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| DISTRICT COURT, DENVER COUNTY, COLORADO  Court Address: Denver County Court  1437 Bannock St., Room 256  Denver, CO 80202  (720) 865-8301  Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company;  v.  Defendants: SHAWN BEESON | DATE FILED: June 1, 2017 4:06 FILING ID: CD2DF22E908E3 CASE NUMBER: 2015CV31709  **COURT USE ONLY** | PM |
| Attorneys for Plaintiffs: |  | |
|  | Case Number: 2015CV31709 | |
| Nathan Silver  Silver Law Firm, LLC 700 17th Street, Suite 650  Denver, Colorado 80202  Phone: (303) 328-8510  E-m[ail: nathan@silverlawdenver.com](mailto:nathan@silverlawdenver.com) Atty. Reg. # 28836 | Division: 275 | |
| ABRAMS & ASSOCIATES, LLC  Robert Abrams, Atty Reg. # 37950  Neil S. Sullenberger, Atty Reg. # 48698 700 17th St., Suite 650  Denver, CO 80202  Phone #: (303) 322-4115  Fax #: (303) 333-0708  E-m[ail: Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net) |  | |
| **PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE TO MOTION TO RECONSIDER COST APPORTIONMENT AND AMEND JUDGMENT** | | |

COMES NOW, Plaintiffs Robert Abrams and Abrams & Associates, LLC, by their attorneys at Abrams & Associates, LLC, and hereby file their Reply to Defendant’s Response to Motion to Reconsider Cost Apportionment and Amend Judgment. In support thereof, Plaintiffs state and allege as follows:

# INTRODUCTION

1. Plaintiffs concede Defendant prevailed on a significant issue in the litigation, the

breach of contract claim. Defendant apparently refuses to concede that Plaintiffs also prevailed on multiple significant issues in the litigation, such as civil theft and battery.

1. As a point of clarity, Defendant’s assertion that “Robert Abrams chose to illegally hold” settlement funds is a false statement. *Defendant’s Response,* ¶ 1. The jury found for Plaintiffs on the claim of civil theft.
2. While Defendant attacks Plaintiffs’ Motion on the basis of insufficient legal authority, all of which was presented in a section entitled same, Defendant’s response fails to address with his own authority how the jury’s verdict for Plaintiffs on multiple issues should be disregarded to treat Defendant as prevailing party overall.
3. Likewise, Defendant fails to provide legal authority stating why Plaintiffs are not “eligible for an award of costs under C.R.S. § 13-16-104,” the same section under which Defendant claims his entitlement to costs.

# II. LEGAL ANALYSIS

1. **Defendant’s conclusory statement that Defendant is prevailing party in this case is not supported by the jury’s verdict.**
2. Defendant’s citation to *Dennis I. Spencer Contractor, Inc.* supports Plaintiffs’ position and argument that no party deserves the title of prevailing party, as there can be only one and all meet the definition. 884 P.2d 326 (Colo. 1994).
3. In his haste to cite *Overland Development* for the definition of a prevailing party, Defendant conspicuously fails to address the basis for his axiomatic argument that Plaintiffs did not “succeed upon a significant issue presented by the litigation” or “achieve some of the benefits sought in the lawsuit.” 773 P.2d 1112 (Colo. App. 1989).
4. Further, Defendant’s Alaskan legal authority is plainly distinguishable from this case. Plaintiffs did not prevail on a claim for mere setoff. Plaintiffs prevailed on independent and substantial claims, most notably the claim that carried the most significant potential damages in the entire litigation – civil theft.
5. Defendant correctly acknowledges Plaintiffs’ citation to *Archer*, 90 P.3d 228 (Colo. 2004), for the proposition that the award of costs is within the court’s discretion. Plaintiffs are well aware of such a fact and merely request the Court reevaluate its determination of the prevailing party based upon all parties’ ability to fit within such a definition.

# Plaintiffs are at a loss as to Defendant’s assertion that Plaintiffs failed to cite legal authority.

1. Plaintiffs, in typical fashion, drafted their Motion with a separate section entitled “Legal Authority,” wherein they cited all applicable case law in support of their position.
2. Plaintiffs’ Motion in fact included case law defining a prevailing party, upon which they base their argument in paragraphs 16-17 of the Motion, that each party could be considered to have prevailed in the litigation. Claiming that the failure to reiterate the legal authority in each sentence is “fatal” to Plaintiffs’ argument is nonsensical.

# Defendant’s reiteration of legal authority fails to address the fundamental issue of why Defendant is the sole party that fits the definition of “prevailing party.”

1. Defendant correctly states the law as reflected in *Archer*. *See Defendant’s Response*, ¶ 11. Defendant attacks Plaintiffs for misrepresentations as to “law and facts” in *Anderson v. Purcell*, 244 P.3d 1188 (Colo. 2010). Ironically, Defendant misrepresents that Plaintiffs cited the case for the proposition that “a party cannot be the prevailing party if it didn’t prevail on some claims in the litigation.” *Defendant’s Response*, ¶ 13. Rather, Plaintiffs merely cited the case for the definitional language of a prevailing party. Nothing in Plaintiffs’ Motion

represents that the case stood for the finding of two prevailing parties. Rather, Plaintiffs argued, and continue to argue, that “[i]t is thus inequitable to declare Defendant prevailing party and award his costs associated with all claims” where multiple parties meet the definition of a prevailing party. *Plaintiff’s Motion,* ¶ 21.

