|  |  |
| --- | --- |
| DISTRICT COURT, DENVER COUNTY, COLORADOCourt Address: Denver County Court1437 Bannock St., Room 256Denver, CO 80202(720) 865-8301Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company;v.Defendants: SHAWN BEESON | DATE FILED: June 1, 2017 4:06 PM FILING ID: CD2DF22E908E3CASE NUMBER: 2015CV31709**COURT USE ONLY** |
| Attorneys for Plaintiffs: |  |
|  | Case Number: 2015CV31709 |
| Nathan SilverSilver Law Firm, LLC 700 17th Street, Suite 650Denver, Colorado 80202Phone: (303) 328-8510E-mail: nathan@silverlawdenver.com Atty. Reg. # 28836 | Division: 275 |
| ABRAMS & ASSOCIATES, LLCRobert Abrams, Atty Reg. #37950Neil S. Sullenberger, Atty Reg. # 48698 700 17th St., Suite 650Denver, CO 80202 |  |
| Phone #: (303) 322-4115Fax #: (303) 333-0708E-mail: Robert@AbramsLaw.net |  |
| **PLAINTIFFS’ RESPONSE AND OBJECTION TO DEFENDANT’S BILL OF COSTS** |

COMES NOW, Plaintiffs Robert Abrams and Abrams & Associates, LLC, by their attorneys at Abrams & Associates, LLC, and hereby file their Response and Objection to Defendant’s Bill of Costs. In support thereof, Plaintiffs state and allege as follows:

# INTRODUCTION

1. Defendant filed his Bill of Costs on or about May 26, 2017, wherein he seeks an award of $2,864.02. Plaintiffs object to such sum for the reasons stated herein and object to the award in its entirety for the reasons stated in Plaintiffs’ Reply to their Motion to Reconsider, filed contemporaneously herewith.

# LEGAL AUTHORITY

1. C.R.C.P. 121 §1-22 provides “The Bill of Costs shall itemize and total costs being claimed. Taxing and determination of costs shall be in accordance with C.R.C.P. 54(d) and Practice Standard § 1-15.”
2. C.R.S. § 13-16-122(1) provides that items includable as costs are:
	1. Any docket fee required by article 32 of this title or any other fee or tax required by statute to be paid to the clerk of the court;
	2. The jury fees and expenses provided for in article 71 of this title;
	3. Any fees required to be paid to sheriffs pursuant to section 30-1-104, C.R.S.;
	4. Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case;
	5. The witness fees, including subsistence payments, mileage at the rate authorized by section 13-33-103, and charges for expert witnesses approved pursuant to section 13-33-102(4);
	6. Any fees for exemplification and copies of papers necessarily obtained for use in the case;
	7. Any costs of taking depositions for the perpetuation of testimony, including reporters' fees, witness fees, expert witness fees, mileage for witnesses, and sheriff fees for service of subpoenas;
	8. Any attorney fees, when authorized by statute or court rule;
3. Any fees for service of process or fees for any required publications;
4. Any item specifically authorized by statute to be included as part of the costs.
5. To be awardable as costs, an expense must be necessarily incurred by reason of the litigation and for the proper preparation for trial. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009); *Cherry Creek Sch. Dist. #5 v. Voelker*, 859 P.2d 805, 813 (Colo. 1993) (stating costs must be “reasonably necessary for the development of the case” to be awardable).
6. Reasonableness of amount is a requirement common to all requests for costs.

*Scholz v. Metropolitan Pathologists, P.C.,* 851 P.2d 901, 910 (Colo. 1993); *see also Salazar v. American Sterilizer Co.,* 5 P.3d 357, 373 (Colo. App. 1993). The party seeking an award of costs bears the burden of proof on the issue of reasonableness. *Brody v. Hellman*, 167 P.3d 192, 206 (Colo. App. 2007). Hence, the requesting party “must provide the court with sufficient information and supporting documentation to allow a judge to make a reasoned decision for each cost item presented.” *Id*. (emphasis added); see also *City of Aurora v. Simpson (In re Water Rights of Park County Sportsmen's Ranch),* 105 P.3d 595, 627 (Colo. 2005).

