

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AT&T MOBILITY LLC,

Civ. No. 2:13-cv-00007-KJM-DAD

Plaintiff,

ORDER

v.
GENERAL CHARLES E. "CHUCK"
YEAGER (RET.), et al.,

Defendants.

PARSONS BEHLE & LATIMER, PLC,

Plaintiff in Intervention,

v.
GENERAL CHARLES E. "CHUCK"
YEAGER (RET.),

Defendant.

The motion for summary judgment by plaintiff in intervention Parsons Behle & Latimer, PLC ("PBL") is currently pending before the court. The court submitted the motion without argument and now DENIES it.

I. BACKGROUND

On November 21, 2007, Robert Eliason with the law firm of Wild, Carter & Tipton filed a complaint against AT&T on General Yeager's behalf in a separate case, raising

1 claims of violation of the common law right of privacy and California Civil Code section 3344,
2 among other claims. *Yeager v. AT&T*, Civ. No. S-07-2517 KJM GGH (“Yeager docket”), ECF
3 No. 1.

4 On September 9, 2008, the court granted Eliason’s motion to withdraw as counsel
5 and substituted plaintiff in propria persona. ECF No. 31. On March 16, 2009, Steven McDonald
6 of De La Pena & McDonald LLP substituted in as counsel for Yeager. Yeager docket, ECF
7 No. 33.

8 On March 8, 2010, the court granted plaintiff’s substitution of attorney, relieving
9 attorney McDonald and substituting Charles Harder of Wolf, Rifkin, Shapiro, Schuman &
10 Rabkin, LLP as counsel. Yeager docket, ECF No. 73. On October 19, 2010, the court granted
11 Harder’s motion to withdraw as counsel and substituted plaintiff in propria persona. Yeager
12 docket, ECF No. 84.

13 On June 25, 2010, Connie Bowlin, Ed Bowlin and Aviation Autographs (the
14 Bowlins), judgment creditors, filed a lien against Yeager for satisfaction of a money judgment
15 granted in a separate action, *Yeager, et al. v. Bowlin, et al.*, Civ. No. 2:08-105 WBS JFM.
16 Yeager docket, ECF No. 77.

17 On November 16, 2010, attorney Joanna Mendoza substituted in as counsel for
18 plaintiff. Yeager docket, ECF No. 88. The court granted Mendoza’s motion to withdraw on
19 April 11, 2011, again substituting Yeager in propria persona. Yeager docket, ECF Nos. 95, 96.

20 On October 12, 2011, attorney John Zarian of Zarian Midgley & Johnson PLLC
21 substituted in as counsel for Yeager. Yeager docket, ECF No. 106. In November 2011, as noted
22 on the docket in this case, Zarian Midgley merged with PBL. *See AT&T Mobility v. Yeager,*
23 *et al.*, Civ. No. S-13-0007 KJM DAD (AT&T docket), ECF No. 72-3 ¶ 4.

24 On June 8, 2012, Yeager prevailed in a jury trial against AT&T on his claim that
25 AT&T violated his right to publicity under California Civil Code section 3344 by using
26 Yeager’s name to promote its cell phone service. Yeager docket, ECF No. 222. The jury
27 awarded Yeager \$135,000. Yeager docket, ECF No. 227 at 2.

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1 On June 13, 2012, attorney Mendoza filed a notice of a lien claim. Yeager docket,
2 ECF No. 231. She withdrew the lien claim on March 21, 2013. Yeager docket, ECF No. 296.

3 Yeager filed a motion for attorneys' fees on July 9, 2012. Yeager docket, ECF
4 No. 243. In support of the motion for attorneys' fees, Yeager submitted billing records from
5 Zarian Midgley & Johnson and its successor firm PBL as well as billing records from his many
6 former counsel. *See generally* Yeager docket, ECF No. 243.

