

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA
ex rel. John King and Jane Doe, et al.,

Plaintiffs,

v.

SOLVAY S.A., et al.,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:06-cv-02662

**DECLARATION OF BRUCE D. OAKLEY
IN SUPPORT OF SOLVAY PHARMACEUTICALS, INC.'S BILL OF COSTS**

I, Bruce Oakley, declare as follows:

1. I am over the age of 18 and a resident of Texas. I am admitted to practice in this Court and am a partner at Hogan Lovells US LLP (“Hogan Lovells”). I have served as attorney-in-charge for Defendant Solvay Pharmaceuticals, Inc. (“SPI”)¹ in this matter. I submit this declaration in support of SPI’s Bill of Costs for \$961,380.51, filed herewith.

2. Based on the work that I have performed on behalf of SPI and my review of the invoices and other business records maintained by Hogan Lovells related to this case, I am knowledgeable regarding the costs that SPI has incurred during its defense of this case. The statements contained in this Declaration are based upon my own personal knowledge or are based upon my review of invoices or business records maintained at my general direction as a partner in Hogan Lovells. The amounts claimed on the Bill of Costs reflect amounts paid for services actually and necessarily performed and the applicable taxes thereto. Where appropriate, SPI does not seek to tax costs for all amounts reflected on invoices attached to this Declaration. The invoices reflect that SPI has incurred approximately \$2,228,248.29 in non-expert vendor or other third-party

¹ SPI is now known as AbbVie Products, LLC.

costs for services undertaken in the defense of this case; thus, SPI is seeking to tax only approximately 43% of this amount.

3. The costs set out in SPI's Bill of Costs filed in this matter are true and correct.

I. FEES OF THE CLERK AND MARSHAL

4. SPI is not seeking to tax any costs for fees of the clerk and marshal.

II. FEES FOR PRINTED OR ELECTRONICALLY RECORDED TRANSCRIPTS

A. Hearing Transcripts (\$533.05)

Transcripts	Cost	Source
February 17, 2010 Conference Hearing before Judge Gray H. Miller	\$170.00	Ex. 1 at 1-4
May 2, 2013 Discovery Hearing before Judge Nancy K. Johnson	\$119.00	Ex. 1 at 5-8
April 3, 2014 Motion Hearing before Judge Gray H. Miller	\$98.55	Ex. 1 at 9-10
October 7, 2014 Discovery Hearing before Judge Nancy K. Johnson	\$145.50	Ex. 1 at 11-13

B. Deposition Transcripts (\$52,734.59)

Transcripts	Cost	Source
S. Bhasin Deposition	\$1,050.14	Ex. 2 at 1
J. Blok Deposition	\$475.80	Ex. 2 at 3
R. Brady Deposition	\$836.92	Ex. 2 at 5
K. Carlisle Deposition	\$ 968.85	Ex. 2 at 7
J. Cohn Deposition	\$1,927.25	Ex. 2 at 9
S. Corson Deposition	\$1,887.88	Ex. 2 at 11
T. Drummond Deposition Day 1	\$1,849.95	Ex. 2 at 13
T. Drummond Deposition Day 2	\$1,434.80	Ex. 2 at 15
S. Fadem Deposition	\$3,343.24	Ex. 2 at 17
A. Friede Deposition	\$4,351.50	Ex. 2 at 19
T. Garcia-Gannon Deposition	\$810.25	Ex. 2 at 21
F. Gelsey Deposition	\$686.75	Ex. 2 at 24

