

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

JOHN LEY, an individual, et al.,  
Plaintiffs,  
v.  
CLARK COUNTY PUBLIC  
TRANSPORTATION BENEFIT AREA,  
dba C-TRAN, a Washington Public  
Transportation Benefit Area, et al., et. al.,  
Defendants.

No. 15-2-01144-1

CERTAIN DEFENDANTS'  
SUPPLEMENTAL MOTION FOR  
ATTORNEYS' FEES AND COSTS  
UNDER RULE 11

**I. INTRODUCTION**

Defendants C-TRAN, the individual Board members (and alternate Board member Connie Jo Freeman), and Jeff Hamm ("Defendants")<sup>1</sup> submit the following supplemental motion for attorneys' fees and costs under Rule 11 ("Motion") to the Court in accordance with the Court's December 11, 2015 oral ruling. Because this Court has already awarded reasonable attorneys' fees and costs, the only remaining issue is the amount to be awarded. Defendants request \$32,249.95 in reasonable attorneys' fees and \$117.94 in

<sup>1</sup> This Motion is not brought on behalf of defendants David Madore, Jeanne Stewart, or Connie Jo Freeman. Nor is it brought on behalf of defendants Tom Mielke or the Board Composition Review Committee, neither of which is represented by this counsel.

1 costs attributable to defending against the claims brought against the individual Board  
2 members and Mr. Hamm (collectively, the “individual defendants”), including the work  
3 required to bring the motion for sanctions.

## 4 II. STATEMENT OF FACTS

5 Defendants rely on and incorporate herein the facts previously set forth in the  
6 Motion for Reasonable Attorneys’ Fees and Costs Under Civil Rule 11 For Claims  
7 Against the Individual Defendants (“Motion for Sanctions”).

## 8 III. STATEMENT OF ISSUE

9 Whether the attorneys’ fees and costs requested are reasonable as an award under  
10 Civil Rule 11.

## 11 IV. EVIDENCE RELIED UPON

12 In support of this Motion, defendants rely on the Declaration of Thomas H.  
13 Wolfendale in Support of Certain Defendants’ Supplemental Motion for Attorneys’ Fees  
14 and Costs Under Rule 11 (“Wolfendale Decl.”), the Declaration of Michael K. Ryan in  
15 Support of Certain Defendants’ Supplemental Motion for Attorneys’ Fees and Costs  
16 Under Rule 11 (“Ryan Decl.”), and the previously filed Declaration of Michael K. Ryan in  
17 Support of Defendants’ Motion for Reasonable Attorneys’ Fees and Costs Under Civil  
18 Rule 11 for Claims Against the Individual Defendants.

## 19 II. ARGUMENT

### 20 A. Defendants’ request for \$22,499.68 is a reasonable request for attorneys’ fees 21 for defending against the frivolous claims.

22 This Court has already determined that defendants are entitled to reasonable  
23 attorneys’ fees as a sanction against plaintiffs for bringing frivolous claims. The sole  
24 issue left before the Court is the appropriate sanction to award. In awarding reasonable  
25 fees, courts generally use the lodestar method to calculate the amount. *See, e.g., Zink v.*

1 *City of Mesa*, 137 Wn. App. 271, 152 P.3d 1044 (2007) (upholding an award for attorney  
2 fees under the frivolous lawsuit statute, RCW 4.84.185, using the lodestar methodology);  
3 *see also Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998) (“Courts should be  
4 guided in calculating fee awards by the lodestar method in determining an award of  
5 attorney fees as costs.”), *abrogated on other grounds by Safeco Ins. Co. v. Woodley*, 150  
6 Wn.2d 765, 82 P.3d 660 (2004). Under the lodestar method, a reasonable hourly rate is  
7 multiplied by the number of hours reasonably spent on the lawsuit. *Zink*, 137 Wn. App. at  
8 277. In making this determination, the court should exclude wasteful or duplicative hours  
9 and any hours spent pursuing unsuccessful claims, but the court need not make “an  
10 explicit hour-by-hour analysis of each lawyer’s time sheets . . . as long as the court  
11 considers relevant factors and gives reasons for the amount awarded.” *Id.* (internal  
12 quotation and citation omitted). Further, “[i]f the court finds that claims are so related that  
13 segregation is not reasonable, then it need not segregate the attorney fees.” *Dice v. City of*  
14 *Montesano*, 131 Wn. App. 675, 128 P.3d 1253 (2006).