7 De La Pena & McDonald filed a notice of a lien claim on August 22, 2012, but
8 withdrew it on April 23, 2013. Yeager docket, ECF Nos. 259, 300.

9 On December 18, 2012, the court granted Yeager's motion for \$160,757 fees for
10 PBL's work on the case, but denied his request for \$132,150.72 in fees owed to his previous
11 counsel, holding that the invoices of the previous counsel were not properly authenticated.
12 Yeager docket, ECF No. 270 at 5. The court also granted in part plaintiff's request for costs
13 under California Civil Code section 3344, granting \$5,728.42 of the \$15,437.72 requested, and
14 granted in part plaintiff's request for costs under Federal Rule of Civil Procedure 54(d) (granting
15 \$7,100.30 of the \$36,681.63 requested). *Id.* The court directed AT&T to remit a total of
16 \$173,585.72 within fourteen days of the date of the order. *Id.*

17 On December 28, 2012, the Bowlins filed a motion to intervene as judgment lien
18 creditors, seeking an order for disbursement of funds. Yeager docket, ECF No. 271.

19 On January 2, 2013, plaintiff filed a motion for leave to file a supplemental motion
20 for attorneys' fees. Yeager docket, ECF No. 277. In that motion, Yeager sought an award of
21 \$26,039 in attorneys' fees and additional costs incurred between July 1, 2012 and September 30,
22 2012. Yeager docket, ECF Nos. 277, 278.

23 Also on January 2, 2013, AT&T initiated this separate action as a complaint for
24 interpleader, naming Yeager, the Bowlins, Mendoza, DeLaPena & McDonald and the Lesser Law
25 Group as defendants, and depositing \$308,668.85 with the court. AT&T docket, ECF No. 1.
26 The amount represents the \$135,000 judgment and \$173,585.72 fees award in the underlying
27 AT&T action, plus accrued interest. *Id.* at 1. In its complaint for interpleader, AT&T explains
28 the named defendants each claim entitlement to all or a portion of the amounts payable by AT&T

1 in satisfaction of the judgment in the underlying AT&T action. AT&T filed the separate
2 interpleader action seeking relief that includes discharge from any further liability and a
3 determination as to which of the defendants is entitled to the amount of the deposited funds. *Id.*
4 at 5.

5 On January 16, 2013, Yeager filed a motion asking the court to reconsider its
6 decision not to award plaintiff the fees incurred by previous counsel. Yeager docket, ECF
7 No. 279.

8 On February 15, 2013, Attorney Zarian filed a motion to withdraw as counsel
9 alleging among other things that Yeager had failed to pay the firm's invoices. Yeager docket,
10 ECF No. 289. The court directed Zarian to show cause why the request should not be denied in
11 light of then-pending motions for reconsideration and for additional fees. Yeager docket, ECF
12 No. 295. On April 23, 2013, Yeager opposed Zarian's motion to withdraw. Yeager docket, ECF
13 No. 301.

14 On April 16, 2013, the court granted the parties' stipulation for dismissal of AT&T
15 from the instant interpleader action subject to its depositing any supplemental attorneys' fees
16 awarded with the court. AT&T docket, ECF No. 50.

17 On August 20, 2013, the court granted PBL's request for an additional award of
18 \$7,763.63 in fees and denied the motion for reconsideration. Yeager docket, ECF No. 305.

19 On October 1, 2013, AT&T deposited an additional \$7,763.63 with the court and
20 on October 7, 2013, the court dismissed AT&T from the action. AT&T docket, ECF No. 64.

21 On October 2, 2013, the court granted PBL's motion to withdraw as counsel in the
22 underlying case and discharged the order to show cause. Yeager docket, ECF No. 306.

23 Zarian then filed a motion to intervene on behalf of PBL on December 5, 2013.
24 AT&T docket, ECF No. 72. On April 11, 2014, the court granted the motion to intervene.
25 AT&T docket, ECF No. 91. Following the court's order, PBL filed an intervenor complaint on
26 May 5, 2014. AT&T docket, ECF No. 93. Yeager answered on June 10, 2014. AT&T docket,
27 ECF No. 95.