1. Plaintiffs request the Court reconsider and amend its judgment to reflect that both sides prevailed, pursuant to the definition of such term, and that no party should be awarded costs under these facts and circumstances to correct its error and avoid the resultant manifest injustice.

# Alternatively, the Court should limit Defendant’s costs.

1. District courts are vested with discretion in awarding or disallowing costs to successful litigants. *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358, 1363 (10th Cir.1979), cert. denied, 446 U.S. 909, 100 S.Ct. 1836, 64 L.Ed.2d 261 (1980); *Mikel v. Kerr*, 499 F.2d 1178, 1183 (10th Cir. 1974). As noted in Plaintiffs’ Motion, trial in this matter was initially scheduled for May 2, 2016. Over Plaintiffs’ objections and two related motions thereto, the Court continued the matter on the sole question of Defendant’s future damages as to his shoulder injury.
2. In May of 2016, Plaintiffs wanted to litigate the issue on the evidence in hand, which would have prevented the motions practice for which Defendant blames Plaintiffs in his Reply. *Defendant’s Response*, ¶ 16. Defendant then argues that he is entitled to costs from the evidentiary hearing for the permanent protection order in this case. Rather than stay present, Defendant takes the “slippery slope” approach and extends a rational argument to a “logical extreme.” *Defendant’s Response,* ¶ 18. Plaintiffs do not assert that counsel must submit a bill of costs after every motion, as Plaintiffs agree with Defendant that such an interpretation would in fact be “ludicrous.” However, to compare a permanent protection order hearing to every other motion is a logical fallacy, not a logical extreme.
3. C.R.S. § 13-14-109 governs the award of fees and costs for protection order hearings, so Defendant’s logical extension is unnecessary. Nowhere in the statute is a respondent, here Defendant, entitled to costs for “prevailing” where a court does not award a permanent protection order.
4. Rather, C.R.S. § 13-14-109(3) states, “At the permanent protection order hearing, the court may require the respondent to pay the filing fee and service-of-process fees…, and

to reimburse the petitioner for costs incurred in bringing the action.” The statute is one-sided, in

that it does not provide for a discretionary award of costs to a respondent under any circumstances. Further, the Court already determined upon Defendant’s subsequent motion for attorney’s fees that fees and costs were not awardable under C.R.S. § 13-17-102, as Plaintiffs’ petition for such protection order did not lack substantial justification. The court, on December 14, 2015, denied defendant’s motion and closed this issue.

1. Finally, Plaintiffs note Defendant’s argument for the award of costs incident to the permanent orders hearing lacks any legal authority and Plaintiffs do not find any section of the Response indicating that supportive authority exists. For the foregoing reasons and those stated in Plaintiffs’ Motion and Plaintiffs’ Objection to Defendant’s Bill of Costs, filed contemporaneously herewith, Defendant’s argument on this issue should be foreclosed.

# CONCLUSION

WHEREFORE, Plaintiffs respectfully request the Court reconsider its finding that Defendant was the prevailing party at trial and amend its judgment to reflect that no party is entitled to costs on that basis. Alternatively, Plaintiffs request the Court declare that Defendant’s costs are limited in scope to the period of time after judgment entered in the permanent protection hearing, including post-hearing filings thereto, ending with the court’s order of

December 14, 2015, until the Court’s April 29, 2016 order, continuing trial on the sole issue of Defendant’s future shoulder damages, which this Court reaffirmed in its December 2016 order. Independently of the prevailing party issue, Plaintiffs request the Court award Plaintiffs their costs from the Court’s April 29, 2016, order continuing the trial, which extended discovery until the May 2017 trial, pursuant to C.R.S. § 13-16-105, as Defendant released (nonsuited) all claims for those injuries after the parties litigated the issue for one full year. As such, plaintiffs expended costs for nothing as defendant neither presented any evidence as to future shoulder injury claims and lost the issue as each party prevailed and was awarded one dollar.

RESPECTFULLY SUBMITTED this 1st day of June, 2017.

ABRAMS & ASSOCIATES, LLC

*/s/ Neil S. Sullenberger*

Neil S. Sullenberger, Attorney for Plaintiffs

*(Original signature on file at Abrams & Assoc., LLC, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 1st day of June, 2017, via ICCES, served a true copy of the foregoing PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE TO MOTION TO RECONSIDER COST APPORTIONMENT AND AMEND JUDGMENT upon:

Wadi Muhaisen Amanda Becker

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Michael A. Gubiotti*

Michael A. Gubiotti

*(Original signature on file at Abrams & Assoc. LLC pursuant to C.R.C.P. 121 § 1-26)*