

1 JERRY LEE BURCH  
2505 JOHNSON AVE  
2 SAN LUIS OBISPO, CA 93401  
(805) 270-3002

3 Specially Appearing Defendant, In Pro Per  
4

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
6 **FOR THE COUNTY OF SAN LUIS OBISPO**

7 KYLE CARTER BILLINGSLEY, ) CASE NO. 21CV-0196  
PLAINTIFF, ) **NOTICE OF MOTION AND MOTION TO QUASH**  
VS. ) **SERVICE; MEMORANDUM OF POINTS AND**  
8 JERRY LEE BURCH ) **AUTHORITIES**  
DEFENDENT. ) DATE: AUGUST 4, 2021  
9 ) TIME: 9:00 AM  
10 ) DEPT: 9

11 TO PLAINTIFF, KYLE CARTER BILLINGSLEY AND HIS ATTORNEYS OF RECORD: CHASE W.  
12 MARTIN AND MOLLY M. WILSON OF ADAMSKI MOROSKI MADDEN CUMBERLAND & GREEN LLP,  
13 P.O. BOX 3845, SAN LUIS OBISPO, CA 93403  
14

15 PLEASE TAKE NOTICE that on **Wednesday, August 4, 2021, at 9:00 AM, or as soon**  
16 **after that as the matter can be heard, in Department 9 of the above-entitled**  
17 **court located at 1035 Palm Street, Room 385, San Luis Obispo, CA 93408,**  
18 specially appearing defendant, Jerry Burch will appear specially and move the  
19 Court for an order quashing plaintiff's purported service of summons and  
20 complaint on defendant. This motion is made is under Code of Civil Procedures  
21 section 418.10(a)(1) which states in pertinent part that a defendant may file  
22 a motion to quash service of summons on the ground of lack of jurisdiction of  
23 the Court over him or her.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4  
5 Jerry Burch, ("Defendant"), is software professional as described in **Exhibit**  
6 **One**—the last resume he wrote in November 2017.

7  
8 During Defendant's career, and especially during his employment with a San  
9 Luis Obispo-based company then named Quest Development where he was hired as  
10 a Software Engineer and as "Employee 22", he became a recognized expert in  
11 the reliable archival of data to computer storage devices. At his time of  
12 hire Quest Development produced a backup application marketed by Symantec as  
13 "The Norton Backup" and which only performed backup of PC's running DOS and  
14 Windows and to floppy discs. Quest Development purchased back the rights to  
15 market the product and then added tape backup to market their product to OEMs  
16 producing tape drives and later CD-R/CD-RW optical drives, and to ship "in  
17 the box" with their drives.

18  
19 During his time of employment Quest Development grew and was known by various  
20 other names: Arcada Software, Seagate Software, VERITAS Software and  
21 eventually Symantec, when Symantec merged with VERITAS Software shortly after  
22 Defendant left, in a coincidental "closing of the loop".

23  
24 Defendant also showed an expertise in delivering software products on time  
25 and with high quality to keep support costs low which was important to the  
26 OEM customers including the product in their boxes and in high volume. It was  
27 unusual at this time for a PC utility application to be localized into so  
28 many languages: English, French, Italian, Spanish, Portuguese, Dutch and both  
traditional and simplified Japanese, and particularly these last two.

1 Microsoft selected, then Arcada Software's product, to ship with Windows 98  
2 and to replace the Windows 95 backup "applet", produced by a competitor,  
3 Colorado Memory Systems.

4  
5 Defendant's final role in this company was as the Director of Research and  
6 Development of The Consumer Products Group, ("CPG"), and to deliver the  
7 backup product to OEMs with a reputation of quality to keep support costs low  
8 for these manufacturers and meeting schedule to not impede their time to  
9 market. Defendant was ultimately responsible for all aspects of creation of  
10 the software and delivery of master discs and manuals to OEM customers.

11  
12 Defendant also represented the company on the Logical Format Committee of  
13 QIC, an industry trade group, and contributed to industry standards. QIC and  
14 the use of Quarter Inch Cartridges has since lapsed but is noted in **Exhibit**  
15 **Two**.

