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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE**
9 **NORTHERN MARIANA ISLANDS**

10 PAUL MURPHY,

11 Plaintiff,

12 v.

13 ROBERT A. GUERRERO, in his official
14 capacity as Commissioner of the Department
15 of Public Safety of the Commonwealth of
16 the Northern Mariana Islands, and LARISSA
17 LARSON, in her official capacity as
18 Secretary of the Department of Finance of
19 the Commonwealth of the Northern Mariana
20 Islands,

21 Defendants.

Civil Action No. 14-0026

**RESPONSE TO PLAINTIFF'S BILL
OF COSTS**

22 Defendant Robert A. Guerrero, in his official capacity as Commissioner of the Department
23 of Public Safety for the Commonwealth of the Northern Mariana Islands, and Larrisa Larson, in
24 her official capacity as Secretary of the Department of Finance for the Commonwealth of the
25 Northern Mariana Islands (collectively "the Commonwealth"), by and through counsel, Charles E.
26 Brasington, hereby respond to Plaintiff's Bill of Costs. The Commonwealth objects to the amount
27 claimed for "fees for service of summons and subpoena," and the \$1,046.46 in "other costs." The
28 "other costs" include: (1) "Lost annual leave time for case related issues and hearings (32 hours at
\$18.58)" for \$594.56; (2) "Fees related to firearms applications" for \$201.5; and (3) "Flight to

1 Guam to place firearm in Guam DPS armory” for \$250.00.

2 The Commonwealth has two objections. First, Murphy submitted no receipts regarding the
3 service of the summons, and several of the multiple services of the summons were procedurally
4 improper. However, as Plaintiff Murphy was acting pro se, the Commonwealth submits that \$50.00
5 is appropriate amount to compensate Murphy for the two services of summons and complaint (in
6 an amount of \$25.00 each) that were procedurally proper and not duplicative. Second, none of the
7 “other costs” qualify as “costs” in Federal Rule of Civil Procedure 54(d) as defined by 28 U.S.C.
8 § 1920. Therefore, the proper amount of costs is \$470.00.

10 I. STANDARD

11 Federal courts have the ability to order the losing party to pay costs in a civil case. Although
12 courts did not have the authority to grant costs at common law, in the early days of our Nation
13 federal courts awarded costs in the same manner, and to the same extent, as the courts of State in
14 which they were situated. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2001 (2012). As
15 this state of affairs led to undesirable discrepancies from State to State, Congress acted to ensure
16 uniformity in federal courts’ awarding of costs. *Id.*

18 Today a federal court’s ability to grant costs is governed by 28 U.S.C. § 1920 (“§ 1920”)
19 and Federal Rule of Civil Procedure 54(d)(1) (“Rule 54(d)(1)”). Rule 54(d)(1) provides:

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21 Costs Other Than Attorney’s Fees. Unless a federal statute, these rules, or a court
22 order provides otherwise, costs--other than attorney’s fees--should be allowed to
23 the prevailing party. But costs against the United States, its officers, and its agencies
24 may be imposed only to the extent allowed by law. The clerk may tax costs on 14
25 days’ notice. On motion served within the next 7 days, the court may review the
26 clerk’s action.

27 Fed. R. Civ. P. 54(d)(1). According to the U.S. Supreme Court, “§ 1920 defines the term ‘costs’
28 as used in Rule 54(d).” *Taniguchi*, 132 S. Ct. at 2001 (quoting *Crawford Fitting Co. v. J.T.*
Gibbons, Inc., 482 U.S. 437, 439 (1987)). Section 1920 provides:

A judge or clerk of any court of the United States may tax as costs the following:

- 1 (1) Fees of the clerk and marshal;
- 2 (2) Fees for printed or electronically recorded transcripts necessarily obtained for
3 use in the case;
- 4 (3) Fees and disbursements for printing and witnesses;
- 5 (4) Fees for exemplification and the costs of making copies of any materials where
6 the copies are necessarily obtained for use in the case;
- 7 (5) Docket fees under section 1923 of this title;
- 8 (6) Compensation of court appointed experts, compensation of interpreters, and
9 salaries, fees, expenses, and costs of special interpretation services under section
10 1828 of this title.

11 A bill of costs shall be filed in the case and, upon allowance, included in the
12 judgment or decree.

13 28 U.S.C. § 1920. As § 1920 defines “costs” as used in Rule 54(d)(1), a given expense must fall
14 within one of the six subsections of § 1920 in order to be taxable against a losing party. Indeed,
15 while a court has discretion to grant costs under Rule 54(d)(1), the Supreme Court has made clear
16 that “[t]he discretion granted by Rule 54(d) . . . is solely a power to decline to tax, as costs, the
17 items enumerated in § 1920.” *Crawford Fitting Co.*, 482 U.S. at 442.

