

APPENDIX

1a
APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 20-1299

Charles L. Burgett

Plaintiff - Appellant

v.

The General Store No Two Inc., et al.

Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: October 8, 2020

Filed: October 22, 2020

[Unpublished]

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Charles Burgett brought this pro se 42 U.S.C. § 1983 action against multiple defendants. The district court¹ dismissed all claims with prejudice as a sanction for

¹The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri.

Burgett's willful discovery violations, explaining in a lengthy Order that Burgett's willful, bad faith defiance of "at least four Court orders" had prejudiced defendants. This court affirmed. Burgett v. Gen. Store No Two Inc., 727 Fed. Appx. 898, 900 (8th Cir. 2018), cert. denied, 139 S. Ct. 2638 (2019). Burgett now appeals the court's order taxing costs in favor of defendants in the total amount of \$6,9875.23. After careful review of the entire record, we conclude the court did not abuse its substantial discretion in taxing costs and therefore affirm. See Fed. R. Civ. P. 54(d)(1); Dindinger v. Allsteel, Inc., 853 F.3d 414, 431 (8th Cir. 2017) (standard of review).

Defendants were prevailing parties presumptively entitled to recover costs properly taxable under 28 U.S.C. § 1920. A district court has discretion to tax the costs of printed and electronic transcripts of the same deposition, provided both were "necessarily obtained" for use in the case. See Stanley v. Cottrell, Inc., 784 F.3d 454, 465-67 (8th Cir. 2015); Zotos v. Lindbergh Sch. Dist., 121 F.3d 356, 363 (8th Cir. 1997). Discovery-related copying is taxable, particularly in a case where the losing party's discovery abuses were determinative. See Op. Eng'rs Local #49 Health & Welfare Fund v. Charps Welding & Fab., Inc., 950 F.3d 510, 527 (8th Cir. 2020). Defendants submitted evidence that all costs taxed were not duplicative and were in fact paid. The court did not abuse its discretion in declining to deny or reduce taxable costs on account of Burgett's alleged indigency, particularly given his willful abuse of the discovery process that prejudicially increased defendants' litigation costs. See Smith v. Tenet Healthsystem SL, Inc., 436 F.3d 879, 889 (8th Cir. 2006).

The district court's text only order entered January 13, 2020 is affirmed. Appellant's motion to strike the brief of appellee The General Store No Two Inc. is denied.

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:16-cv-00455-SRB**

Burgett v. General Store No Two Inc, The et al

Assigned to: District Judge Stephen R. Bough

Case in other court: Jackson County Circuit Court, 1616-CV08489

8th Circuit Court of Appeals, 17-01916

8th Circuit Court of Appeals, 20-01299

Cause: 28:1983 Civil Rights

Date Filed: 05/18/2016

Date Terminated: 12/28/2016

Jury Demand: Defendant

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff

Charles Burgett

represented by **Charles Burgett**

P.O. Box 24826

Kansas City, MO 64131

PRO SE

V.

Defendant

**General Store No Two Inc, The
doing business as
Marsh's Sunfresh Market**

represented by **Ryan E. Karaim**

Franke, Schultz & Mullen - KCMO

8900 Ward Parkway

Kansas City, MO 64114

(816)421-7100

Fax: (816)421-7915

Email: rkaraaim@fsmlawfirm.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

W.S.C. Services, Inc.

represented by **Meagan L. Blackwell-Patterson**

Waldeck & Patterson P.A.

5000 West 95th Street

Suite 350

Prairie Village, KS 66207

(913) 749-0320

Fax: (913) 749-0301

Email: meaganp@waldeckpatterson.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Brooke Blake

Waldeck & Patterson P.A.

