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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JED MARGOLIN,

Plaintiff,

v.

NATIONAL AERONAUTICS  
AND SPACE ADMINISTRATION,

Defendant.

Case No. 3:09-CV-00421-LRH-VPC

**RESPONSE TO DECLARATION  
OF JED MARGOLIN (#68)**

COMES NOW Defendant National Aeronautics and Space Administration ("Defendant") and submits this response to the Declaration of Jed Margolin ("Plaintiff"). (#68). Plaintiff's declaration itemizes litigation costs that he claims to have expended in this Freedom of Information Act ("FOIA") case. Many of the costs Plaintiff seeks are unreasonable, however, and thus this Court should reduce any cost award to Plaintiff accordingly, as explained more fully below.

**BACKGROUND**

On June 3, 2011, this Court concluded that Plaintiff had substantially prevailed in this FOIA action to the extent his lawsuit prompted a voluntary or unilateral change in the position of Defendant. (# 67 p. 3). The Court ruled that Plaintiff is thus entitled to at least some portion of litigation costs that he incurred before November 5, 2009 — the date Defendant disclosed

supplemental documents to him. (# 67 p. 3). Accordingly, the Court directed Plaintiff to file an affidavit or declaration itemizing litigation costs incurred before November 5, 2009. (#67 p. 4). Plaintiff filed his declaration on June 6, 2011 (#68) and this response addresses that declaration's itemization of costs.

### ARGUMENT

**A. Plaintiff is not entitled to mileage costs to and from the federal building — and related parking costs — because those expenses are unreasonable.**

A successful FOIA plaintiff is entitled to recover the reasonable costs of litigating a FOIA action. *Kuzma v. Internal Revenue Service*, 821 F.2d 930, 933 (2<sup>nd</sup> Circuit 1987). Here, Plaintiff seeks to recover \$23.10 for "Mileage to and from Federal Building (42 miles)" on every occasion that he filed a document with the Court. (# 68 pp. 2-3). But awarding Plaintiff \$23.10 each and every time he simply filed a document with the Court is excessive and unreasonable because it was not necessary that Plaintiff drive to the courthouse every time he wished to file a document; Plaintiff could have either mailed the documents for filing or he could have filed the documents electronically. Plaintiff has admitted as much in his filings with this Court.

On August 3, 2009, Plaintiff moved for permission to use the Court's electronic filing system. (#3). This Court granted Plaintiff's request on August 31, 2009. (#7). Plaintiff argued in his motion that using the Court's electronic filing system offers "a number of advantages," including the "[a]bility to file pleadings electronically with the court" and "[s]avings in time and expenditures for attorneys." (#3 p. 2). Plaintiff also made comments in his motion indicating that he did not wish to drive to the courthouse to file documents:

Although [Plaintiff] can travel to the U.S. District Courthouse in Reno to file documents, according to Google Maps [Plaintiff] lives 20.9 miles from the Reno Courthouse and can expect a one-way travel time of 37 minutes. \* \* \*

The foregoing are burdens that Defendant does not have.

Therefore, in the interests of fairness, [Plaintiff] requests permission to register and use the Court's [electronic filing] system."

(#3 p. 4). Given Plaintiff's professed aversion to driving to the courthouse and his request that the Court alleviate that "burden," this Court should decline to reimburse Plaintiff for costs affiliated

1 with drives to the courthouse to file documents. Defendant therefore objects to Plaintiff's request  
 2 for \$23.10 in mileage costs — and affiliated parking costs — for the filing of each of the following  
 3 documents:

- 4 • Complaint (#1) — \$23.10 for mileage and \$1.00 for parking;
- 5 • Ex Parte Motion for Pro Se Litigant to File Electronically by Plaintiff Jed Margolin (#3) —  
 6 \$23.10 for mileage and \$1.50 for parking;
- 7 • Filing Proof of Service (#4) — \$23.10 for mileage and \$.75 for parking;
- 8 • Certificate of Interested Parties (#5) — \$23.10 for mileage and \$1.25 for parking;
- 9 • “File CM/ECF Registration Form”<sup>1</sup> — \$23.10 for mileage and \$1.25 for parking; and
- 10 • Appendix filed with Court (## 11-12) — \$23.10 for mileage and \$.25 for parking.