15 In this case, a reasonable award should be made based on the reasonable hourly  
16 rate for the individual defendants’ attorneys for a reasonable number of hours worked.  
17 *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983).  
18 Counsel must provide “reasonable documentation of work performed”; this  
19 documentation “need not be exhaustive or in minute detail, but must inform the court, in  
20 addition to the number of hours worked, of the type of work performed, and the category  
21 of attorney who performed the work. (i.e., senior partner, associate, etc.)” *Id.* The  
22 process should not be “unduly burdensome . . . for the court or the parties.” *William G.*  
23 *Hulbert, Jr. and Clare Mumford Revocable Living Trust v. Port of Everett*, 159 Wn. App.  
24 389, 409, 245 P.3d 779 (2011). “An ‘explicit hour-by-hour analysis of each lawyer’s time  
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1 sheets' is unnecessary as long as the award is made with a consideration of the relevant  
2 factors and reasons sufficient for review are given for the amount awarded." *Id.* (internal  
3 quotation omitted).

4 Because C-TRAN defended and indemnified the individual defendants, the award  
5 should go to C-TRAN. *See Manteufel v. Safeco Ins. Co. of Am.*, 117 Wn. App. 168, 173-  
6 74, 68 P.3d 1093 (2003) ("Following a hearing on the issue of sanctions, the trial court  
7 awarded sanctions to SAFECO in the amount of attorney fees SAFECO had expended  
8 defending Wathen against Manteufel's frivolous lawsuit."). Accordingly, C-TRAN  
9 should be awarded fees for defending the individual defendants against the frivolous  
10 claims brought by plaintiffs against them. C-TRAN should also be awarded its reasonable  
11 fees and costs incurred for bringing the Motion for Sanctions.

12 1. *The Number of Hours Expended by Counsel was Reasonable.*

13 The number of hours reasonably expended by C-TRAN's counsel for the work  
14 related to the frivolous claims is set forth in detail in the invoices attached to Mr. Ryan's  
15 declarations. Ryan Decl., ¶ 4, Ex. A. Descriptions of the time expended on work related  
16 to the motion for sanctions are attached to the declaration of Thomas H. Wolfendale. *See*  
17 *Wolfendale Decl.*, ¶ 4, Ex. A. The billing statements provide detail for what was done, in  
18 a narrative fashion covering each day and each attorney's work. The highlighted entries  
19 reflect work that was necessarily expended to defend against the frivolous claims against  
20 the individual defendants and to pursue the motion for sanctions. Plaintiffs actively  
21 defended their assertion of the frivolous claims, sought discovery related to those claims,  
22 and even proposed settlement of those claims. These actions required defendants to invest  
23 additional time in resolving the frivolous claims.  
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1 Additional time and effort were required to untangle the frivolous claims brought  
2 against the individual defendants. Ryan Decl., ¶ 6. Defendants were essentially required  
3 to restate plaintiffs' case to determine the contours of their claims. *Id.* Defendants spent  
4 four of the 14 pages of argument in the motion to dismiss—or approximately 28 percent—  
5 specifically addressing the claims against the individual defendants. *Id.*, ¶ 10. Therefore,  
6 for time entries that involved unsegregated tasks, C-TRAN is requesting 28 percent of the  
7 invoiced amount. *Id.* This is likely less than the actual amount incurred defending the  
8 individual defendants. *Id.*

9 Mr. Ryan and Mr. Wolfendale have reviewed the invoices and found the hours  
10 reasonable. Ryan Decl., ¶ 5; Wolfendale Decl., ¶ 5.

11 2. *The Hourly Rates Charged by Counsel were Reasonable*

12 The Ryan and Wolfendale Declaration also set forth the hourly rates charged by  
13 defendants' attorneys. Ryan Decl., ¶ 4, Ex. A. The hourly rates charged by the K&L  
14 Gates LLP attorneys with primary responsibility over the case ranged from \$236.60-  
15 \$263.90 per hour for associates and \$386.75-\$541.45 per hour for partners working on the  
16 case. *See* Ryan Decl., Ex. A; Wolfendale Decl., Ex. A. These rates, all of which were  
17 approved by C-TRAN, are less than the standard rates K&L Gates LLP charges other  
18 clients. Wolfendale Decl., ¶¶ 7-8. Further, the partners on this case have extensive  
19 experience with municipal clients, which justifies the hourly rates charged. *See* Ryan  
20 Decl., ¶ 3; Wolfendale Decl., ¶¶ 7-8. The associates on this case also have experience  
21 working with municipal clients. Wolfendale Decl., ¶¶ 9-10.