5000 West 95th Street

Suite 350

4a

Prairie Village, KS 66207
913-749-0318
Fax: 913-749-0301
Email: brookeb@waldeckpatterson.com
TERMINATED: 01/04/2017

Laura Van Note

Wallace, Saunders, Austin, Brown &
Enochs, Chartered-OPKS
10111 West 87th Street
Overland Park, KS 66212
913-749-0300
Fax: 913-749-0301
Email: laurav@waldeckpatterson.com
TERMINATED: 09/02/2016

Defendant

Andrei Florea

*in his official capacity as an employee of
W.S.C. Services Inc. and agent of Marsh's
Sunfresh Market, and in his individual
capacity*

represented by **Meagan L. Blackwell-Patterson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brooke Blake

(See above for address)
TERMINATED: 01/04/2017

Laura Van Note

(See above for address)
TERMINATED: 09/02/2016

Defendant

Thomas Bethel

*in his official capacity as a police officer,
and in his individual capacity*

represented by **Nicolas Taulbee**

Missouri Attorney General's Office-KC
615 East 13th Street
Suite 401
Kansas City, MO 64106
(816) 889-5000
Fax: (816) 889-5006
Email: nicolas.taulbee@ago.mo.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lynnette Nefertiti Lockhart

Missouri Attorney General's Office-KC
615 East 13th Street
Suite 401
Kansas City, MO 64106
816-889-5013
Fax: 816-889-5006
Email: lynnette.lockhart@ago.mo.gov
TERMINATED: 02/20/2020

Defendant

Terry Grimmett
*in his official capacity as a police officer,
and in his individual capacity*

5a represented by **Nicolas Taulbee**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lynnette Nefertiti Lockhart
(See above for address)
TERMINATED: 02/20/2020

Defendant

Matthew Payne
*in his official capacity as a police officer,
and in his individual capacity*

represented by **Nicolas Taulbee**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lynnette Nefertiti Lockhart
(See above for address)
TERMINATED: 02/20/2020

Date Filed	#	Docket Text
01/13/2020	149	Before this Court is Plaintiff's pro se Memorandum in support of the Motion to Retax Costs (#143). Plaintiff basically reargues the issues decided by this Court in an Order dated December 4, 2019 (Doc. # 142). Defendants W.S.C. Services, Inc. and Andrei Florea concede \$54.00 in delivery costs are not recoverable. Plaintiff's Memorandum (Doc. #143), construed as a Motion, is denied and costs are awarded in the amount of \$3,282.15 to defendants W.S.C. Services, Inc. and Andrei Florea; \$1,998.24 to defendant The General Store No. Two, Inc., d/b/a/ Marshs Sun Fresh Market; and \$1,704.84 to defendants Terry Grimmett, Thomas Bethel, and Matthew Payne. Signed on 1/13/20 by District Judge Stephen R. Bough. This is a TEXT ONLY ENTRY. No document is attached. (Diefenbach, Tracy) Copy of this order mailed to: Charles Burgett, P.O. Box 24826, Kansas City, MO 64131 (Entered: 01/13/2020)

6a
APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-1299

Charles L. Burgett

Appellant

v.

The General Store No Two Inc., doing business as Marsh's Sunfresh Market, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-00455-SRB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 15, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

7a
APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHARLES BURGETT
Plaintiff,

v.

THE GENERAL STORE NO. TWO INC., et al.,
Defendants.

Case No. 16-0455-CV-W-SRB

17-000007
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00000000
00000000
00000000

**OBJECTIONS TO THOMAS BETHEL, MATTHEW PAYNE
AND TERRY GRIMMETT'S BILL OF COSTS**

Plaintiff Charles Burgett (Burgett) makes the following objections to defendants' Thomas Bethel, Matthew Payne and Terry Grimmett purported bill of costs. (Doc. # 115).

On December 28, 2016, the court unjustly dismissed all of Burgett's claims [not on the merits] and all defendants; and issued judgment. On January 18, 2017, the instant defendants purportedly filed the bill of costs.

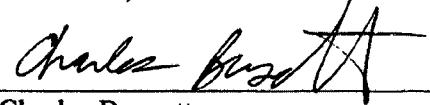
Local Rule 54.1(a) states, "A party seeking an award of costs shall file a verified bill of costs, upon a form provided by the Clerk, no later than 21 days after entry of final judgment pursuant to Fed.R.Civ.P. 58 (emphasis added in original)." The defendants' counsel, Lynnette Lockhart did not timely or otherwise "file a verified bill of costs, upon a form provided by the Clerk" within the required time of "21 days after entry of final judgment pursuant to Fed.R.Civ.P. 58." Therefore, for this reason alone, Doc. #115 must be stricken as untimely and not allowed, and the clerk should not enter the bill of costs.

