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SUPERIOR COURT
THURSTON COUNTY, WA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

STEPHEN CHAUSSEE, an individual,

Plaintiff,

vs.

STATE OF WASHINGTON,

Defendant.

Case No.: 11-2-01884-6

Hon. Gary Tabor

**(PROPOSED) FIRST AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING PLAINTIFF'S
PETITION FOR ATTORNEY FEES
AND COSTS**

THIS MATTER came on regularly before this Court on Plaintiff's Petition for Attorney Fees and Costs. The Court considered the following:

Plaintiff's Petition for Attorney Fees and Costs;

The Declaration and supplemental declaration of Jack Sheridan in Support of Plaintiff's Petition for Attorney Fees and Costs with attached exhibits;

The Declaration and supplemental declaration of Katherine C. Chamberlain in Support of Plaintiff's Petition for Attorney Fees and Costs;

The Defendant's response in opposition to Plaintiff's Petition for Attorney Fees and Costs;

PLAINTIFF'S FIRST AMENDED FINDINGS OF
FACT AND CONCLUSIONS OF LAW - 1


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SEATTLE, WA 98104
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1 The declaration(s) of counsel in opposition to Plaintiff's Petition for Attorney
2 Fees and Costs with attached exhibits;
3 Plaintiff's Reply and supporting declaration with attached exhibits; and,
4 The record of these proceedings.

5 Having been fully advised, the Court makes the following findings of fact and
6 conclusions of law.

7 1. These findings of fact and conclusions of law are issued in connection
8 with the plaintiff's petition for attorney fees. Our Supreme Court requires the entry of
9 findings of fact in fee award decisions. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957
10 P.2d 632 (1998).

12 **Background and Hourly Rate**

13 2. This case was filed on ^{August} ~~December~~ 9, 2011. 

14 3. The State moved for summary judgment in the case, which was denied
15 on May 3, 2013. The case was tried to a jury of twelve from March 16-25, 2015. The
16 jury found for the plaintiff on his claim and awarded emotional harm damages in the
17 amount of \$1 million. Judgment was entered on March 26, 2015 against the State in
18 the amount of \$1 million. The defendant sought a new trial or remittitur, and that
19 motion was denied on April 24, 2015. 

21 4. Plaintiff now seeks attorney fees and costs for bringing this case to trial.

22 5. This case was brought under RCW 42.40.050(1)(a), which provides,
23 "Any person who is a whistleblower, as defined in RCW 42.40.020, and who has been
24

1 subjected to workplace reprisal or retaliatory action is presumed to have established a
2 cause of action for the remedies provided under chapter 49.60 RCW.”

3 6. RCW 49.60.210(2) provides, “ It is an unfair practice for a government
4 agency or government manager or supervisor to retaliate against a whistleblower as
5 defined in chapter 42.40 RCW.”

6 7. The legal basis for plaintiff’s attorney fee claims is RCW 49.60.030(2),
7 which provides:

8
9 Any person deeming himself or herself injured by any act in violation
10 of this chapter shall have a civil action in a court of competent
11 jurisdiction to enjoin further violations, or to recover the actual
12 damages sustained by the person, or both, together with the cost of suit
including reasonable attorneys' fees or any other appropriate remedy
authorized by this chapter or the United States Civil Rights Act of 1964
as amended, or the Federal Fair Housing Amendments Act of 1988....

13 RCW 49.60.030(2). This statute is to be liberally construed. RCW 49.60.020.

14 8. The plaintiff prevailed in this case, and with a \$1 million verdict,
15 achieved excellent results. *See, e.g., Blair v. Wash. State University*, 108 Wn.2d 558,
16 572 (1987), *Steele v. Lundgren*, 96 Wn. App. 773, 783 (2000). Thus, he is entitled to
17 an award of reasonable attorney fees. Our Supreme Court has given trial courts broad
18 discretion in awarding attorney fees. “In order to reverse an attorney fee award, an
19 appellate court must find the trial court manifestly abused its discretion.” *Pham v.*
20 *Seattle City Light*, 159 Wn.2d 538, 540, 543, 151 P.3d 976 (2007)(trial court abused
21 discretion in denying multiplier based on irrelevant factors).
22

23 9. The Washington State Supreme Court has determined that the
24 calculation of an award of a reasonable attorney fee involves several determinations,
25