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1 PBL filed the instant motion for summary judgment on July 11, 2014. AT&T
2 docket, ECF No. 103. Yeager opposed on July 24, 2014, AT&T docket, ECF No. 108, and PBL
3 replied on July 31, 2014, AT&T docket, ECF No. 109.

4 II. ALLEGATIONS OF PBL'S COMPLAINT-IN-INTERVENTION

5 PBL alleges as follows in its complaint-in-intervention. On October 5, 2011,
6 Yeager and Zarian entered into a retention letter agreement, which provided Zarian would
7 represent Yeager in the AT&T action. Compl.-In-Intervention ¶ 8 ("Compl."), ECF No. 93.¹ On
8 November 1, 2011, Zarian's firm merged with PBL. *Id.* ¶ 10. Between November 2011 and
9 April 2013 Zarian and PBL sent Yeager regular billing statements for professional services,
10 which totaled \$106,408.53. *Id.* ¶ 12. PBL received payments from Yeager on March 16, May 22
11 and September 19, 2012. *Id.* ¶ 14.

12 Yeager was awarded \$135,000 in damages by a jury in the underlying AT&T
13 action. *Id.* PBL continued to represent Yeager in post-trial proceedings. *Id.* ¶ 15. The court
14 awarded Yeager \$173,585.72 in fees and costs and supplemented the award by \$7,763.63. *Id.* In
15 February 2013 PBL withdrew as counsel for Yeager in the AT&T action. *Id.* ¶ 18.

16 On January 2, 2013, AT&T deposited \$308,668.95 with the Clerk of the Court,
17 which represents the \$135,000 damages award, the \$173,585.72 fees and costs award and accrued
18 interest. *Id.* ¶ 19. On October 1, 2013, AT&T deposited with the Clerk of the Court the
19 supplemental award amount of \$7,763.63. *Id.* "The sums deposited with the Clerk of the Court
20 include sums awarded for fees and costs corresponding to the \$106,408.53 in professional fees
21 and costs advanced by Parsons Behle as part of its representation of Gen. Yeager, which fees and
22 costs remain unpaid." *Id.* ¶ 20. "Under California law, statutorily awarded fees and costs may be
23 properly payable directly to the attorney of record where the legal services rendered resulted in
24 the award and where such a direct payment is consistent with legislative intent and/or public
25 policy." *Id.* ¶ 21.

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28 ¹ Unless otherwise indicated, all further references to the docket are to the AT&T docket,
the docket in this case.

1 PBL alleges four claims for relief for breach of contract, *id.* ¶¶ 23–27, account
 2 stated, *id.* ¶¶ 28–31, services rendered, *id.* ¶¶ 32–35, and quantum meruit, *id.* ¶¶ 36–40. PBL
 3 seeks, among other things, payment for services rendered in the amount of at least \$106,408.53.
 4 *Id.* at 7.

5 **III. STANDARD FOR A SUMMARY JUDGMENT MOTION**

6 A court will grant summary judgment “if . . . there is no genuine dispute as to any
 7 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
 8 The “threshold inquiry” is whether “there are any genuine factual issues that properly can be
 9 resolved only by a finder of fact because they may reasonably be resolved in favor of either
 10 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).²

11 The moving party bears the initial burden of showing the district court “that there
 12 is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*,
 13 477 U.S. 317, 325 (1986). The burden then shifts to the nonmoving party, which “must establish
 14 that there is a genuine issue of material fact” *Matsushita Elec. Indus. Co. v. Zenith Radio*
 15 *Corp.*, 475 U.S. 574, 585 (1986). In carrying their burdens, both parties must “cit[e] to particular
 16 parts of materials in the record . . . ; or show [] that the materials cited do not establish the
 17 absence or presence of a genuine dispute, or that an adverse party cannot produce admissible
 18 evidence to support the fact.” Fed. R. Civ. P. 56(c)(1); *see also Matsushita*, 475 U.S. at 586
 19 (“[the nonmoving party] must do more than simply show that there is some metaphysical doubt as
 20 to the material facts”). Moreover, “the requirement is that there be no *genuine* issue of *material*
 21 fact Only disputes over facts that might affect the outcome of the suit under the governing
 22 law will properly preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 247–48.

