

The Honorable Douglas L. Federspiel

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
BENTON COUNTY

JULIE M. ATWOOD,

Plaintiff,

vs.

MISSION SUPPORT ALLIANCE, LLC,
STEVE YOUNG, an individual,

Defendants.

Case No.: 15-2-01914-4

**AMENDED JUDGMENT REGARDING
ATTORNEY FEES, COSTS, AND TAX
ADJUSTMENT**

Clerk's Action Required

JUDGMENT SUMMARY

Judgment Creditor: Julie M. Atwood

Judgment Creditor's Attorney: The Sheridan Law Firm, P.S.

Judgment Debtor: Mission Support Alliance, LLC

Judgment on Petition
For Attorney Fees, Costs, Pre-
Judgment Interest, And Tax
Adjustment:

\$ 1,523,186.71

THIS MATTER came on regularly before this Court for a trial with a jury held on September 11 through October 10, 2017. Plaintiff Julie M. Atwood was represented by John P. Sheridan and Defendants Mission Support Alliance and Steve Young were represented by Denise Ashbaugh and Cristin Kent Aragon of Yarmuth Wilsdon PLLC

AMENDED JUDGMENT REGARDING
ATTORNEY FEES, COSTS, AND TAX
ADJUSTMENT - 1

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1 and Stanley J. Bensussen of Mission Support Alliance, LLC. The jury awarded
2 \$8,100,000.00 in damages.

3 On December 21, 2017, the Court heard Plaintiff's Petition For Attorney Fees,
4 Costs, Pre-Judgment Interest, And Tax Adjustment, and granted the request for attorney
5 fees, costs, and tax adjustment in the Order on Post-Trial Motions dated January 10,
6 2018. Attached hereto as Exhibit 1 is a copy of the Court's Findings of Fact and
7 Conclusions of Law regarding Plaintiff's Petition for Attorney Fees, Costs, Prejudgment
8 Interest, and Tax Adjustment. Attached as a Exhibit 2 is a track changes edit of the same
9 document, showing the edits made by Plaintiff based on the Court's Order on Post-Trial
10 Motions. Consistent with the decision attached at Exhibit 1, the Court enters judgment as
11 follows:

12 Tax Adjustment: \$271,719.00 ¹

13 Attorneys Fees: \$794,516.55

14 Costs: \$131,672.44

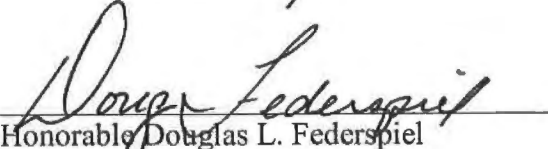
15 .5 Multiplier: \$377,223.27

16 Offset By Fees and
17 Costs Previously Paid (\$51,944.55)
18 By MSA in Connection
with Sanctions Order:

19 **Total Amount of \$1,523,186.715**
20 **Judgment on Petition**
21 **For Attorney Fees,**
22 **Costs, Pre-Judgment**
23 **Interest, And Tax**
24 **Adjustment:**

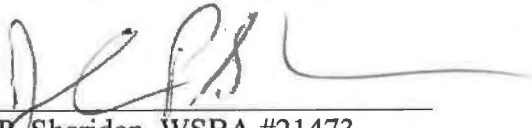
25 ¹ The tax offset number changed since the filing, owing to the Court's denial of pre-judgment interest and
owing to recent changes in the tax code. See Supp'l Minnig Dec., ¶¶ 2-5.

1 DONE IN OPEN COURT this 1 day of February, 2018.

2
3 
4 Honorable Douglas L. Federspiel

5
6
7 Presented By:

8
9 THE SHERIDAN LAW FIRM, P.S.

10
11 By: 
12 John P. Sheridan, WSBA #21473
Attorneys for Plaintiff Julie M. Atwood

13 Approved as to Form:

14
15 YARMUTH WILSDON PLLC

16
17 By: _____
18 Denise L. Ashbaugh, WSBA # 28512
Cristin Kent Aragon, WSBA # 39224

19
20
21
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23
24
25
AMENDED JUDGMENT REGARDING
ATTORNEY FEES, COSTS, AND TAX
ADJUSTMENT - 3

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EXHIBIT 1

The Honorable Douglas L. Federspiel
Hearing Date: February 2, 2018.
Time: 9:30 a.m.

SUPERIOR COURT OF WASHINGTON
FOR BENTON COUNTY

JULIE M. ATWOOD,

Plaintiff,

vs.

MISSION SUPPORT ALLIANCE, LLC,
STEVE YOUNG, an individual,

Defendants.

Case No.: 15-2-01914-4

**THIRD AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
REGARDING PLAINTIFF'S PETITION
FOR ATTORNEY FEES, COSTS, PRE-
JUDGMENT INTEREST, AND TAX
ADJUSTMENT**

THIS MATTER came on regularly before this Court on Plaintiff's Petition for Attorney Fees and Costs, Pre-Judgment Interest, and Tax Adjustment. The Court considered the following:

Plaintiff's Petition for Attorney Fees and Costs, Pre-Judgment Interest, and Tax Adjustment;

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

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

THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 1

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1 The Declarations of Judith Lonnquist, Scott Blankenship, ¹ Julie Atwood, and Adam
2 Pechtel in Support of Plaintiff's Petition for Attorney Fees and Costs;

3 The Defendant's response in opposition to Plaintiff's Petition for Attorney Fees and
4 Costs, Pre-Judgment Interest, and Tax Adjustment;

5 The declaration(s) of counsel in opposition to Plaintiff's Petition for Attorney Fees and
6 Costs with attached exhibits;

7 The declaration(s) of Messrs. Monahan and Miller;

8 Plaintiff's Reply and supporting declaration with attached exhibits; and,

9 The record of these proceedings.²

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

12
13 **Introduction**

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

17 2. This is a civil rights case brought under the WLAD and a wrongful discharge in
18 violation of public policy case. This case includes claims of gender discrimination, retaliation
19 under the WLAD, and wrongful discharge in violation of public policy. Plaintiff prevailed on all
20 claims after a three-week jury trial. The jury awarded \$8.1 million. Plaintiff won pre-trial
21 motions to compel and for sanctions, and successfully opposed MSA's efforts to quash an
22
23

24 ¹ In response to a motion by the Defendants, I have stricken specified sentences from the declarations of Ms.
25 Lonnquist and Mr. Blankenship. See Order on Post-Trial Motion, at pp. 36-38.

² Defendants also filed a Motion to Strike Plaintiff's Motion for Attorney Fees and Costs as untimely pursuant to
CR 54(d)(1) & (2). This motion was denied for the reasons stated in the Order on Post-Trial Motions at pp. 34-35.

1 important subpoena related to witness Sandra Fowler.

2 3. Pursuant to RCW 49.60.030, Plaintiff Julie Atwood requests that the Court order
3 Mission Support Alliance (MSA) to pay plaintiff's attorneys' fees and costs in the above-
4 captioned matter since Ms. Atwood prevailed on all claims.³ Plaintiff also asks that the Court
5 award plaintiff the requested hourly rates of her Seattle attorneys. Plaintiff requested fees
6 totaling \$844,892.00,⁴ and costs to date of \$138,491.66. Plaintiff proposed such amounts be
7 offset by fees and costs partially paid by MSA pursuant to the Court's sanctions order in the
8 amount of \$51,944.55. Plaintiff also requested pre-judgment interest in the amount of
9 \$162,518.71, and the *Blaney* tax adjustment in the amount of \$271, 719. Plaintiff requested a
10 multiplier of .5 of the contingent fees, which she calculated to be \$387,326.00. The total amount
11 that Plaintiff requested was \$1,890,870.82.
12

13 4. MSA filed an extensive response, dated December 14, 2017, raising a large
14 number of issues regarding Atwood's requested Attorneys' Fees as a whole, internal Motions to
15 Strike portions of opposing Declarations, and challenging various entries as well as categories
16 of Attorneys' Fees and specific Expenses on various bases. I will attempt to address each
17 challenge raised by MSA separately in these Findings of Fact and Conclusions of Law.⁵
18

19 5. Under the WLAD, plaintiff stands in the shoes of a private attorney general, "to
20 enable vigorous enforcement of modern civil rights litigation and to make it financially feasible
21 for individuals to litigate civil rights violations.
22

23 ³ In addition, the fee request is based upon RCW 42.41.040(7) and RCW 49.48.030 and statutory attorney fees
24 must be construed liberally in favor of the employee as a remedial statute. *Flower v. TRA Industries, Inc.*, 127 Wn.
App. 13, 35, 111 P.3d 1192 (2005).