Notwithstanding, the costs for the stenographic transcripts were not necessarily incurred. The transcripts (Doc. ## 115-2, 115-3) establish a duplicate cost. The transcript costs were shared. See Doc. ##113-1, P. 6; 114-1, PP. 2-3. The costs regarding (Doc. #115-3) were predicted on a biased ruling of the court and were not necessarily incurred.

The costs for (Doc. ## 115-2, 115-3) were not paid [invoices show balance due]. Thomas Bethel, Matthew Payne and Terry Grimmett did not file proof of payment in respect to (Doc. ## 115-2, 115-3).

Based on the foregoing reasons, no amount (\$.00) should be taxed as costs against Burgett. The parties should pay their own costs. Plaintiff Charles Burgett asks the clerk not to enter defendants' Thomas Bethel, Matthew Payne and Terry Grimmett purported bill of costs.

Submitted,



Charles Burgett
Plaintiff *Pro se*
PO Box 24826
Kansas City, Missouri 64131
(816)521-0339

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHARLES BURGETT
Plaintiff,

v.

THE GENERAL STORE NO. TWO INC., et al.,
Defendants.

Case No. 16-0455-CV-W-SRB

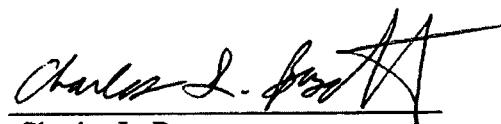
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by first class U.S. mail, postage prepaid, on January 30, 2017 to:

Lynnette N. Lockhart
615 E. 13th Street, Suite 401
Kansas City, MO 64106

Ryan E. Karaim
8900 Ward Parkway
Kansas City, MO 64114

Meagan L. Blackwell-Patterson
5000 West 95th Street, Suite 350
Prairie Village, KS 66207



Charles L. Burgett

10a
APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RECEIVED

2019 DEC 11 PM 3:44

CLERK U.S. DIST. COURT
WEST. DIST. OF MO.
KANSAS CITY, MO.

CHARLES BURGETT
Plaintiff,

v.

THE GENERAL STORE NO. TWO INC., et al.,
Defendants.

Case No. 16-0455-CV-W-SRB

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO RETAX COSTS

Plaintiff Charles Burgett (Burgett) asks the court to **RETAX costs** assessed by the clerk (Doc. #142).

On December 28, 2016, the court [as an unwarranted sanction] unjustly dismissed Burgett's entire civil rights lawsuit with prejudice; and, issued judgment [no findings were made on the merits].

On January 30, 2017, Burgett filed objections to defendants' W.S.C. Services, Inc. and Andrei Florea (Doc. #117) and, the General Store No. Two Inc. (Doc. #118) bills of costs; and, defendants' Thomas Bethel, Matthew Payne and Terry Grimmett purported bill of costs (Doc. #119).

On December 4, 2019, the clerk assessed the bills of costs (Doc. ## 113, 114, 115) over the objections of Burgett. The total of the bills of costs is \$7,248.09 [\$6,745.83 - transcripts; \$502.26- copies].

W.S.C. Services, Inc. and Andrei Florea

The court should vacate the award of costs because the costs were not necessarily incurred in the case. See 28 U.S.C. §1924. Specifically, the clerk awarded delivery costs for transcripts, which are not recoverable. *Smith v. Tenet HealthSystem SL., Inc.*, 436 F.3d 879, 889 (8th Cir. 2006). See Doc. #113-1, PP. 5 of 8 - 8 of 8.

The court should vacate the award of costs because incurred costs were unnecessary, duplicate and unreasonably high. *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir. 1995).

The costs for the videotaped deposition and stenographic transcripts were not necessarily incurred. The deposition was unnecessary and was not used in the proceeding. See Doc. #117, P. 1. No costs should be recoverable for both a videotaped deposition and stenographic transcript. *Id.*; *Cherry v. Champion Int'l Corp.*, 186 F.3d 442, 448-449 (4th Cir. 1999).

