Honorable David Gregerson
Noted for Consideration: January 29, 2016 @ 9:00 a.m.
Oral Argument Set

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., Defendants.	No. 15-2-01144-1 REPLY IN SUPPORT OF CERTAIN DEFENDANTS' SUPPLEMENTAL MOTION FOR REASONABLE ATTORNEYS' FEES AND COSTS UNDER CIVIL RULE 11 FOR CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS

I. SUMMARY OF REPLY

Plaintiffs' Response to Certain Defendants' Supplemental Motion for Reasonable Attorneys' Fees and Costs Under Civil Rule 11 ("Response") attempts to relitigate issues already determined by this Court. After full briefing and argument, the Court on December 19, 2015, held that plaintiffs failed to conduct a reasonable inquiry into either the facts or law supporting the claims against the individual against the individual C-TRAN Board members and Jeff Hamm (collectively, "individual defendants"). Because plaintiffs' liability under Rule 11 has already been decided, the arguments in the Response seeking to excuse or minimize plaintiffs' fault should be rejected. The sole legal issue

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before the Court today is the reasonableness of C-TRAN's fee request. That request is reasonable and should be approved.

II. REPLY

A. The Court has already ruled on awarding sanctions under Rule 11.

The Court has already ruled that granting sanctions under Rule 11 is appropriate in this case, because plaintiffs failed to conduct a reasonable inquiry into the facts or law supporting the claims against the individual defendants. This issue was thoroughly briefed and argued in December 2015. Any attempt to relitigate this issue now is improper. Yet plaintiffs' argument for limited sanctions is that they undertook a reasonable investigation of the statutes and cases. Indeed, they argue yet again that awarding fees in this case is improper because the issues presented were "matters of first impression." Response at 6.

Plaintiffs should not be able to avoid the consequences of bringing frivolous claims merely because no one else has been sanctioned for such conduct in the past. In addition, defendants are not seeking sanctions for the claims against C-TRAN or the BCRC. Rather, the sanctions sought are for the claims asserted specifically against the individual defendants, which lacked any basis in law or fact. The claims against the individual defendants were "matters of first impression" only because no one had ever thought to bring such claims, and therefore no court ever ruled that they were frivolous. Creativity is no excuse for an improper claim, and a prior finding of frivolity is not required for awarding sanctions.

B. C-TRAN may recover attorneys' fees expended in indemnifying the individual defendants.

Plaintiffs fail to provide any case law supporting their theory that C-TRAN, as the party indemnifying the individual defendants, cannot recover the attorneys' fees it

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expended in defending them. Plaintiffs' argument would undermine the purpose of Rule 11 by allowing them to avoid the consequences of bringing a frivolous claim merely because of a pre-existing indemnification obligation. The Court should reject this argument out of hand.

C. Awarding attorneys' fees is an appropriate sanction.

The purpose of Rule 11 is "deter baseless filing and curb abuses of the judicial system." *Building Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 746, 218 P.3d 196 (2009). The rule expressly contemplates awarding reasonable expenses incurred because of the sanctionable conduct. CR 11 ("which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee"). The "trial court retains broad discretion to tailor an 'appropriate sanction' and to determine against whom such sanction should be imposed." *Miller v. Badgley*, 51 Wn. App. 285, 303, 753 P.2d 530 (1988).

Rule 11 is not a fee-shifting mechanism, but rather a rule that backs up an attorney's obligation to investigate potential claims and make sure that they are well grounded in law and fact. Defendants have, accordingly, limited their claim for attorneys' fees to those actions that were necessitated by plaintiffs' sanctionable conduct. Requiring plaintiffs to pay for the expenses they caused others to incur because of their baseless claims will deter future baseless filings and curb future abuses of the legal system *See D'Aquino v. Citicorp./Diner's Club, Inc.*, 139 F.R.D. 357, 360 (N.D. Ill. 1991) ("[Rule 11] also ensures that those who create unnecessary costs bear them."). Such an award will also ensure that plaintiffs and their attorneys understand the gravity of bringing frivolous claims.