25 ⁴ The requested fees were reduced by \$1,400 owing to a billing error. Sub #510, Sheridan Dec., ¶ 40.

⁵ If these findings of fact and conclusions of law fail to address an objection raised by MSA, then I have denied the
objection. I have issued a written decision on the objections that I deemed warranted a written explanation.

THE SHERIDAN LAW FIRM, P.S.

THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 3

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

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

10 RCW 49.60.030(2).⁶ This statute is to be liberally construed. RCW 49.60.020. The plaintiff
11 prevailed in this case, and with an \$8.1 million verdict, achieved excellent results. *See, e.g.,*
12 *Blair v. Wash. State University*, 108 Wn.2d 558, 572 (1987); *Steele v. Lundgren*, 96 Wn. App.
13 773, 783 (2000). Thus, she is entitled to an award of reasonable attorney fees. Our Supreme
14 Court has given trial courts broad discretion in awarding attorney fees. "In order to reverse an
15 attorney fee award, an appellate court must find the trial court manifestly abused its discretion."
16 *Pham v. Seattle City Light*, 159 Wn.2d 538, 540, 543, 151 P.3d 976 (2007) (trial court abused
17 discretion in denying multiplier based on irrelevant factors).

18 Number of Hours Expended Not Contested

19 ⁶ Under the common law wrongful discharge claim, plaintiff has an independent ground for attorney fees under
20 RCW 42.41.040(7), which provides for an award of "costs and reasonable attorneys' fees to the prevailing party,"
21 and RCW 49.48.030, which provides:

22 In any action in which any person is successful in recovering judgment for wages or salary owed
23 to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed
24 against said employer or former employer: PROVIDED, HOWEVER, That this section shall not
25 apply if the amount of recovery is less than or equal to the amount admitted by the employer to
be owing for said wages or salary.

RCW 49.48.030. "Statutory attorney fees under this provision must be construed liberally in favor of the employee
as a remedial statute to protect employee wages and assure payment." *Flower v. TRA Industries, Inc.*, 127 Wn.
App. 13, 35, 111 P.3d 1192 (2005), *citing Bates v. City of Richland*, 112 Wn. App. 919, 939, 51 P.3d 816 (2002).
This statute applies to front and back pay. *Hayes, v. Trulock*, 51 Wn. App. 795, 755 P.2d 830 (1988). The fees
requested here are awarded under these statutes as well as under the WLAD. For examples of fees awarded under
these statutes, see, Sheridan Dec. Exhibit 6 (*Brundridge* findings of fact at ¶ 9) and Exhibit 7 (*Wellenbrock* findings
of fact at ¶ 4).

THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 4

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1 7. Subject to certain limited "line-item" objections, the number of hours expended
2 by Atwood's counsel is not contested. However, the larger dispute between the parties is the
3 hourly rates requested by Mr. Sheridan and the other attorneys and professionals on Atwood's
4 legal team. The hourly rates shall be addressed below, but first, it is necessary to review the
5 framework for an analysis of attorneys' fees and expenses in Washington State.

6 **Computation of Reasonable Attorneys' Fees and Expenses**

7 8. A starting point to determine the reasonableness of an attorney fee request is the
8 "lodestar" method. *Absher Const. Co. v. Kent School Dist. No. 415*, 79 Wn.App. 841, 846-47,
9 917 P.2d 1086 (1995). The "lodestar" method is the mathematical product of a reasonable
10 hourly rate multiplied by a reasonable number of hours expended, supported by an itemized
11 description of the time entries. The *Absher Const. Co., id.*, opinion also allows a court to look to
12 a "factors" approach for this determination. *Id.*, citing *Allard v. First Interstate Bank*, 112
13 Wn.2d 145, 149, 768 P.2d 998, 773 P.2d 420 (1989). This is presumably not a separate and
14 independent test, but a related method to assist the trial court in making a determination of
15 "reasonable"⁷ in the "lodestar" equation.

16 9. *Allard* draws the "factors" test from at least three sources: (1) RPC 1.5(a); (2) the
17 contingent fee agreement; and (3) the Court's belief that the plaintiffs should be made whole. *Id.*,
18 at 149. There were other factors, but those predominated.

19 10. RPC 1.5(a) provides several factors in determining the amount of attorneys' fees
20 to be awarded:

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22
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24 ⁷ "Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable
25 rate." *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983). The rate requested by Mr.
Sheridan (\$550 per hour) is Mr. Sheridan's normal hourly rate, which he has been charging since January of 2013.
(Sheridan Declaration, ¶ 26).

- 1 (1) The time and labor required, the novelty and difficulty of the questions
involved, and the skill requisite to perform the legal service properly;
2
3 (2) The likelihood, if apparent to the client, that the acceptance of the
particular employment will preclude other employment by the lawyer;
4
5 (3) The fee customarily charged in the locality for similar legal services;
6
7 (4) The amount involved and the results obtained;
8
9 (5) The time limitations imposed by the client or by the circumstances;
10
11 (6) The nature and length of the professional relationship with the client;
12
13 (7) The experience, reputation, and ability of the lawyer or lawyers
performing the services; and
14
15 (8) Whether the fee is fixed or contingent.

16 I will go through each of these factors from RPC 1.5(a).

17 (1) The time and labor required, the novelty and difficulty of the questions
18 involved, and the skill requisite to perform the legal service properly.

19 11. MSA's brief paints this case as a simple, straightforward single-Plaintiff
20 employment case. (Defs.' Opposition to Pl.'s Petition for Attorney Fees, p. 2, L 21 - "a single
21 Plaintiff employment lawsuit." repeating this verbatim several additional times throughout the
22 brief.) It was anything but that. This was a time and labor intensive case for Atwood driving up
23 Atwood's costs and fees due in large part to the extensive and aggressive motion and discovery
24 practice employed by MSA. This is an appropriate factor to take into consideration. *Herring v.*
25 *Department of Social and Health Services*, 81 Wn. App. 1,34,914 P.2d 67 (1996) ("The trial
court considered the appropriate factors in setting the attorney fee judgment The trial court
then found DSHS's counsel's tendency of 'stubborn and aggressive resistance to discovery' was
a large factor in lead counsels' need for associate counsel.") As just one example, when it came

1 to light that MSA had failed to disclose a material witness when that witness should have been
2 disclosed pursuant to an Interrogatory Question, this Court sanctioned MSA (but not the
3 lawyers), Ordered the production of the witness, and allowed Atwood to depose the witness at
4 MSA's expense. This was just one example of numerous discovery fights. I am not saying MSA
5 was solely to blame as Atwood filed her share of motions as well.⁸