J. Glenmullen Deposition	\$1,788.11	Ex. 2 at 26
D. Gobat Deposition	\$1,305.88	Ex. 2 at 28
T. Hatke Deposition	\$1,301.25	Ex. 2 at 30
E. Hollander Deposition Day 1	\$1,142.30	Ex. 2 at 32
E. Hollander Deposition Day 2	\$2,069.59	Ex. 2 at 34
J. Hynd Deposition Part 1	\$1,076.08	Ex. 2 at 36
J. Hynd Deposition Part 2	\$1,073.53	Ex. 2 at 37
J. Hynd Deposition Part 3	\$1,333.06	Ex. 2 at 38
S. Jennings Deposition	\$1,392.42	Ex. 2 at 42
J. King Deposition Day 1	\$1,517.40	Ex. 2 at 44
J. King Deposition Day 2	\$2,057.65	Ex. 2 at 46
S. LaClaire Deposition	\$706.35	Ex. 2 at 48
H. Lagast Deposition	\$1,107.70	Ex. 2 at 50
L. Lipshultz Deposition	\$733.19	Ex. 2 at 52
K. Minne Deposition	\$913.15	Ex. 2 at 54
J. Morley Deposition	\$1,256.85	Ex. 2 at 56
R. Mortimer Deposition	\$1,445.66	Ex. 2 at 58
T. Mullins Deposition	\$324.90	Ex. 2 at 60
T. Pigott Deposition	\$932.15	Ex. 2 at 62
J. Redmond Deposition	\$1,039.70	Ex. 2 at 64
M. Rosenthal Deposition	\$1,848.75	Ex. 2 at 66
C. Saigal Deposition	\$2,251.82	Ex. 2 at 68
E. Schutter Deposition	\$1,630.55	Ex. 2 at 70
C. Townsend Deposition	\$831.50	Ex. 2 at 72
R. van der hoop Deposition	\$2,031.72	Ex. 2 at 74

C. Deposition Videotape Recording Fees (\$47,423.83)

Transcripts	Cost	Source
S. Bhasin Video	\$1,049.40	Ex. 2 at 2
J. Blok Video	\$644.75	Ex. 2 at 4
R. Brady Video	\$639.45	Ex. 2 at 6
K. Carlisle Video	\$300.00	Ex. 2 at 8
J. Cohn Video	\$990.00	Ex. 2 at 10
S. Corson Video	\$1,224.30	Ex. 2 at 12
T. Drummond Video Day 1	\$1,425.00	Ex. 2 at 14
T. Drummond Video Day 2	\$1,200.00	Ex. 2 at 16
S. Fadem Video	\$2,385.00	Ex. 2 at 18
A. Friede Video	\$3,536.43	Ex. 2 at 20
T. Garcia-Gannon Video	\$1650.00	Ex. 2 at 22-23
F. Gelsey Video	\$630.00	Ex. 2 at 25
J. Glenmullen Video	\$2,371.75	Ex. 2 at 27
D. Gobat Video	\$1,170.00	Ex. 2 at 29
T. Hatke Video	\$1,460.00	Ex. 2 at 31

E. Hollander Video Day 1	\$1,170.00	Ex. 2 at 33
E. Hollander Video Day 2	\$1,187.55	Ex. 2 at 35
J. Hynd Video Day 1	\$1,350.00	Ex. 2 at 39
J. Hynd Video Day 2	\$858.60	Ex. 2 at 40
J. Hynd Video Day 3	\$1,240.20	Ex. 2 at 41
S. Jennings Video	\$1,812.60	Ex. 2 at 43
J. King Video Day 1	\$1,330.00	Ex. 2 at 45
J. King Video Day 2	\$1,685.00	Ex. 2 at 47
S. LaClaire Video	\$286.20	Ex. 2 at 49
H. Lagast Video	\$1,170.00	Ex. 2 at 51
L. Lipshultz Video	\$801.85	Ex. 2 at 53
K. Minne Video	\$450.00	Ex. 2 at 55
J. Morley Video	\$1,176.60	Ex. 2 at 57
R. Mortimer Video	\$1,004.85	Ex. 2 at 59
T. Mullins Video	\$270.30	Ex. 2 at 61
T. Pigott Video	\$943.40	Ex. 2 at 63
J. Redmond Video	\$1,170.00	Ex. 2 at 65
M. Rosenthal Video	\$2,632.50	Ex. 2 at 67
C. Saigal Video	\$2,121.80	Ex. 2 at 69
E. Schutter Video	\$1,621.80	Ex. 2 at 71
C. Townsend Video	\$1,224.30	Ex. 2 at 73
R. van der hoop Video	\$1,240.20	Ex. 2 at 75

5. Pursuant to 28 U.S.C. § 1920(2), SPI seeks to recover a total of \$100,691.47 for “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.” An itemized schedule of fees SPI seeks to tax for transcripts is set out above.

