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SUPERIOR COURT OF THE STATE OF WASHINGTON
WHATCOM COUNTY

SCOTT HILLIUS; TOM STAEHR; DANIEL and
SONJA LYONS; DOUGLAS and ANGELIQUE
SCARLETT; MARK MIEDEMA; STEVEN and
LISA ZEHM,

Plaintiffs,

v.

18 PARADISE, L.L.P.; and MJ MANAGEMENT,
LLC;

Defendants,

MJ MANAGEMENT, LLC,

Counterclaimant.

MAUREEN AND ROGER DOWLING, a
married couple, et. al.

Intervenors.

Case No.: 20-2-00702-37

**WILLIAM (MICK) O'BRYAN AND JOSH
WILLIAMS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS**

MICK O'BRYAN AND JOSH WILLIAMS, by and through their attorneys of record,
JEFFREY POSSINGER of POSSINGER LAW GROUP and REID MEYERS, Attorney, move the

1 court for Findings of Fact and Conclusions of Law and an Order awarding Mick O'Bryan
2 ("O'Bryan") and Joshua Williams ("Williams") the attorneys' fees they were required to
3 personally incur in order to successfully defend against Plaintiff's Consumer Protection
4 Act ("CPA") claims brought against them. Claims which were first voluntarily dismissed
5 by the Plaintiffs, then after pleading O'Bryan and Williams back into the case, were
6 dismissed with prejudice by the Court on O'Bryan and William's Motion for Summary
7 Judgment, which the Court decided on March 21, 2024 and formally dismissed them on
8 April 12, 2024.

9 **I. FACTS RELEVANT TO MOTION**

10 **A. Procedural Background**

11 On May 29, 2020, Plaintiffs filed a Complaint against MJ Management, O'Bryan,
12 Williams, and various other Defendants. During the course of this litigation, Plaintiffs
13 amended their Complaint five separate times, certified a class made up of Homestead
14 property owners, and in its final amended complaint, sought damages against MJ
15 Management, 18 Paradise; and O'Bryan and Williams personally, under the Consumer
16 Protection Act, (Ch. 19.86 RCW) (the "CPA"), among a host of other causes of action
17 directed at different parties.

18 Plaintiffs voluntarily dismissed MJ Management, O'Bryan, and Williams in their
19 Third Amended Complaint. On January 9, 2023, Plaintiffs filed their Fifth Amended
20 Complaint, in which they once again, re-pled Williams and O'Bryan back into the case
21 claiming the two men, in their individual capacities, had violated the CPA for actions
22 they performed as agents of MJ Management, a Limited Liability Company which they
23 were members. From the time that they were brought back into the case, O'Bryan and
24 Williams argued that that the CPA claims brought against them personally were
25 spurious and that based entirely on what Plaintiffs' counsel admitted to them during
26 the now much-litigated meeting in June of 2023, namely that they were brought back

1 into the lawsuit solely as leverage to get MJ Management to dismiss its counterclaim.

2 On January 25, 2024, 18 Paradise and MJ Management filed a joint and renewed
3 Motion for Partial Summary Judgment re: Consumer Protection Act claims brought by
4 the Plaintiffs.

5 The Court Granted Defendants' Partial Summary Judgment Motion, dismissing
6 the claims against the Defendants and dismissed Plaintiffs' only legal claims against
7 O'Bryan and Williams personally, and in so doing, effectively dismissed them from the
8 case with prejudice.

9 On March 28, 2024. Plaintiffs filed "Additional Authorities re: presentation of
10 Order on Consumer Protection Act Claim" and a "Memorandum re: Presentation of
11 Order on Consumer Protection Act Claim." Regardless of how Plaintiffs' counsel chose
12 to label these court filings, they were effectively Motions to Reconsider the Court's
13 ruling on the Order granting Partial Summary Judgment. The Court did not rule on any
14 of these motions filed by the Plaintiffs but disposed of all outstanding motions for
15 reconsideration in an oral ruling on the first morning of trial.

16 On September 11, 2024, the Court issued its Findings of Fact, Conclusions of Law,
17 and Order on the current case. As all claims against Williams and O'Bryan were
18 dismissed, they are clearly the prevailing party with respect to the claims brought
19 against them in their personal capacity.