6 12. This wasn't a "standard" employment case. There was a significant amount of
7 discovery and an unusually large number of motions all the way through trial, and now post-
8 trial. As just one example of the complexity, we had interactions with the Department of Energy
9 (hereinafter "DOE"). DOE had actual involvement in parts of the trial by the General Counsel
10 of the Department of Energy (located on the East Coast) represented by Ms. Marla Marvin as
11 the General Counsel's representative in the courtroom. They would communicate regarding a
12 number of issues, and Ms. Marvin would provide us with guidance from the General Counsel.
13 Another layer of complexity were the rules and restrictions occasioned by the DOE's *Touhy*
14 authorization⁹ and the associated rules surrounding what the government witnesses could and
15 could not say, including financials, and the obvious confidentiality of National Nuclear secrets.
16 This added layer of complexity was both novel and difficult. It took great skill, time and effort,
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19 ⁸ I do not know if this carries any weight, but - with the caveat that I have been on the Superior Court Bench now
20 for just five years and on the District Court Bench for two years - even though I have had my share of complex
21 litigation as a trial attorney for 17 years, I can represent that this case presented me with the most number of
22 motions, the most number of complex issues, and certainly the most issues of first impression. I enjoyed the
23 challenge of the volume and quality of the Motions - it has certainly been my pleasure to be intellectually
24 challenged by the excellent briefing and aggressive and yet respectful argument on both sides. I want to make this
25 observation for any reviewing court for the purpose of my input on the amount of time expended by both sides and
supporting the award for the requested attorneys' fees - and state, for the record, that without exception it was
possibly the highest quality litigation I have had the pleasure to be associated with. With all sincerity, I
complement both sides on their excellent lawyering, and their excellent representation of their respective clients. I
will always remember this case as a high mark and an example of the utmost professionalism and excellence all
attorneys should emulate.

⁹ Please see the email from Marla Marvin to myself and counsel dated September 14, 2017, attached as Exhibit B to
the Order on Post-Trial Motions as a fair summary of the complexities occasioned by the *Touhy* authorization.

1 which was evidenced by Mr. Sheridan's performance, to battle this case through to a successful
2 jury verdict.

3 (2) The likelihood, if apparent to the client, that the acceptance of the particular
4 employment will preclude other employment by the lawyer.

5 13. It had to be obvious to Atwood that Mr. Sheridan would not be working on other
6 cases while he was consumed with representing her during the discovery phase, and at trial.

7 (3) The fee customarily charged in the locality for similar legal services.

8 14. This is a hotly contested issue, admittedly complicated by my ruling on a pre-trial
9 Motion for Attorneys' Fees arising out of a straightforward Discovery Dispute. It does not
10 escape me that my decision on that issue allows MSA to advance an argument that may have a
11 material and significant impact on the amount of attorneys' fees awarded to Atwood. For that
12 reason, I have taken extra time and effort to attempt to make the decision which I believe is
13 correct and justified for the reasons set forth below.

15 15. In this case, MSA put on evidence that other lawyers practicing employment law
16 in Eastern Washington and more specifically the Benton County area charged less than Mr.
17 Sheridan. The Court does not challenge those observations. However, there was no evidence
18 offered by MSA that any other firm in the Benton County area was skilled enough, or could
19 absorb the time loss if unsuccessful, or could cash flow the out-of-pocket expenses of this type
20 of litigation. There may well be such a firm, but MSA did not produce evidence of one. In
21 circumstances where you have a unique case requiring specialized skills and there is no
22 evidence in the record that a local firm could have handled the case, then the average hourly rate
23 of the locality is not, by itself, given much weight, and the Court is more amenable to finding
24 Mr. Sheridan's rate reasonable under the circumstances.
25

1 16. By way of analogy (albeit not perfect) consider the scenario that I lived in a city
2 of moderate size and means located in a rural area of the state, where there was the typical
3 assortment of grocery stores, pharmacies, farm supply in implement stores, and a used car
4 dealership. Through ways not relevant to this story, I became monetarily very successful and
5 despite that, I lived outwardly modestly to fit into the local population, with one exception. ~~Ever~~
6 since I was a young child, I wanted to own a Corvette Z-06. On a whim, while on a trip to a
7 larger metropolitan area, after great study and research regarding the best Corvette Z-06 on the
8 market, I purchased a bright shiny red one with all of the electronic and mechanical "bells and
9 whistles." This car does things and performs substantially above any other vehicle I could
10 purchase off the lot at our local used car dealership. I drove the car home and proudly drove it
11 around town almost every day allowing myself that one extravagance.
12

13 17. Then, on one very bad day, an inattentive driver missed a stop sign, ran full speed
14 into the intersection and completely totaled my beautiful new Corvette Z-06. While thankfully
15 no one was injured, I was forced to sue the driver for damages to my Corvette Z-06.
16

17 18. Would it be fair for either the defendant's insurance company, the Defendant's
18 lawyer, the Judge or the Jury to say, "Well, the average price of a vehicle in our area is
19 \$15,000.00, and there is just no way you should recover \$95,000.00 for the expensive car you
20 chose to purchase in a larger metropolitan area?" or, "You should have purchased a vehicle here
21 - then your damages would only be \$15,000.00." Or, "It was your choice to buy an extremely
22 expensive vehicle and I should not bare the economic burden of your expensive choice when
23 you could have purchased a moderately priced car here."
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1 19. I am of the opinion that if I want to drive an expensive car that is my privilege. If
2 they don't sell a Corvette Z-06 in my town, I am not constrained to buying only local cars, I can
3 buy cars wherever I want. And if someone damages my car, they must pay for the damages to
4 the car, even if they exceed the cost of a car available locally.

5 20. A similar analogy could be used examining the cost of a medical specialist, such
6 as a surgeon, when only local family physicians are available when facing a complex surgery.
7 Does this sound fair and equitable? And, should the same hold true for attorneys and their rates?
8 Here, both parties hired law firms headquartered out of Seattle. If MSA chooses to retain a
9 Seattle firm, shouldn't Atwood have the same right? I am assuming no one would say that
10 Atwood must hire counsel from Benton County even when the opposing counsel is from
11 Seattle. Secondly, while much was made of the difference between the hourly rates of local
12 counsel and the rates requested by Atwood's counsel, there was very little evidence of the
13 Defendant's hourly rates for similar cases involving "non-negotiated" fee reductions.¹⁰ Third,
14 while there may have been a handful of law firms in Benton County that handle plaintiff-
15 oriented gender discrimination cases, the Defense did not persuade me that there were firms as
16 skilled, as ready to assume risks of the case, as able to afford the lost cash-flow resulting from
17 taking this contingent fee case, and as able to absorb and pay for all of the costs and expenses of
18 the trial, and as willing to be as responsive to the tsunami of legal motions, discovery, and
19 pleadings as was generated by Yarmuth Wilsdon, PLLC before, during and after the trial.
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24 ¹⁰ One fact available to the trial court when examining this issue is the hourly fees and total bill of opposing
25 counsel charged in the case to compare with the amount requested by the prevailing party. In this case, Yarmuth
Wilsdon, PLLC, had negotiated a reduced rate with MSA due to the volume of work they handled for the client. It
made it very difficult, and almost impractical, to attempt a comparison.

1 21. My point is that while average hourly rates of a community are placed into
2 evidence in the context of an attorney fee award, that is not necessarily helpful if the evidence
3 does not include proof that those attorneys in the community could have handled the same case
4 with the similar results. In my opinion, evidence of local hourly rates is not a helpful (or
5 relevant/material) piece of information without the latter part of the equation providing a "full
6 picture" of the local market.