The costs for (Doc. # 113-1, PP. 6, 8) were not paid [invoices show balance due]. See *Id.*; Doc. #117, P. 1. **The court should vacate the award of costs because there is no proof of payment or obligation to pay the costs.**

When itemizing copy costs (Doc. #113-1, P. 2), defendants' counsel did not identify what was copied and why the copying was necessary for the case. See *Id.*; Doc. #117, P. 1; 28 U.S.C. §1920; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 993; *U.S. v. Merritt Meridian Constr. Corp.*, 95 F.3d 153, 173 (2d Cir. 1996); *Eolas Techs.*, 891 F.Supp.2d at 807. **The court should vacate the award of costs.**

The General Store No. Two Inc.

The court should vacate the award of costs because incurred costs were unnecessary, duplicate and unreasonably high. *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir. 1995). The costs for the stenographic transcripts were not necessarily incurred; the transcripts establish a duplicate cost; and, the deposition was unnecessary and was not used in the proceeding. See Doc. #118, P. 1.

The costs for (Doc. # 114-1, PP. 2-3) were not paid [invoices show balance due]. See *Id.*; Doc. #118, P. 1. **The court should vacate the award of costs because there is no proof of payment or obligation to pay the costs.**

When itemizing copy costs (Doc. #114-1, P. 4), defendant's counsel did not identify what was copied and why the copying was necessary for the case. See *Id.*; Doc. #118, P. 1; 28 U.S.C. §1920; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 993; *U.S. v. Merritt Meridian Constr. Corp.*, 95 F.3d 153, 173 (2d Cir. 1996); *Eolas Techs.*, 891 F.Supp.2d at 807. **The court should vacate the award of costs.**

Thomas Bethel, Matthew Payne and Terry Grimmett

The foregoing defendants waived the purported bill of costs because, "a verified bill of costs [was not timely filed], upon a form provided by the [c]lerk", pursuant to Local Rule 54.1(a). See Doc. #119, P. 1. **The court should vacate the award of costs.**

Notwithstanding, the court should vacate the award of costs because incurred costs were unnecessary, duplicate and unreasonably high. *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir.1995). The costs for the stenographic transcripts were not necessarily incurred; the transcripts establish a duplicate cost; and, the deposition was unnecessary and was not used in the proceeding. See Doc. #119, P. 1.

The costs for (Doc. ## 115-2, 115-3) were not paid [invoices show balance due]. See Id., Doc. #119, P. 1. The court should vacate the award of costs because there is no proof of payment or obligation to pay the costs.

Common to All defendants' Bills of Costs

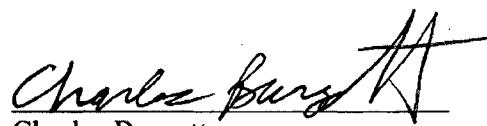
The clerk improperly assessed costs for all six party defendants. The term, "the prevailing party" as used in FRCP 54 is singular; therefore, the Rule allows for only one "prevailing party". *Shum v. Intel Corp.*, 629 F.3d 1360, 1367 (Fed.Cir.2010). The court should vacate the award of costs.

The court should vacate the award of costs because Burgett is indigent and is unable to pay any of the assessed costs. *Lampkins v. Thompson*, 337 F.3d 1009, 1017 (8thCir.2003). See Affidavit of Assets, Income and Expenses, Exhibit 1.

The court should vacate the award of costs because the award is inequitable under the circumstances. Imposing an award of \$7,248.09 costs when Burgett is indigent and has an inability to pay would be inequitable. See id. Additionally, imposing costs on indigent civil rights plaintiffs [like Burgett] who cases that were dismissed with prejudice [not on the merits] will have a chilling effect on future similar actions. *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1247-48 (9thCir.2014).

For the above-stated reasons, Plaintiff Charles Burgett asks the court to **VACATE the costs** erroneous assessed against him and to **RETAX the costs**.

