

The Honorable Suzanne R. Parisien  
Noted for Hearing: February 9, 2023  
Without Oral Argument

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SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation  
under the laws of the State of Washington,

Defendant.

NO. 21-2-11739-9 SEA

**CITY OF SEATTLE’S MOTION FOR  
DETERMINATION OF FEE  
AMOUNT PURSUANT TO COURT  
ORDER AWARDING FEES**



1 **II. STATEMENT OF FACTS**

2 **A. The Court Ordered Plaintiff Kimberly Ferreiro to Sit for Deposition and**  
3 **Sanctioned Plaintiffs**

4 The City began requesting dates for Ms. Ferreiro’s deposition in early August. (Sub  
5 No. 73 at ¶2.). Plaintiffs refused to provide any dates, insisting that they be able to depose a  
6 third-party witness (Plaintiffs’ former supervisor, Michelle Chen), first. (*Id.* at ¶¶2-7.)  
7 Plaintiffs then declined to schedule Ms. Chen’s deposition and continued to refuse to provide  
8 any dates on which Ms. Ferreiro could be deposed. (*Id.* at ¶¶6-10.) The City finally noted Ms.  
9 Ferreiro’s deposition in November, and she did not attend. (*Id.* at ¶¶11-19.) Plaintiffs did not  
10 respond to the City’s requests to reschedule it, forcing the City to move this Court for an order  
11 compelling Ms. Ferreiro’s deposition. (*Id.* ¶¶17-19.)

12 The City filed its Motion to Compel on November 18. (Sub No. 72.) In it, the City  
13 provided legal authority and analysis regarding Plaintiffs’ obligation to produce Ms. Ferreiro  
14 for a deposition, and which provides that Plaintiffs cannot block and sequence the *City’s*  
15 discovery for their tactical benefit. (*Id.*) Plaintiffs filed a substantial brief in opposition,  
16 mischaracterizing the record and various discovery matters, and making arguments about  
17 privilege disagreements and purported prejudice. (Sub No. 80.) This required the City to  
18 prepare a reply brief that addressed these multiple and varied assertions and arguments. (Sub  
19 No. 86.)

20 On January 6, 2023, the Court granted the City’s Motion to Compel. (Sub No. 99.) The  
21 Order required Plaintiff Kimberly Ferreiro to appear for her video-taped deposition within  
22 fourteen days of the Order – by January 20. (*Id.* at 2:6-7) The City subsequently agreed that  
23 Ms. Ferreiro could be deposed on January 30 as an accommodation, and the parties so  
24 stipulated. (Sub No. 109.) In doing so, the parties agreed that the Order would otherwise  
25 remain unchanged and in full force and effect. (*Id.* at 1:23-24.) In seeking this  
26 accommodation, Plaintiffs said nothing about not honoring the Order. (Declaration of Brandi  
27 Balanda, dated January 27, 2023 (“Balanda Decl.”), ¶12.)

1 **B. The City Provided Plaintiffs with Detailed Information to Support its Reasonable**  
2 **Request for Fees and Costs**

3 On January 12, the City provided Plaintiffs with the amount of fees and costs it had  
4 incurred in bringing the Motion, and a detailed spreadsheet containing task descriptions and  
5 hourly rates for that work. (Balanda Decl. at Exhibit A.) The City limited the amount  
6 requested to only include work in connection with the Motion to Compel and reply brief in  
7 support of that motion, notwithstanding that it had incurred substantial costs in its efforts to  
8 obtain Ms. Ferreiro’s deposition before resorting to a motion. (*Id.*) The hourly rates charged to  
9 the City for this matter are: \$475 per hour for attorney James Savitt, who has been practicing  
10 law for approximately 40 years; \$275 per hour for attorneys Duffy Graham and Sarah  
11 Gohmann-Bigelow, each of whom is Of Counsel, and have been practicing law for over twenty  
12 years and approximately 15 years, respectively; and \$165 per hour for paralegal work. A total  
13 of 22.1 hours were spent on all work to prepare the motion to compel (including legal research  
14 and analysis, drafting the motion, drafting the supporting declaration, identifying and preparing  
15 exhibits thereto, and filing). A total of 34.9 hours were spent on all work to review, assess, and  
16 respond to Plaintiffs’ opposition brief and prepare the reply brief (including analysis of the  
17 arguments and cited law in that brief, research and analysis to address all points made, drafting  
18 the reply brief, and preparing the appendix of non-Washington authorities and on filing). The  
19 attorneys’ fees and costs the City incurred for all of this work totaled **\$16,153**.