7 22. I find no evidence that attorney fees in cases brought under the WLAD should be
8 reduced based on geography. Further evidence supporting my ruling is that Mr. Sheridan's
9 overhead is in Seattle, and thus his fees are at Seattle market rates. Sheridan Dec. ¶ 25. In
10 addition, the Blankenship declaration opines in support of using Seattle rates. Sheridan Dec.,
11 Exhibit 22. Mr. Blankenship opines that to deny Seattle rates for Mr. Sheridan's work would
12 deny Ms. Atwood full recovery under the WLAD, and would be a disincentive for lawyers in
13 Seattle to assist victims of retaliation and discrimination in Washington. I find that opinion to be
14 persuasive. Exhibit 22 at ¶¶ 23-24. I also note the 8/30/17 declaration of Adam Pechtel, which
15 was submitted by plaintiff in response to defendants' motion to determine attorney fees. He
16 stated that he is one of two members in Tri-Cities of the Washington Employment Law
17 Association, which is an association of Washington employment lawyers. He practices in
18 Kennewick. His declaration demonstrates that the numbers of local attorneys practicing
19 employment law full-time may be limited in the Tri-Cities, which also supports permitting
20 Seattle rates, so that more attorneys can provide these important services to Hanford workers.
21 Mr. Blankenship has stated that if he could not get Seattle rates when working outside of
22 Seattle, "It would certainly deter me from taking a case out of the Seattle area if in the end it
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1 forced a significant discount." Exhibit 22 at ¶ 24. For all of these reasons, I find that Seattle
2 rates are appropriate.

3 23. This approach has been approved in cases such as *Collins v. Clark County Fire*
4 *Dist. No.5*, 155 Wn. App. 48, 231 P.3d 1211 (2010). There the trial court faced the same
5 argument; i.e., the out-of-town counsel asked for his customary hourly rate of \$300 per hour and
6 the other side offered evidence that the Clark County legal community would reflect hourly
7 rates of somewhere between \$210 to \$225. *Id.* at 77-79. The trial court stated: "*To argue that*
8 *Clark County standards would set the fee is not persuasive as counsel in this highly specialized*
9 *field often would be from Seattle or Portland where they're with firms more highly specialized*
10 *in this type of case and management.*" *Id.*, at 79. Interestingly, that case involved allegations of
11 employment discrimination based on gender. On appeal, the Court of Appeals affirmed the trial
12 court's decision in part based on that very observation. *Id.*, at 101.

14 24. Another case of note is *Broyles v. Thurston County*, 147 Wn. App. 409, 195 P.3d
15 985 (2008). Under similar circumstances, the appellate opinion noted: "[T]he trial court noted
16 that these rates were consistent with that charged by other lawyers in the Puget Sound area. In
17 using such a large geographic area for measuring reasonableness, the trial court noted that
18 very few attorneys in the Puget Sound area would take such a case of this nature and that it
19 would be unreasonable to limit the plaintiffs to using an attorney from Mason or Thurston
20 County." *Id.*, at 452. I believe that this is entirely consistent with my analysis, and my ruling on
21 this issue.
22

23 25. An additional factor comes into play in this case - specifically, conflicts of
24 interest. As a perfect example, every single judge in the County either recused themselves or
25

1 were asked to recuse themselves. It does not take a leap of logic to believe that there may not be
2 a firm in the Benton County area that could have taken this case due to conflicts of interest.
3 While not within the regimented analysis, I consider this another worthwhile factor to take into
4 consideration when looking at the reasonableness of Atwood retaining counsel from Seattle and
5 outside of the Benton County bar.

6 26. Now, I had previously ruled in this case, in the context of a limited discovery
7 dispute, that lower rates should be applied to Mr. Sheridan's attorney fee request. The nature of
8 that discovery dispute was relatively straightforward and didn't warrant, in my opinion at the
9 time, the higher rate which I have awarded for the overall case. In isolation, that discovery
10 dispute could have been handled by local counsel at their local rates. Perhaps in hindsight I
11 would have ruled differently had I realized the complication it presented in the final award of
12 Attorneys' Fees; however, I stand by my prior ruling. They are two separate and distinct
13 situations. That was and remains limited to that particular discovery dispute, and I do not
14 consider it binding on me for any other part of the case, and certainly not on the trial or the
15 overall litigation. It admittedly complicated the issue, unfortunately, but I believe my decision is
16 internally consistent.

17
18
19 (4) The amount involved and the results obtained.

20 27. Atwood sought and recovered \$2.1 million dollars in economic damages. Atwood
21 requested between \$6 and \$8 million dollars in noneconomic damages in her closing argument,
22 and suggested to the jury that the noneconomic damages could be even higher. The jury
23 awarded the lowest amount of noneconomic damages requested by Atwood; i.e., \$6 million
24 dollars. A great amount of money was at stake, and Atwood was extremely successful in
25

1 securing a jury award giving her what she requested. The results, realistically, reflected what
2 Atwood asked the jury to award, which by anyone's assessment constitutes a great result.

3 (5) The time limitations imposed by the client or by the circumstances.

4 28. There was no evidence that I am aware of regarding any time limitations placed
5 on Atwood's legal team by her or any outside forces.¹¹

6 (6) The nature and length of the professional relationship with the client.

7 29. There was no evidence to the best of my knowledge regarding the length of the
8 professional relationship between Mr. Sheridan and Atwood, other than the case at issue.

9 (7) The experience, reputation, and ability of the lawyer or lawyers performing
10 the services.

11 30. It was clear to this Court from the record that Mr. Sheridan is very experienced
12 and has acquired a high level of expertise in this area of employment law, and in particular with
13 regard to the Hanford labor market. The record provided evidence of Mr. Sheridan's reputation
14 as follows: "Mr. Sheridan enjoys an excellent reputation in Washington's legal community."
15 Declaration of Judith A. Lonnquist in Support of Plaintiff's Petition for Attorney Fees, Costs,
16 Prejudgment Interest, and Tax Penalty (dated November 10, 2017), ¶8.

17 31. Mr. Sheridan has been an attorney since 1984 and he has extensive experience as
18 a trial attorney having conducted numerous jury trials in his career both in the military and in
19 private and public practice, and his hourly rate has increased in proportion to his experience and
20 success. Sheridan Dec. at ¶ 26. Mr. Sheridan has focused his practice on civil rights and public
21
22
23

24 ¹¹ At one point during the trial I placed a time limit on both counsel to assure that the trial did not last beyond 5
25 weeks. We had indicated to the jury that the trial would last 3 weeks, and many had travel plans or other
obligations beyond the 5-week mark. However, neither side used all of their available time - so neither side "ran
out" of time or were materially affected by the imposition of time limits by the Court.

1 interest law since 1994, and some of his cases have helped shape the development of
2 Washington law. *See e.g., Martini v. Boeing*, 137 Wn. 2d 357 (1999); *Brundridge v. Fluor Fed.*
3 *Services, Inc.*, 164 Wn.2d 432, 191 P.3d 879 (2008); *Pham v. Seattle City Light*, 159 Wn.2d
4 538, 540, 151 P.3d 976 (2007); *Trinh and Bailey v. City of Seattle*, 145 Wn. App. 1011 (2008)
5 (unpublished); *Johnson v. Chevron*, 159 Wn. App. 18, 244 P.3d 438 (2010); *Lodis v. Corbis*
6 *Holdings, Inc.*, 172 Wn. App. 835, 852, 292 P.3d 779 (2013); *Tamosaitis v. URS Inc.*, 781 F.3d
7 468 (9th Cir. 2015), and *Washington State Dep't of Transp. v. Mendoza de Sugiyama*, 182 Wn.
8 App. 588, 330 P.3d 209 (2014). Sheridan Dec. at ¶¶ 3-24.

9
10 (8) Whether the fee is fixed or contingent.

11 32. The fee agreement between Mr. Sheridan's office and Atwood is a Mixed Hourly
12 / Contingent Fee Agreement¹² properly reduced to writing, and made part of the record. Of
13 importance to this Court, Atwood agreed to pay Mr. Sheridan and his attorneys and staff at the
14 agreed-upon hourly rates up to a maximum of \$40,000.00. This is not an inconsequential
15 amount of money to pay Mr. Sheridan on an hourly fee basis and evidences an agreement at
16 arm's length between Atwood and Sheridan at an agreed upon hourly rate of \$550 for Mr.
17 Sheridan, and the other hourly rates as set forth on page two of the agreement.