6. SPI seeks to recover costs for one copy of a transcript for hearings held on February 17, 2010, May 2, 2013, April 3, 2014, and October 7, 2014. Hearing transcript costs are recoverable when they “were necessarily obtained for use in th[e] case.” *Crevier-Gerukos v. Eisai, Inc.*, No. H-11-0434, 2014 WL 108730, at *1 (S.D.Tex. Jan. 9, 2014) (Rosenthal, J.) (quoting *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 713 F.2d 128, 133 (5th Cir. 1983)). They are likewise recoverable when the transcripts “enabled the parties to refer to rulings by the Court and to comply” thereby “benefit[ing] the parties and the Court.” *Coffin v. Blessey Marine Servs., Inc.*, No. H-11-0214, 2015 WL 409693, at *6 (S.D. Tex. Jan. 29, 2015) (Atlas, J.).

7. At the February 17, 2010 hearing, the Court heard argument on the parties' discovery disputes and on Relators' ability to use documents SPI produced to the States of Texas and Virginia in preparation of its Third Amended Complaint. Relators subsequently filed their Opposed Motion to Permit Use of Subpoenaed Documents in Third Amended Complaint. Dkt. 107. Relators intended to use the disputed documents to enhance the breadth and particularity of their claims, which would bear upon SPI's pending and forthcoming motions to dismiss. Accordingly, SPI requested a transcript of the hearing to prepare its opposition to Relators' Motion. *See* Dkt. 108 (citing and attaching hearing transcript as Exhibit A).

8. At the May 2, 2013 hearing, Judge Johnson addressed the parties' ongoing discovery disputes about the scope of discovery and the timeline for third parties to object and respond to Relators' subpoenas and for SPI to object and respond to Relators' requests. Additionally, at issue was Relators' ability to subpoena documents potentially containing trade secrets from governmental agencies and Relators' request to enjoin SPI from communicating with those agencies. After hearing both parties' requests and concerns, Judge Johnson ordered the parties to continue to negotiate for another 10 days and reappear before her on a later date. In order to ensure compliance and negotiate with the benefit of the Court's guidance, both SPI and Relators requested a transcript. Shortly after the hearing, the parties were able to negotiate an agreement surrounding SPI's potentially confidential information and a Joint Agreed Motion to Modify the Protective Order Governing Confidential Information was filed. *See* Dkt. 204.

9. At the April 3, 2014 hearing, the Court held a discovery hearing to address Relators' Rule 56 Motion for Additional Discovery Time. Dkt. 239. Relators argued that they could not respond to SPI's Partial Motion for Summary Judgment, Dkt. 232, without additional time to gather documents from the States and review forthcoming documents from backup tapes

Relators requested from SPI. SPI was requested to submit a status report on the discovery issues discussed and subsequently requested a transcript to ensure compliance. *See* Dkt. 268 (Status Report).

10. At the October 7, 2014 hearing, Judge Johnson held a discovery hearing to address the sufficiency of Relators' responses to SPI's interrogatories concerning the allegedly false claims at issue. Judge Johnson heard argument and ruled from the bench. As this issue was potentially—and ultimately—dispositive and bore on Relators' damages, SPI requested a transcript to review and reference in the preparation of its expert reports and motions for partial summary judgment. *See* Dkt. 638, n. 11.

11. SPI has also ordered a transcript for the February 24–25, 2016 hearing on SPI's Motion for Partial Summary Judgment. Dkt. 476, 636. However, as the Court has issued a final judgment before SPI received the completed transcript, SPI is not seeking fees for this transcript.

12. The subtotal for transcript costs is \$533.05. True and correct copies of invoices for these costs are attached as Exhibit 1.