1 the first of which is the calculation of a "lodestar figure." *Id.* (citing *Bowers v.*
2 *Transamerica Title Insurance Co.*, 100 Wn.2d 581, 597 (1983)). The lodestar figure is
3 the product of the attorney's reasonable rate of hourly compensation multiplied by the
4 number of attorney hours reasonably expended in the litigation. *Bowers*, 100 Wn.2d
5 at 593. An attorney's established rate for billing clients is usually the reasonable
6 hourly rate for calculation of the lodestar. *Id.* at 596-598. "Where the attorneys in
7 question have an established rate for billing clients, that rate will likely be a reasonable
8 rate." *Id.* at 597. Trial judges are in the best position to determine the amount of
9 attorney fees and costs, and are thus given broad discretion in determining the
10 lodestar. *Pham v. Seattle City Light*, 159 Wn.2d at 540.

12 10. In determining the reasonable hourly rate of counsel, the Court has the
13 discretion to apply historical rates (adjusted for inflation) or current rates to the
14 calculation. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 375-376,
15 798 P.2d 799 (1990); *Steele v. Lundgren*, 96 Wn. App. 773, 785-786, 982 P.2d 619
16 (2000). Here, early billings by the Sheridan Law Firm were hourly, and under the
17 case law, this Court will use historical rates for the hourly billing, since there was no
18 delay in payment, and current rates should apply for all billing after that.

20 11. Plaintiff entered into a mixed contingent fee agreement with Mr.
21 Sheridan's law firm. Sheridan Declaration, Exhibit 14. The fees paid hourly were
22 billed here at the rates in effect at the time billed.

24 12. For the contingent fees, this Court will award current rates because the
25 Court finds that the current rates billed here are the rates billed hourly clients.

1 13. In assessing the reasonableness of the hourly rates of counsel, the Court
2 has independently review the billing records submitted by the parties and the
3 declarations of their attorneys and staff and finds them to be reasonable.

4 14. Jack Sheridan—Mr. Sheridan requests an hourly rate of \$550 per hour.
5 I find that the \$550 per hour rate is Mr. Sheridan’s established hourly rate, in that he
6 bills hourly clients at that rate and has done so since January 1, 2013. Sheridan Dec.
7 This rate “will likely be a reasonable rate.” *Bowers v. Transamerica Title Insurance*
8 *Co.*, 100 Wn.2d 581, 597 (1983). Mr. Sheridan’s declaration states and I find that
9 from January 1, 2013, through July 31, 2014, Mr. Sheridan was a partner at
10 MacDonald, Hoague & Bayless, which is a prominent Seattle law firm that focuses on
11 civil rights and immigration. Sheridan Dec. There, he billed hourly work at the rate
12 of \$550 per hour. In *Bichindaritz v. University of Washington*, King County Case No.
13 12-2-05747-8 SEA, which was a PRA case, Mr. Sheridan was awarded his hourly rate
14 of \$550 per hour. Sheridan Dec.¶19. In *Boyer v. State*, Thurston County Case No..
15 11-2-01726-2, which was a RCW 49.60 failure to accommodate a disability case, he
16 was also awarded his hourly rate of \$550 per hour. Sheridan Dec. For the hourly
17 portion of this case, which occurred in 2011, Mr. Sheridan billed hourly clients,
18 including Mr. Chaussee, at \$450 per hour, which is the rate for which he is asking
19 during that period of time. Sheridan Dec.¶20.

20 15. The State seeks to reduce the hourly rates of counsel as excessive
21 without any evidence to support that argument, and as a backup argument claims that
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1 the rates should be the rates in the fee agreement or measured by the rates of Thurston
2 County attorneys. These arguments are not supported by the law or the facts.

3 16. The terms of the fee agreement are irrelevant. The law is as follows
4 regarding the WLAD, and thus regarding state whistleblower claims, since it:

5 contemplates reasonable compensation, in light of all of the
6 circumstances, for the time and effort expended by the attorney for the
7 prevailing plaintiff, no more and no less. Should a fee agreement
8 provide less than a reasonable fee calculated in this manner, the
9 defendant should nevertheless be required to pay the higher amount.