18
19 33. Like the Court in *Allard*, I would like to see Atwood fully compensated.
20 Upholding the requested hourly rates will go a long way in fully compensating Atwood as she
21 already paid out \$40,000.00 at those hourly rates.

22 Other considerations

23
24
25 ¹² Signed by Atwood on May 14, 2015 and signed by Mr. Sheridan on behalf of his firm on June 1st, 2015. A true
and correct copy of the Fee Agreement is attached as Exhibit #18 to the Declaration of Mr. Sheridan in Support of
his Petition for Attorneys' Fees and Expenses, dated November 14, 2017.

1 34. Mr. Sheridan asks the Court to consider the legislature's pronouncement that the
2 statute in question is to be applied liberally pursuant to RCW 49.60.020. This is allowed under
3 case law. *Berryman v. Metcalf*, 177 Wn. App. 644, 668, 312 P.3d 745 (2013) ("In determining
4 the amount of an [attorney fee] award, the court must consider the purpose of the statute
5 allowing for attorney fees. A statute's mandate for liberal construction includes a liberal
6 construction of the statute's provision for an award of reasonable attorney fees." (citations
7 omitted). RCW 49.60.020 states in relevant part: "The provisions of this chapter shall be
8 construed liberally for the accomplishment of the purposes thereof."
9

10 35. In addition, "The Court has called for liberal construction of the attorney fee
11 entitlement in order to encourage private enforcement of the Law Against Discrimination."
12 *Martinez v. City of Tacoma*, 81 Wn. App. 228, 235, 914 P.2d 86 (1996). So, not only does the
13 express language of the statute itself provide for liberal construction, the "Court"
14 has called for liberal construction of the statute; specifically, RCW 49.60.030(2). In addition,
15 Atwood advances the "private attorney general" theory to bolster her claim that Mr. Sheridan's
16 attorneys' fees are reasonable. "The 'private attorney general' theory lets the attorneys recover
17 more than the benefit to their client would make reasonable, because they also confer benefits
18 on others throughout society by winning a civil rights claim." *McGinnis v. Kentucky Fried*
19 *Chicken of California*, 51 F.3d 805, 810 (9th Cir. 1995)¹³ (applying Washington State law on
20 discrimination) These various theories support Mr. Sheridan's argument that his requested
21
22

23 ¹³ This citation is not exactly on point due to the fact that Atwood received a verdict for her damages far in excess
24 of the attorneys' fees requested. One of the angles that "private attorney general" action addresses is whether
25 Atwood would have paid Mr. Sheridan and his legal team the amounts now requested based on an hourly rate not
knowing the outcome of the lawsuit? "The 'private attorney general' theory allows the fee award to exceed what a
reasonable individual would pay lawyers for the benefit conferred on him." *McGinnis, id.* Here, we only know that
with hindsight.

1 attorneys' fees and expenses should be awarded at the rates requested for the totals requested.

2 36. Both parties hired Seattle counsel. The only two practical distinctions were the
3 years in practice between the two firms (favoring Atwood's counsel), and the reduced rate of
4 defense counsel due to a negotiated "volume discount" with MSA. It also seems eminently
5 reasonable that both parties hired Seattle counsel. Both parties should have anticipated paying
6 Seattle rates regardless of the venue of the lawsuit. There was no challenge to Mr. Sheridan's
7 rate in the Seattle market. The evidence, bolstered by declarations, supported the reasonableness
8 of those fees in Benton County under the circumstances presented by this case.
9

10 37. Jack Sheridan—Mr. Sheridan requests an hourly rate of \$550 per hour. \$550 per
11 hour rate is Mr. Sheridan's established hourly rate, in that he bills hourly clients at that rate and
12 has done so since January 1, 2013. Sheridan Dec. at ¶ 26. This rate "will likely be a reasonable
13 rate." *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 581, 597 (1983). Mr.
14 Sheridan's declaration states that from January 1, 2013, through the present, he has billed for
15 hourly work at the rate of \$550 per hour and has been paid that rate by several courts. His rate is
16 supported by the declarations of prominent Seattle attorneys, Judith Lonnquist and Scott
17 Blankenship.
18

19 38. I am awarding the requested hourly rates by Atwood's legal team, with one
20 exception. In the discovery dispute where I lowered the rate, that rate shall apply to those hours
21 and are not compensable now at the higher rate, or the net difference between the rate requested
22 and the rate awarded. That is a ruling which I believe was appropriate under the facts as
23 presented at the time, and I am going to stand by that ruling.
24

25 39. *In setting and approving the hourly rates requested by Mr. Sheridan's team I*

1 am not factoring in the contingent nature to the exclusion of a separate multiplier.

2 **Adjustments to Billing Records**

3 40. Attorneys must document their work. The plaintiff has submitted extensive
4 billing records for the Court's review. "This documentation need not be exhaustive or in minute
5 detail, but must inform the court, in addition to the number of hours worked, of the type of work
6 performed and the category of attorney who performed the work (*i.e.*, senior partner, associate,
7 etc.)." *Bowers* at 597. The records submitted by plaintiffs' counsel contain sufficient detail
8 under the standard set forth in *Bowers*.

9
10 41. Plaintiff billed about 2000 hours in this litigation. "The court must limit the
11 lodestar to hours reasonably expended, and should therefore discount hours spent on
12 unsuccessful claims, duplicated effort, or otherwise unproductive time." *Bowers* at 597. The
13 hours reasonably expended must be spent on claims having a "common core of facts and related
14 legal theories." *Pham*, 159 Wn.2d at 538 (citing *Martinez v. City of Tacoma*, 81 Wn. App. 228,
15 242-43, 914 P.2d 86 (1996)); *Steele v. Lundgren*, 96 Wn. App. 773, 783, 982 P.2d 619 (1999).

16
17 42. I agree with and accept the attorneys' fees and costs withdrawn by Mr. Sheridan
18 as outlined in his briefing. *See* Pl.'s Reply in Support of Fee Petition, Sub #540, at p. 7
19 (withdrawing \$1,240.00 in requested fees). I disagree with MSA's proposal that I withhold
20 attorneys' fees for Motions which were unsuccessful. That is not the law. "The court should
21 discount hours spent on unsuccessful **claims**, duplicated or wasted effort, or otherwise
22 unproductive time." *Chuong Van Pham v. City of Seattle, Seattle City Light*, 159 Wash. 2d 527,
23 538, 151 P.3d 976, 981 (2007). Plaintiff won every claim. Motions are filed subject to CR 11
24 and impliedly filed in good faith. No one is expected to win every motion. That is unrealistic.
25

1 What is not subject to an award is any time that is proven to be duplicative or unproductive.
2 Filing and losing a motion is not necessarily unproductive. Every motion won or lost, led to the
3 win on every claim. I have reviewed the time entries and I do not find any were duplicative or
4 unproductive. All of the hours billed involved a common core of acts that led to victory on every
5 claim.

6 43. “[T]he determination of a fee award should not be an unduly burdensome
7 proceeding for the court or the parties. As long as the award is made after considering the
8 relevant facts and the reasons given for the award are sufficient for review, a detailed analysis
9 of each expense claimed is not required.” *Steele v. Lundgren*, 96 Wn.App. 773, 982 P.2d 619,
10 626 (1999). I looked at a very large number of the representative entries filed by Atwood, and
11 relied in part on the time entries disputed by MSA and individually itemized in its brief.
12

13 44. In addition to the reductions referenced above, I am awarding the Attorneys and
14 Expenses requested by Mr. Sheridan except as set forth below.
15

16 45. There were entries by Mr. Sheridan¹⁴ related to drafting a press release. Exhibit
17 16 to Sheridan Dec. dated November 14, 2017 (entries dated 8/20/15 and 2/16/17, totaling
18 \$2,475.00). Those were not reasonably related to the lawsuit, should not be borne by MSA, and
19 shall not be part of the award. Such time spent on press releases is deducted from the billing
20 records submitted.