23 In deciding a motion for summary judgment, the court draws all inferences and
 24 views all evidence in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at
 25 587–88; *Whitman v. Mineta*, 541 F.3d 929, 931 (9th Cir. 2008). “Where the record taken as a

27 ² Rule 56 was amended, effective December 1, 2010. However, it is appropriate to rely
 28 on cases decided before the amendment took effect, as “[t]he standard for granting summary
 judgment remains unchanged.” Fed. R. Civ. P. 56 Advisory Committee’s Note (2010
 Amendments).

1 whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine
 2 issue for trial.’” *Matsushita*, 475 U.S. at 587 (quoting *First Nat’l Bank of Ariz. v. Cities Serv.*
 3 *Co.*, 391 U.S. 253, 289 (1968)).

4 A court may consider evidence as long as it is “admissible at trial.” *Fraser v.*
 5 *Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003). “Admissibility at trial” depends not on the
 6 evidence’s form, but on its content. *Block v. City of L.A.*, 253 F.3d 410, 418–19 (9th Cir. 2001)
 7 (citing *Celotex Corp.*, 477 U.S. at 324). The party seeking admission of evidence “bears the
 8 burden of proof of admissibility.” *Pfingston v. Ronan Eng’g Co.*, 284 F.3d 999, 1004 (9th Cir.
 9 2002). If the opposing party objects to the proposed evidence, the party seeking admission must
 10 direct the district court to “authenticating documents, deposition testimony bearing on attribution,
 11 hearsay exceptions and exemptions, or other evidentiary principles under which the evidence in
 12 question could be deemed admissible” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 385–86
 13 (9th Cir. 2010). However, courts are sometimes “much more lenient” with the affidavits and
 14 documents of the party opposing summary judgment. *Scharf v. U.S. Atty. Gen.*, 597 F.2d 1240,
 15 1243 (9th Cir. 1979).

16 IV. UNDISPUTED FACTS

17 When the parties agree a fact is undisputed, the court refers to their agreement
 18 rather than to the portions of the record supporting the agreement. When the facts are disputed,
 19 the court notes the disagreement and cites to the supporting record. The court does not cite to any
 20 facts that are irrelevant to resolution of the pending motion.

21 In the underlying action here, the court awarded attorneys’ fees totaling
 22 \$168,520.63. Yeager’s Resp. to PBL’s Statement of Undisputed Facts ¶ 1, ECF No. 108-1. This
 23 award “relates to professional legal fees claimed by” Yeager in that action and “reflects
 24 professional services actually rendered by [PBL] only in connection with that action.” *Id.* ¶¶ 2–3
 25 (emphasis omitted).

26 The parties dispute whether Yeager has paid only \$86,692.98 of the attorneys’ fee
 27 award to PBL. *Id.* ¶¶ 4–5. Yeager disputes PBL’s calculation of Yeager’s payments, arguing
 28 Yeager’s spouse, who “handle[s] [Yeager’s] financial and legal matters,” Yeager Decl. ¶ 1, ECF

1 No. 108-2, paid PBL “more than \$100,000 in attorney’s fees” Yeager’s Opp’n to Mot.
 2 Summ. J. (“Opp’n”) at 2, ECF No. 108; Yeager Decl. ¶ 2. Yeager does not dispute the
 3 calculation of attorneys’ fees in the amount of \$168,520.63 as awarded by the court in the
 4 underlying action. He does dispute PBL’s calculation of the payments he has made to PBL in
 5 satisfaction of the fees billed.