22 Both the number of hours and the rates charged by defendants' attorneys are  
23 reasonable under the circumstances. The Court should award C-TRAN \$22,499.68 in  
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1 attorneys' fees that defendants incurred to secure dismissal of the frivolous claims against  
2 the individual defendants. Ryan Decl., ¶ 9.

3 **B. C-TRAN is entitled to recover \$9,750.27 in fees and \$117.94 in costs incurred**  
4 **in bringing this motion.**

5 A party obtaining fees as Rule 11 sanctions may also be awarded fees for the hours  
6 spent preparing the fee affidavit and supporting motion. *See* CR 11 (allowing recovery of  
7 reasonable attorneys' fees incurred because of the filing of the frivolous pleading, motion,  
8 or legal memorandum); *cf. Bowers*, 100 Wn.2d at 595 (allowing recovery of \$4,283 in  
9 attorney fees incurred in the determination of the fee award in a non-CR 11 context). C-  
10 TRAN incurred \$9,750.27 in fees for additional work related to the Motion for Sanctions,  
11 the reply in support, and attendance at hearings required by the Court. Wolfendale Decl.,  
12 ¶ 14 & Ex. A. This amount is in addition to the fees and costs already incurred that are  
13 reflected in the Ryan and Wolfendale Declarations. Defendants also incurred \$117.94 in  
14 costs associated with the motion for sanctions, which were necessary for delivering the  
15 motion for sanctions and the subsequent reply in support of the motion for sanctions to the  
16 Court. Wolfendale Decl., ¶ 15 & Ex. A.

### 17 III. CONCLUSION

18 For the reasons set forth herein, C-TRAN respectfully requests that the Court  
19 award C-TRAN \$32,249.95 in reasonable attorneys' fees and \$117.94 in costs consistent  
20 with its prior oral ruling granting the motion for sanctions.

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DATED this 22nd day of January, 2016.

Respectfully submitted,

K&L GATES LLP

By 

Thomas H. Wolfendale, WSBA # 3776  
Robert B. Mitchell, WSBA # 10874  
Aaron E. Millstein, WSBA # 44135

925 Fourth Avenue, Suite 2900  
Seattle, WA 98104  
Phone: (206) 370-7640  
tom.wolfendale@klates.com  
rob.mitchell@klgates.com  
aaron.millstein@klgates.com  
*Attorneys for C-TRAN, C-TRAN Board of  
Directors, Greg Anderson, Jack Burkman,  
Connie Jo Freeman, Bart Hansen, Jim Irish,  
Lyle Lamb, Jennifer McDaniel, Anne  
McEnerny-Ogle, John Shreves, Jeanne Stewart  
and Jeff Hamm*

1 CERTIFICATE OF SERVICE

2 Benita G. Gould declares as follows:

3 1. I am and at all times hereinafter mentioned was a citizen of the United  
4 States, a resident of the State of Washington, over the age of 21 years, competent to be a  
5 witness in the above action, and not a party thereto.

6 2. On January 22, 2015, I caused a true and correct copy of the foregoing  
7 document to be served in the manner indicated:

8  
9 Damien R. Hall  
Adele J. Ridenour  
10 Kamille Samper  
Ball Janik LLP  
11 101 SW Main Street, Suite 1100  
Portland, OR 97204  
12 dhall@balljanik.com  
aridenour@balljanik.com  
13 ksamper@balljanik.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via certified mail
- via email
- via electronic court filing
- via hand delivery

14 Christopher Horne  
15 Clark County Prosecuting  
Attorney  
16 Civil Division  
17 1300 Franklin St., Suite 380  
P.O. Box 5000  
18 Vancouver, WA 98666-5000  
19 chris.horne@clark.wa.gov

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David Madore  
17401 NE Stoney Meadows Dr.  
Vancouver, WA 98682-5614

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via certified mail
- via email
- via electronic court filing
- via hand delivery

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Dated January 22, 2015, at Seattle, Washington.



Benita G. Gould