11 Therefore, any reimbursement of costs to Plaintiff should be reduced accordingly.

12 **B. Plaintiff is not entitled to mileage costs to and from the Washoe County Law Library**  
 13 **because those expenses are unreasonable.**

14 Plaintiff seeks \$23.21 in mileage costs to and from the Washoe County Law Library, where  
 15 he claims to have performed legal research. (# 68 p. 3). But online research is available on that  
 16 library's web site (*see* <http://www.co.washoe.nv.us/lawlib>); it was not necessary for Plaintiff to  
 17 drive to that library to conduct legal research.<sup>2</sup> Nor was it reasonable for Plaintiff to drive to that  
 18 library given his professed aversion to driving long distances; the drive to and from the Washoe  
 19 County Law Library was even longer than the drives to and from the courthouse. (# 68 pp. 3).  
 20 Moreover, Plaintiff has the ability to print documents in his home: “There are a number of  
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24 <sup>1</sup> This document does not show up on PACER.

25 <sup>2</sup> Plaintiff also seeks costs for mileage to and from the Nevada Supreme Court Library. (#  
 26 68 p. 3). The web site for that library states that electronic legal research tools may be used at the  
 27 library only. *See* <http://lawlibrary.nevadajudiciary.us/electronicResources/electronicResources.php>.  
 28 The web site for the Washoe County Law Library, however, includes no such requirement. Under  
 the circumstances, Plaintiff could have — and indeed should have — conducted his research  
 through the Washoe County Law Library online from his home.

advantages in using [the Court's electronic filing system]," including the "[a]bility to download and print documents directly from the court system." (#3 p. 2). Under the circumstances, Plaintiff should not be reimbursed for his mileage costs to and from the Washoe County Law Library.

**C. Plaintiff is not entitled to copying and mailing the complaint because it was unnecessarily voluminous.**

Plaintiff seeks \$41.60 for making copies of his complaint and \$47.78 in postage to mail the complaint to the Attorney General and Defendant. (#68 p. 2). Those copying and postage costs are excessive, however, because the 14-page complaint unnecessarily included 128 pages of exhibits. (#1). At most, Plaintiff should receive the copying and mailing costs associated with the 14-page complaint (but not the exhibits). Thus, Plaintiff should be reimbursed \$1.40 for copying the document<sup>3</sup> and 88 cents (the cost of two stamps) to mail it. Accordingly, Plaintiff should receive \$2.28 (rather than the requested \$89.38) for the cost of copying and mailing his complaint.

**D. Plaintiff is not entitled to reimbursement for all of his PACER costs because some of those charges are not affiliated with this action.**

Plaintiff seeks \$51.04 in costs for PACER fees but only \$39.76 of those charges relate to filings in the District of Nevada. (# 68 pp. 4, 20). Accordingly, Plaintiff should be reimbursed for \$39.76 rather than \$51.04.

**CONCLUSION**

For the reasons argued above, this Court should reduce any cost award to Plaintiff in the manner described above.

Respectfully submitted,

DANIEL G. BOGDEN  
United States Attorney

/s/ Holly A. Vance  
HOLLY A. VANCE  
Assistant United States Attorney

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<sup>3</sup> The Nevada Supreme Court Library charges ten cents per page for copying documents. (#68 p. 12).

**CERTIFICATE OF SERVICE**

JED MARGOLIN,

Plaintiff,

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NATIONAL AERONAUTICS  
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Defendant.

Case No. 3:09-CV-00421-LRH-VPC

The undersigned hereby certifies that service of the foregoing **RESPONSE TO DECLARATION OF JED MARGOLIN (#68)** has been made by electronic notification through the Court's electronic filing system or, as appropriate, by sending a copy by first-class mail to the following addressee(s) on June 15, 2011:

Addressee:

JED MARGOLIN  
1981 Empire Road  
Reno, NV 89521-7430

/s/ Holly A. Vance  
Holly A. Vance