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THE HONORABLE MICHAEL SCOTT
Department 9
Noted for Hearing: March 4, 2024
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

COLUMBIA DEBT RECOVERY, LLC, a Washington
limited liability company,

Plaintiff/
Counterclaim-Defendant,

vs.

JORDAN PIERCE, an individual, and DONTE
GARDINER, an individual,

Defendants/
Counterclaim-Plaintiffs,

and

GUSTAVO CORTEZ, TOWANA PELTIER and
DARIUS MOSELY,

Third-Party Plaintiffs,

vs.

COLUMBIA DEBT RECOVERY, LLC, a Washington
limited liability company,

Third-Party Defendant,

NO. 20-2-16403-8 SEA

**REPLY DECLARATION OF BLYTHE H.
CHANDLER IN SUPPORT OF
DEFENDANTS/COUNTERCLAIM-
PLAINTIFFS/THIRD-PARTY PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES, COSTS
AND SERVICE AWARDS**

REPLY DECLARATION OF BLYTHE H. CHANDLER IN SUPPORT
OF DEFENDANTS/COUNTERCLAIM-PLAINTIFFS/THIRD-PARTY
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS

Case No. 20-2-16403-8 SEA

TERRELL MARSHALL LAW GROUP PLLC
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<p>1 and</p> <p>2 JORDAN PIERCE, DONTE GARDINER, THOMAS</p> <p>3 G. HELLER, MARY ASHLEY ANCHETA,</p> <p>4 BETHANY HANSON, MEGAN SHANHOLTZER,</p> <p>5 Third-Party Plaintiffs,</p> <p>6 vs.</p> <p>7 THRIVE COMMUNITIES MANAGEMENT,</p> <p>8 LLC, a Washington limited liability</p> <p>9 company, THRIVE COMMUNITIES, INC., a</p> <p>10 Washington corporation, and BELKORP</p> <p>11 HOLDINGS, INC., a Washington</p> <p>12 Corporation d/b/a THE EDEN,</p> <p>13 Third-Party Defendants.</p>	
--	--

13 I, Blythe H. Chandler, declare as follows:

14 1. I am a member of the law firm of Terrell Marshall Law Group PLLC and co-

15 counsel of record for Defendants/Counterclaim-Plaintiffs/Third-Party Plaintiffs in this matter. I

16 am admitted to practice before this Court and am a member in good standing of the bar of the

17 state of Washington. I respectfully submit this declaration in support of

18 Defendants/Counterclaim-Plaintiffs/Third-Party Plaintiffs’ Motion for Attorneys’ Fees, Costs and

19 Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in

20 this declaration and could testify competently to them if called upon to do so.

21 2. Attached hereto as Exhibit 4 is the Spokane County Superior Court’s order in in

22 *Gordon v. Robinhood Financial, LLC*, Spokane County Superior Court Case No. 19-2-04574-32,

23 awarding the Davis Wright Tremaine law firm more than \$749,393 for its defense over three

24 years of a “putative statewide class action.” This award was reduced from the more than \$1.2

25 million Davis Wright claimed in attorneys’ fees. The amount awarded is still more than twice

26 what Class Counsel request in this case.

1 3. Attached hereto as Exhibit 5 is a true and correct copy of the August 12, 2022
2 Declaration of Kenneth E. Payson in Support of Davis Wright’s request for over \$1.2 million in
3 fees to defend the *Gordon v. Robinhood Financial, LLC* matter. Davis Wright claimed
4 entitlement to fees for the work of three “primary” attorneys on the case and at least nine
5 others. See Exhibit 5 ¶¶ 2, 6.