Submitted,



Charles Burgett
Plaintiff *Pro se*
PO Box 24826
Kansas City, Missouri 64131
(816)521-0339

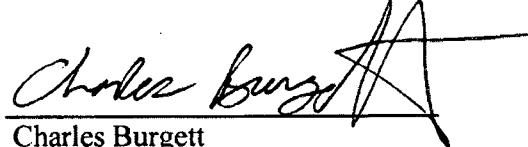
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by first class U.S. mail, postage prepaid, on December 11, 2019 to:

Meagan L. Blackwell-Patterson
5000 West 95th Street, Suite 350
Prairie Village, KS 66207

Ryan E. Karaim
8900 Ward Parkway
Kansas City, MO 64114

Nicolas Taulbee
615 E. 13th Street, Suite 401
Kansas City, MO 64106



Charles Burgett

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHARLES BURGETT

Plaintiff,

v.

THE GENERAL STORE NO. TWO INC., et al.,
Defendants.

Case No. 16-0455-CV-W-SRB

AFFIDAVIT OF ASSETS, INCOME AND EXPENSES

I, Charles Burgett, affirm that I am the Plaintiff in this case, that because of my indigence I am unable to pay any award of assessed costs. I further affirm that the details below and the information I have given relating to my inability to pay assessed costs are true.

1. My Mailing Address and Telephone Number is:

P.O. Box 24826
Kansas City, Missouri 64131
816-521-0339

2. I receive monthly income of \$950.00.

3. I **do not own** real property.

- A. I **do not own** an automobile.

- B. I **have not** received within the past 12 months any money from any of the following sources:

Rent payments, interest or dividends; Pensions, trust funds, annuities or life insurance payments; Gifts or inheritances; Welfare payments; ADC or other governmental child support; Unemployment benefits; Social Security benefits.

- C. I **do not own** any stocks, bonds or savings bonds either individually or jointly.

4. I have the following monthly Obligations

- A. Court Ordered Child Support - \$387.00
- B. Shelter Rent Expense - \$400.00
- C. Cell Phone Expense - \$40.00.
- D. VISA Payment - \$75.00; Balance due: \$2,800.00.

I affirm under penalty of perjury, pursuant to 28 U.S.C. §1746 that the details of this affidavit and the information contained in the affidavit is true to the best of my knowledge and belief.

STATE OF MISSOURI)

JACKSON COUNTY)

Date Executed: December 11, 2019

Signature: Charles Burgett

Printed Name: Charles Burgett, Plaintiff *Pro Se*

16a
APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RECEIVED

2020 JAN -7 PM 3:22

CHARLES BURGETT
Plaintiff,

v.

THE GENERAL STORE NO. TWO INC., et al.,
Defendants.

CLERK U.S. DIST. COURT
WEST. DIST. OF MO
KANSAS CITY, MO

Case No. 16-0455-CV-W-SRB

REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO RETAX COSTS

Plaintiff Charles Burgett hereby replies to defendants' opposition (Doc. ##144, 145) to his Motion to Retax Costs as follows:

From the outset, Burgett timely filed a document on December 11, 2019, which he believes is a Motion to Retax Costs and Memorandum in Support combined. Burgett *Pro se* filing (Doc. #143) should be liberally construed by the court as a Motion to Retax Costs and Memorandum in Support combined and filed in one document. See Burgett's Motion for Extension to File Motion to Retax Costs.

W.S.C. Services, Inc. and Andrei Florea

Video Deposition and Stenographic Transcripts

First, the defendants are claiming \$3,316.15 for the videotaped deposition [\$1,628.00] and stenographic transcripts [\$1,708.15] (Doc. #113-1, PP. 5-8). **The court should vacate the award of costs because incurred costs were unnecessary, duplicate and unreasonably high.** *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir.1995); This Reply, P. 3 infra.

Second, the defendants' counsel noticed Burgett for a video deposition not a video and stenographic deposition. See (Doc. #60). Therefore, costs can only be claimed for the videotaping and not the stenographic deposition. *Morrison v. Reichhold Chemicals, Inc.*, 97 F.3d 460, 464-65 (11th Cir.1996). Additionally, no costs should be recoverable for both a videotaped deposition and stenographic transcript. *Cherry v. Champion Int'l Corp.*, 186 F.3d 442, 448-449 (4th Cir.1999).