20 B. Williams and O'Bryan's Attorney's Fees and Costs

21 The court records in this case clearly reflect that Plaintiffs' only claim against
22 Williams and O'Bryan was dismissed – twice. Once by Plaintiffs themselves and a second
23 time by the Court after the Plaintiff's re-pled them for a questionable purpose.

24 Williams and O'Bryan attorneys had to diligently defend against Plaintiffs claims
25 brought against Williams and O'Bryan in their personal capacity. This defense included
26 filing and defending against numerous motions and other court related activities.

1 Williams and O'Bryan were forced to spend considerable time and money defending
2 themselves from Plaintiffs' CPA claims. In defending against the CPA claims, Williams
3 and O'Bryan incurred \$240,271.5 in legal fees and \$5,490.61 in associated costs for
4 work performed between July 26, 2023, and Court's order dismissing the CPA claim and
5 them from this lawsuit. See. Decl. of Possinger and Decl. of Meyers.

6 II. EVIDENCE RELIED UPON

7 Mick O'Bryan and Josh Williams rely on the Declarations of Jeffrey Possinger and
8 Reid Meyers; the papers and pleadings in this matter and the argument and authority
9 cited in this motion.

10 III. ISSUE PRESENTED

11 Whether the Court should award O'Bryan and Williams their Attorneys fees for
12 successfully defending against the Plaintiffs' CPA claim when the Plaintiffs only re-
13 alleged the claim because MJ Management had a declaratory Counterclaim, Plaintiffs
14 wanted to use the threat of personal liability against O'Bryan and Williams to force
15 them to withdraw MJ's Counterclaim, and they admitted in correspondence they did
16 not have any reason for naming Josh Williams to the lawsuit. YES.

17 IV. LEGAL AUTHORITY AND ARGUMENT

18 A. **Under Contract, Statute, and Equitable Principles, O'Bryan and Williams 19 are Entitled to Attorney Fees as Prevailing Parties.**

20 A party may seek attorney fees when authorized by a contract, statute, or a
21 recognized equitable ground. *Newport Yacht Basin Ass'n. of Condo. Owners v. Supreme
22 Nw., Inc.*, 168 Wn. App. 86, 97, 285 P.3d 70 (2012). O'Bryan and Williams are entitled to
23 their attorney's fees and costs under all three bases.

24 1. Contractual Attorneys' Fees.

25 Plaintiffs asserted their CPA claims against O'Bryan and Williams, arguing that
26 O'Bryan and Williams, despite acting as MJ Management's in their capacity as members

1 of the company were also personally liable because they had personally committed
2 unfair and deceptive acts and practices in connection with the Master Declaration,
3 including:

- 4 • Using the Joint Maintenance Fee for items, purchases, and
5 services the Master Declaration did not authorize or allow;
- 6 • Commingling the Joint Maintenance Fee with revenue from
7 Homestead's golf course;
- 8 • Not maintaining accurate accounting of the funds generated by
9 the Joint Maintenance Fees; and
- 10 • Executing the Sixth and Seventh Amendments to the Master
11 Declaration;

12 See. Fifth Amended Complaint, ¶111.

13 The basis of these claims against O'Bryan and Williams personally arise from MJ
14 Management's work under the terms of the Master Declaration through MJ
15 Management's contractual relationship with 18 Paradise. *Id.* (¶107 of the Fifth
16 Amended Complaint). This work was performed through assignment of rights by 18
17 Paradise to MJ Management by contract. Section 8.3 of the Master Declaration provides
18 that:

19 Violation for breach of any condition, covenant or restriction
20 herein contained shall give the Declarant and/or the
21 Association and/or the Parcel Owners in addition to all other
22 remedies, the right to proceed at law or in equity to compel
23 compliance of the terms of said of said conditions, covenants
24 and restrictions and prevent the violation or breach of any of
25 them... Expenses of litigation shall include reasonable
26 attorney's fees incurred by the prevailing party in seeking
27 such enforcement.