20 In that same January 12 correspondence, the City asked Plaintiffs whether they would  
21 agree to pay this amount, and if not, the specifics of any objections to be addressed. (Balanda  
22 Decl., Exhibit A.) Plaintiffs responded that they would get back to the City regarding their  
23 answer or objections on January 20. (*Id.* at Exhibit B.) The City therefore set up a meet and  
24 confer for January 20 to discuss any issues. (*Id.* at Exhibit C.)  
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1 **C. Plaintiffs Would Not Agree to Pay Any Amount or Discuss Any Specific Time**  
2 **Entry, Requiring this Motion**

3 In the interim, Plaintiffs filed a motion for discretionary review (“MDR”) with the  
4 Court of Appeals seeking review of the Court’s Discovery Orders (including the Order),<sup>1</sup> and a  
5 motion to halt the entire case until 30 days after final resolution of Plaintiffs’ MDR. (Balanda  
6 Decl., ¶5.) The City is opposing Plaintiffs’ MDR, including because Plaintiffs do not meet the  
7 standard for discretionary review of the Court’s discovery orders, and the Court did not abuse  
8 its discretion in any of those rulings. (*Id.* at ¶6.)

9 On January 20, the parties met and conferred by telephone. (Balanda Decl., ¶7.)  
10 Plaintiffs stated that they “objected” to the amount the City requested because the motion was  
11 “simple” – a position belied by the arguments they raised in opposition. (*Id.* at ¶8.) Plaintiffs  
12 also referenced that there had been “block billing” – an assertion that is simply not true given  
13 the task level descriptions and time allocations in the spreadsheet that the City had provided  
14 them. (*Id.* at ¶8, Exhibit A.) Plaintiffs would not identify any specific time entry for discussion  
15 or as the subject of their objections or state any amount that they would agree to pay. (*Id.* at  
16 ¶8.) Instead, Plaintiffs insisted upon delaying any such discussion until an unknown future  
17 time because they are hoping the Court of Appeals stays this case or accepts discretionary  
18 review. (*Id.*) Plaintiffs declined to agree to the reasonable amount the City incurred and  
19 declined to state any amount they would agree is reasonable. (*Id.*) In compliance with the  
20 Court’s Order, the City therefore brings this Motion for the Court to set the amount that  
21 Plaintiffs shall pay.

22 **III. STATEMENT OF ISSUES**

23 Pursuant to the Court’s prior Order, should the Court order Plaintiffs to pay **\$16,153** as  
24 the total amount of attorney’s fees and costs incurred by the City in making its motion to

25 \_\_\_\_\_  
26 <sup>1</sup> “Discovery Orders” means the Revised and Updated Order Granting City of Seattle’s Motion for Privilege  
27 Determination, entered November 16, 2022 (Sub No. 66); Order Denying Motion to Reconsider Determination of  
Privilege, entered December 2, 2022 (Sub No. 88); Order Denying Plaintiffs’ Revised Motion to Compel  
Discovery and for *In Camera* Review and the Appointment of a Special Master, entered January 6, 2023 (Sub No.  
101); and the Order (Sub No. 99).

1 compel where the amount sought is supported by detailed time entries of reasonable work  
2 incurred at reasonable rates?

#### 3 IV. EVIDENCE RELIED UPON

4 The City relies upon the files and records of this case, and the Declaration of Brandi  
5 Balanda, dated January 27, 2023 and exhibits attached thereto.

#### 6 V. ARGUMENT AND AUTHORITY

##### 7 A. The Lodestar Method is Used to Determine the Reasonable Fees Amount

8 “A trial court initially determines attorney fees and costs using the ‘lodestar’  
9 calculation, multiplying the total number of hours reasonably expended in the litigation by the  
10 reasonable hourly rate.” *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 81, 272 P.3d 827  
11 (2012); *Roberson v. Perez*, 123 Wn. App. 320, 344, 96 P.3d 420 (2004) (applying lodestar  
12 method to calculate attorney fees awarded as monetary sanction for discovery abuse under CR  
13 37). The court can then adjust the lodestar upward or downward based upon certain factors at  
14 the court’s discretion. *Clausen*, 174 Wn.2d at 81. The City is not requesting any adjustment  
15 here. Paralegal and legal assistant fees are recoverable in an attorney fee award. *Absher*  
16 *Constr. Co. v. Kent Sch. Dist.*, 79 Wn. App. 841, 844-45, 917 P.2d 1086 (1995).