21 46. As mentioned earlier, Mr. Sheridan’s Reply Brief identifies a number of line
22 items that he agrees to withdraw. I accept those revisions as set forth in that brief. *See* Pl.’s
23

24
25 ¹⁴ In referencing “Mr. Sheridan” in relation to a discussion of attorneys’ fees here and elsewhere throughout this Order, I am necessarily including the time entries, time expended and hourly rates of the other lawyers and professionals on his team.

1 Reply in Support of Fee Petition, Sub #540, at p. 7 (withdrawing \$1,240.00 in requested fees).

2 47. Mr. Sheridan and his staff keep track of hourly billings through use of an
3 electronic billing system, which permits them to enter time by hand or using a clock device on
4 the computer. He and his staff made the entries contemporaneously. For the times attached to
5 his declaration, it was and is his practice to edit times to deduct unbillable, unproductive, and
6 duplicative time and to reduce time spent based on my business judgment as each time slip is
7 created. He trained his staff to do the same. He also reduced staff hours if he found them to be
8 unbillable, unproductive, or duplicative. Sheridan Dec. at ¶ 33. Ms. Lonnquist has opined that
9 Mr. Sheridan's total hours are "relatively modest." Exhibit 21 at ¶ 10.

11 48. I find that plaintiff's approach was economical. Mr. Sheridan has reviewed the
12 total hours billed at the SLF and found them to be reasonable. Sheridan Dec.

13 **The Other Lawyers and Professionals Utilized as Part of Atwood's Team.**

14 49. Anne Mjaatvedt—Ms. Mjaatvedt requests an hourly rate of \$350 per hour. Mr.
15 Sheridan notes that some of the early work on the case was done by Ms. Mjaatvedt, whose
16 resume shows her to be an experienced employment law attorney whose practice has been in
17 Seattle since 2013. See Sheridan Dec., Exhibit 14. Because she is relatively new to Washington,
18 Mr. Sheridan billed her time at \$350 per hour, which he concludes is low for an attorney with
19 her experience. I have reviewed her rate and found it to be reasonable. Given Ms. Mjaatvedt's
20 impressive medical education, legal education and background¹⁵ (paragraph 32 and Exhibit 14
21 to the Declaration of Mr. Sheridan, November 14, 2017) I find her more than qualified to have
22 assisted in this case. Her fees shall be awarded on the time entries produced at \$350 per hour.
23
24

25 ¹⁵ I am Denying MSA's Motion to strike her CV. Her resume is admissible as a business record since it was
received in the usual course of business when Mr. Sheridan hired Ms. Mjaatvedt. Sheridan First Supp. Dec.

THE SHERIDAN LAW FIRM, P.S.

THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 20

Attorneys at Law
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705 Second Avenue
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1 50. Mark Rose—Mr. Rose requests an hourly rate of \$350 per hour. Mr. Sheridan's
2 declaration and Mr. Rose's declaration state that \$350 per hour is the rate he bills hourly clients
3 at the Sheridan Law Firm, P.S. and has done so since joining in 2014. Sheridan Dec. at ¶¶ 22,
4 23, 26. Mr. Sheridan considers that rate to be reasonable given his experience and education.
5 Sheridan Dec. at ¶ 30, Exhibit 12. I find that Mr. Rose is qualified and produced high-quality
6 timely briefing in this case, as well as providing valuable assistance in drafting the final set of
7 jury instructions throughout the various edits. He shall be compensated at the requested rate of
8 \$350.00 per hour for the time requested. It is a reasonable rate for attorneys with his level of
9 experience and expertise.
10

11 51. An award for attorneys' fees may also include recovery for time spent by
12 qualified paralegals or legal assistants where the hourly rate and amount of time spent are
13 reasonable." 16 Wash.Prac., Tort Law and Practice, Section 6.27 (4th ed.), *citing TJ Landeo,*
14 *Le v. Harley C. Douglass, Inc.*, 186 Wn. App. 249, 346 P.2d 777 (2015), *rev. denied*, 184
15 Wn.2d 1003, 357 P.3d 666 (2015). Here the work done based on the entries and rate of \$200
16 charged by Mr. Sheridan's legal assistant, Ashalee May, were necessary and proper, appear
17 more than secretarial work, and appear warranted. She appears to be well qualified and worked
18 under Mr. Sheridan's direction. She was a paralegal at a large firm in Las Vegas before joining
19 his firm. She bills at \$200 per hour. Ms. May worked as Mr. Sheridan's paralegal between June
20 2008 and September 2017, and provided a diverse range of services under his supervision from
21 document management to litigation support, including drafting documents and witness-related
22 pleadings such as lists of primary witnesses and pre-trial statements. She also interviewed
23 witnesses, helped draft witness declarations, and attended trials when required. I have reviewed
24
25

1 her billings in this case, and found the entries to be reasonable. In my opinion, her hourly rate
2 of \$200 is reasonable. It is the rate Mr. Sheridan bills hourly clients for Ms. May's work. The
3 fees for Ms. May's work shall be awarded as requested.

4 52. I am awarding the full costs of all expert witnesses (unless otherwise expressly
5 disallowed by this Order) used by Atwood in this case. "[A]s to employment discrimination
6 claims ... an award of expert witness fees is clearly authorized by RCW 49.60.030(2)." *Xieng v.*
7 *Peoples Nat. Bank of Washington*, 120 Wn.2d 512, 528, 844 P.2d 389 (1993). While MSA did
8 not make a direct attack on the experts who testified at trial, MSA does challenge the propriety
9 of awarding the costs and expenses of a consulting or "non-testifying" expert. (Defendant's
10 Brief in Opposition to Plaintiff's Petition for Attorneys' Fees and Expenses, p. 10 (December
11 14, 2017).
12

13 53. With regard to the costs of a consulting or non-testifying consulting expert, I am
14 awarding those costs as part of Atwood's judgment. I am persuaded that the use of the non-
15 testifying experts was reasonable and necessary to Mr. Sheridan's preparation of the case,
16 including but not limited to assisting in cross-examination of one or more of MSA's expert
17 witnesses.
18

19 54. With the few exceptions outlined herein, Atwood met her burden to establish that
20 the attorneys' fees and expenses requested by Mr. Sheridan and his team were both reasonable
21 and necessary to her successful representation in this litigation. I also note that Ms. Lonnquist
22 opined that "the combined [contingent] hours for the Sheridan firm ... is consistent with my
23 experience in vigorously contested cases." Sheridan Dec., Exhibit 21 ¶10.
24

25 **Lodestar**

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

Hourly Billing

<u>Attorney/Staff</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total</u>
Sheridan	\$550	20	\$10,450.00
Mark Rose	\$350	1.2	\$420.00
May	\$200	3.2	\$640.00
Mjaatvedt	\$350	81.6	\$28,560.00
	Total Hourly Hours Worked:	106	
		Total Hourly Fee:	\$40,070.00

**Contingent Fee Billing
(Through 11/6/17)**

<u>Attorney/Staff</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total</u>
Sheridan	\$550	998.6	\$549,230.00
Mark Rose	\$350	335.62	\$117,467.00
May	\$200	534.7	\$106,940.00
Mjaatvedt	\$350	2.9	\$1,015.00
	Total Contingent Hours Worked:	1871.82	
		Pre-Adjustment Contingent Subtotal:	\$774,652.00¹⁶

¹⁶Accord Sheridan Dec., dated November 14, 2017, Sub #510, at ¶ 15.

