

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Theresa Kennedy and John Plummer,  
individually and for others similarly situated,

*Plaintiffs,*

v.

City of Chicago,

*Defendant.*

Case No. 20-cv-1440

Hon. Thomas M. Durkin

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**CITY OF CHICAGO'S MEMORANDUM IN SUPPORT OF ITS BILL OF COSTS**

The City of Chicago (“City”) prevailed in this putative class-action lawsuit brought by Plaintiffs Theresa Kennedy and John Plummer (“Plaintiffs”). (Dkt. 196, Mem. Op.; Dkt. 197, Entered Judgment.) As the undisputed prevailing party as to all issues, the City moves the Court for an award of costs. Fed. R. Civ. P. 54(d)(1); N.D. Ill. L.R. 54.1.

There is a strong presumption in favor of awarding costs to the prevailing party, and “unless and until the losing party affirmatively shows that the prevailing party is not entitled to costs, the district court must award them ‘as of course.’” *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 222 (7th Cir. 1988). Here, the Court awarded costs to the City upon entry of judgment. (Dkt. 197.) When costs are awarded under Rule 54(d) against more than one non-prevailing party, “the presumptive rule is joint and several liability unless it is clear that one or more of losing parties is responsible for a disproportionate share of the costs.” *Anderson v. Griffin*, 397 F.3d 515, 522-23 (7th Cir. 2005). In accordance with Section 1920, the Court may tax the following as costs:

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

28 U.S.C. § 1920.

The City submits herewith its itemized Bill of Costs, including invoices where appropriate, supported by declarations and using the form provided by the U.S. District Court of the Northern District of Illinois. All of the costs the City itemized and supported in the Bill of Costs are reasonable, were necessarily incurred in successfully defending against Plaintiffs' claims, and are calculated at the amounts prescribed by law—even where the City's actual costs exceed the prescribed amounts. (See Bill of Costs Exhibit 1, Declaration of Elizabeth E. Babbitt.)

**A. 28 U.S.C. § 1920(1) – The City Seeks \$65.00 in Costs for Clerk and Marshal Fees.**

“Fees for service of process are recoverable under 28 U.S.C. § 1920(1), but may not exceed the U.S. Marshal’s rate at the time process was served.” *Goldberg v. 401 N. Wabash Venture LLC*, 09 CV 6455, 2013 WL 4506071, at \*1 (N.D. Ill. Aug. 23, 2013) (internal quotations and citation omitted). In the event a private process server is used, rather than the U.S. Marshal, the prevailing party is only entitled to the U.S. Marshal rate. *Id.*; *see also Lewis v. City of Chicago*, 04-cv-6050, 2012 WL 6720411 (N.D. Ill. Dec. 21, 2012). A party may only recover for time spent serving each subpoena if such time is accounted for by the process server. *Goldberg*, 2013 WL 4506071, at \*2.

At all times relevant to the litigation, the U.S. Marshal's rate for service of process was \$65.00/hour, plus travel costs and other out-of-pocket expenses. 28 C.F.R. § 0.114(a)(3).

Exhibit 2 of the Bill of Costs provides an itemization of and supporting invoice for service fees the City incurred in serving one records subpoena to the Cook County Sheriff's Office. The City's private process server did not separately indicate time spent or mileage expended. Accordingly, the City conservatively assumes that it took one hour to serve the subpoena and requests the \$65.00 U.S. Marshal's fee. The City does not seek to recover additional charges for rush service. The total of \$65.00 identified in Exhibit 2 of the Bill of Costs should be fully reimbursed to the City.

**B. 28 U.S.C. § 1920(2) – The City Seeks Recovery of Various Transcript Costs.**

Pursuant to 28 U.S.C. § 1920(2), the City should be awarded “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.” To award costs for transcripts, the “transcripts need not be indispensable, but only reasonably necessary.” *Marinich v. People Gas Light & Coke Co.*, 98 CV 2394, 2002 WL 1759796, at \*2 (N.D. Ill. July 30, 2002) (internal quotation and citation omitted). Deposition costs are recoverable if the deposition was reasonably necessary “to the case at the time it was taken,” regardless of its subsequent use in a motion or in court. *See Cengr v. Fusibond Piping Sys., Inc.*, 135 F.3d 445, 455 (7th Cir. 1998).