10 *Martinez v. City of Tacoma*, 81 Wn. App. 228, 238, 914 P.2d 86 (1996). The
11 defendant is required to pay the reasonable hourly rate for the work done—the
12 loadstar—no more, no less. The terms of the contingent fee agreement are not
13 relevant and not considered by the Court. Thus, the Court held, “the trial court
14 abused its discretion in placing undue emphasis on Martinez's contingent fee
15 agreement when determining a reasonable attorney fee for this case.” *Id.* at 241.
16 Here, the hourly rate stated in the 2011 contingent fee agreement is not the test.

17 17. In determining the reasonable hourly rate of counsel, the Court has the
18 discretion to apply historical rates (adjusted for inflation) or current rates to the
19 calculation. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 375-376,
20 798 P.2d 799 (1990); quoting, *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir.
21 1980),¹ *Steele v. Lundgren*, 96 Wn.App. 773, 785-786, 982 P.2d 619 (2000). Except
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24 ¹ The *Bowers* court also discusses *Copeland* extensively in its opinion and cites it favorably regarding
25 calculation of the lodestar; however, *Bowers* does not specifically address current versus historical
rates. *Bowers* at 100 Wn.2d 581, 598.

1 for hourly billing in 2011, which plaintiffs are billing at the 2011 rates, current rates
2 are the rates used from 2013 to the present—the hourly rates billed to hourly clients.
3 Under *Fisher Properties* and *Copeland*, the hourly rates used in the lodestar represent
4 the prevailing rate for clients who typically pay their bills promptly. To encourage
5 attorneys to represent victims of discrimination, and to compensate those attorneys
6 when they have to wait several years for payment, the use of current rates is
7 appropriate. But this is not an issue here. Only actual rates are requested.
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9 As to the Thurston County rate argument, Mr. Chaussee lives in Kingston.
10 He works in Seattle/Bainbridge Island. It would be wrong to require him to retain an
11 Olympia employment lawyer, or to require Mr. Sheridan, whose office is in Seattle,
12 to bill at Olympia rates when his overhead is in Seattle. This line of reasoning was
13 raised by the defendant in *Brundridge v. Fluor* and rejected by the court. See
14 April 16, 2015 Sheridan Dec., Ex. 6, Findings of Fact 22-26. It should be rejected
15 here as well.
16

17 18. I find that Mr. Sheridan's rate is a reasonable rate for attorneys with his
18 level of experience and expertise. Mr. Sheridan's declaration states and I find that Mr.
19 Sheridan has been an attorney since 1984 and he has extensive experience as a trial
20 attorney having conducted numerous jury trials in his career both in the military and in
21 private and public practice, and his hourly rate has increased in proportion to his
22 experience and success. Sheridan Dec. ¶¶ 1-22, Exhibits 1-7. Mr. Sheridan has
23 focused his practice on civil rights and public interest law since 1994, and some of his
24 cases have helped shape the development of Washington law. *See e.g., Martini v.*
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1 *Boeing*, 137 Wn. 2d 357 (1999), *Brundridge v. Fluor Fed. Services, Inc.*, 164 Wn.2d
2 432, 191 P.3d 879 (2008), *Pham v. Seattle City Light*, 159 Wn.2d 538, 540, 151 P.3d
3 976 (2007), *Trinh and Bailey v. City of Seattle*, 2008 Wash. App. LEXIS 1391 (1998),
4 *Johnson v. Chevron*, 159 Wn. App. 18, 244 P.3d 438 (2010), *Lodis v. Corbis*
5 *Holdings, Inc.*, 172 Wn. App. 835, 852, 292 P.3d 779, 789 (2013), *Tamosaitis v. URS*
6 *Inc.*, No. 12-35924, 2015 WL 898187 (9th Cir. Mar. 4, 2015), and *Washington State*
7 *Dep't of Transp. v. Mendoza de Sugiyama*, 182 Wn. App. 588, 330 P.3d 209 (2014).
8 Sheridan Dec.
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10 19. Beth Touschner—Plaintiff requests an hourly rate of \$325 per hour for
11 Ms. Touschner's work on his case. Mr. Sheridan considers that rate to be reasonable
12 for attorneys with her level of experience, and Mr. Sheridan's declaration states and I
13 find that \$325 per hour is the rate she charged clients who retain her services on an
14 hourly basis since January 1, 2013. Sheridan Dec. ¶23, Exhibit 8. Ms. Touschner's
15 declaration indicates that she has been an attorney since 2008, and she worked for the
16 Sheridan Law Firm, P.S. for over three years and MHB from January 2013 through
17 August 2014. Exhibit 8. She supported Mr. Sheridan in drafting pleadings, including
18 summary judgment responses and appellate briefs, and has second-chaired trials with
19 Mr. Sheridan. Exhibit 8. In *Boyer v. State*, Thurston County Case No. 11-2-01726-2,
20 which was a RCW 49.60 failure to accommodate a disability case, she was also
21 awarded her hourly rate of \$325 per. Sheridan Dec. ¶20. For the hourly portion of
22 this case, which occurred in 2011, Ms. Touschner billed Mr. Chaussee at \$285 per
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1 hour, which Mr. Sheridan considers to be reasonable in 2011, and which I so find.