16  
17 AMMCG is a legal corporation and describe themselves as "AMMCG's legal talent  
18 is unmatched. The firm enjoys an excellent reputation for integrity,  
19 expertise and knowledge. We are client-oriented and result driven. Our  
20 attorneys stand out with experience, longevity and well-established  
21 relationships and connections in government, business, agriculture and other  
22 critical sectors of our community." and on the "About" page of their website  
23 <https://ammcglaw.com/>, attached as **Exhibit Three**. During this transaction  
24 Defendant received two services from Kyle Billingsley ("Plaintiff) as two  
25 from attorneys working for AMMCG: Molly M. Wilson and Chase W. Martin.

26  
27 The first service occurred on January 8, 2021 and the events of such were  
28 described in a letter sent via email to Ms. Wilson, attached as **Exhibit Four**,  
on that same day and describing why Defendant watched an angry tenant with a

1 sheet of paper in his hand walk over from the adjacent house he resides in,  
2 2525 Johnson, to Defendant's residence at 2505 Johnson.

3  
4 The second service and the topic of this motion, occurred on April 11, 2021  
5 and was delivered to Defendant personally by a process server—at his own  
6 residence, this time.

7  
8 Defendant appears in front of the court today to state this service was  
9 defective because the printed copy of the complaint he was served is  
10 defective and in the following way: in the copy served two exhibits, Exhibit  
11 3 and Exhibit 4, are not "clear and correct copies" as stated in the  
12 complaint. Defendant believes these same defects may regularly exist in  
13 printed copies of these exhibits.

14  
15 The complaint claims that "Mr. Billingsley's **demands** to Close Escrow are  
16 attached as Exhibit 5", however, only a single, purported, "Demand to Close  
17 Escrow" is found in this exhibit, and for 2505 Johnson Avenue. This  
18 transaction is to purchase both 2505 Johnson Avenue and 2525 Johnson Avenue.  
19 An extraneous exhibit, Exhibit 6, uncited in the complaint, is also present  
20 in printed copy served Defendant.

21  
22 Defendant provided the printed copy of the complaint and exhibits served him  
23 with a cover letter describing these issues to First American Title Company  
24 to scan and email to parties in the transaction. This email and the  
25 attachment are attached as **Exhibit Five**.

26  
27 This service caused significant use of Defendant's time to defend, and he has  
28 been forced to spend most of time since served this complaint and until  
filing this motion acting as his own attorney.

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Defendant costs continue until this matter is resolved.

Defendant also states it is especially egregious that he, an expert in data-integrity, was served material that shows a data-integrity issue: that printed copies of the material do not similarly represent the electronic copies. Someone else may have been more accepting of that, but Defendant cannot, and that a professional given the opportunity to correct his work refuses to, and as a professional, defendant would never let such obviously defective work stand if given opportunity to correct.

**II.**

**LEGAL ARGUMENT**

**A. THE PURPORTED SERVICE OF THE SUMMONS AND COMPLAINT IS NOT VALID AND SHOULD BE QUASHED**

A motion to quash service of summons in California due to defective service is authorized by Code of Civil Procedures section 418.10(a)(1) which states in pertinent part that a defendant may file a motion to quash service of summons on the ground of lack of jurisdiction of the Court over him or her. The fact that the service of the summons and complaint was defective is the reason that the Court lacks jurisdiction over the defendant. The Court does not acquire jurisdiction over any defendant unless proper service of the summons and complaint has been made even if the defendant is a resident of California.

**B. THE PLAINTIFF HAS THE BURDEN OF SHOWING THAT THE PURPORTED SERVICE OF THE SUMMONS AND COMPLAINT ON DEFENDANT IS VALID**

1 Case law is clear that once a defendant files a motion to quash service that  
2 the plaintiff has the burden of proving that the service was valid.  
3 Once a defendant files a motion to quash the burden is on the plaintiff to  
4 prove by a preponderance of the evidence the validity of the service and the  
5 court's jurisdiction over the defendant. *Bolkiah v. Superior Court* (1999) 74  
6 Cal.App.4th 984, 991.