13. SPI also seeks fees for costs associated with transcripts and videotapes of all depositions taken, including the depositions of fact and expert witnesses. Costs for deposition transcripts and videotaping are recoverable when “a deposition could reasonably be expected to be used for trial preparation.” *See Jurach v. Safety Vision, LLC*, No. H-14-044, 2015 WL 893178, at *3 (S.D. Tex. Mar. 1, 2015) (Rosenthal, J.) (taxing costs for videotaped depositions). A prevailing party may recover costs for both written transcripts and videotapes. *See U.S. ex rel. Long v. GSDMIdea City, L.L.C.*, 807 F.3d 125, 131 (5th Cir. 2015) (affirming the district court's grant of both formats).

14. The transcripts and videotapes of depositions were necessary in SPI's defense of its case. Relators routinely arranged to videotape their deposition of current and former SPI employees and of SPI's experts, requiring that SPI order a copy of each. The witnesses, particularly Relators John King and Tammy Drummond, were quoted extensively in SPI's successful partial motions for summary judgment. Similarly, the transcripts of expert witness depositions were necessary to prepare and defend against *Daubert* motions.

15. Given the number of witnesses, their scattered residences across the country, and the potential difficulty in securing their attendance, SPI reasonably expected to make use of the videotaped depositions in lieu of live testimony at trial. Further, SPI anticipated the use of the videotaped depositions for purposes of impeaching the credibility of any witnesses Relators chose to call.

16. SPI incurred \$52,734.59 in costs for deposition transcripts and \$47,423.83 for deposition videotapes. True and correct copies of invoices for these fees are attached as Exhibit 2.

17. SPI has not sought to tax costs for any shipping fees that appear on the invoices.

III. FEES AND DISBURSEMENTS FOR PRINTING AND WITNESSES

A. Witness Fees (\$280.00)

Vendor	Date	Cost
J. Blok	3/30/2015	\$40
R. Brady	4/13/2015	\$40
J. Cohn	4/1/2015	\$40
E. Hollander	10/1/2014 4/8/2015	\$80
L. Lipschultz	4/25/2015	\$40
R. Mortimer	4/10/2015	\$40

18. Pursuant to 28 U.S.C. § 1920(3) and 28 U.S.C. § 1821, SPI seeks to tax costs for expert witnesses SPI presented for deposition at the request of Relators. SPI seeks the statutory \$40.00 per witness per day for a total of \$280.

19. As SPI's counsel incurred costs to travel to the location of its witnesses, SPI does not seek any fees for its experts' travel or per diem.

IV. FEES FOR EXEMPLIFICATION AND COPIES

A. Vendor Photocopy Charges (\$24,881.03)

Vendor	Date	Cost	Source
24 seven Discovere	6/6/2012	\$158.62	Ex. 3 at 1
Capture Discovery	11/30/2012	\$30.94	Ex. 3 at 2
Capture Discovery	12/31/2012	\$334.66	Ex. 3 at 3
Capture Discovery	1/6/2013	\$556.20	Ex. 3 at 4
Capture Discovery	1/9/2013	\$146.84	Ex. 3 at 5
Capture Discovery	3/27/2013	\$71.62	Ex. 3 at 6
Reliable	7/29/2013	\$660.15	Ex. 3 at 7
Id innovative discovery	5/30/2014	\$243.01	Ex. 3 at 8
DTI	5/31/2014	\$438.72	Ex. 3 at 9–10
Id innovative discovery	7/31/2014	\$509.49	Ex. 3 at 11
Id innovative discovery	9/30/2014	\$287.78	Ex. 3 at 12
Transperfect Legal Solutions	12/31/2014	\$579.79	Ex. 3 at 13–14
Cornerstone Discovery	1/7/2015	\$955.89	Ex. 3 at 15
Transperfect Legal Solutions	1/14/2015	\$1,119.10	Ex. 3 at 16
Transperfect Legal Solutions	1/15/2015	\$1,026.28	Ex. 3 at 17
Transperfect Legal Solutions	1/23/2015	\$3,833.18	Ex. 3 at 18
Transperfect Legal Solutions	1/31/2015	\$1,713.86	Ex. 3 at 19–20
Transperfect Legal Solutions	1/31/2015	\$152.78	Ex. 3 at 21
DTI	1/31/2015	\$765.44	Ex. 3 at 22–23
Transperfect Legal Solutions	2/18/2015	\$1,264.58	Ex. 3 at 24
Transperfect Legal Solutions	2/26/2015	\$2,531.66	Ex. 3 at 25–26
Transperfect Legal	2/28/2015	\$724.39	Ex. 3 at 27