Third, the videotaped deposition and stenographic deposition transcript were unnecessary and were not used in the proceeding. The defendants' counsel only speculated that the stenographic deposition transcript and videotaped deposition would have been used at trial ["had the matter proceeded, [d]efendants would have used the transcript . . . as well as used the videotaped deposition . . . at trial (OPP, P. 3)."] The foregoing statement is an admission that the defendants did not use the video deposition in the proceeding. In addition, as an attempt to support the taking of the video deposition of Burgett, the defendants' counsel stated, "In the past, Plaintiff had improperly refused to answer deposition questions . . . (OPP, P. 4)." The defendants' counsel nor any of the other defendants' counsel had previously deposed Burgett in the instant matter. The defendants' counsel's statement is false. **The costs for the videotaped deposition and stenographic transcripts were not necessarily incurred. The court should be vacate the award of costs.**

Finally, the costs for invoice (Doc. #113-1, P. 8) [show balance due]; and, the defendants' counsel continues not to provide any proof (e.g., cancelled checks) that the invoices (Doc. #113-1, PP. 5-8) were paid. In fact, the invoices (Doc. #113-1, PP. 5-8) show that the costs were billed to Nationwide Insurance Company not the defendants. **The court should vacate the award of costs because there is no proof of payment or obligation to pay the costs.**

Copy Costs

The defendants are claiming \$208.86 in copying costs (Doc. #113-1, P. 2). The order issued in the "*Ledar Transport*" offered by defendants' counsel is not published; does not set any precedent or authority for this case; and, is aged as compared to the case law assert by Burgett *infra*. The foregoing documentation provided by the defendants for copy costs merely indicate that photocopies were made. See Doc. #113-1, P.2 ("5755.32930 06/24/2016 1A B110 E101 0.060 8.40 Copying charges (140 pages @ .06/page)"). The defendants' counsel did not identify what was copied and why the copied documents were necessary for the case. The providing of inadequate detail regarding the copying costs is inconsistent with case law. See for example *Eolas Techs. Inc. v. Adobe Sys., Inc.* 891 F.Supp.2d at 807 (2012). **The court should vacate the award of copying costs.**

The General Store No. Two Inc.

Stenographic Transcript

The defendant is claiming \$1,704.84 for the stenographic transcripts (Doc. #114-1, PP. 2-3), which defendant's counsel claims is defendant's share (Doc. #126, P. 3). Based on the allegation by defendant's counsel, the total shared costs for the stenographic transcripts is \$5,004.68 (Doc. #114-1, PP. 2-3; 115-2, 115-3; 113-1, PP.6,8). The so-called shared costs, *inter alia*, is excessive. The costs for the stenographic transcripts were not necessarily incurred; the transcripts establish a duplicate cost; and, the deposition was unnecessary and was not used in the proceeding. **The court should vacate the award of costs because incurred costs were unnecessary, duplicate, unreasonably high and excessive.** *Cherry v. Champion Int'l Corp.*, 186 F.3d 442, 448-449 (4th Cir. 1999); *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir. 1995); *Teague v. Bakker*, 35 F.3d 978, 996 (4th Cir. 1994).

Notwithstanding, the costs for (Doc. #114-1, PP. 2-3) were not paid [invoices show balance due]. The defendant's counsel continues not to provide any proof (e.g., cancelled checks) that the invoices were paid. **The court should vacate the award of costs because there is no proof of payment or obligation to pay the costs.**