2 Sheridan Dec.

3 20. Mark Rose—Mark Rose requests an hourly rate of \$350 per hour. Mr.
4 Sheridan's declaration states and I find that \$350 per hour is the rate he bills hourly
5 clients at the Sheridan Law Firm, P.S. and has done so since joining in 2014. Sheridan
6 Dec. ¶24, Exhibit 9. Mr. Sheridan considers that rate to be reasonable given his
7 extensive experience (intensive litigation practice since 2009) and education and I
8 agree.
9

10 21. Staff fees—Ashalee May requests an hourly rate of \$200 per hour. I find
11 that Ms. May has worked as Mr. Sheridan's paralegal since June 2008, and has
12 provided a diverse range of services under Mr. Sheridan's supervision from document
13 management to litigation support, including drafting document and witness-related
14 pleadings such as lists of primary witnesses and pre-trial statements. Sheridan Dec.
15 ¶25. She also interviews witnesses, helps draft witness declarations, and attends trials
16 when required. Ms. May's hourly rate has been deemed reasonable by Mr. Sheridan
17 owing to her education and extensive litigation experience and I agree. Sheridan Dec.,
18 Ex. 10. Mr. Sheridan's declaration states, and I find that Ms. May's rate of \$200 per
19 hour was previously awarded by the Honorable Erik Price in *Boyer v. State*, Thurston
20 County Case No. 11-2-01726-2. Sheridan Dec. ¶20.
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22 22. Patti Lane requests an hourly rate of \$175 per hour. Mr. Sheridan's
23 declaration states and I find that Patti Lane is the office legal assistant. She provides
24 support to everyone in the office and her duties include contacting witness, drafting
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1 subpoena, drafting shells for pleadings, organizing hanging files for trial, executing
2 electronic court filings, setting depositions, and communicating with opposing counsel
3 staff. Sheridan Dec. ¶26, Exhibit 11. I find her rate to be reasonable.

4 23. MHB Fees— Mr. Sheridan’s declaration states and I find that from
5 January 1, 2013 through July 2014, Mr. Sheridan was a partner at MacDonald, Hoague
6 & Bayless. Sheridan Dec. His staff went with him to MHB including Ms. Touschner
7 and Ms. May. Sheridan Dec. ¶22. When he left to re-form his firm beginning August
8 1, 2014, Ms. May went with him. Sheridan Dec. ¶25, Ms. Lane left MHB and joined
9 the SLF in the fall of 2014. Sheridan Dec. ¶26. The hourly rates on this case during
10 his time at MHB are reasonable and incorporated into the total fees below. Sheridan
11 Dec. ¶21. As to the hourly rates of other attorneys and staff at MHB, Ms.
12 Chamberlain’s declaration outlined those fees and the reasonableness of those fees for
13 Andre LaRoche, Ms. Chamberlain, Tim Ford, and Troy Locati. I agree with her
14 opinion that the rates are reasonable. Chamberlain Dec.
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17 **Total Hours Worked**

18 24. Attorneys must document their work. The plaintiff has submitted
19 extensive billing records for the Court’s review. “This documentation need not be
20 exhaustive or in minute detail, but must inform the court, in addition to the number of
21 hours worked, of the type of work performed and the category of attorney who
22 performed the work (*i.e.*, senior partner, associate, etc.)” *Bowers* at 597. The records
23 submitted by plaintiff’s counsel contain sufficient detail under the standard set forth in
24 *Bowers*.
25

1 25. I find that Plaintiff billed 1145.67 hours in this litigation. "The court
2 must limit the lodestar to hours reasonably expended, and should therefore discount
3 hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive
4 time." *Bowers* at 597. The hours reasonably expended must be spent on claims
5 having a "common core of facts and related legal theories." *Pham*, 159 Wn.2d at 538
6 (citing *Martinez v. City of Tacoma*, 81 Wn. App. 228, 242-43, 914 P.2d 86 (1996)).