Solutions			
Transperfect Legal Solutions	2/28/2015	\$771.48	Ex. 3 at 28
DTI	2/28/2015	\$940.40	Ex. 3 at 29–30
Transperfect Legal Solutions	3/13/2015	\$1,783.25	Ex. 3 at 31–32
Transperfect Legal Solutions	3/31/2015	\$1,875.18	Ex. 3 at 33
Transperfect Legal Solutions	4/30/2015	\$609.67	Ex. 3 at 34
Cornerstone Discovery	2/22/2016	\$796.07	Ex. 3 at 35

B. Contractor Photocopy Charges (\$69,029.60)

Contractor	Cost	Source
Xerox	\$69,029.60	Ex. 4

C. E-Discovery Vendor Fees (\$785,757.35)

Vendor (DTI) Invoice Date	Cost	Source
5/31/2013	\$9,594.87	Ex. 5 at 1–3
6/30/2013	\$6,777.92	Ex. 5 at 4–5
7/31/2013	\$5,161.42	Ex. 5 at 6–7
8/31/2013	\$4,552.10	Ex. 5 at 8–9
9/30/2013	\$23,882.05	Ex. 5 at 10–12
11/8/2013	\$31,644.23	Ex. 5 at 14–15
11/29/2013	\$34,998.44	Ex. 5 at 16
12/31/2013	\$9,706.61	Ex. 5 at 17–18
1/31/2014	\$4,973.15	Ex. 5 at 20
1/31/2014	\$19,873.24	Ex. 5 at 21
2/28/2014	\$14,724.71	Ex. 5 at 23
3/31/2014	\$19,561.86	Ex. 5 at 25–26
4/30/2014	\$20,689.17	Ex. 5 at 28
5/31/2014	\$26,639.72	Ex. 5 at 30–31
6/30/2014	\$61,998.73	Ex. 5 at 33–34
7/31/2014	\$30,389.49	Ex. 5 at 36
8/31/2014	\$27,354.78	Ex. 5 at 38–39
9/30/2014	\$29,469.21	Ex. 5 at 41–42
10/31/2014	\$33,202.81	Ex. 5 at 43–44
11/30/2014	\$24,029.34	Ex. 5 at 47–48
12/31/2014	\$42,875.87	Ex. 5 at 50–51
1/31/2015	\$26,770.12	Ex. 5 at 53–54
2/28/2015	\$24,833.61	Ex. 5 at 56–57

3/31/2015	\$23,162.20	Ex. 5 at 59
4/30/2015	\$22,277.20	Ex. 5 at 61
5/29/2015	\$22,227.41	Ex. 5 at 63
7/21/2015	\$21,902.41	Ex. 5 at 65
7/31/2015	\$22,273.29	Ex. 5 at 66
8/31/2015	\$21,980.79	Ex. 5 at 68
9/30/2015	\$21,980.79	Ex. 5 at 70
10/31/2015	\$22,055.79	Ex. 5 at 72
11/30/2015	\$22,055.79	Ex. 5 at 74
12/31/2015	\$22,055.79	Ex. 5 at 76
1/31/2016	\$10,127.48	Ex. 5 at 78
2/29/2016	\$10,127.48	Ex. 5 at 80
3/31/2016	\$9,827.48	Ex. 5 at 82

D. Production Hardware Invoices (\$483.52)

Drive Description	Production Date & Volume	Amount	Source
500GB WD My Passport Essential Portable Hard Drive	5/24/2014 (SPI001)	\$84.68	Ex. 6 at 1
500 GB WD My Passport Essential Portable Hard Drive	8/30/2013 (SPI009)	\$84.68	Ex. 6 at 2
320 GB WD My Passport Essential Portable Hard Drive	9/10/2013 (SPI009)	\$81.46	Ex. 6 at 3
500 GB WD My Passport Essential Portable Hard Drive	1/24/2014 (SPI-INSPEC001)	\$74.01	Ex. 6 at 4
500 GB WD My Passport Essential Portable Hard Drive	7/25/2014 (SPI032)	\$74.01	Ex. 6 at 5
500 GB WD My Passport Hard Drive	9/19/2014 (SPI036)	\$84.68	Ex. 6 at 6