6 **V. PBL’S MOTION FOR SUMMARY JUDGMENT**

7 PBL seeks summary judgment for fees in the amount of \$81,827.65, which it
 8 argues represents Yeager’s unpaid portion of the \$168,520.63 awarded by the court.³ Mem. P.
 9 A. in Supp. Mot. Summ. J. (“Mem.”) at 2–3, ECF No. 103-1. PBL focuses a significant portion
 10 of its memorandum on the argument that it is entitled to the unpaid portion as a statutory award
 11 under California Civil Code section 3344’s fee shifting provision. *See id.* at 6–15; *see also id.* at
 12 7 (citing *Flannery v. Prentice*, 26 Cal. 4th 572, 577 (2001), for proposition that, “to the extent
 13 attorneys have provided unpaid legal services to the prevailing litigant, the statutory attorney fee
 14 award belongs and should be paid directly to those attorneys, unless such unpaid fees have been
 15 waived or otherwise validly disposed of by contractual agreement”). However, as noted, Yeager
 16 does not dispute the accuracy of the total of \$168,520.63 awarded. Yeager’s Resp. to PBL’s
 17 Statement of Undisputed Facts ¶¶ 1–3, but rather disputes whether \$81,827.65 is an accurate
 18 calculation of the unpaid amount Yeager owes PBL. *Id.* ¶¶ 4–6; Opp’n at 2. *Flannery* does not
 19 help PBL in this regard as it only addressed “the narrow question . . . whether a party may receive
 20 or keep the proceeds of a fee award when she has neither agreed to pay her attorneys nor obtained
 21 from them a waiver of payment.”⁴ *Flannery*, 26 Cal. 4th at 580–81.

22 ³ PBL requests the court take judicial notice of nine documents filed in the Yeager action.
 23 ECF No. 104. The documents submitted by PBL are of the type for which judicial notice is
 24 proper. Fed. R. Evid. 201. Specifically, the documents consist of matters filed as part of a court
 proceeding. Matters of public record are generally subject to judicial notice. *Akhtar v. Mesa*,
 698 F.3d 1202, 1212 (9th Cir. 2012). Accordingly, PBL’s request for judicial notice is granted.

25 ⁴ Similarly, much of Yeager’s “disputed material facts” focus on, *inter alia*, whether
 26 “Zarian erred by not getting appropriate declarations and/or not filing the ones they did not obtain
 27 from other attorneys, in a timely fashion” when it submitted its motion for attorneys’ fees, or
 28 whether Zarian “mishandled other issues affecting the award and judgment.” Yeager’s Resp. to
 PBL’s Statement of Undisputed Facts ¶¶ 8–16. Notwithstanding the fact none of these arguments
 were actually made in Yeager’s memorandum in opposition to the motion for summary judgment,
 the question before this court is not whether the award of \$168,520.63 in the underlying action is

1 PBL’s only remaining argument is the “statutory attorney’s fee award pursuant to
 2 section 3344 in the amount of \$168,520.63” has not been paid in full by Yeager, and he
 3 “continues to owe [PBL] \$81,837.65.” Mem. at 16. The only basis for its claim for the unpaid
 4 fees is the declaration of John Zarian, which includes an itemized spreadsheet listing the
 5 payments received from Yeager totaling \$86,692.98 and the remaining balance of \$81,827.65.
 6 Zarian Decl. Ex. B, ECF No. 105-1 (“billing summary”); *see also* Zarian Decl. ¶ 12, ECF No. 105
 7 (“Exhibit B is a true and correct copy of a summary showing the fees claimed, fees awarded,
 8 payments applied, and the outstanding balance.”).