7 26. Mr. Sheridan's declarations state and I find that Mr. Sheridan and his
8 staff keep track of hourly billings through use of an electronic billing system, which
9 permits them to enter time by hand or using a clock device on the computer. He and
10 his staff made the entries contemporaneously. For the times attached to this
11 declaration, it was and is his practice to edit times to deduct unbillable, unproductive,
12 and duplicative time and to reduce time spent based on my business judgment as each
13 time slip is created. He trained his staff to do the same. He also reduced staff hours if
14 he found them to be unbillable, unproductive, or duplicative. Sheridan Dec. ¶27.

15 27. The plaintiff prevailed on his whistleblower claim. The pleadings
16 submitted by the plaintiff and the hours billed were based on a common core of facts
17 and related legal theories, and plaintiff should be compensated for those hours.

18 28. Plaintiff's approach was economical. Mr. Sheridan has reviewed the
19 total hours billed at the SLF and MHB and found them to be reasonable, except for
20 certain attorneys and staff he cannot opine. Sheridan Dec., ¶ 28, Exhibit 12. Ms.
21 Chamberlain has opined as to the total hours worked for those individuals.

22 Chamberlain Dec. I find the total hours worked to be reasonable. *as modified below.*

1 **Lodestar**

2 29. Pursuant to *Bowers*, once the hourly rates and total hours worked have
3 been determined, “[t]he total number of hours reasonably expended is multiplied by
4 the reasonable hourly rate of compensation.” *Bowers*, 100 Wn.2d at 597. That figure
5 becomes the lodestar. The calculation is as follows:

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<u>Attorney/Staff</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total</u>
Sheridan (SLF 2011 hourly)	\$450	4.2	\$ 1,890.00
Sheridan (SLF contingent)	\$550	215.3	\$118,415.00
Sheridan (MHB contingent)	\$550	107.1	\$58,905.00
Sheridan (additional fees)	\$550	15.7	\$8,635.00
Touschner (SLF 2011 hourly)	\$285	60.7	\$17,299.50
Touschner (MHB contingent)	\$325	136	\$44,200.00
Mark Rose (SLF contingent)	\$350	32.74	\$11,459.00
Rose (additional fees)	\$350	7.53	\$2,635.50
May (SLF contingent)	\$200	342.1	\$ 68,420.00
May (MHB contingent)	\$200	127.7	\$25,540.00
Lane (SLF contingent)	\$175	64.75	\$11,331.25
Lane (additional fees)	\$175	14.25	\$2,493.75
LaRoche (MHB contingent)	\$225	1.4	\$315.00
Chamberlain (MHB contingent)	\$300	6.7	\$2,010.00
Chamberlain (MHB additional fees)	400	5.5	2,200.00
Ford	\$600	1.7	\$1,020.00

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(MHB contingent)			
Locati (MHB contingent)	\$175	2.3	\$402.50
	Total Hours Worked:	1145.67	\$377,171.50
			as modified
		Lodestar:	✓ \$377,171.50

The Court will not award fees or costs for the interlocutory appeal and deducts the following: Fee: \$16,942.50 costs: \$1,180.90

30. I find that the lodestar in this case is the product of the rates and hours billed as set forth above, which totals \$377,171.50. This amount is reasonable.

31. The defendant argues that plaintiff cannot recover for unsuccessful theories. Defendant wants the Court to deduct fees if a piece of evidence was rejected or a motion denied. In fact, plaintiff won a victory based on a common core of facts—the minor successes and failures during battle are not relevant—only the overall outcome:

All of Steele's claims involved a common core of facts and related legal theories. Steele won substantial relief. The trial court recognized that Steele's claims were overlapping and that, despite the elimination of some of the claims on summary judgment, the core of her claims went to the jury. The court did not abuse its discretion in this respect.

Steele v. Lundgren, 96 Wn. App. 773, 783, 982 P.2d 619, 625 (1999). Plaintiff was successful on his whistleblower claim. That brings forth full fees and costs so long as they are reasonable.