7  
8 And a defendant is under no duty to respond to a defectively served summons  
9 and may stand mute until a plaintiff makes a showing of the validity of the  
10 service to the satisfaction of the court. *Taylor-Rush v. Multitech Corp.*  
11 (1990) 217 Cal.App.3d 103, 111.

12  
13 Thus, Plaintiff now has the burden of showing that the purported service of  
14 the summons and complaint on Defendant is valid.

15  
16 **III.**  
17 **CONCLUSION**

18  
19 Based on the above, it is requested that defendant's motion to quash service  
20 of the summons and complaint be granted.

21  
22 Since this is a repeat issue, defendant also requests that AMMCG be ordered  
23 to institute a Quality Control program for services and report back to  
24 Defendant and the court what was done.

25  
26 Dated: \_\_\_\_\_

27 Specially Appearing Defendant  
28

# EXHIBIT ONE

# **JERRY L. BURCH**

2505 Johnson Avenue, San Luis Obispo, CA 93401  
(805) 270-3002, jerryburch@fastmail.fm

Software Engineer with extensive experience in the following areas:

- Embedded Systems
- Device Drivers
- Device Control
- File Systems
- .Net C#/C++
- Networking
- Microcontrollers
- Digital Electronics
- Test Tools (DSO/ Analyzers)
- In-Circuit Emulators
- Debugging
- Project Management

Other Relevant Experience:

- Microsoft Windows (3.0-10)
- Linux/Unix
- Java/JavaScript/Python

## **Professional Experience**

### **Weatherford, Inc. — San Luis Obispo, CA**

#### **Software Engineer, Cygnet SCADA, 2013-2015**

- Cygnet is the market leader in enterprise SCADA (Supervisory Control and Data Acquisition) for the oil and gas industry.
- Member of EIE Team, focusing on data collection and control of remote field computers (RTUs) from a variety of vendors using Modbus and proprietary protocols
- C++/.Net, TCP/IP and radio networking

### **Veritas Software — San Luis Obispo, CA**

#### **Director of R&D, Consumer Products, 1998-2000**

- Responsible for all areas of engineering for development group of approximately 40 engineers and Q/A analysts.
- Engineering Direction, Staffing, Team Development

#### **Senior Software Engineer (1991-1998):**



- Responsible for File System and Logical Formatting layers of industry's largest volume Consumer Backup application (DOS, Windows 3.1, Windows 95, Windows 98).
- Participated in Industry Standards Organizations (QIC, IEEE-1394) for logical formats.
- Extended backup application to write to Optical Media using ISO-9660.
- Worked with numerous vendors (Iomega, Seagate, Conner, etc.) to extend application to work on their tape and optical devices.
- Extended Windows 95 Backup Application to work in Windows 98 and perform full backup and restore of Long File Names and System Registry

## **Octel Communications — Milpitas, CA**

### **Software Engineer, 1990-1991**

- Embedded 80386 Protected Mode Programming for Telephone Switching Office Voice Mail Systems
- Embedded Z-80 Programming for Office-Level Voice Mail Systems
- Used Intel Compilers and In-Circuit Emulators to develop software to interface with Hard Drives for voice mail message storage.
- Developed tools running on Sun Workstations for automated testing of code running on remote hardware.

## **Compaq Computer Corporation — Houston, TX**

### **Systems Design Intern, 1989**

- Wrote software to parse CAD and Bill-of-material files to support downloading of production code into SMT parts placement machines.
- Added remote download capability so staff did not have to be physically present at machine to download

## **IBM Academic Workstations Division — Palo Alto, CA**

### **Programmer, Intern, 1988-1989**

- Assisted in port of BSD 4.3 Unix to run on IBM RT and 6152 (PS/2 model 80) Academic Workstations
- Performed maintenance programming on Kernel, File System and Utility code.