E. D4, LLC Invoices (\$27,212.86)

Vendor (D4) Invoice Date	Cost	Source
8/21/2013	\$2,000.00	Ex. 7 at 1
9/30/2013	\$1,062.50	Ex. 7 at 2
10/31/2013	\$4,225.00	Ex. 7 at 3
12/31/2013	\$500.00	Ex. 7 at 4
1/31/2014	\$476.41	Ex. 7 at 5
2/28/2014	\$5,311.24	Ex. 7 at 6
3/31/2014	\$1,430.96	Ex. 7 at 7
5/21/2014	\$12,038.61	Ex. 7 at 8
9/30/2014	\$168.14	Ex. 7 at 9

20. Pursuant to 28 U.S.C. § 1920(4), SPI seeks to tax costs for “[f]ees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.” An itemized schedule of fees SPI seeks to tax is set out above.

21. The scope and nature of this litigation has necessitated SPI’s fulsome defense—including witness and exhibit preparation for 32 deponents and 46 volumes of production, comprised of approximately 1,784,622 documents on 2,903,765 pages; the work with 6 testifying experts, a consulting expert and a consulting analytics firm; and the briefing associated with two motions to dismiss, 9 motions for summary judgment,² and 6 *Daubert* motions³ (which included providing the Court with courtesy copies of often voluminous records and exhibits). As photocopying costs were necessarily incurred for these and many other case-mandated activities, including discovery exchanges and filings, SPI seeks to tax photocopying costs from third-party vendors and Hogan Lovells business services contractor, Xerox. *See Fogleman v. ARAMCO (Arabian Am. Oil Co.)*, 920 F.2d 278, 286 (5th Cir. 1991) (permitting the recovery of photocopying fees without “expect[ing] a prevailing party to identify every xerox copy made for use in the course of legal proceedings”).

22. Invoices from SPI’s third-party photocopy vendors total \$24,881.03. Records of photocopy costs maintained by Hogan Lovells’ IT, Financial, and Human Resources’ “Elite Billback” system⁴ total \$69,029.60, for a grand total of \$93,910.63. However, to conservatively account for any copies made for the convenience of SPI’s counsel, SPI claims only \$46,955.31, *i.e.* 50% of these costs. *See E8 Pharm., LLC v. Affymetrix, Inc.*, No. 08-11132-GAO, 2014 WL 4964385, at *2 (D. Mass. Sept. 30, 2014) (granting 50% of copying costs when prevailing

² See Dkts. 232, 303, 358,389,391, 395, 398, 408, 476 (including an original, renewed, and supplemental Motions for Summary Judgment on Relators’ P&T Committee Influence Theory).

³ See Dkts. 479, 484, 492, 500, 503, 507.

⁴ Hogan Lovells and Xerox’s Elite Billback records are maintained through iA Enterprise Platform software.

party's law firm invoices reflected "the date, number of pages, the person making the copies, and the total charge").

23. True and correct copies of third-party photocopy vendor invoices and Hogan Lovells' photocopy records are attached as Exhibits 3 and 4, respectively.

24. SPI does not seek fees for any printing or photocopying performed directly by Hogan Lovells non-contractor employees.

25. SPI also seeks fees for costs incurred for electronic document exemplification and copying services. Relators served 6 rounds of document requests, which necessitated the search and production of documents from approximately 100 custodians. Though the Fifth Circuit has not "determined precisely which costs may be awarded under § 1920 since the 2008 amendments, including what costs of electronic discovery are taxable," costs associated with the digitization of hardcopy documents to an electronic format are recoverable as a form of exemplification and copying. *See generally Long*, 807 F.3d at 131–32. *See also E.A.F.F. v. United States*, No. SA-08-CA-124-XR, 2014 WL 1652598, at *3 (W.D. Tex. Apr. 23, 2014) (collecting cases supporting the proposition that scanning documents is equivalent to "making copies").