24 Master Declaration of Covenants, Conditions, Restrictions and Reservations, §8.3

1 Because Plaintiffs filed suit against Williams and O'Bryan pursuant to the terms
2 of the Master Declaration, and Williams and O'Bryan successfully defeated those claims,
3 Williams and O'Bryan are entitled to their attorney's fees for that portion of this lawsuit.
4 Even in the absence of a contractual authorization for fees, Williams and O'Bryan also
5 have a cognizable right to their attorney's fees under statute and equity.

6 2. Equitable Attorneys' Fees.

7 Washington's Supreme Court has explicitly held that an opposing party's bad
8 faith or misconduct creates an exception to the American rule. *Miotke v. City of*
9 *Spokane*, 101 Wn.2d 307, 338, 678 P.2d 803 (1984); *City of Seattle v. McCready*, 131
10 Wn.2d 266, 931 P.2d 156 (Wash. 1997). Under this exception, the Court may award a
11 prevailing party their attorneys' fees when his opponent has acted in bad faith,
12 vexatiously, wantonly, or to unreasonably oppress the other party *F.D. Rich Co., Inc. v.*
13 *Industrial Lumber Co.*, 417 U.S. 116 (1974); *Structures v. Insurance Co. of the West*, 161
14 Wn.2d 577, 167 P.3d 1125, (2007).

15 As was fully briefed in the MJ Defendants' January 26, 2024, Motion for Partial
16 Summary Judgment to Dismiss Williams and O'Bryan—which O'Bryan and Williams
17 incorporate here by reference—Plaintiffs re-pled Williams and O'Bryan into this action
18 to oppress them and MJ Management, in bad faith, and as part of a strategy of vexatious
19 litigation. Plaintiffs named Williams and O'Bryan in the Fifth Amended Complaint as
20 leverage against MJ Management because they wanted to use the threat of their
21 personal liability to drive them to dismiss MJ Management's declaratory counterclaim.

22 Plaintiffs' Counsel admitted that their reason for renaming Williams and O'Bryan
23 as Defendants was due to MJ Management's Counterclaims. Plaintiffs' counsel said as
24 much in an email to O'Bryan and Williams:

25 "We took a voluntary nonsuit against MJ Management, Mick,
26 and Josh in connection with the 3rd Amended Complaint.
27 Afterwards, 18 Paradise objected to a trial setting because MJ
28 Management asserted a counterclaim and Phil [Buri] was

1 away. We thought it was resolved in the dismissal. When Phil
2 returned, he said he wanted to pursue it, so we brought MJ,
3 Mick, and Josh back in."

4 See. Decl. of Possinger in Support of MJ Defendants' Motion for Partial Summary
5 Judgment to Dismiss O'Bryan and Williams, See. Exhibit 6 (Emphasis Added). Later in
6 the same email, Plaintiffs' Counsel admitted they did not have a basis for their claim
7 against Williams specifically. "At this point, I can't really identify anything that Josh in
8 particular did that is part of the claim..." *Id.*

9 Plaintiffs' Counsel made similar admissions in open court during the Court's
10 October Evidentiary Hearing while Mr. Davis questioned Mr. O'Bryan. "Q: Then we told
11 you that when the counterclaim stuck around, we decided that we would rename you
12 in the lawsuit because we thought it was the smart thing to do; right? A: (By Mr. O'Bryan)
13 I – I can assume that, yes." *Id.* at Ex. 3 at p.180:18-21; 23.

14 The evidence is irrefutable. After already voluntarily dismissing O'Bryan and
15 Williams, Plaintiffs refiled claims against both O'Bryan and Williams, not because they
16 earnestly believed they had a factual or legal basis for a claim that they had personally
17 violated to Consumer Protection Act, but rather because they believed the threat of
18 personal liability would force the men to dismiss MJ Management's Counterclaim
19 against the Plaintiffs. The Plaintiff's tactic here was particularly egregious with respect
20 to Josh Williams, because he had not been a member of MJ Management for years and
21 had no role or authority to withdraw MJ Management's Counterclaim. The Court should
22 grant Williams and O'Bryan their attorney fees and costs.