9 As a preliminary matter, the court must determine whether the billing summary is
 10 admissible evidence. *See* Fed. R. Civ. P. 56(e); *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d
 11 1179, 1181 (9th Cir. 1988). In order for evidence to be admissible, a party must satisfy the
 12 requirement of authenticating or identifying an item of evidence by producing “evidence
 13 sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid.
 14 901(a); *see also* *Beyene*, 854 F.2d at 1182; *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir.
 15 2004) (invoices are not self-authenticating under Rule 902(9)). The Ninth Circuit has “repeatedly
 16 held that unauthenticated documents cannot be considered in a motion for summary judgment.”
 17 *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002) (collecting cases). “In a
 18 summary judgment motion, documents authenticated through personal knowledge must be
 19 ‘attached to an affidavit that meets the requirements of [Federal Rule of Civil Procedure] 56(e)
 20 and the affiant must be a person through whom the exhibits could be admitted into evidence.’”
 21 *Id.* at 773–74 (quoting *Canada v. Blain’s Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987)).
 22 Rule 56 requires that affidavits be made on personal knowledge and that the affiant be competent
 23 to testify to the matters stated therein. Fed. R. Civ. P. 56(e).

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27 proper. The dispute here is whether or not the attorneys’ fees awarded to Yeager as a result of
 28 that ruling were paid by Yeager to PBL such that PBL is entitled to all or a portion of the amount
 deposited by AT&T with the court.

1 With regard to the billing summary itemizing Yeager's payments, John Zarian's
 2 declaration states:

3 10. In addition to a retainer payment remitted by Gen. Yeager in
 4 the early stages of the representation, Parsons Behle's records
 5 reflect that Gen. Yeager made four other payments. The total
 amount of retainer funds and payments applied to the fees claimed
 in the *Yeager v. AT&T* matter is \$86,692.98.

6 11. Each invoice sent to Gen. Yeager included an accounting,
 7 documenting payments applied to the *Yeager v. AT&T* matter.
 8 Accordingly, Gen. Yeager was fully advised of the manner and
 timing of the payments applied. Gen. Yeager has never disputed
 these payment applications, which are properly accounted for as
 part of the funds at issue in this lawsuit.

9
 10 12. Of the \$168,520.63 in fees awarded by Court [sic] for
 11 professional services rendered by Zarian Midgley and Parsons
 12 Behle, \$81,827.65 remains outstanding and unpaid. Attached
 13 hereto as Exhibit B is a true and correct copy of a summary
 14 showing the fees claimed, fees awarded, payments applied, and the
 15 outstanding balance. At no point has Parsons Behle ever entered
 16 into a contractual agreement, or other understanding, with Gen.
 17 Yeager for purposes of waiving or otherwise disposing of any of
 18 amounts [sic] owed by him in the *Yeager v. AT&T* matter, inclusive
 19 of the outstanding balance set forth in Exhibit B.

20
 21 Zarian Decl. ¶¶ 10–12 (emphasis omitted). The billing summary submitted by PBL shows the
 22 following:

Invoice Date	Firm	Fees Claimed	Fees Awarded	Payments Applied	Balance
8/31/2011	Zarian Midgley	\$2,368.00	\$2,368.00		\$2,368.00
9/30/2011	Zarian Midgley	\$471.00	\$471.00		\$471.00
11/20/2011	Zarian Midgley	\$11,388.50	\$11,388.50		\$11,388.50
2/9/2012	Parsons Behle	\$1,440.00	\$1,440.00		\$1,440.00
2/18/2012	Parsons Behle	\$256.00	\$256.00		\$256.00
3/31/2012	Parsons Behle	\$11,404.00	\$11,404.00		\$11,404.00
5/23/2012	Parsons Behle	\$10,192.00	\$10,192.00		\$10,192.00
6/30/2012	Parsons Behle	\$10,161.00	\$10,161.00		\$10,161.00
7/5/2012	Parsons Behle	\$113,076.50	\$113,076.50		\$39,012.48
10/3/2012	Parsons Behle	\$18,763.50		\$7,763.63	\$0
10/31/2012	Parsons Behle	\$7,275.50			\$0
		\$186,796.00	\$168,520.63		<u>\$86,692.98</u> <u>\$81,827.65</u>