Adjustments to Billing

Adjustments Based on Court's Ruling on Fees Awarded as Discovery Sanction	(\$86,725.00) <i>invoiced</i> ¹⁷ (\$8,580.00) <i>invoiced</i> ¹⁸ \$51,944.55 <i>awarded</i> ¹⁹	Sanctions Adjustment: Subtotal:
		(\$43,360.45)
Withdrawn Fee Requests		(\$1,240.00) ²⁰
Billing Error:		(\$1,400.00) ²¹
Duplicate Entries		(\$3,300.00) ²²
Press Release		(\$2,475.00) ²³
Total Adjustments:		(\$51,775.45)

Supplemental Contingent Fee Billing

	<u>Hours Billed</u>	<u>Total</u>
Invoice dated Dec. 19, 2017 (Fees Post 11/6/17) ²⁴	73.4	\$31,570.00 ²⁵

Summary

Total Hourly Fees	\$40,070.00
Contingent Fees (through 11/6/17)	\$774,652.00
Total Adjustments	(\$51,775.45)

¹⁷ Invoice dated July 31, 2017 (Sub # 320, at Exhibit 4 to Sheridan Dec. dated July 31, 2017).

¹⁸ Invoice dated August 20, 2017 (Sub # 361, at Exhibit 1 to Supp.'l Sheridan Dec. dated Aug. 20, 2017).

¹⁹ See Ashbaugh Dec. (Sub #530), ¶ 3).

²⁰ See Reply, Sub #540, at p. 7 ("Total hours withdrawn at \$200 per hour are 6.2 hours = \$1,240.00.")

²¹ See Sheridan Dec., dated November 14, 2017, Sub #510, at ¶ 40 ("\$1,400.00 will be deducted from the fees owing to two billing entries in Mark Rose's declaration, which appear to be entries by Ashalee May, which she mistakenly billed under Mark Rose's name. Since we can't confirm them, we are deleting them.")

²² *Id.*, at Exhibit 16 (two duplicate entries dated 8/21/17)

²³ *Id.* (entries dated 8/20/15 and 2/16/17).

²⁴ Exhibit 1 to Supp.'l Sheridan Dec. (Sub# 539).

²⁵ This amount reflects a deduction from the invoice of \$4,260.00, pursuant to the Court's letter ruling, for fees related to the opposition to Yarmuth's motion to quash the subpoena duces tecum. Sheridan First Supp. Dec. for work done on plaintiff's recent opposition to defendant's motion to quash. See Sheridan First Supp. Dec.

THE SHERIDAN LAW FIRM, P.S.

THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 24

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Supplemental Contingent Fees \$31,570.00
(post 11/6/17)

Adjusted Attorney Fees Total / \$794,516.55
Adjusted Lodestar

Multiplier

56. A multiplier is warranted in this case. I find that the case was high-risk from the outset owing to the fact that Ms. Atwood was terminated and isolated, so persons who may have been expected to help were of no help, and were in fact, some of the main witnesses against her. See Sheridan Dec. at ¶ 40.

57. For cases brought under the WLAD, society and the legislature want to encourage private enforcement, and "the possibility of a multiplier works to encourage [attorneys] to accept difficult cases." See *Pham v. Seattle City Light*, 159 Wn.2d at 542. See also *Brundridge v. Fluor Fed. Services, Inc.*, 164 Wn.2d 432, 191 P.3d 879 (2008) (50% multiplier awarded to Sheridan in wrongful discharge case involving eleven plaintiff whistleblowers owing to risk). See Sheridan Dec., Exhibit 6.

58. Adjustments to the lodestar are appropriate to reflect "the contingent nature of success, and the quality of work performed." *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d at 598. "In adjusting the lodestar to account for this risk factor, the trial court must assess the likelihood of success at the outset of the litigation." *Pham v. Seattle City Light*, 159 Wn.2d at 542 quoting *Bowers* at 598-599. In *Bowers*, the Supreme Court held that a 50% multiplier was reasonable, because 1) counsel would not have been compensated, unless the plaintiff prevailed, 2) plaintiff's cause of action arguably was legally unsupported, and 3) the

1 law arguably did not authorize an award of attorneys fees to the prevailing party.²⁶ *Id.* at 600-
2 601; *see also*, *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d
3 299, 335-336 (1993) (50% multiplier; only a *portion* of the case was contingent); *Herring v.*
4 *Department of Social & Health Servs.*, 84 Wn. App. 1, 34-35 (1996)(50% multiplier because
5 initial view high-risk); *Guam Soc'y Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 697-
6 98 (9th Cir. 1996) (2.0 multiplier for controversial nature of case); *Oberfelder v. City of*
7 *Petaluma*, 2002 U.S. Dist. Lexis 8635, pp. 31-33 (N.D. Cal. 2002) (1.5 multiplier for unusually
8 demanding and costly case).
9

10 59. The legislature wants to encourage attorneys to take public interest cases. In
11 adjusting the lodestar to account for this risk factor, the trial court must evaluate the likelihood
12 of success at the outset of the litigation. *Bowers* at 598. Most important, "the contingency
13 adjustment is designed solely to compensate for the possibility ... that the litigation would be
14 unsuccessful and that no fee would be obtained." *Id.* at 598-9 *citing*, *Copeland v. Marshall*, 641
15 F.2d 880, 893 (D.C. Cir. 1980). "The risk factor should apply only where there is no fee
16 agreement that assures the attorney of fees regardless of the outcome of the case." *Id.* at 599.
17 Mr. Sheridan's contract with the plaintiff provided for only a modest hourly amount and full
18 recovery only if the plaintiff succeeded. Sheridan Declaration.
19

20 60. Plaintiff suggests that a 50% multiplier is warranted here, because this was a
21 high-risk case with an excellent result. I note that Mr. Sheridan received a .5 (50%) multiplier in
22 *Brundridge* (over \$300,000; Sheridan Dec. at ¶ 12, Exhibit 6, findings at ¶ 39) and a 25%
23

24
25 ²⁶ 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.

multiplier in *Wellenbrock* (over \$150,000; Sheridan Dec. at ¶ 13, Exhibit 7, findings at ¶ 22)—both whistleblower cases. Mr. Sheridan also received a multiplier in the *Pham* case after remand. Sheridan Dec., ¶ 9. Ms. Lonnquist has opined that a “substantial multiplier” is warranted here. Exhibit 21 at ¶ 13 (first sentence).

61. I am awarding Atwood a multiplier of .5 times (i.e., increased by 50%) the attorneys’ fee incurred by her legal team as awarded by this Court (with the exception of those that were billed and paid on an hourly basis) due to the risk of loss to the Sheridan firm had the jury returned a defense verdict, the complex nature of the factual issues, the skill of Atwood’s counsel, and the Court’s desire to encourage other attorneys to take cases such as this one. The relevant factors stated are supported by the record.

62. A small portion of the fees here were hourly under a mixed fee agreement, and plaintiff does not seek a multiplier for that hourly portion. In *Washington State Physicians Ins. Exchange & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 335-336 (1993), the plaintiff also engaged counsel under a mixed hourly-contingent fee agreement and the Court approved a multiplier nevertheless. Thus, the hourly portion of the contract is not fatal to plaintiff’s claim for a multiplier. A multiplier is warranted here to encourage attorneys like Mr. Sheridan to take these high-risk cases, which further important public policies. A 50% multiplier is calculated as follows:

Adjusted Lodestar:	\$794,516.55
Less Hourly Fees	(\$40,070.00)
Subtotal:	\$754,446.55
.5 Multiplier	\$377,223.275

1 The Court orders a 50% multiplier on the contingent fees incurred as outlined above.

2 **Costs**

3 63. RCW 49.60.030 specifically provides for costs. In civil rights cases in
4 Washington, victims of discrimination may recover, "actual costs of the litigation, including
5 expert witness fees, facsimile and copying expenses, cost of depositions, and other out-of-
6 pocket expenses." *Hume v. American Disposal, Co.*, 124 Wn.2d 656, 674, 880 P.2d 988 (1994);
7 *Xieng v. Peoples Nat. Bank of Washington*, 120 Wn.2d 512, 528-530, 844 P.2d 389 (1993);
8 *Blaney v. Int'l Ass'n of Machinists And Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 216-
9 17, 87 P.3d 757, 764 (2004) (transportation costs, copying costs, supplies, equipment and
10 lodging).