23 **B. Calculating Reasonable Attorney's Fees.**

24 To establish reasonable attorney's fees, the court makes a "Lodestar" calculation
25 by multiplying the number of hours spent on the issue with the attorney's hourly rate.,
26 *See e.g., Brand v. Dept. of Labor & Industries*, 139 Wn.2d 659, 989 P.2d 1111 (1999);
27 *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.3d 632 (1998), *Scott Fetzer Co. v. Weeks*, 122

1 Wn.2d 141, 150, 859 P.2d 2010 (1993); *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d
2 581, 675 P.2d 193 (1983).¹ Under the Lodestar method, the party seeking attorney's fees
3 and costs bears the burden of proving the requested award is reasonable. *Fetzer*, 122
4 Wnd.2d at 151.

5 "[T]he attorney seeking fees ...must inform the court, in addition to the number
6 of hours worked, the type of work performed and the category of attorney who
7 performed the work." *Bowers*, 100 Wn.2d at 597. An attorney's usual rate for billing
8 clients is likely reasonable. *Id.* The court may also consider the "level of skill required by
9 the litigation, time limitations imposed on the litigation, the amount of potential
10 recovery, the attorney's reputation, and the undesirability of the case." *Id.* "The court is
11 not required to artificially segregate time in a case... where the claims all relate to the
12 same fact pattern but allege different bases for recovery." *Ethridge v. Hwang*, 105 Wn.
13 App. 447, 461, 20 P.3d 958 (2001) (citing *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 572,
14 740 P.2d 1379 (1987)).

15 Williams and O'Bryan's respective declarations of counsel provide detailed
16 explanations of the work performed, and both their time, and the time spent by their
17 staff. Those hours relate specifically to defending Williams and O'Bryan in this litigation.
18 Attorney Jeffrey Possinger and his staff spent 1,054.3 hours to defend Williams and
19 O'Bryan in this litigation. Attorney Reid Meyers spent 74 hours to defend Williams and

20
21 _____
22 ¹ It is well settled law that the court may calculate reasonable fees according to the prevailing market
23 rates. See *Blum v. Stenson*, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984) (Courts may
24 calculate reasonable fees according to the prevailing market rates in the relevant community whether
25 representation is by private or non-profit counsel); *Dept. of Labor & Indus. v. Overnite Transp. Co.*, 67
26 Wn. App. 24, 40, 834 P.2d 638 (1992), *review denied*, 120 Wn.2d 1030 (1993) (rejecting appellant's
27 argument that fee awards must be cost related and upholding an attorney fee award on behalf of a state
28 agency based on a reasonable market rate); *Martinez v. City of Tacoma*, 81 Wn. App. 228, 237, 914 P.2d
86, *review denied*, 130 Wn.2d 1010 (1996) ("the court should award reasonable attorney fees based on
market rates regardless of the terms of the private compensation arrangements...").

1 O'Bryan in this litigation. Possinger Law Group provided paralegal and administrative
2 support to Attorney Reid Meyers in the course of this litigation.

3 As set out above, this case can only be characterized as complex litigation, with
4 multiple parties, multiple claims, and complicated litigation issues; coupled with an
5 unusually large volume of motion practice which required Williams and O'Bryan's
6 counsel to spend considerable time and incur considerable expenses responding to
7 motions and other court filings made by the Plaintiffs.

8 The hours spent on this case are true and correct as the time entries counsel
9 made contemporaneously with the work provided. *See Absher Const. Co. v. Kent School*
10 *Dist.*, 79 Wn. App. 841, 845, 905 P.2d 1229 (1995) (laying out requirements for factual
11 support for a request for fees). Williams and O'Bryan's counsel's rates are competitive
12 in the area and for the complexities present in this this matter.

13 Moreover, Williams and O'Bryan's respective counsels' hourly rates are
14 reasonable based on the skill level required by the litigation, the attorney's respective
15 reputation, and the undesirability of a case of this complexity. The Court can also
16 consider the complications and exceptionally heavy motion practice between the
17 parties. These factors significantly increased Williams and O'Bryan's litigation costs.

18 For these reasons, the Court should award a total of \$245,762.11 in attorney's
19 fees and costs: \$222,977.11 for Possinger Law Group and \$22,785.00 for Reid Meyers,
20 Attorney². For these reasons, the Court should award a total of \$245,762.11 in attorney's
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25 ² The Court should take notice that O'Bryan and Williams have not included those hours that were
26 previously submitted to the Court in connection with MJ Management's Motion for Attorney's Fees on
27 Temporary Restraining Order (TRO) and Order for Preliminary Injunction. That time spent was specifically
28 related to MJ Management's interests in certain records and was thus easily identifiable and thus
separable from time spent in the defense of Plaintiff's CPA claims against O'Bryan and Williams.