## **Oil Securities, Inc — Stockton, CA**

### **Plant Operator, 1984-1987**

- Plant operator at LNG vaporization and pumping station
- Modified/Updated Plant Software
- Designed and Implemented Computer Control over Boiler to improve plant performance

- Performed Light Maintenance Duties

**Other Employment, pre-1984:** Waiter, Raft Rental Worker, Car Wash Worker

## **Education**

- **Welding Technology Certificate, Cuesta College, San Luis Obispo, CA (2010)**
  - AWS D1.1 Steel Welding Certified SMAW/FCAW 3G/4G all thickness (not current)
  - MIG/TIG Welding, Aluminum and Stainless Steel
  - OxyFuel/Plasma Cutting, Manual and Automatic
  - Welding Power Supply Operation/RepairAdditional Studies
  - AutoCAD (ENGR 226 – Engineering Drawing 1)
  - Blueprint Reading (WELD175 - Blueprint Reading and Materials Processing)
  - Metallurgy (WELD173)
  - Hydraulics/Pneumatics (EET227 Fluid and Pneumatic Technology)
  - Automotive Technology:
    - ATCH120 Auto Ignition Systems
    - ATCH125 Engine Performance
    - ATCH153 Engine Overhaul
    - ATCH152 Internal Combustion Engines
    - ATCH166 Auto Maintenance
    - ATCH187 Fuel Injection and Turbo-charging
- **B.S. Computer Engineering, Cal Poly, San Luis Obispo, CA (1990)**
- **A.A. Computer Science, San Joaquin Delta College, (1986)**

# EXHIBIT TWO

[Recovering ".qic"  
Files](#)[Drive Classes](#)[Standards Cross  
Reference](#)[Migration Paths](#)[Tape Suppliers](#)[Technology Brief](#)[Former Members](#)[Glossary](#)[Standards](#)[Home](#)

## ABOUT QIC



QIC was an international trade association, incorporated in 1987, to encourage and promote the widespread use of quarter-inch tape cartridge technology. One hundred companies around the world were Members or Associates of QIC during its active years. The group became inactive in 1998 after more than 15 million QIC-compatible drives had been installed.

Most of the 15 million QIC tape drives in use worldwide were installed in business environments. QIC tape automation solutions enabled capacities well into the terabyte range, providing the hardware data compression and read-write features essential to network backup.

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# EXHIBIT THREE



## About Us

AMMCG's legal talent is unmatched. The firm enjoys an excellent reputation for integrity, expertise and knowledge. We are client-oriented and result driven. Our attorneys stand out with experience, longevity and well-established relationships and connections in government, business, agriculture and other critical sectors of our community.

- Steven J. Adamski
- Allen G. Bowman
- David M. Cumberland
- Michelle L. Gearhart
- Joshua M. George
- Ty Green
- Natalie F. Laacke
- Thomas J. Madden
- Chase W. Martin
- Jeffrey A. Minnery
- Martin P. Moroski
- Jean St. Martin
- Linda Somers Smith
- Molly M. Wilson



