

The Honorable Suzanne R. Parisien
Noted for Hearing: To be Considered Prior to Decision on
Plaintiffs' Motion to Compel, filed February 14, 2023
Without Oral Argument

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 TO
SHORTEN TIME ON MOTION FOR
LEAVE TO FILE DECLARATION IN
SURREPLY**

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I. INTRODUCTION AND RELIEF REQUESTED

Defendant City of Seattle respectfully asks the Court to shorten time on the City’s Motion for Leave to File Declaration in Sur-Reply, filed February 28, 2023 (“Motion”, Sub No. 131). More specifically, the City asks the Court to rule on the City’s Motion before ruling on Plaintiffs’ Motion to Compel (“MTC”, Sub No. 121). The City makes this request because it seeks fair consideration of Plaintiffs’ MTC. Plaintiffs submitted a new declaration with their reply brief (the “Mindenberg’s Reply Declaration”, Sub No. 130.) That declaration contains incorrect assertions that Plaintiffs then use to support new accusations against the City and its counsel in their Reply brief, and a new request for relief. By its Motion, the City has asked the Court for leave to file a declaration of G. William Shaw, an attorney at K&L Gates (“Shaw Declaration”), that corrects those false assertions in the Mindenberg’s Reply Declaration. Plaintiffs’ MTC is noted for consideration today, February 28. Thus, there is good cause to grant this motion to shorten time so that the Court can rule on whether the Shaw Declaration may be filed before ruling on Plaintiffs’ MTC.

II. STATEMENT OF FACTS

As discussed in the City’s Opposition, on February 14, 2023, Plaintiffs filed an unnecessary motion to compel service information for former Mayor Durkan in violation of CR 26(i). (MTC, Sub No. 121.) Plaintiffs noted their MTC for consideration on February 28. (Sub No. 123.) The City filed an opposition on February 22, after Plaintiffs refused to withdraw their MTC. (Sub No. 125.)

On Friday, February 24, Plaintiffs filed a Reply in support of their MTC. (Sub No. 129.) With it, Plaintiffs also filed a new declaration (the Mindenberg’s Reply Declaration). (Sub Nos. 129 and 130.) That declaration contains incorrect assertions about a discussion that Plaintiffs’ counsel purportedly had with Mr. Shaw regarding when he was authorized to accept service for former mayor Durkan, and the substance and timing of any discussions he had with the City’s undersigned counsel. (Sub No. 130, ¶¶6-8.) Plaintiffs then use those incorrect

1 assertions to seek new relief in their reply brief – Rule 11 sanctions. (Sub No. 129.) Plaintiffs’
2 assertions are false. (See Shaw Declaration, Sub No. 132.) But because Plaintiffs submitted
3 them on reply, the City has no means to respond in the ordinary course of briefing on Plaintiffs’
4 MTC.

5 On Monday, February 27, Mr. Shaw prepared a declaration that addresses Plaintiffs’
6 misstatements about their discussion. (Sub No. 132.) This morning, the City filed a Motion for
7 Leave asking the Court to allow the City to file the Shaw Declaration to be considered by the
8 Court when ruling on Plaintiffs’ MTC. (Sub No. 131.) Under LCR 7(b)(4)(A), the City noted
9 its Motion for consideration on March 13. (Sub No. 133.) Given that the City’s Motion is
10 noted for consideration after the note date on Plaintiffs’ MTC, the City alerted the Court to the
11 City’s filing. (Declaration of Brandi Balanda, ¶3.) In response to the Court’s email on this
12 issue, the City determined a motion to shorten time was needed and promptly so notified
13 Plaintiffs in compliance with LCR 7(b)(10)(C). (Balanda Decl., Exhibit A.)

14 III. STATEMENT OF ISSUES

15 Whether there is good cause to shorten time on the City’s Motion so that the Court can
16 rule on whether the City may file the Shaw Declaration to address new materials that Plaintiffs
17 submitted on reply before the Court rules on Plaintiffs’ MTC.

18 IV. EVIDENCE RELIED UPON

19 The City relies upon the files and records of this case, and the Declaration of Brandi
20 Balanda, dated February 28, 2023, and exhibit attached thereto.

21 V. ARGUMENT AND AUTHORITY

22 Under LCR 7(b)(10), the Court may shorten time on a motion for good cause. Here,
23 there is good cause to shorten time so that the Court can rule on the City’s Motion before ruling
24 on Plaintiffs’ MTC. Plaintiffs filed a new declaration on reply that contains misrepresentations
25 about a discussion they purportedly had with Mr. Shaw. (Sub No. 130 at ¶¶6-7 Sub No. 132 at
26 ¶¶5-9.) Plaintiffs then make new accusations against the City and its counsel and seek new
27 relief based on those misstatements. (Sub No. 129.)

1 In its Motion, the City asks the Court to grant leave so that the City may file a
2 Declaration by Mr. Shaw that refutes and corrects Plaintiffs' misstatements made for the first
3 time in on reply, for the court to consider when ruling on Plaintiffs' MTC. (Sub No. 131.) But
4 if the Court does not shorten time on the City's Motion, it may end up ruling on Plaintiffs'
5 MTC before ruling on whether the City may file the Shaw Declaration for consideration
6 therewith. This result would be unjust, given Plaintiffs' reply was not a strict reply; instead,
7 Plaintiffs submitted new material that included new (incorrect) fact assertions upon which
8 Plaintiffs made serious unfounded accusations and requested new additional relief.

9 To the extent the Court may rule on Plaintiffs' MTC before two judicial days from
10 today, the City respectfully asks the Court to set an oral hearing on this motion to shorten time
11 pursuant to LCR 4(b)(10)(D).

12 VI. CONCLUSION

13 For the foregoing reasons, the City respectfully asks the Court to shorten time on its
14 Motion such that it rules on the Motion before ruling on Plaintiffs' MTC.

1 DATED: February 28, 2023.

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3 **SAVITT BRUCE & WILLEY LLP**

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5 By s/ Brandi B. Balanda

6 James P. Savitt, WSBA #16847

7 Brandi B. Balanda, WSBA #48836

8 Sarah Gohmann Bigelow, WSBA #43634

9 1425 Fourth Avenue Suite 800

10 Seattle, Washington 98101-2272

11 Telephone: 206.749.0500

12 Facsimile: 206.749.0600

13 Email: jsavitt@sbwLLP.com

14 Email: bbalanda@sbwLLP.com

15 Email: sgohmannbigelow@sbwLLP.com

16 *Attorneys for Defendant City of Seattle*

17
18 *I certify that this memorandum contains 879 words,*
19 *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:

5 Susan B. Mindenbergs, WSBA #20545
6 Law Office of Susan B. Mindenbergs
7 705 Second Avenue, Suite 1050
8 Seattle, WA 98104
9 Telephone: (206) 447-1560
10 Facsimile: (206) 447-1523
11 Email: susanmm@msn.com

- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

12 *Attorney for Plaintiffs*

13 Jeffrey L. Needle, WSBA #6346
14 Law Office of Jeffrey L. Needle
15 705 Second Avenue, Suite 1050
16 Seattle, WA 98104
17 Telephone: (206) 447-1560
18 Facsimile: (206) 447-1523
19 Email: jneedlel@wolfenet.com
20 jneedle@jneedlelaw.com

- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

21 *Attorney for Plaintiffs*

22 DATED this 28th day of February, 2023 at Seattle, Washington.

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Meghan Parker