23
 24 Zarian Decl. Ex. B. Zarian's declaration also states that, in addition to a retainer payment made
 25 by Yeager, he "made four other payments." *Id.* ¶ 10. However, neither Zarian's declaration nor
 26

1 the billing summary specifies the exact amount of each of the four payments made by Yeager.
2 The billing summary itemizes the fees claimed by PBL, the fees awarded by the court and the
3 payments applied, which are the exact amounts as the fees claimed and awarded for the first eight
4 invoices. The payments applied column does not reflect a retainer payment and four separate
5 payments. Thus, to the extent Zarian declares Yeager made only one retainer payment and four
6 subsequent payments, the billing summary does not support his assertion.

7 Moreover, Zarian describes no personal knowledge of the summary of payments
8 made by Yeager, nor “any other manner in which [he] is otherwise competent to testify about
9 [the] contents” of the summary. *Chao v. Westside Drywall, Inc.*, 709 F. Supp. 2d 1037, 1048–49
10 (D. Or. 2010) (excluding from evidence an exhibit introduced through an affidavit as improperly
11 authenticated). Zarian does not explain the origin and contents and the billing summary is
12 “facially devoid of any identifying information supporting any conclusion” about its source. *Id.*
13 at 1049.

14 Other than introducing the billing summary as a “true and correct copy,” Zarian
15 Decl. ¶ 12, Zarian does not declare he has personal knowledge of the facts set forth in the
16 summary sufficient to attest to the identity and accuracy of the contents. *Cf., e.g., Kruse v.*
17 *Hawai’i*, 857 F. Supp. 741, 745 n.5 (D. Haw. 1994) (finding a case log properly authenticated
18 under Fed. R. Evid. 901 through declaration stating, among other things, declarant was “familiar
19 with the documents” based on her capacity as a supervisor and “she was the custodian of the file[]
20 until it was transferred”). A statement in an attorney’s declaration that an exhibit is a “true and
21 correct copy,” without more, does not lay an adequate foundation to properly authenticate the
22 billing summary. *Beyene*, 854 F.2d at 1182.

23 Consonant with the court’s obligation to consider only authenticated documents in
24 resolving motions for summary judgment, the court will not rely on the unauthenticated billing
25 summary. *Orr*, 285 F.3d at 773.

26 In its reply, PBL argues in part that “the fee awards granted by this Court at
27 Yeager’s request establish the threshold amounts owed and unpaid,” referencing its request for
28 judicial notice of the court’s orders in the underlying AT&T action. Reply in Supp. of Mot.

1 Summ. J. at 4, ECF No. 109. To the extent PBL argues the numerous filings in the underlying
2 AT&T action establish the unpaid amount owed by Yeager, this argument is unavailing. PBL
3 fails to point to where exactly in the record evidence of Yeager's payments or outstanding
4 balance exists. The court will not undertake an examination of the more than four hundred pages
5 PBL offers in an effort to locate evidence where it is not identified in PBL's papers with adequate
6 references. *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001) (a party must
7 bring its evidence to the court's attention because a district court is not required to comb the
8 record).

9 The only relevant evidence relied on by PBL in support of its motion for summary
10 judgment is the billing summary. PBL’s Statement of Undisputed Facts ¶¶ 4–6, ECF No. 103-3.
11 As the moving party, PBL has not satisfied its initial burden of showing the court “there is an
12 absence of evidence to support the nonmoving party’s case.” *Celotex Corp.*, 477 U.S. at 325.

13 ||| Accordingly, PBL's motion for summary judgment is DENIED.

14 || DATED: August 19, 2014.


UNITED STATES DISTRICT JUDGE