# ARGUMENT

1. Plaintiffs object to Defendant’s bill of costs on four primary fronts: (A) The Court should exercise its discretion to award no costs; (B) Defendant failed to provide sufficient documentary support for the claimed costs; (C) Notwithstanding lack of support, Defendant’s costs for service of process and subpoenas is excessive and unnecessary; and (D) Notwith- standing lack of support, Defendant’s travel costs are irregular and excessive.

# The Court Should Exercise its Discretion to Award No Costs.

1. Plaintiffs briefed this issue extensively in their Motion to Reconsider and Reply thereto. As such, Plaintiffs do not feel the need to provide a complete reiteration of case law and argument herein and direct the Court to their previously-filed Motion and their Reply, filed contemporaneously herewith.
2. In summary, Plaintiffs argue that the jury’s verdict indicates that this is the type of case where both parties could fit the definition of prevailing party and thus, the Court should exercise its discretion to award no costs to any party.

# Defendant Failed to Provide Sufficient Documentary Support for the Claimed Costs.

1. The Plaintiff's bill of costs does not provide an analysis of the costs incurred or argument to support the award of costs as to any category of fees. The burden is on the requesting party to provide “sufficient information and supporting documentation to allow [the court] to make a reasoned decision for each cost item presented.” *City of Aurora v. Simpson,* 105 P.3d 595 at 627 (Colo. 2005); *see also Brody v . Hellman,* 167 P.3d 192, 206 (Colo.App.2007), *Cherry Creek School District v. Voelker,* 859 P.2d 805 at 812 - 814 (Colo. 1993); *American Water Development, Inc. v. City of Alamosa,* 874 P.2d 352 at 387 (Colo. 1994). A review of the filling shows no documentary support for any of the claimed costs. As such, sufficient information and

supporting documentation is not present to allow the court to make a reasoned decision for each cost item presented by defendant. Accordingly, Defendant failed to meet his burden.

1. Plaintiffs do not dispute that C.R.S. § 13-16-104 and 105 allow a prevailing party to recover his costs against the opposing party, should the Court decide to make such a determination. However, the trial court retains discretion to decide which costs are to be included in the assessment, even when the assessment is required by statute. *See Bowers v. Loveland Publishing Co.,* 773 P.2d 595, 596 (Colo.App. 1989). This discretion allows courts to prevent cost awards that are manifestly unreasonable and unjust. *See Scholz v. Metropolitan Pathologists, P.C.* 851 P.2d 901 (Colo. 1993).
2. In Defendant’s bill of costs, none of the claimed costs are supported by an invoice, bill, or affidavit. The entries are vague and fail to satisfy Defendant’s burden. *See Brody*

*v. Hellman*, 167 P.3d 192 (Colo. App. 2007).

1. Should the Court want to rest on Defendant counsel’s signed bill of costs as sufficient to award same, Plaintiffs present case law to the contrary. *See Brody,* 167 P.3d at 206- 07 (reversing an award of costs where the trial court relied solely on the word of the prevailing party’s counsel and failed to require any documentation of expenses claimed as costs); *Keith v. Kinney,* 140 P.3d 141, 153 (Colo. App. 2005) (stating that even affidavits containing conclusory statements without factual support are insufficient as a matter of law).
2. Importantly, Defendant’s conclusion notes that there are additional “invoices and amounts [that are not included in his bill of costs] because bills have not been received from the venders performing the services….” Such a statement implies that Defendant has invoices and documentary evidence for his current bill of costs, which he failed to attach to his bill of costs as support. Thus, Defendant failed to meet his burden as to the current bill of costs, and it should be denied in its entirety on that basis. Finally, this court ordered defendant to produce his bill of costs by May 26, 17, not to reserve costs, arguably incurred two years ago, for submission at a later date.
3. Defendant claims cost for a trial transcript in the amount of $194.25. This cost was incurred in the prior PPO hearing ending in December 2015. C.R.S. § 13-14-109 governs the award of fees and costs for protection order hearings. Defendant moved for attorney fees, the court denied same and stated nothing regarding costs in the PPO hearing where the court can note, defendant failed to request same. Nowhere in the statute is a respondent, here Defendant, entitled to costs for “prevailing” where a court does not award a permanent protection order.

# Notwithstanding lack of support, Defendant’s costs for service of process and subpoenas is excessive and unnecessary.

1. Defendant claims $608 in “service of process/subpoenas,” pursuant to C.R.S. §

13-16-122(g).