6 4. Among the three primary attorneys listed are Eric Franz, an associate who
7 graduated from the University of Washington in 2017 and clerked for Judge James L. Robart in
8 the United States District Court for the Western District of Washington. Exhibit 5, ¶ 5. Davis
9 Wright claimed a rate of \$535 per hour for Mr. Franz’s work in 2022. By that time, Mr. Franz
10 had practiced for at most 5 years, including clerkship time. In comparison, I graduated from the
11 University of Washington in 2010. I then clerked for both Judge Betty Binns Fletcher in the
12 Ninth Circuit Court of Appeals and Judge John C. Coughenour in the Western District of
13 Washington. I have been in class action practice at my firm for 10 years. Yet, I seek
14 compensation for my work in this case at a rate of \$495 per hour—lower than Mr. Franz’s rate
15 when had half that much time in practice. Davis Wright claimed over \$391,000 in fees for only
16 Mr. Franz’s work in the *Gordon v. Robinhood* case—more than the entire fee request made by
17 Class Counsel in this case.

18 5. Davis Wright claimed a rate of \$635 per hour for partner Lauren Rainwater, an
19 attorney whose experience is virtually the same as my own (we both graduated from law school
20 in 2010 and then clerked for the Honorable John C. Coughenour). I also clerked for a federal
21 court of appeals judge, while she did not. Her rate is nonetheless higher than the rates Class
22 Counsel seeks for attorneys Amanda Steiner and Paul Arons who have decades more
23 experience than me or Ms. Rainwater.

24 6. The Davis Wright firm’s own rates and billing practices in class action cases
25 confirm the reasonableness of the rates sought by Class Counsel in this case.

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7. Attached hereto as Exhibit 6 is a true and correct copy of the February 13, 2024 Order Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs in *Ellis v. University of Washington Police Department*, King County Superior Court Case No. 21-2-11501-9.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

EXECUTED at Seattle, Washington and DATED this 16th day of February, 2024.

By: /s/ Blythe H. Chandler
Blythe H. Chandler, WSBA #43387

DECLARATION OF SERVICE

I, Blythe H. Chandler, hereby certify that on February 16, 2024, I caused true and correct copies of the foregoing to be served via the means indicated below:

Brad Fisher, WSBA #19895
Email: bradfisher@dwt.com
DAVID WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Telephone: (206) 622-3150
Facsimile: (206) 757-7700

- U.S. Mail, postage prepaid
- Hand Delivered via Messenger Service
- Overnight Courier
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- King County Electronic Filing System

Jeffrey I. Hasson, WSBA #23741
Email: hasson@hassonlawllc.com
HASSON LAW, LLC
9385 SW Locust Street
Tigard, Oregon 97223
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- Overnight Courier
- Facsimile
- Electronic Mail
- King County Electronic Filing System

*Attorneys for Plaintiff/Counterclaim-Defendant
Columbia Debt Recovery, LLC*

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Email: dmargulis@cozen.com
Email: dbowzer@cozen.com
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- Overnight Courier
- Facsimile
- Electronic Mail
- King County Electronic Filing System

*Attorneys for Third-Party Defendants Thrive
Communities Management, LLC and Thrive
Communities, Inc.*

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- Facsimile
- Electronic Mail
- King County Electronic Filing System

*Attorneys for Third-Party Defendant
Belkorp Holdings, Inc., d/b/a The Eden*

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

DATED this 16th day of February, 2024.

By: /s/ Blythe H. Chandler, WSBA #43387
Blythe H. Chandler, WSBA #43387

Exhibit 4

CN: 1920457432

SN: 105

PC: 136

FILED

FEB 06 2023

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

Isaac Gordon
Plaintiff(s)

vs.

Robinhood Financial LLC and Robinhood
Markets Inc
Defendant(s)

)
) CASE NO. 19-2-04574-32

)
) ORDER ON ATTORNEY FEE AWARD

I. Basis

The Court of Appeals stayed Mr. Gordon’s (“Gordon”) appeal for the trial court to determine the amount of fees to be awarded before the appellate court will resolve whether awarding fees was appropriate. This stay order was not transmitted or communicated to the trial court until eight months after it was entered.

The appellate court lifted the stay on December 8, 2022, in anticipation of this order from the trial court. Like the original stay order, the December 8th order was never transmitted or communicated to the trial court until an email from counsel on the afternoon of January 31, 2023.