**1. Pretrial Hearing Transcripts – Costs \$102.85.**

The City may recover the costs for the transcripts of pre-trial proceedings, provided the moving party presents “reasonable explanations for ordering and taxing these pre-trial transcripts.” *Goldberg*, 2013 WL 4506071, at \*2. Pursuant to Local Rule 54.1(b), “[i]f in taxing costs the clerk finds that a transcript or deposition was necessarily obtained, the costs of the transcript or deposition shall not exceed the regular copy rate as established by the Judicial Conference of the United States and in effect at the time that the transcript or deposition was filed . . .” Under 28

U.S.C. § 753 and N.D. Ill. General Order 18-0011<sup>1</sup>, the cost of an original, ordinary transcript (meaning one delivered within 30 calendar days after receipt of an order) is \$3.65/page; a transcript delivered within 14 days after receipt of an order has a rate of \$4.25/page; and a transcript delivered within 7 days after receipt of an order has a rate of \$4.85/page. N.D. Ill. General Order 18-0011, entered on April 19, 2018. Accordingly, the transcripts of hearings or depositions taken after that date fall under the applicable rates provided in General Order 18-0011. *Hacker v. United Airlines, Inc.*, No. 16 C 9708, 2019 WL 2287807, at \*3 (N.D. Ill. May 29, 2019).

In *Goldberg*, Judge St. Eve found that the ordering of transcripts for pre-trial proceedings was reasonable, particularly where the court had made oral rulings, and the party “needed to review these rulings to make strategic decisions in their case.” 2013 WL 4506071, at \*2. Likewise, in this case, the City obtained the transcripts of the August 9, 2022 and August 18, 2022 hearings before Judge Feinerman, during which he made preliminary inquiries about the City’s first motion for judgment on the pleadings, including the City’s argument that it could not be held liable under Section 1983 based on the Seventh Circuit’s opinion in *Bethesda Lutheran Homes & Services, Inc. v. Leeann*, 154 F.3d 716, 718 (7th Cir. 1998). (Dkts. 121, 123.) The City also obtained the transcript of the August 16, 2023 hearing, during which the Court read its oral ruling granting Plaintiffs leave to amend their complaint to name Santiago Bravo and John Plummer as additional named Plaintiffs. (Dkt. 164.) The City needed to review the Court’s statements and rulings in furtherance of its successful motions for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). (Dkts. 136, 184, 196.) The costs of these pre-trial transcripts are itemized and supported in Exhibit 3 of the City’s Bill of Costs. Although the City ordered certain transcripts at expedited

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<sup>1</sup> General Order 18-0011 sets forth the transcript rates per page for all transcripts requested on or after April 20, 2018 and is the relevant Order in effect at all times relevant to this matter. General Order 18-0011 was later amended by General Order 23-0015, which increased the transcript rates per page for all transcripts requested on or after October 1, 2023.

rates and thus incurred additional costs, it only seeks to recover costs at the ordinary rate of \$3.65/page. The amount of these pre-trial transcripts, at the prescribed per page rate, totals \$102.85, which should be taxed as costs.

**2. Deposition Transcripts Costs – \$1,445.40.**

The costs of deposition transcripts are recoverable to the extent they were necessarily obtained for use in the case. 28 U.S.C. § 1920(2). “[C]osts may be awarded for deposing a witness who is not called at trial as long as the deposition was necessary when taken.” *Lewis*, 2012 WL 6720411, at \*5 (awarding costs to prevailing defendant for 9 depositions taken by plaintiff as well as costs for depositions of witnesses listed on plaintiff’s will call/may call witness list). Court reporter attendance fees are also recoverable so long as they do not exceed the maximum rate authorized in this District. *Harney v. City of Chicago*, 702 F.3d 916, 927 (7th Cir. 2012) (awarding court reporter attendance fees in addition to transcript fees). Courts have also approved court reporter fees for deponents who did not appear at their scheduled depositions. *See, e.g., Chapman v. Wagener Equities, Inc.*, 09 CV 7229, 2017 WL 2973420, at \*3 (N.D. Ill. Jul. 12, 2017); *Merryman v. Sarah Fisher/Hartman Racing LLC*, 1:13-cv-00849, 2015 WL 1823525, at \*2 (S.D. Ind. Apr. 20, 2015).

In this case, the City seeks \$1,220.40 in costs for the depositions of two party witnesses, Theresa Kennedy and former Plaintiff Brian Neals, whose depositions were taken, because at the time those depositions were taken, the depositions were necessary. The itemization of costs of these deposition transcripts, based on the per page rate set forth in General Order 18-0011, and the related deposition invoices, are included under Exhibit 4. The City does not seek the actual invoiced amounts for these transcripts, but rather only seeks: (i) the ordinary per page amount prescribed in General Order 18-0011 (\$3.65 per page for originals), which total \$715.40; (ii) the court reporting service’s Exhibit Share services, which permitted the parties to electronically mark

and share exhibits with witnesses and counsel in real time during depositions that proceeded remotely via Zoom due to COVID-19, which was required due to Plaintiffs' insistence to proceed with Zoom depositions even after COVID-19 related restrictions were lifted, totaling \$295.00; and (iii) allowed court reporter attendance fees for each deposition noticed by the City at the rates provided in the General Order<sup>2</sup> that total \$220.00. *See* N.D. Ill. L.R. 54.1(b) ("attendance fees for the court reporters are limited to \$110 for a half day and \$220 for a full day;" one half day is 4 hours or less). The City also seeks the deposition cancellation fee for one party witness, former Plaintiff Anthony Murdock, whose deposition was scheduled but did not proceed at Plaintiffs' counsel's request, which totals \$225.00. The City does not seek to recover other costs it incurred due to the remote nature of the majority of the depositions in this matter, including, *inter alia*, exhibit management services, virtual services, expedited charges, and/or delivery and handling fees.