32. Defendant misquotes *Bowers* as to the need for detail in billing records. Plaintiff has submitted more than sufficient detail to meet the *Bowers* standard. In *Bowers*, the following was deemed acceptable:

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Attorney & Type of Work	Hours	Rate	Total
Senior Partner: Court appearances	17.3	\$95	\$1,643.50
Senior Partner: Review of pleadings	39.2	\$85	\$3,332.00
Junior Associate: Research & drafting	87.6	\$40	\$3,504.00
Junior Associate: Depositions	35.5	\$40	\$1,420.00
			\$9,899.50

Bowers v. Transamerica Title Ins. Co., 100 Wn. 2d 581, 598, 675 P.2d 193, 204

(1983). The above was sufficient detail for the Supreme Court, and here, plaintiff submitted much greater detail. Again, the defendant's arguments are misleading and wrong.

33. In its response, the defendant paraphrases *Hensley*, which is a U.S. Supreme Court case from 1983, for the proposition that a court may simply reduce an award if a court cannot identify specific hours that should be eliminate. Defendant's brief at 3:11. The actual quote is, "The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983).

Following the requirements and examples from *Bowers*, plaintiff has more than adequately represented the hours worked. Even so, *Hensley* also states,

Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.

1 *Id.* at 435. In fact, *Hensley* and other federal cases discussing attorney fees have no
2 applicability here, because federal attorney fee petitions are based on different grounds
3 than state fee petitions, and the federal grounds were soundly rejected by our Supreme
4 Court in *Bowers*, which held that the twelve factor federal approach, “has been
5 criticized as providing no more than illusory guidance to trial judges in setting
6 reasonable fees.” *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 596, 675
7 P.2d 193, 203 (1983). Thus, all of the hours are supported by applicable law, and even
8 supported by the defendant’s improper reliance on *Hensley*.
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10 34. The defendant argues that Mr. Sheridan’s travel time should be denied
11 since, “the plaintiff selected Thurston County over King County as the venue in the
12 case.” Response at 6:20. But Thurston County was a proper venue, and the venue
13 went unchallenged, so again, the WLAD provides for the following remedies:

14 Any person deeming himself or herself injured by any act in violation
15 of this chapter shall have a civil action in a court of competent
16 jurisdiction to enjoin further violations, or to recover the actual
17 damages sustained by the person, or both, together **with the cost of suit**
18 including reasonable attorneys' fees or any other appropriate remedy
19 authorized by this chapter or the United States Civil Rights Act of 1964
as amended, or the Federal Fair Housing Amendments Act of 1988 (42
U.S.C. Sec. 3601 et seq.).

20 RCW 49.60.030(2). See, *Blaney v. Int'l Ass'n of Machinists And Aerospace Workers*,
21 *Dist. No. 160*, 151 Wash. 2d 203, 212-13, 87 P.3d 757, 762 (2004). Travel is a cost,
22 which should be awarded under the WLAD. See also, *Xieng v. Peoples Nat. Bank of*
23 *Washington*, 120 Wn.2d 512, 530, 844 P.2d 389, 398 (1993) (trial court's award of
24 expert witness fees proper under RCW 49.60.030(2)). Travel is a valid cost,
25 especially when venue is not challenged.

1 35. As to the State's challenges to times billed for a motion to compel, a
2 summary judgment response, and a Public Records Act claim, the Court should be
3 mindful that all of that was mixed in with the sanctions motion; since the defendant
4 failed to produce the handwritten complaint in discovery, Vernon Day when deposed
5 the first time testified that he did not know the name of the whistleblower, and then at
6 summary judgment, submitted the document as evidence that they would not have
7 retaliated against Mr. Chaussee because they had the document. Extra time was
8 needed to combat the misrepresentations. All of that time should be awarded as
9 should the time for the discretionary review and continuance, because they are all part
10 of the same core facts. *Steele v. Lundgren*, 96 Wash. App. 773, 783, 982 P.2d 619,
11 625 (1999).
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13 36. As to the claim that Ms. Tuschner was engaged in nonlegal work when
14 billing some issues, this argument is also rejected. See Response at 7:1. Attorneys
15 must review discovery documents, keep clients informed, and edit pleadings for the
16 Court. All of these billings are appropriate.
17

18 37. The federal court block billing argument made by the defendant is not
19 recognized in Washington State. Instead, we rely on the simpler billing methods
20 outlined in *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 598, 675 P.2d
21 193, 204 (1983). The block billing argument should be rejected.
22

23 38. As to Ms. Chamberlain's billings, she has submitted a supplemental
24 declaration in support, which should be adopted.
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1 39. Challenges to paralegal and staff time are unsubstantiated. Their billing
2 reflects an efficient organization in which staff step-in for attorneys to get the work
3 done. They have been awarded these rates in other cases, and they are reasonable.