26. Similarly, costs associated with the production of those electronic documents are recoverable. *Id.* (affirming the district court's grant of fees related to the conversion of documents to TIFF format and the processing of documents to generate metadata such as optical character recognition ("OCR")). *Long*, 807 F.3d at 131–32; *Murphy v. Verizon Commc'ns, Inc.*, No. 3:09-CV-2262-G, 2015 WL 1647371, at *3 (N.D. Tex. Apr. 13, 2015) (granting costs for electronic imaging and corresponding hardware produced to opposing party); *Neutrino Dev. Corp. v. Sonosite, Inc.*, No. H-01-2484, 2007 WL 998636, at *4 (S.D. Tex. Mar. 30, 2007)

(Rainey, J.) (granting e-discovery costs related to production, including the removal of sensitive metadata).

27. SPI also seeks to recover costs related to the production and maintenance of this staggering amount of discovery exchanged, as electronic “exemplifications and copies” under § 1920(4). *See generally Long*, 807 F.3d at 131–32 (finding no abuse of discretion in the district court’s grant of e-discovery fees while the Fifth Circuit has not enumerated which “precise” costs are available under § 1920). *See also Pacificorp v. Nw. Pipeline GP*, No. 3:10-CV-00099-PK, 2012 WL 6131558, at *8 (D. Or. Dec. 10, 2012) (holding “the storage of electronic data throughout this process is obviously required to prepare and produce the requested electronic discovery, requires no intellectual efforts, and may be properly taxed under § 1920(4)”); *In re Aspartame Antitrust Litig.*, 817 F. Supp. 2d 608, 615 (E.D. Pa. Oct. 5, 2011) (granting costs for data processing and data hosting under § 1920(4) when a “staggering” volume of discovery was produced electronically in order to “allow[] discovery to be conducted in an efficient and cost-effective manner”); *Chenault v. Dorel Indus., Inc.*, No. A-08-CA-354-SS, 2010 WL 3064007, at *4 (W.D. Tex. Aug. 2, 2010) (granting costs associated with the “creation of a database” when the electronic database was created to enable electronic production “in lieu of extremely costly [traditional] paper production” and would eliminate “costs by not printing out hundreds of documents”); *Adidas Am., Inc. v. Payless Shoesource, Inc.*, No. 01-1655-KI, 2009 WL 302246, at *6 (D. Or. Feb. 9, 2009) (denying losing party’s objections to electronic data storage costs, because “we are well past the day when all copies are basic photocopies . . . especially when [documents] are numerous,” and electronic discover “allows a more efficient way to litigate the case and to present the evidence at trial”).

28. Throughout the discovery period, in order to respond to Relators' 6 rounds of document requests,⁵ review responses produced under Relators' 9 third-party Rule 45 subpoenas for confidential business information, and prepare its defense, SPI was required to obtain the services of an e-discovery vendor, DTI Global, to collect, process, manage and produce electronic records and exemplifications of documents. Technical services are essential to the collection, review and production of documents, as technician expertise and software tools are necessary to generate the image, native, and metadata files which comply with generally acceptable production practices and the instructions set forth by Relators in their requests for production. SPI incurred costs for electronic production, reflected in DTI's invoices as:

- i. Project Management \$52,470.00
- ii. Processing Services \$6,071.25
- iii. Post Processing Services \$18,641.25
- iv. Tiff Image Conversion \$23,632.21
- v. Native Processing \$6,314.75
- vi. Technical Services \$28,961.25
- vii. Data Loading \$16,742.80
- viii. Scanning \$109,220.32
- ix. OCR \$6,063.56
- x. Logical Unitization \$15,860.14
- xi. Backup Tape Restoration \$7,500.00
- xii. Technical Time \$242.50
- xiii. Image Endorsement \$698.47

⁵ In addition to these document requests, Relators served over 1,800 Requests for Admission, many of which required reference to produced documents to answer.