# EXHIBIT FOUR

January 8, 2021

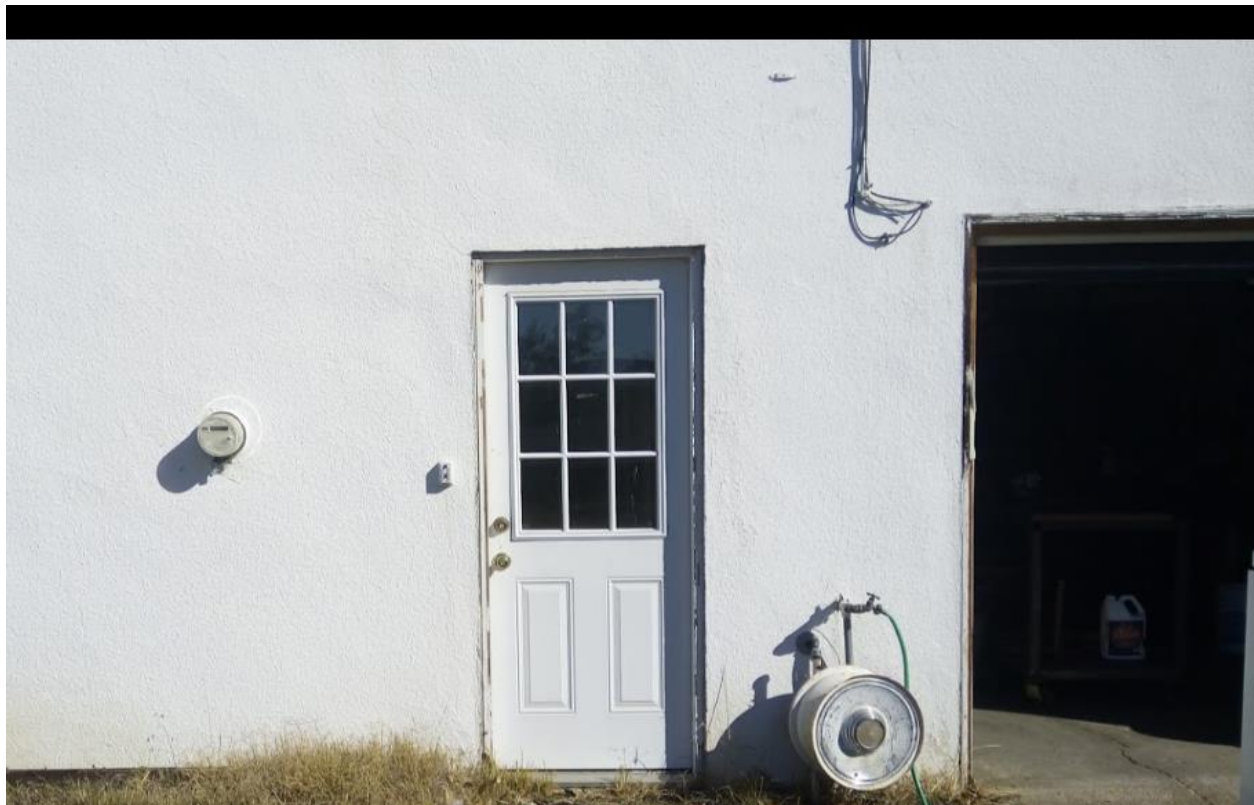
Mary M. Wilson (via email [lss@ammcglaw.com](mailto:lss@ammcglaw.com))

Jerry Burch  
2505 Johnson Avenue  
San Luis Obispo, CA, 93401  
[jerryburch@fastmail.fm](mailto:jerryburch@fastmail.fm)  
(805) 270-3002

Ms. Wilson:

Today my tenant received a knock on his door and was served this notice intended for me. He identified that he was not me, but was still served this notice. After some discussion and offering to call me to come over and accepted it, since I live next door, he told them he was refusing the notice intended for me, and he was told if he was refusing notice they would tape to his door, and did.

This notice is intended for me and says "VIA HAND DELIVERY" and not "VIA HAND-OFF DELIVERY". I was at home and no one knocked on my door. I don't know if there is a similar notice taped to my front door and it could take me weeks to notice because the entrance used for 2505 Johnson is the back door, next to the garage, and off the driveway. In the future if you need to serve me notice then please attach it to that door, and please inform your client so, and to communicate that to any other legal representation. I would notice it within minutes, probably, as I spend most of my time in an office I use that room for, or in the garage.





After calming my agitated tenant, I started drafting this reply, as I started drafting a reply to your demand to close, delivered via email on Wednesday evening, when I saw the email. I did not acknowledge your email because you explained I had three days to reply.

I had planned to deliver my reply today, but now I am so aggravated I will not be able to complete it today, but you will have it on Monday.

I want to make clear that you will not contact my tenant in this matter, without:

- (1) Clearing it with me first and I will set up an appointment with him
- (2) Compelling reason why you need to go directly to him

It is a matter of record, in this transaction, that I live at 2505 Johnson. Your client has been to my house many times. He once, similar in a way that this was disturbing to my tenant, demanded immediate entrance into my tenant's house to inspect it. I told him this was not allowed and that any landlord would know that. I told him, and did, arrange a time for him to inspect it. Then he failed to arrive and has never seen the inside of 2525 Johnson, but I have been perfectly willing to arrange it for him.

At this time, and as matter of courtesy, I request that your client divulge his home address, whether in Seaside, as he has maintained, or as I suspect, in San Luis Obispo, to "clear up the mystery" for me.

Sincerely,

Jerry Burch

(unsigned, signed copy available on request)