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6 **Multiplier**

7 40. A multiplier is warranted in this case. I find that the case was high risk
8 from the outset owing to the fact that Mr. Chaussee was not the whistleblower and had
9 no economic damages by the time of trial, which made liability and damages
10 problematic. See Sheridan Dec. Also, even though no medical testimony is required
11 under *Bunch*, the fact that there was no significant medical testimony to support the
12 emotional harm made the case more challenging and the verdict more impressive. See
13 Sheridan Dec.

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15 41. For cases brought under the WLAD, society and the legislature want to
16 encourage private enforcement, and "the possibility of a multiplier works to encourage
17 [attorneys] to accept difficult cases." See, *Pham v. Seattle City Light*, 159 Wn.2d at
18 542. See also, *Brundridge v. Fluor Fed. Services, Inc.*, 164 Wn.2d 432, 191 P.3d 879
19 (2008) (50% multiplier awarded to Sheridan in wrongful discharge case involving
20 eleven plaintiff whistleblowers owing to risk). A multiplier is warranted here.

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22 42. Adjustments to the lodestar are appropriate to reflect "the contingent
23 nature of success, and the quality of work performed." *Bowers v. Transamerica Title*
24 *Insurance Co.*, 100 Wn.2d at 598. "In adjusting the lodestar to account for this risk
25 factor, the trial court must assess the likelihood of success at the outset of the

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1 litigation.” *Id.* quoting *Bowers* at 598-599. In *Bowers*, the Supreme Court held that a
2 50% multiplier was reasonable, because 1) counsel would not have been compensated,
3 unless the plaintiff prevailed, 2) plaintiff’s cause of action arguably was legally
4 unsupported, and 3) the law arguably did not authorize an award of attorneys fees to
5 the prevailing party.² *Id.* at 600-601; *see also, Washington State Physicians Ins.*
6 *Exchange & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 335-336 (1993)(50% multiplier;
7 only a **portion** of the case was contingent); *Herring v. Department of Social & Health*
8 *Servs.*, 84 Wn. App. 1, 34-35 (1996)(50% multiplier because initial view high-risk);
9 *Guam Soc’y Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 697-98 (9th Cir.
10 1996) (2.0 multiplier for controversial nature of case); *Oberfelder v. City of Petaluma*,
11 2002 U.S. Dist. Lexis 8635, pp. 31-33 (N.D. Cal. 2002) (1.5 multiplier for unusually
12 demanding and costly case).

13
14 43. This was a high-risk case from the outset because Mr. Chaussee was not
15 the whistleblower, and the Court had not ruled on whether the shifting burden jury
16 instruction would be given. When determining whether a contingency multiplier is
17 warranted in a particular case, we have explained that
18

19 In adjusting the lodestar to account for this risk factor, the trial court
20 must assess the likelihood of success **at the outset of the litigation.**
21 *This is necessarily an imprecise calculation and must largely be a*
22 *matter of the trial court’s discretion.* Nevertheless certain guiding
23 principles should be followed [T]o the extent, if any, that the hourly
24 rate underlying the lodestar fee comprehends an allowance for the

25 ² The trial court also relied on evidence concerning the percentage of plaintiff’s counsel’s practice that was devoted to contingent fee representation. *Id.* The *Bowers* court held that this reliance was mistaken, but nonetheless found the 50% adjustment for contingency arrived at to be proper. *Id.* at 601.



1 contingent nature of the availability of fees, no further adjustment
2 duplicating that allowance should be made.

3 *Id.* at 542, quoting, *Bowers*, 100 Wn.2d at 598–99, 675 P.2d 193 (bold and emphasis
4 added). Here, the multiplier will encourage other attorneys to take such high risk and
5 novel cases in the public interest to hold the State accountable for in wrongful acts.
6 And the outcome was exceptional.