This Court needed additional time to review Robinhood Financial, LLC’s (“Robinhood”) nearly 500-page submission supporting its \$1,248,862.62 attorney fee request. It also reviewed the hundreds of pages submitted in opposition to the request, as well as Robinhood’s reply, which sought to strike Gordon’s supplemental materials. This Court’s 2022 assignment to the family law docket required managing over 800 active cases involving multiple bench trials each week – frequently with unrepresented litigants, which require the court to

generate voluminous required final pleadings. Many of these cases had a statutory priority for resolution and affected families with children. When not in trial, there are status conferences, revisions, and substantive motions each week. Unfortunately, chronic underfunding of Superior Court¹ has resulted in lack-of-capacity issues and delays in case resolution, despite working long days, weekends, and vacations. Spokane Superior Court judges also do not have the assistance of law clerks. This Court apologizes to the parties and appellate court for the delay in reviewing these materials and issuing this order.

II. Analysis

In addition to supplemental declarations that continued to argue the merits of the decision and claiming judicial bias, Mr. Gordon's counsel submitted an additional pleading denominated as "NOTICE OF ADDITIONAL ROBINHOOD FILINGS" in mid-September. This pleading demonstrates how Gordon persists in fundamentally misunderstanding the interplay with the CEMA² case in federal court in the western district and this case. The problem in this case involves conduct and the way Gordon initiated this CEMA action, responded to discovery, and the actions after remand. Because of this, as Judge Rice reiterated when Gordon sought clarification, this case was "frivolous from the start" and Gordon's action after remand justify the Court's decision. Although Robinhood's motion to strike has merit on a number of bases, given the circumstances and amount of fees sought, the Court reviewed it.

Both sides argue that this Court should apply hourly rates found to be reasonable from other cases or a routine motion to dismiss for lack of personal jurisdiction. This Court independently evaluated the reasonableness of the fee award. Just as Gordon is correct that there are situations where it's reasonable for their hourly rates exceed non-contingency-fee hourly rates, Robinhood is correct this case presents procedural complexity of a putative statewide class

¹ The most recent caseload data from the Washington State Administrative Office of the Courts (AOC) reflect that Spokane Superior Court needed *four* additional full-time judicial officers for its caseload. This data preceded the pandemic and changes in the law that created additional workload. The Legislature authorized an additional judge decades ago based on caseload data from twenty-five years ago when Spokane's population was much smaller. Despite repeated requests, the Board of County Commissioners has consistently declined to fund its half of an additional judge. Unfortunately, lack of capacity means that Spokane's growing legal needs cannot be addressed timely, despite best efforts and long hours.

² Commercial Electronic Mail Act. See RCW ch. 19.190.

action that advanced novel theories³ and required specialized expertise. Robinhood argues that its attorneys' billing rates are presumptively reasonable.⁴ However, this Court must analyze each case on its own facts and circumstances, including reviewing the voluminous time entries that involved over one hundred pages of single-spaced time entries with what appears to be an 8-point font at best.⁵ The Court also reviewed a lengthy summary of docket entries from the federal court and compared it to the fee entries to ensure that unsuccessful or duplicative efforts were not included. Robinhood is correct that caselaw states how "it is *not necessary*" to reduce an attorney fee award when the court did not adopt each contention raised.⁶ However, this does not mean that it prohibits reducing a fee award for a claim that was not successful.

Attorneys seeking fees must provide reasonable documentation of the work performed.⁷ The documentation does not have to be exhaustive or extremely detailed, but must set forth the hours, type of work and category of attorney who provided the work.⁸ Most of Robinhood's voluminous entries provide that sufficient level information. Robinhood is correct that it is permitted to redact information relating to attorney-client privilege and work product.⁹ Although Robinhood is also correct that Gordon did not identify specific entries to which he complains, this Court has an independent obligation to review the submissions supporting the fee request and did so. If Robinhood had wanted the Court to consider the redacted entries, it could have submitted a privilege/work product log and requested in camera review; it did not.