Copy Costs

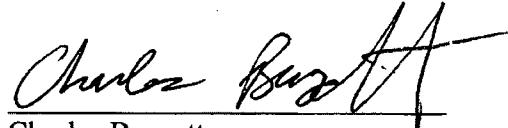
The defendant is claiming \$293.40 in copying costs (Doc. #114-1, P. 4). More than 35 percent of the copies are at an excessive rate of .50 per page. The foregoing documentation provided by the defendant for copy costs merely indicate that photocopies were made. See Doc. #114-1, P.4 ("110.011 05/19/2016 2A 4 0.500 4.00 Photocopy expense (8 color copies @ 0.50)"). The defendant's counsel did not identify what was copied and why the copied documents were necessary for the case. The providing of inadequate detail regarding the copying costs is inconsistent with case law. See for example *Eolas Techs. Inc. v. Adobe Sys. Inc.* 891 F.Supp.2d at 807 (2012). **The court should vacate the award of copying costs.**

Thomas Bethel, Matthew Payne and Terry Grimmett

The foregoing defendants did not oppose Burgett's Motion to Retax Costs. **The court should vacate the award of costs.**

For the above-stated reasons and for the reasons stated in his Motion to Retax Costs, Plaintiff Charles Burgett asks the court to **VACATE the costs** erroneous assessed against him and to **RETAX the costs**.

Submitted,



Charles Burgett
Plaintiff *Pro se*
PO Box 24826
Kansas City, Missouri 64131
(816)521-0339

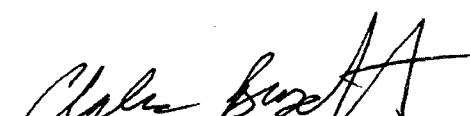
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by first class U.S. mail, postage prepaid, on January 7, 2020 to:

Meagan L. Blackwell-Patterson
5000 West 95th Street, Suite 350
Prairie Village, KS 66207

Ryan E. Karaim
8900 Ward Parkway
Kansas City, MO 64114

Nicolas Taulbee
615 E. 13th Street, Suite 401
Kansas City, MO 64106


Charles Burgett

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CHARLES BURGETT

Appellant,

v.

Appeal No. 20-1299

THE GENERAL STORE NO. TWO INC., et al,
Appellees.

MOTION TO STRIKE BRIEF OF APPELLEE,
THE GENERAL STORE NO. TWO INC.

Appellant Charles Burgett asks This Court to **STRIKE** the brief of appellee, the General Store No. Two Inc. (Doc. # 4915293). This Motion to Strike Brief of Appellee is being filed contemporaneously with Burgett's Reply Brief.

On February 12, 2020, the Clerk of This Court issued Civil Case Docketing Letter (Doc. # 4880769) to all case participants, including attorney Ryan Edward Karaim. Id. at P. 4. The letter stated, *inter alia*, "Counsel in the case must supply the clerk with an Appearance Form (¶ 2)." Burgett has not received a document from attorney Karaim certifying that he entered his appearance before This Court for appellee, The General Store No. Two Inc. nor does the Docket show that attorney Karaim filed an Appearance of Counsel Form with the Clerk of This Court. Therefore, no attorney licensed to practice in this jurisdiction has entered an appearance on behalf of appellee, The General Store No. Two Inc. and appellee is in default.

Attorney Karaim has a pattern of not following Federal Rules of Appellate Procedure; and, Eighth Circuit Rules and directives. For example: attorney Karaim was required under Federal Rule of Appellate Procedure 25 and Eighth Circuit Rule 25A(e) to serve Burgett with the brief for The General Store No. Two Inc.;

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however, Burgett did not received a copy of the same from Karaim. The Clerk of This Court sanctioned the misconduct and sent Burgett a copy of the brief. See Doc. ## 4923900, 4923910. Attorney Karaim should not be allowed to ignore Federal Rules of Appellate Procedure; and, Eighth Circuit Rules and directives.

This Court should **strike** the brief for The General Store No. Two Inc. because attorney Karaim did not and has not entered his appearance before This Court, as required by Federal Rule of Appellate Procedure 46, Eighth Circuit Rule 46A, and directive from the Clerk of This Court (Doc. # 4880769, ¶ 2).

Based on the foregoing, Appellant asks This Court to **STRIKE** the brief of appellee, the General Store No. Two Inc.

Dated: July 13, 2020

Submitted,



Charles L. Burgett, Appellant *Pro Se*
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FILED

JUL 16 2020

MICHAEL GANS
CLERK OF COURT