7 44. The legislature wants to encourage attorneys to take public interest
8 cases. In adjusting the lodestar to account for this risk factor, the trial court must
9 evaluate the likelihood of success at the outset of the litigation. *Bowers* at 598. Most
10 important, “the contingency adjustment is designed solely to compensate for the
11 possibility ... that the litigation would be unsuccessful and that no fee would be
12 obtained”. *Id.* at 598-99 citing, *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir.
13 1980). “The risk factor should apply only where there is no fee agreement that assures
14 the attorney of fees regardless of the outcome of the case.” *Id.* at 599. Mr. Sheridan’s
15 contract with the plaintiff provided for only a modest hourly amount and full recovery
16 only if the plaintiff succeeded. Sheridan Declaration, Ex. 14.

17
18 45. Plaintiff suggests that a 50% multiplier is warranted here, because this
19 was a high-risk case with an excellent result. I note that Mr. Sheridan received a .5
20 (50%) multiplier in *Brundridge* (over \$300,000) and a 25% multiplier in *Wellenbrock*
21 (over \$150,000)—both whistleblower cases. Sheridan Dec. ¶13. Mr. Sheridan also
22 received a multiplier in the *Pham* case after remand. Sheridan Dec. ¶10.

23
24 46. A small portion of the fees here were hourly under a mixed fee
25 agreement, and plaintiff does not seek a multiplier for that hourly portion. In

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1 *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d 299,
2 335-336 (1993), the plaintiff also engaged counsel under a mixed hourly-contingent
3 fee agreement and the Court approved a multiplier nevertheless. Thus, the hourly
4 portion of the contract is not fatal to plaintiff's claim for a multiplier.

5 47. I find that a multiplier is warranted here to encourage attorneys like Mr.
6 Sheridan to take these high-risk cases, which further important public policies. A 50%
7 multiplier is calculated as follows:

8
$$\$377,171.50 \text{ (loadstar)} - \$19,189.50 \text{ (2011 hourly)} = \$357,982.00 \div 2 \text{ (50\%)} =$$

9
10
$$\$178,991.00 \text{ (multiplier).}$$

11
12
13 **Costs**

14 48. RCW 49.60.030 specifically provides for costs. In civil rights cases in
15 Washington, victims of discrimination may recover, "actual costs of the litigation,
16 including expert witness fees, facsimile and copying expenses, cost of depositions, and
17 other out-of-pocket expenses." *Hume v. American Disposal, Co.*, 124 Wn.2d 656, 674,
18 880 P.2d 988 (1994), *Xieng v. Peoples Nat. Bank of Washington*, 120 Wn.2d 512, 528-
19 530, 844 P.2d 389 (1993).

20
$$\$20,711.83$$

21 49. I find that Plaintiff incurred costs of ~~\$12,180.29~~ charged to the Sheridan
22 ~~Law Firm, P.S., and \$9,712.44~~ charged to MHB in connection with this litigation,
23 ~~which are reasonable. Sheridan Supp. Dec., Ex. 2, and Chamberlain Dec., Ex. B.~~

1
2 **Fee Recovery**

3 50. A prevailing plaintiff is entitled to be awarded reasonable attorneys' fees
4 for the time spent in obtaining statutory attorneys' fees. See e.g. *Bowers*, 100 Wn.2d at
5 600. Plaintiff will be awarded the fees and costs for work done on this petition.
6

7 **Summary and Allocation**

8 51. The defendant is ordered to pay the plaintiff attorneys' fees and costs as
9 follows:
10

11	Attorney Fees:	\$977,171.50 \$360,229.00
12	Costs:	\$21,892.73 \$20,711.83
13	Multiplier	\$178,991.00
14	Total Owing:	\$578,055.23 \$380,940.83

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17 DATED this 24 day of April, 2015.

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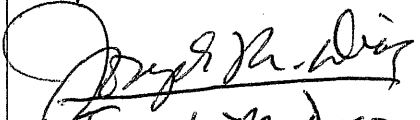
Hon. Gary Tabor
Thurston County Superior Court

22 Presented by:
23 THE SHERIDAN LAW FIRM, P.S.
24
25 By:
s/John P. Sheridan
John P. Sheridan, WSBA # 21473

Attorneys for Plaintiff

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Approved as to Form:


Joseph M. Diaz, WSBA 16170