#### **C. 28 U.S.C. § 1920(4) – The City Seeks \$7,390.83 in Copying Costs.**

The City seeks \$7,390.59 in costs relating to converting documents into TIFF image format, making them readable through optical character recognition ("OCR"), and branding them for production. "[T]he cost of converting files into electronic format for discovery is taxable." *Merix Pharm. Corp. v. Clinical Supplies Mgmt., Inc.*, No. 11 C 3318, 2015 WL 3407459, at \*11 (N.D. Ill. May 27, 2015) (collecting cases); *see also Intercontinental Great Brands LLC v. Kellogg N. Am. Co.*, No. 13 C 321, 2016 WL 316865, at \*6 (N.D. Ill. Jan. 26, 2016) (awarding fees for TIFF conversion); *Ariel Inv., LLC v. Ariel Capital Advisors LLC*, No. 15 C 3717, 2017 WL 3023746, at \*3 (N.D. Ill. July 17, 2017) (awarding costs for "file format conversion"). Similarly, costs for OCRing and branding documents for production (*i.e.*, adding Bates labels) are also

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<sup>2</sup> Certain of the depositions at issue do not clearly specify the length of the deposition. In such instances, the City conservatively assumed the \$110.00 half day rate for the court reporter fee.

recoverable. *See Chi. Bd. Options Exch., Inc. v. Int'l Sec. Exch., LLC*, No. 07 CV 623, 2014 WL 125937, at \*9 (N.D. Ill. Jan. 14, 2014) (costs for “making files readable through optical character recognition” as well as “its ‘branding’ costs,” and “[c]osts for bates stamping” recoverable); *Comrie v. IPSCO Inc.*, No. 08 C 3060, 2010 WL 5014380, at \*3–4 (N.D. Ill. Dec. 1, 2010) (OCR costs recoverable).

As itemized in Exhibit 5 to the Bill of Costs, the City utilized a third-party vendor, L2 Services, LLC (“L2”), to scan hard copies of arrest-related documents for putative class members and convert them to digital copies on two separate occasions. Plaintiffs requested these documents in discovery. On one occasion, L2 performed TIFFing and OCRing services for 1,484 pages, and on the other, L2 performed solely TIFFing for 1,571 pages. The City therefore seeks to recover \$1,050.61 in costs incurred by L2.

The City incurred additional ESI costs, which are set forth in the Declaration of Elizabeth Conaway, CEDS, Director of eDiscovery Services, in Exhibit 6 to the Bill of Costs. As detailed in the Conaway Declaration, the law firm of Taft Stettinius & Hollister LLP charged the City at a reduced hourly rate of \$110/hour for all e-discovery services related to the litigation performed by its ESI analysts and paralegals, without specifically providing line items for TIFFing, OCRing, or branding documents for production. As described in the Conaway Declaration, Taft thus submits the relevant, recoverable costs for TIFFing 157,349 pages, OCRing 158,920 pages, and branding 160,404 pages for production in this case by using the standard industry per page rate for those services. *See, e.g., Motorola Sols., Inc. v. Hytera Communications Corp. Ltd.*, 1:17-CV-01973, 2021 WL 3489813, at \*14-16 (N.D. Ill. Aug. 6, 2021) (awarding costs incurred for TIFFing, OCRing, and branding, and finding that the prevailing party’s declaration in support of those e-discovery costs was the “best breakdown obtainable from retained records,” where the declaration

applied a \$0.02 per page rate for TIFFing and a \$0.01 per page rate for OCR and branding). Notably, the City has accounted for the TIFFing of 3,055 pages and OCRing of 1,484 pages performed by L2, and avoided double charging for those amounts. The City thus seeks the aggregate amount of \$7,390.83 in recoverable ESI costs.

### **CONCLUSION**

For all the above reasons, the City asks this Court to award it \$8,904.08 in costs pursuant to Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920, which is itemized as follows:

<b>Cost Type</b>	<b>Amount Sought</b>
Clerk and Marshal Fees (service of subpoenas)	\$65.00
Transcript Costs (pretrial transcripts and deposition transcripts)	\$1,445.40
Copying Costs (TIFFing, OCRing, and branding)	\$7,390.59
<b>Total:</b>	<b>\$8,904.08</b>

The City further requests that the Court enter judgment in that amount or such other amount as the Court deems just against Plaintiffs, and any such further relief as this Court deems equitable and just.

Dated: December 6, 2024

Respectfully submitted,

### **CITY OF CHICAGO**

/s/ Elizabeth E. Babbitt

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