- xiv. PDF Conversion \$508.90
- xv. Hard Drive and Disk Media \$1,620.00
- xvi. Convert VHS to DVD \$495.00

29. Counsel for SPI retained DTI Global by May 2013, to assist with the processing, organization, and maintenance of the electronic data exchanged in the litigation. As the nearly 3,000,000 pages of documents were so voluminous and impractical to reconvert to hardcopy format for storage while litigation remained active, these files were maintained electronically until the Court's final judgment on March 31, 2016. SPI incurred costs for access to and maintenance for these electronic documents, reflected in DTI's invoices as:

- i. Monthly User Fees \$60,750.00
- ii. Storage Fees \$429,964.95

30. SPI seeks to tax \$785,757.35 in costs related to the processes described in Paragraphs 28 and 29. True and correct copies of invoices from DTI reflecting these costs are attached as Exhibit 5.

31. SPI has not sought to tax fees for services and processing for document collection and review, contract-attorney hourly document review, travel costs associated with the collection of documents, or miscellaneous items on DTI's invoices, reflected as:

- i. NUIX Processing \$12,137.25
- ii. Equivio Processing \$3,380.08
- iii. Coding – Folder Titles \$7,740.24
- iv. Technology Assisted Review \$97.50
- v. Document Review – First Level \$964,753.44
- vi. Document Review – Project Manager \$57,189.50

- vii. Document Review – Paralegal \$22,288.00
- viii. Document Review – Overtime \$144,372.00
- ix. Contractor Travel Expenses \$3,795.69
- x. Supplies \$409.50
- xi. Photocopies \$29.70
- xii. Shipping⁶ \$1,855.00

32. SPI also seeks to recover \$483.52 for the cost hardware (hard drives) sent by Hogan Lovells to produce electronic files to Relators.⁷

33. True and correct copies of Hogan Lovells' billing records are attached as Exhibit 6.

34. SPI has not sought costs for hardware used internally, sent to its e-discovery vendor, or used for the convenience of counsel, witnesses, or experts.

35. In connection with requests for production by Relators for information contained on SPI backup tapes that was not easily accessible for purposes of Fed. R. Civ. P. 26(b)(2)(B), D4 Discovery, LLC, was engaged jointly by Relators' counsel and SPI's counsel to provide consulting and technical assistance relating to the recovery of e-mail data found on these tapes.⁸ D4's services included recommending tapes from which to select data, evaluating the tapes to determine whether data for the agreed custodians resided on those tapes, and processing and filtering the data with agreed search terms and date limitations. The parties agreed at the time to share the costs of D4's services, given the accessibility of the data at issue.

⁶ SPI seeks costs for Blowbacks w/Assembly, which is DTI's printing and assembly service, under Vendor Copying Charges in Paragraph 22 above, with relevant invoices included in Exhibit 5.

⁷ Per Relators' request, SPI009 was produced twice.

⁸ Relators insisted on the production of the documents contained upon these tapes, as was discussed at the April 3, 2014 hearing. *See supra* Paragraph 9.

36. SPI now seeks to tax its \$27,212.86 share of these restoration costs, which are analogous to “fees for exemplification and the costs of making copies of . . . materials where the copies are necessarily obtained for use in the case.” 28 U.S.C. § 1920(4).

37. True and correct copies of invoices from D4 Discovery, LLC are attached as Exhibit 7.

V. DOCKET FEES

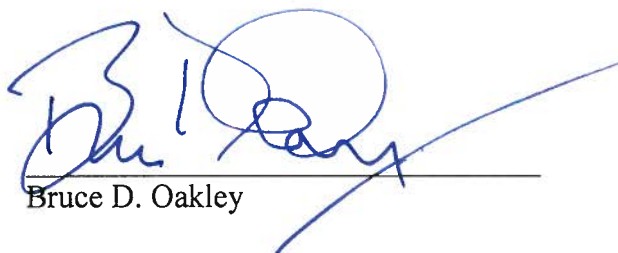
38. SPI is not seeking to tax any costs for docket fees.

VI. FEES FOR COURT APPOINTED EXPERTS OR INTERPRETERS

39. SPI is not seeking to tax any costs for appointed experts or interpreters.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed this 14th day of April 2016.


Bruce D. Oakley