18 Importantly, the scope of taxable costs is narrow. “Although ‘costs’ has an everyday
19 meaning synonymous with ‘expenses,’ the concept of taxable costs under Rule 54(d) is more
20 limited and represents those expenses, including, for example, court fees, that a court will assess
21 against a litigant.” *Taniguchi*, 132 S. Ct. at 2006 (quoting 10 C. Wright, A. Miller, & M. Kane,
22 Federal Practice and Procedure § 2666, pp. 202–203 (3d ed.1998)). “Taxable costs are limited to
23 relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk
24 fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and
25 copies, docket fees, and compensation of court-appointed experts.” *Taniguchi*, 132 S. Ct. at 2006.
26 Indeed, “[t]axable costs are a fraction of the nontaxable expenses borne by litigants for attorneys,
27 experts, consultants, and investigators.” *Id.* As the Supreme Court explained: “It comes as little
28

1 surprise, therefore, that ‘costs almost always amount to less than the successful litigant’s total
2 expenses in connection with a lawsuit.’” *Taniguchi*, 132 S. Ct. at 2006 (quoting 10 C. Wright, A.
3 Miller, & M. Kane, Federal Practice and Procedure § 2666, p. 203 (3d ed.1998)).

4 A court’s ability to award costs is limited by 54(d)(1) and § 1920. *Taniguchi*, 132 S. Ct. at
5 2001. Section 1920 defines the term costs in Rule 54(d)(1). *Id.* For a given expense to be taxable
6 against a losing party, that expense must fit within § 1920. *Id.* at 2001, 2006. If a given expense
7 falls outside of the categories enumerated in § 1920, then it cannot be taxed against the losing
8 party.
9

10 **II. ARGUMENT**

11 **A. “Fees for Service of Summons and Subpoena”**

12 The first objection is that no receipts were provided related to the “fees for service of
13 summons and subpoena.” Individuals seeking costs are directed to itemize and provide
14 documentation for all categories of costs. (*See* Bill of Costs, ECF No. 112, Oct. 18, 2016
15 (“SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in
16 all categories.”).) Plaintiff did not submit an itemization for “fees for service of summons and
17 subpoena.” (*See id.* and attachments thereto.) In correspondence with Plaintiff, Plaintiff indicated
18 that the amount of \$420.00 was for delivering a total of twelve summons at the rate of \$35.00,
19 totaling \$420.00. In reviewing the docket in this case defendants note that a total of 16 summons
20 were served in this action: ECF Nos. 2, 3, 4, 13, and 14 were served by Plaintiff Paul Murphy,
21 ECF Nos. 16 and 17 were served by Michael B. Murphy (who Defendants believe to be Plaintiff
22 Murphy’s Father), and ECF Nos. 23, 24, 25, 29, 30, 31, 34, 35, and 36 were served by Nadia
23 Murphy.
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26 The Commonwealth makes three observations. First, on each of the aforementioned
27 summons, the server listed costs as \$0.00. (*See* ECF Nos. 2, 3, 4, 13, 14, 16, 17, 23, 24, 25, 29, 30,
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1 31, 34, 35, and 36.) Second, ECF Nos. 2, 3, 4, 13, and 14 were served by Plaintiff Murphy, which
2 would be in violation of Rule of Civil Procedure 4(c)(2), which provides that service of summons
3 must be accomplished by “[a]ny person who is at least 18 years old and not a party.” Fed. R. Civ.
4 P. 4(c)(2). The Court addressed this deficiency in its Order Dismissing First Amended Complaint
5 and Granting Leave to Amend, ECF No. 11. Third, Plaintiff Murphy was not required to serve
6 summons after the first complaint, but served them with several subsequent amended complaints.
7

8 A final countervailing point: if Murphy were represented by counsel, the foregoing would
9 be fatal to his bill of costs as to the “fees for service of summons and subpoena.” This was not the
10 case, however. The Commonwealth recognizes that pro se plaintiffs, as laypeople, are
11 appropriately entitled to more leeway in navigating the vagaries of the court system. Therefore,
12 the Commonwealth proposes that Murphy be granted costs for service at the current rate for service
13 of process in the Commonwealth, \$25.00 per person, for a total amount of \$50.00.
14

15 **B. “Other Costs”**

16 The Court cannot grant any of the “other costs” because they do not fall under any of the
17 six categories found in § 1920.