1 fees and costs: \$222,977.11 for Possinger Law Group and \$22,785.00 for Reid Meyers,
2 Attorney³.

3 The Court's Findings of Fact and Conclusions of Law must support the entry of
4 an award of Attorney's Fees and Costs. *See. Mahler v. Szucs*, 135 Wn.2d 398, 434-35,
5 957 P.2d 632 (1998). Williams and O'Bryan's counsel provided proposed Findings of Fact
6 and Conclusions of Law with this Motion for Attorney's Fees and Costs. Williams and
7 O'Bryan support their proposed findings with substantial evidence, including the case
8 record and relevant legal authority. As provided by Williams and O'Bryan's counsel, and
9 detailed in their declarations, the time spent defending them in this litigation was
10 reasonable.

11 Although RCW 4.84.330 requires the award of attorney's fees and costs, the
12 amount of the attorney fee award is within the trial court's discretion, and the Court of
13 Appeals will not overturn a Trial Court's decision absent a manifest abuse of discretion.
14 *Boeing v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1997) (citing *Bowers v.*
15 *Transamerica Title Ins. Co.*, 100 Wn.2d 581, 595-96, 675 P.2d 193 (1983)). The abuse of
16 discretion standard is used in determining whether the attorney's fee award was
17 reasonable. Or when the record does not state a basis for the award. *Faraj v. Chulsie*,
18 125 Wn. App. 536, 549 (2004). (Citing *Brand v. Dep't. of Labor & Indust.*, 139 Wn.2d 659,
19 665, 989 P.2d 1111 (1999)).

20 V. CONCLUSION

21 Based both on contract and on equity, Williams and O'Bryan are entitled to their
22 attorney fees and costs incurred defending against Plaintiffs' Consumer Protection Act
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24
25 ³ The Court should take notice that O'Bryan and Williams have not included those hours that were
26 previously submitted to the Court in connection with MJ Management's Motion for Attorney's Fees on
27 Temporary Restraining Order (TRO) and Order for Preliminary Injunction. That time spent was specifically
related to MJ Management's interests in certain records and was thus easily identifiable and thus
separable from time spent in the defense of Plaintiff's CPA claims against O'Bryan and Williams.

1 claims brought against them personally. The Court should enter Findings of Fact and
2 Conclusions of Law awarding Williams and O'Bryan their Attorney Fees and Costs.

3
4 Respectfully submitted, this 20th day of September 20, 2024.

5
6 **POSSINGER LAW GROUP, PLLC**

7
8 */s/ Jeffrey Possinger*

9 Jeffrey Possinger WSBA# 30854
10 Attorney for Defendant MJ Management
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16 **REID E MEYERS, ATTORNEY**

17 */s/ R E Meyers*

18 Reid E. Meyers WSBA # 51751
19 Attorney for Defendant MJ Management
20 14122 Ervine Rd.
21 Anacortes, WA 98221
22 210-415-1070
23 reid@reidmeyers.com

24 **CERTIFICATE OF SERVICE**

25 I certify that on the date shown below a copy of the MOTION FOR AWARD OF
26 ATTORNEY'S FEES AND COSTS was served on the following persons in the manner set
27 forth below:

28 *
MOTION FOR AWARD OF ATTORNEY'S FEES AND
COSTS
[PAGE 11 of 12]

Possinger Law Group
A Professional Limited Liability Company

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Benjamin Vandenberghe 701 Fifth Avenue, Suite 5500 Seattle, Washington 98104 T: 206-682-7090 biv@montgomerypurdue.com afrank@montgomerypurdue.com Attorney for Defendant 18 Paradise LLP	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
Maureen and Roger Dowling romo@olyphen.com Matt and Kari Skinner mkkmskinners@comcast.net Intervenors – Pro se	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax

DATED this 20th day of September 2024.

Jody Riegler

Jody Riegler, Paralegal