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Moreover, defendants warned plaintiffs that they would seek Rule 11 sanctions if the claims against the individual defendants were not voluntarily dismissed. By providing the warning, defendants attempted to mitigate the attorneys' fees incurred as a result of plaintiffs' frivolous claims. Plaintiffs ignored the warnings as to the baseless nature of the claims and responded with equally baseless settlement offers to the individual defendants. They also served discovery as to one of the individual defendants. Awarding attorneys' fees in such circumstances is especially appropriate, because defendants attempted--without success--to resolve the frivolous claims without motion practice.

Plaintiffs' alternative argument of a $250 fine per defendant would not serve to deter future abuses of the judicial system. Awarding sanctions against the plaintiffs for a mere $250 per defendant would be less than $250 per plaintiff. Given that plaintiffs have paid over $30,000 in legal fees and are currently appealing this matter, $250 per defendant is plainly insufficient.

D. The amount of fees requested is appropriate.

C-TRAN's request for $32,249.95 in attorneys' fees and costs is reasonable and not excessive.[1] The claims levelled against the individual defendants had serious consequences. Plaintiffs' claims sought to nullify every single action taken by the agency since January 2015. To defend against such claims, counsel had to review videos of the relevant hearings, review meeting minutes, and discuss the case with every client. And the claims against the individuals were not limited to a small penalty. If the elected officials were found to have knowingly violated the OPMA, as requested by plaintiffs, they could have been subject to a recall petition. Such serious consequences go beyond

[1] Nor are the fees incurred by C-TRAN generally—for the entire lawsuit—unreasonable.

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the mere monetary value of the claim.[2] Plaintiffs were not satisfied in naming C-TRAN and the BCRC. They chose to name and castigate individual members of the Board and the CEO of the agency, knowing that they were not proper parties for this matter. As explained in the supplemental motion, counsel had to effectively make plaintiffs' argument for them in order to prepare its motion to dismiss.

Defendants' request of $22,499.68 for attorneys' fees related to dismissing the claims against the individual defendants is reasonable. Plaintiffs do not take issue with specific time entries or point to any instances of allegedly unnecessary work. Instead, they rely on general claims of unreasonableness. The Court should reject the general, unspecific, claim that the work was unnecessary. Moreover, to the extent plaintiffs object to the block billing of the invoices, the appropriate course is to discount the amount requested by a percentage rather than deny the request. And providing such a percentage is exactly what defendants have done. *Cf. Green v City of New York*, 403 F. A'ppx 626, 630 (2d Cir. 2010) (affirming a 15 percent reduction for block-billed time entries). *Kirsch v. Fleet Street, Ltd.*, 146 F.3d 149, 173 (2d Cir. 1998) (affirming a 20 percent fee reduction for issues related to the attorney billing records).

Although plaintiffs make arguments about the hours spent defending their claims, they submit no evidence to support their arguments. Nor do they provide specific arguments against the rates charged by defendants' counsel. For instance, plaintiffs failed to even provide a statement in their supporting declaration as to what reasonable rates are in the region. Instead, they rely solely on factually unsupported arguments about rates.

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[2] Plaintiffs' argument that the attorneys' fees requested are unreasonable because they exceed the potential liability of the individual defendants must be rejected. *See* Response at 8. Under this theory, the total cost for defending against the claims should have been less than $100 per defendant. No attorney could have defended against these claims for such a minimal amount.

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Plaintiffs claim that the $30,000 they charged for filing a partially frivolous lawsuit is more comparable to "what is customarily charged for similar legal services in the urban centers of Southwestern Washington and Northern Oregon." Response at 7. Counsel is not surprised that plaintiffs' legal bills are substantially less than C-TRAN's legal bills, because plaintiffs filed their claims without properly investigating either the facts or law. Even their non-frivolous claims were dismissed on motion. Plaintiffs' complete failure before this Court undermines any argument that the fee charged to their clients represents an appropriate measure of reasonableness for the fees required to defend against this action.

III. CONCLUSION

Awarding $32,249.95 in attorneys' fees and $117.94 in costs against plaintiffs for defending their frivolous claims against the individual defendants and for bringing the motion for sanctions is appropriate and reasonable. Plaintiffs' Response attempts to relitigate issues already decided by this Court and to avoid any meaningful sanction that would deter such abuses. Sanctions should be granted in the amount requested.

DATED this 28th day of January, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Benita G. Gould declares as follows:

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

2. On January 28, 2016, I caused a true and correct copy of the foregoing document to be served in the manner indicated:

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

Dated January 28, 2016, at Seattle, Washington.

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