1. At trial, Defendant called the parties and one fact witness beyond subpoena power in Germany. Thus, any subpoena costs beyond that necessary to attempt to produce Mr. Osborn for trial were not necessary for the litigation and are excessive in light of Defendant’s election not to enforce any subpoena issued. Further, any subpoena’s issued for any other witnesses were unnecessary as defendant called no subpoenaed witness where he could reasonably claim recovery of the expense.
2. Without support, Plaintiffs, and more importantly the Court, cannot make an exact determination as to the necessity or reasonableness of any of these costs, and as such, they should be denied in their entirety for Defendant’s failure to meet his most basic evidentiary burden.

# Notwithstanding lack of support, Defendant’s travel costs are irregular and excessive.

1. Defendant calculates travel costs for prior counsel, lead counsel and associate counsel, totaling $130.90 for 242.4 miles.
2. As noted in more detail in Plaintiffs’ Motion and Reply thereto, any costs for prior counsel relating to the permanent protection order hearing should not be granted, as Defendant had his chance to timely request same and waived that opportunity. Further, the Court denied a motion for attorney’s fees and costs pursuant to C.R.S. § 13-17-102. Finally, the plain language of the costs statute for such hearings does not support an award for Defendant. *See* C.R.S. § 13-14-109(3).
3. Since the permanent protection order issue was decided in or about December of 2015, associated costs, and, as relevant here, prior counsel’s travel costs, are not awardable at this stage simply because the case progressed into a different form of litigation.
4. Likewise, a reduction of any filing costs associated with that prior phase of

litigation should be reduced from Defendant’s Bill of Costs. Since there is no support for any of the filing fees and costs, Plaintiffs are unable to specify or identify any amounts attributable to that time period.

1. Plainly, the controlling statute says what it says. The appropriate reduction in mileage for prior counsel would be $22.15 to a total of $4.43 for one post-hearing appearance on March 24, 2016. The appropriate reduction for filing fees is impossible to determine due to lack of support for Defendant’s claimed costs and should be stricken in their entirety, as noted above.
2. Additionally, Defendant claims mileage amounting to 33.6 miles per day for associate counsel in this case. However, the daily round trip mileage for counsel’s “Office to Denver District Court” does not comport with actual mileage between those points, as the court can note, defendant’s counsel’s office is a mere 8 blocks from the Denver County Court.
3. Internet research shows that Defendant’s counsel maintains two office locations, one at 2020 S. Parker Road, Denver and one at 1435 Larimer Street, Denver. As noted above, sufficient support was not provided to substantiate from which location mileages are calculated, and such lack of support should be fatal to Defendant’s claim for such costs. As shown by Google Maps, the Larimer Street location is 1.1 miles from the Court, and the Parker location is

8.4 miles from the Court. Thus, round trip travel for both locations should be 2.2 and 16.8 miles, respectively. Defendant claims 2.8 miles, presumably from the Larimer office, and 33.6 miles, presumably from the Parker office, for round trip mileage. Using the rate Defendant cites, at minimum, the mileage expenses should be reduced to $10.71 for lead counsel. Should the Court consider associate counsel’s mileage, it should be reduced to $45.35. As such, the maximum sum the Court should award under this category is $60.49.

1. The Court should also determine that costs for associate counsel’s travel should

not be awarded, as no evidence indicated that lead counsel needed second chair or that she did not in fact work in the downtown office where the case was centrally located. As both sides acknowledged in closing argument, the case was simple and straightforward. Defendant fails to meet his burden to substantiate the necessity and reasonableness of such travel costs for second chair. The total sum the Court should award under this category, if any at all, is $15.14.

WHEREFORE, Plaintiffs respectfully request this Court deny the award of Defendant’s Bill of Costs in its entirety for lack of evidentiary support, as well as for the reasons in Plaintiffs’ Motion to Reconsider and Reply thereto. Alternatively, Plaintiffs respectfully request the Court reduce Defendant’s Bill of Costs, in accordance with Plaintiffs’ arguments herein, as it deems fair and just under the circumstances.

RESPECTFULLY SUBMITTED this 1st day of June, 2017.

ABRAMS & ASSOCIATES, LLC

*/s/ Neil S. Sullenberger*

Neil S. Sullenberger, Attorney at Law

*(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 and correct and correct copy of the foregoing PLAINTIFFS’ RESPONSE AND OBJECTION TO DEFENDANT’S BILL OF COSTS 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)*