial preparation. 28 U.S.C. § 1920 allows recovery for "[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case." This District's guidelines include in this category "costs incident to taking depositions…reasonably necessary for preparation for trial or admitted into evidence." E.D. Va. Guidelines at 5. As a general matter, none of the depositions conducted in this litigation were "necessary," as the Court was able to decide the case on the pleadings – every claim was dismissed under Fed. R. Civ. P. 12(b)(6) or 12(b)(1).[8] Thus, Defendants may not recover any costs incurred incident to the depositions in this case.

If such costs are recoverable here, many of the costs itemized by Defendants would nonetheless not be taxable. First, the District's guidelines make clear that the use of private process servers is not taxable. *See* E.D. Va. Guidelines at 2. Accordingly, the $240.00 incurred to serve witness Carolyn A. Wood via Capitol Process Services, Inc., *see* Koegel Decl. Ex. B at B-9, are not recoverable. *See United States v. U.S. Training Ctr., Inc.*, 829 F. Supp. 2d 329, 331-332 (E.D. Va. Dec. 8, 2011) (denying request for service expenses in its entirety, where defendant used Capitol Process Services, Inc., "[b]ecause it is the general policy in this district to allow reimbursement for service costs only when service is performed by the United States Marshal's Service, rather than by private process servers").

Second, Defendants seek to recover $2,106.25 for costs incurred beyond the costs of certified deposition transcripts, including ASCII files, minuscripts, rough transcripts, and

[8] The only question that was decided on summary judgment was whether Plaintiff Al-Zuba'e, Rashid, and Al Ejaili's claims were time-barred, dkt. 226, which did not require any depositions.

exhibits. Courts have denied such requests, *Ferris v. AAF-McQuay, Inc.*, No. 5:06cv82, 2008 U.S. Dist. LEXIS 13591, at *4 n.3 (W.D. Va. Feb. 21, 2008) ("[T]he prevailing party may not tax as costs certain expenses associated with the depositions in this case beyond the cost of the actual transcript itself, such as costs for condensed versions of the transcripts, word indices, ASCII discs, e-transcripts, exhibit copying, and delivery charges.") (internal quotations omitted), as they "are solely for the convenience of attorneys," *Ortho-McNeil Pharm., Inc. v. Mylan Labs. Inc.*, No. 1:02cv32, 2008 U.S. Dist. LEXIS 112147, at *15 (N.D.W.V. Aug. 18, 2008), *aff'd in part, vacated in part on other grounds*, 569 F.3d 1353 (Fed. Cir. 2009); *accord U.S. Training Ctr.*, 829 F. Supp. 2d at 339. Thus, the costs recoverable by Defendants for deposition transcripts must be reduced by at least $2,106.25.

Finally, "[t]axing fees for the expedited production of transcripts is 'not allowed absent a showing of necessity.'" *Nobel Biocare*, 2013 U.S. Dist. LEXIS 30851, at *5 (quoting *Ferris*, 2008 U.S. Dist. LEXIS 13591, at *1). *See also Nigro v. Va. Commonwealth Univ. Med. College of Va.*, Civil Action No. 5:09-cv-00064, 2012 U.S. Dist. LEXIS 156184, at *6 (W.D. Va. Oct. 31, 2012) ("'Courts in the Fourth Circuit have held that costs for expedited production are allowable when the recovering party can show necessity for the expedited service.'") (quoting *Ford v. Zalco Realty, Inc.*, 708 F. Supp.2d 558, 562 (E.D. Va. 2010)). Defendants seek $2,098.20 for an expedited deposition transcript for Ivan Lowell Frederick, II, which was conducted on March 3, 2012. Koegel Decl. Ex. B at B-1. As the dispositive motion deadline was then scheduled for May 17, 2013, dkt. 160, Defendants cannot justify seeking costs incurred for the expedited transcript for this deposition. *Compare Synergistic Int'l, L.L.C. v. Korman*, Civil No. 2:05cv49, 2007 U.S. Dist. LEXIS 9798, at *7-9 (E.D. Va. Feb. 8, 2007) (sustaining defendant's objection to costs related to the expedited preparation of the transcripts where deposition was

taken on June 29, 2005 and summary judgment motion was not until August 15, 2005) *with Nigro*, 2012 U.S. Dist. LEXIS 156184, at *6-7 (allowing costs where depositions were conducted two weeks before dispositive motion deadline).

Similarly, Defendants seek to recover $892.70 in costs for the "3 business day delivery" of the transcript of Plaintiff Al-Ejaili's deposition. Koegel Decl. Ex. B at B-8. However, the District's guidelines only allow for "reasonable delivery fees." E.D. Va. Guidelines at 5. Given that Plaintiff Al-Ejaili's deposition was conducted on March 6, 2013, Koegel Decl. Ex. B at B-8, and dispositive motions were not due until May 17, a "3 business day delivery" of this transcript was not necessary.

3. Fees incurred in obtaining court hearing transcripts

Defendants further seek $636.10 for the costs incurred in obtaining court hearing transcripts. Koegel Decl. ¶ 6. The District's guidelines only permit costs for court hearing transcripts in two situations: (a) "when prepared pursuant to stipulation of parties with agreement to tax as costs," and (b) "when used on appeal." E.D. Va. Guidelines at 2. Defendants cannot show (a), as there was no such stipulation between the parties, and Defendants have failed to show (b). Thus, these costs should be denied.

4. Fees for interpreters

Finally, Defendants seek $3,454.08 for engaging interpreters in this litigation. Koegel Decl. ¶ 10. Of this, Defendants seek $1,354.08 for the use of an interpreter in the deposition they conducted of Plaintiff Al-Ejaili. Koegel Decl. Ex. F at F-2. However, "[w]hen a party requests an interpreter for a deposition, the cost for the service is borne by the party seeking the deposition." *Dahn World Co. v. Eun Hee Chung*, Civil Action No. RWT 06-2170, 2009 U.S. Dist. LEXIS 9802, at *7 (D. Md. Feb. 5, 2009). Thus, Defendants may not recover this cost.

Defendants also seek $980.00 in interpreter fees for the medical examination of Plaintiff Al-Ejaili and $1,120 for the late fee cancellation for an interpreter for the medical examination of Plaintiff Rashid. Koegel Decl. Ex. F at F-1, F-3. However, medical examinations are not taxable under 28 U.S.C. § 1920. *See Jensen v. Lawler*, 338 F. Supp. 2d 739, 748 (S.D. Tex. 2004) (denying recovery for the cost of the independent medical examination as not permissible under § 1920); *Turpin v. Marriott Corp.*, CIVIL ACTION No. 92-4567, 1994 U.S. Dist. LEXIS 14311, at *6 (E.D. Pa. Oct. 6, 1994) (while witness fees for doctor's testimony at trial may be recoverable, a defendant "may not recover for the medical exam of plaintiff," as "such consultation is precluded by § 1920"). By extension, the $980.00 in costs incurred in using an interpreter to conduct the medical examination cannot be taxable either.

In sum, the following costs are not taxable:

Pro hac vice admission fees:	$ 600.00
Costs incident to depositions:	$ 5,337.15
Court hearing transcript fees:	$ 636.10
Interpreter fees:	$ 3,454.08
Total	$10,027.33

CONCLUSION

For the foregoing reasons, Defendants' bill of costs should be denied in its entirety.

Date: August 12, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, I electronically filed the Plaintiffs' OPPOSITION TO DEFENDANTS' BILL OF COSTS through the CM/ECF system, which sends notification to counsel for Defendants.

/s/ George Brent Mickum
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