

The Honorable Benjamin H. Settle

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CONFEDERATED TRIBES OF THE
CHEHALIS RESERVATION, a federally
recognized Indian tribe on its own behalf and as
parens patriae for its members, and CTGW,
LLC, a limited liability company organized
under Delaware law,

Plaintiffs,

v.

THURSTON COUNTY BOARD OF
EQUALIZATION, a political subdivision of the
state of Washington; et al,

Defendants.

NO. C08-5562
PLAINTIFFS’ MOTION FOR COSTS
NOTE ON MOTION DOCKET:
January 24, 2014

I. MOTION

Plaintiffs Confederated Tribes of the Chehalis Reservation and CTGW, LLC,
request judgment on costs pursuant to LCR 54(d), 28 U.S.C. § 1920, and Federal Rule of
Civil Procedure 54.

Judgment was entered in this matter on December 17, 2013, in favor of Plaintiffs.
Dkt. # 219. Plaintiffs now seek judgment for costs of deposition transcripts obtained for
use in the case, electronic transcripts and exhibits, and deposition reporter appearance
fees totaling \$28,423.58—as itemized on the Declaration of Anthony Broadman in

Support of Plaintiffs’ Motion for Costs (“Broadman Decl.”), **Exhibit A.**

1 Plaintiffs seek essentially the same costs sought by and awarded to Defendants on
2 July 1, 2010, prior to the reversal of the Court's prior judgment by the Ninth Circuit
3 Court of Appeals. Dkt. # 199. Plaintiffs also seek those costs as shown on Mandate of
4 Court of Appeals in the amount of \$796.80. Dkt. # 209.

5 II. AUTHORITY

6 A. Costs Are Recoverable Under 28 U.S.C. § 1920.

7 A prevailing party is entitled to costs including, "Fees for printed or electronically
8 recorded transcripts necessarily obtained for use in the case." 28 U.S.C. § 1920(2) & (3);
9 Fed. R. Civ. P. 54(d)

10 B. Plaintiffs' Costs Were Necessary.

11 The prevailing party is entitled to recover costs for depositions and transcripts
12 "necessarily obtained for use in the case." *Id.*; *Alflex Corp. v. Underwriters*
13 *Laboratories, Inc.*, 914 F.2d 175, 177 (9th Cir. 1990). Here, "the case" consisted
14 primarily of two motions for summary judgment filed by Plaintiffs and one motion for
15 summary judgment filed by Defendants. Dkt. # 47, 100, 113. All of the deposition
16 transcripts set forth on Exhibit A to the Broadman Decl. were "use[d] in the case."

17 The transcripts were also "reasonably necessary" for use in the case. *Independent*
18 *Iron Works, Inc. v. United States Steel Corp.*, 322 F.2d 656, 677-78 (9th Cir. 1963).
19 Pretrial transcripts are especially necessary when the case is unusually involved and
20 complex. *Id.* at 678. In *Alflex* the Ninth Circuit held that the cost of obtaining
21 depositions and copies of deposition transcripts were allowable under 28 U.S.C. § 1920
22 where the transcripts were reasonably necessary to the defendant's motion for summary
23 judgment. 914 F.2d at 177; *see also Cengr v. Fusibond Piping Sys.*, 135 F.3d 445, 455
24 (7th Cir. 1998) (a deposition is "reasonably necessary" to a party when preparing a
25 motion for summary judgment.)

Plaintiffs and Defendants are in agreement that nearly all of transcripts listed on

1 Exhibit A to the Broadman Decl. were reasonably necessary for use in the case. *See* Dkt.
2 # 186 (Defendants arguing transcripts reasonable necessary); Dkt. # 187 at 3-4 (listing
3 reasonably necessary transcripts). As to the transcripts of Professor Joseph Kalt, for
4 which Defendants did not seek costs, it was reasonably necessary as conceded by
5 Defendants when they sought attendance fees for that deposition. Dkt. # 187 at 4.
6 Moreover, Professor Kalt was to be Plaintiffs' key expert witness at trial. Dkt. # 146 at
7 13. As to the second transcript volumes of the depositions Lester Olson, Donald Krupp
8 and Robin Hunt, they were continuations of their initial depositions, which Defendants
9 conceded were necessary. Dkt. # 187 at 3.

10 Defendants did not mention and therefore concede that Kevin O'Sullivan's
11 deposition transcript was reasonably necessary. *Id.* It was. Mr. O'Sullivan was
12 disclosed as a trial witness and subpoenaed to testify at trial. Dkt. # 146, 177. His
13 deposition also formed part of the basis for Professor Kalt's report, relied extensively on
14 in Plaintiffs' second motion for summary judgment. *See, e.g.*, Dkt. # 113-2.

15 Defendants argued in their motion for summary judgment that their taxes were
16 proper based on "particularized inquiry into the nature of the state, federal, and tribal
17 interests at state" based on "the degree of federal regulation involved, the respective
18 governmental interests of the tribes and states (both regulatory and revenue raising), and
19 the provision of tribal or state services to the party the state seeks to tax." Dkt. # 100 at 7
20 (citations omitted). Plaintiffs argued the opposite. All discovery and use of such
21 discovery in response to Defendants' motion related to the nature of governmental
22 interests at stake was therefore necessary. Moreover, Defendants never sought to limit
23 discovery or took the position that discovery and proof related to such governmental
24 interests was not critical to the balancing test employed by the Court.

25 III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an award of its costs as set forth above.

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DATED this 6th day of January, 2014.

/s Anthony S. Broadman, WSBA #39508
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Attorneys for Plaintiffs Confederated
Tribes of the Chehalis Reservation and
CTGW, LLC

CERTIFICATE OF SERVICE

I, Anthony S. Broadman, say:

1. I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

2. On January 6, 2014, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system:

- PLAINTIFFS’ MOTION FOR COSTS

which will send notification to the following via e-mail:

Jane Futterman
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Scott C. Cushing
cushins@co.thurston.wa.us

DATED this 6th day of January, 2014.

/s Anthony S. Broadman, WSBA #39508
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