##### 17 B. The Amount the City Requests is Reasonable

18 The hourly rates charged to the City are reasonable. Plaintiffs have not disputed this.  
19 (Balanda Decl., ¶9.) Indeed, these rates are substantially discounted from the standard rates  
20 that the City’s undersigned counsel (Savitt Bruce & Willey, LLP) charges and receives from  
21 for-profit clients, and are below the market rates because the City is a public-entity client. (*Id.*  
22 at ¶10.) Notably, both the Court of Appeals and the Washington Supreme Court have awarded  
23 attorneys’ fees to underlying counsel’s firm using higher and comparable hourly rates. (*Id.* at  
24 ¶11, Exhibit D.)

25 The work done is also reasonable. That work required efforts to prepare, research, and  
26 draft the motion to compel, address the opposition brief, and prepare, research, and draft the  
27 reply brief in support. Quality legal work is time intensive. It is no quick task to develop and

1 ensure accuracy of the record, research and analyze the law, and draft a persuasive synthesis to  
2 convey the salient points. Each of the work steps and tasks recorded are reasonable in support  
3 of this effort, as demonstrated by the detailed task-by-task time entries that we submit herewith  
4 to support this application, and which were provided to Plaintiffs. (Balanda Decl., Exhibit A.)

5 Plaintiffs' main objection is that the City spent too much time preparing the reply brief.  
6 (Balanda Decl., ¶8.) After filing a substantial opposition brief containing record  
7 mischaracterizations and varied and inapposite arguments, Plaintiffs now claim that their  
8 opposition should have been easily and summarily disposed with – *i.e.*, that it was a waste of  
9 time to take it seriously. (*Id.*) This is not so. Instead, it is a stark example of the “Pizza  
10 Principle” recognized by the Delaware Chancery Court, that: “it is more time-consuming to  
11 clean up the pizza thrown against the wall than it is to throw it.” *Elting v. Shawe (In re*  
12 *Transperfect Global, Inc.)*, 2021 Del. Ch. LEXIS 86 (April 30, 2021) (granting fee petition  
13 request). Here, Plaintiffs' mischaracterization of discovery, the record, the City's privilege log,  
14 and privilege assertions, required substantial work to address. (Balanda Decl., Exhibit A.)  
15 This was reasonable and necessary work, including as is demonstrated by the ruling the City  
16 obtained. (*Id.*, ¶2.)

17 **C. This Court Has Full Authority to Enforce Its Order**

18 Although Plaintiffs may want the Court to not enforce its orders or for the case to  
19 proceed because they disagree with how discovery is being managed, this is not the law. RAP  
20 7.1 expressly provides that “The trial court retains full authority to act in a case before review is  
21 accepted by the appellate court, unless the appellate court directs otherwise as provided in rule  
22 8.3.” Further, under RAP 8.1(b), “[a] trial court decision may be enforced pending appeal or  
23 review unless stayed pursuant to the provisions of this rule.” *See Cronin v. Cent. Valley Sch.*  
24 *Dist.*, 12 Wn. App. 2d 123, 456 P.3d 857 (2019) (trial court had authority to hold party in  
25 contempt for not obeying trial court order even where party had appealed the order and was  
26 seeking to stay its enforcement).

1 These rules make good sense; without them, a party could unilaterally avoid  
2 enforcement of a trial court order, halt proceedings, and do so without having to post any  
3 security any time they disagree with any of the trial court's rulings. There has been no  
4 appellate court ruling staying enforcement of the Order or any other matter in this case. And  
5 here, Plaintiffs reaffirmed by agreement that the Order is in full force and effect and that they  
6 are bound by it. (Sub No. 109.)

7 **VI. CONCLUSION**

8 The Court ordered Plaintiffs to pay the City's reasonable attorneys' fees and costs  
9 incurred in having to bring its Motion to Compel Plaintiff Kimberly Ferreiro's deposition. That  
10 Order is in full force and effect. The hourly rates and work performed are reasonable, such that  
11 the City respectfully asks the Court to order that Plaintiffs pay a total of **\$16,153** pursuant to its  
12 prior Order.

13  
14 DATED: January 27, 2023.

15 **SAVITT BRUCE & WILLEY LLP**

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*Attorneys for Defendant City of Seattle*

*I certify that this memorandum contains 2,282, in  
compliance with the Local Civil Rules.*



1 **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that  
3 on this date, I caused a true and correct copy of the foregoing document to be served on the  
4 following in the manner(s) indicated:

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21 *Attorney for Plaintiffs*

22 DATED this 27<sup>th</sup> day of January, 2023 at Seattle, Washington.

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Meghan Parker