18 The Court cannot grant the request for the claimed “[l]ost annual leave time for case related
19 issues and hearings (32 hours at \$18.58)” because it does not fit anywhere under the categories set
20 forth in § 1920. This particular requested item might seem to fit within “salaries” in § 1920(6):
21 “Compensation of court appointed experts, compensation of interpreters, and salaries, fees,
22 expenses, and costs of special interpretation services under [28 U.S.C. §] 1828.”¹ 28 U.S.C. §
23

24
25 ¹ 28 U.S.C. § 1828 provides:

26 (a) The Director of the Administrative Office of the United States Courts shall
27 establish a program for the provision of special interpretation services in criminal
28 actions and in civil actions initiated by the United States (including petitions for
writs of habeas corpus initiated in the name of the United States by relators) in a
United States district court. The program shall provide a capacity for simultaneous

1 1920(6). However, the legislative history behind 28 U.S.C. § 1920 strongly suggests that the word
2 “salaries” is part of a full list item “salaries, fees, expenses, and costs of special interpretation
3 services under [28 U.S.C. §] 1828.” Subsection (6) was added as part of the Court Interpreters Act,
4 Pub. L. No. 95–539, § 7, 92 Stat 2040 (1978). Section 2 of the Court Interpreter’s Act also 28
5 U.S.C. § 1828, which deals with “the provision of special interpretation services in criminal actions
6 and in civil actions initiated by the United States (including petitions for writs of habeas corpus
7 initiated in the name of the United States by relators) in a United States district court.” 28 U.S.C.
8 § 1828(a). The current action was neither criminal nor a civil action brought by the United States,
9 and therefore §1920(6) does not apply.

11 The other two items under “other costs,” the “[f]ees related to firearms applications” for
12

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14 interpretation services in multidefendant criminal actions and multidefendant civil
15 actions.

16 (b) Upon the request of any person in any action for which special interpretation
17 services established pursuant to subsection (a) are not otherwise provided, the
18 Director, with the approval of the presiding judicial officer, may make such services
19 available to the person requesting the services on a reimbursable basis at rates
20 established in conformity with section 9701 of title 31, but the Director may require
21 the prepayment of the estimated expenses of providing the services by the person
22 requesting them.

23 (c) Except as otherwise provided in this subsection, the expenses incident to
24 providing services under subsection (a) of this section shall be paid by the Director
25 from sums appropriated to the Federal judiciary. A presiding judicial officer, in
26 such officer’s discretion, may order that all or part of the expenses shall be
27 apportioned between or among the parties or shall be taxed as costs in a civil action,
28 and any moneys collected as a result of such order may be used to reimburse the
appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services
in accordance with subsection (b) of this section, and moneys collected by the
Director under that subsection may be used to reimburse the appropriations charged
for such services. A presiding judicial officer, in such officer’s discretion, may
order that all or part of the expenses shall be apportioned between or among the
parties or shall be taxed as costs in the action.

1 and the “[f]light to Guam to place firearm in Guam DPS armory.” Both of these items are damages
2 rather than costs. Black’s Law Dictionary defines “damages” as “[m]oney claimed by, or ordered
3 to be paid to, a person as compensation for loss or injury.” Black’s Law Dictionary (10th ed. 2014).
4 Murphy sued Defendants Guerrero and Larson in their official capacities only, and damages are
5 not available against official capacity defendants. *See Will v. Michigan Dep’t of State Police*, 491
6 U.S. 58, 71, 71 n.10 (1989). As this Court recognized in its Order: “Murphy’s only relief as the
7 prevailing party in an official-capacity action is a permanent injunction to prevent Defendants
8 Guerrero and Larson from enforcing the provisions of the Commonwealth Code that have been
9 deemed unconstitutional.” (Decision & Order Granting in Part & Denying in Part Cross-Motions
10 for Summary Judgement, ECF No. 109, at 52.) As the last two items under “other costs” are
11 properly considered “damages” rather than costs under § 1920, the Court should deny them.
12 Therefore, the proper amount of costs is \$840.00.
13
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15 III. CONCLUSION

16 For the foregoing reasons, the Court should order costs in an amount of \$470.00.
17

18 RESPECTFULLY
19 SUBMITTED.

20 DATED: October 25, 2016

OFFICE OF THE ATTORNEY GENERAL

/s/ Charles E. Brasington

Charles E. Brasington
Assistant Attorney General
Attorney for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been electronically filed this 25th day of October, 2016. Further, I certify that a true and correct copy of the foregoing motion was served by electronic mail at Paul.murphy.officialmail@gmail.com.

/s/ Charles E. Brasington
Charles E. Brasington
Assistant Attorney General
Office of the Attorney General