12 64. Here, the costs are detailed in the Sheridan declarations, which he found to be
13 reasonable.

SLF Costs (Ex. 17)	\$109,196.88
Minnig Cost for Work on Dec. (Ex. 20)	\$5,473.75
Lonnquist Cost for Work on Dec. (Ex. 21)	\$5,462.50
Blankenship Cost for Work on Dec. (Ex. 22)	\$1,430.00
Atwood Costs (Ex. 23)	\$5,557.50
Costs after 11/6/17	\$11,371.03 ²⁷
Total Costs:	\$138,491.66

19 65. I hereby award all expenses as necessary and reasonable with the exception of
20 the following: (1) In my opinion, the credit card fees are not a recoverable expense and they
21 shall be removed; (2) the cost of the Lonnquist Declaration is capped at \$3,000.00 - anything
22 above that is deemed unreasonable and unrecoverable²⁸; (3) Alan Parker's trial Expenses of
23

24 ²⁷ Invoice dated December 19, 2017 (Sub # 539, at Exhibit 2 to Supp.'1 Sheridan Dec., Ex. 2).

25 ²⁸ I say "unrecoverable" due to MSA's Motion to Strike portions of her Declaration. I granted the majority of
MSA's Motion and struck a substantial portion of paragraphs 11 and 13. Those sections affected included what

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THIRD AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR ATTORNEY
FEES, COSTS, PRE-JUDGMENT INTEREST,
AND TAX ADJUSTMENT - 28

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1 \$2,141.21 were not supported with sufficient detail to allow me to determine whether it was
2 legally a recoverable cost, or that the expenses were reasonable; and, (4) the following meal
3 charges are excessive and unrecoverable - (i) 2/21/17 - \$119.21; and (ii) 9/12/17 - \$134.95.

4 Those expenses total as follows:

5 **Adjustments to Costs**

6 \$3,0000 Cap for Work on Lonnquist Dec. (\$2,462.50)
7 Credit Card Fee on 2/23/17 (\$218.00)
8 Credit Card on 4/10/17 (\$505.96)
9 Credit card Fee on 10/24/17 (\$724.66)
10 Credit card Fee on 11/2/17 (\$512.73)
11 Alan Parker Trial Expenses (\$2,141.21)
12 Meal on 2/2/17 (\$119.21)
13 Meal on 9/12/17 (\$134.95)

14 **Total Adjustments to Cost: (\$6,819.22)**

15 **Total Costs: \$138,491.66**

16 **Total Recoverable Costs: \$131,672.44**

17 66. With the adjustments reflected above to the Cost Bill, I find that total
18 recoverable costs are \$131,672.44 in connection with this litigation. I have reviewed the costs
19 incurred, and I find them to be reasonable.

20 **Pre-Judgment Interest and Blainey Adjustment**

21 67. Plaintiff requests pre-judgment interest of \$162,518.71, and the *Blaney* tax
22 adjustment of \$271,719.

23 68. "[P]rejudgment interest is awardable [when] a liquidated or readily
24 determinable claim, as opposed to an unliquidated claim. *Hansen v. Rothaus*, 107 Wn.2d 468,
25 472, 730 P.2d 662 (1986). Here, the jury awarded the amount of back pay suggested by Dr.

were obviously the work product of legal research. I attempted, to the best of my ability, to estimate the time put
into that legal research, and factoring in her hourly rate, reduced her bill by the amount of the value of the excised
portions of her Declaration. It may not be exactly accurate, but it was my best estimate.

THIRD AMENDED FINDINGS OF FACT AND
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1 Torelli. However, in my opinion, the economic damages were not liquidated, and thus
2 Atwood is not entitled to prejudgment interest as requested. MSA directs the Court's attention
3 to the holding of *Pannell v. Food Services of America*, 61 Wn. App. 418, 810 P.2d 952 (Div.
4 I, 1991). *Pannell* involved a similar issue; i.e., whether or not prejudgment interest was
5 appropriate on an award of back pay. ("In Washington, prejudgment interest can be awarded
6 only in those cases where the claim is for a fixed sum or the evidence provides a basis for
7 computing the recovery with exactness, without reliance on opinion or discretion." *Id.* at 449,
8 citing, *Hansen v. Rothaus*, 107 Wn.2d 468,472, 730 P.2d 662 (1986)). In the case at hand, the
9 jury's award of the \$2.1 million dollars in economic damages was not segregated into back
10 pay and front pay.
11

12 69. Like jury instruction #23 in *Pannell*, jury instruction #17 used in the case at
13 hand instructs the jury to take into consideration a large number of factors. They had to make
14 discretionary determinations about the duration of employment, growth rate, and a large
15 number of other factors to compute the economic damages. Prejudgment interest only applies
16 to awards in which "the evidence finds a basis for computing the recovery with exactness,
17 without reliance on opinion or discretion." *Pannell, id.*, at 449, citing, *Hansen v. Rothaus*, 107
18 Wn.2d 468, 472, 730 P.2d 662 (1986). In my opinion, the jury used its discretion to compute
19 the amount of economic damages and thus the award is not liquidated and consequently,
20 Atwood is not entitled to prejudgment interest on this amount.
21

22 70. "An offset for additional federal income tax consequences is properly
23 characterized under WLAD's provision for 'any other appropriate remedy.'" *Blaney v. Int'l*
24 *Ass'n of Machinists And Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 214, 87 P.3d 757,
25

1 762 (2004). CPA Scott Minnig calculated that tax adjustment as \$271,719.00. First Supp'l
2 Minnig Dec.. I find this number to be accurate.

3 71. The Defendants are not challenging a requested tax penalty, and the properly
4 computed tax penalty shall be awarded as part of the final judgment.

5 Summary and Allocation

6 72. The defendant is ordered to pay the plaintiff attorneys' fees, costs, and such
7 additional relief as follows:

8
9 Tax Adjustment: \$271,719.00 ²⁹
Adjusted Attorney Fees Total: \$794,516.55
10 .5 Multiplier: \$377,223.275
Total Recoverable Costs: \$131,672.44
11 Less Fees/Costs Previously Paid by MSA: (\$51,944.55) ³⁰

12 **Final Total Due: \$1,523,186.715**

13 *These Findings and Conclusions are intended to incorporate*
14 *my ruling of January 10, 2018. If there is any conflict, the terms*
15 Dated this 2 day of ~~January~~, 2018. *of my Jan 10, 2018 ruling would prevail.*
16 *February*

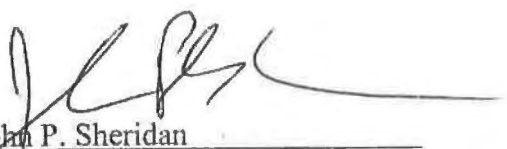
17
18 *Douglas L. Federspiel*
19 Douglas L. Federspiel
20 Yakima County Superior Court Visiting
Judge in Benton County

21 Presented by:
22 THE SHERIDAN LAW FIRM, P.S.

23
24
25 ²⁹ The tax offset number changed since the original filing, owing to the Court's denial of pre-judgment interest and
owing to recent changes in the tax code. See Supp'l Minnig Dec., ¶¶ 2-5.

³⁰ Ashbaugh Dec. (Sub #530), ¶ 3).

1
2 By:


s/John P. Sheridan
John P. Sheridan, WSBA # 21473
Attorneys for Plaintiff