Gordon's objection as to the number and classification of attorneys and staff is not persuasive. During the four years of litigation, Robinhood utilized a reasonable number additional attorneys to consult on specialized issues and their time spent was reasonable. Also, it is reasonable that there were times during the litigation that created a need for assistance, including the high volume of motion practice arising from the conduct in this case. The work performed was reasonable, necessary, and justified.

³ A CEMA violation premised on a refer-a-friend (RAF) text message sent by a nonparty customer who was also the plaintiff's friend or family member is a matter of first impression. As it is, there is no robust case law interpreting the statute.

⁴ See, e.g., *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983) ("When the attorneys in question have an established rate for billing clients, that rate will *likely* be a reasonable rate.") (emphasis supplied).

⁵ Ex. A.

⁶ *Hous. Auth. of City of Seattle v. Bin*, 163 Wn. App. 367, 378 (2011) (italics supplied).

⁷ *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983).

⁸ *Id.*

⁹ *Democratic Party of Washington State v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004).

Likewise, Gordon's objection as to recycling efforts involving a parallel proceeding, *Moore v. Robinhood*, that has the same legal issues is not persuasive. This position again ignores the problem in this case involves in appropriate conduct, without which none of this would be happening.

The unique factors present here involves Gordon's conduct. Ordinarily, Gordon's objections regarding the opposing counsel spending significant time to investigate Gordon's relationships with others would make sense, particularly since Gordon's counsel claims to have "volunteered this information to Robinhood."¹⁰ However, it goes to the heart of the facts of this case, which are anything but ordinary. As noted by Judge Rice there was "no doubt" as to its determination that Gordon's case was "frivolous from the start" and that Gordon only amended his discovery answer *after* Robinhood investigated and filed a motion to stay alleging that the lawsuit was manufactured:

9 Here, Plaintiff asks the Court to clarify that statements made in the Order on
10 the motion for partial reconsideration were dicta rather than "findings of law".
11 ECF No. 219. Reading this Court's entire Orders at ECF Nos. 212 and 218, in
12 context, leaves no doubt about the Court's determination. The following
13 allegations were uncontested:
14 Defendant raised allegations that the lawsuit was orchestrated by the
15 transmittal of a text message by class co-counsel's brother John
16 Cameron. See ECF No. 172 at 9-11. . . . Plaintiff contends his suit
17 hinges on only one text message sent on July 24, 2019. See First
18 Amended Complaint, ECF No. 9 at ¶¶ 5.8—5.10. Indeed, the FAC
19 contains a screenshot of the text message, but the surrounding text
20 messaging conversation is redacted. When questioned who sent him
the allegedly offending text message, Plaintiff swore under oath that
he was "uncertain", that he was "uncertain" how they met, that he was
"uncertain" as to their relationship, and was he was "uncertain" if
Plaintiff provided his phone number. ECF No. 108-4. Class counsel
electronically signed the answers to discovery as well. *Id.* Only after
Defendant investigated further and filed its motion to stay with
supporting allegations that the lawsuit was manufactured, did Plaintiff

ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION ~ 2

¹⁰ See, ¶ 52 at p. 13 of original DEC. OF KIRK D. MILLER. [N.B., Although Robinhood is technically correct about the procedural irregularities (e.g., overlength, supplemental declaration being untimely, making legal arguments, and adding new facts the day before its reply was due), the Court is not granting Robinhood's motion to strike.].
ORDER ON FEES Page 4 of 9

1 amend his answer to reveal that John Cameron sent the allegedly
2 offending text message, that he met John Cameron in early January
3 2019 at a wine bar and restaurant that Plaintiff owned in downtown
4 Spokane, that Plaintiff met John Cameron several times during regular
5 business hours at his wine bar, that Plaintiff also played fantasy role-
playing games and card games with John Cameron on several
occasions between March 2019 and August 2019, that he has
socialized with him thereafter, and that Plaintiff provided his phone
number to John Cameron. *See* ECF No. 119-1.

6 ECF No. 218 at 2-3. In denying continuing jurisdiction under CAFA, this Court
7 expressed that these activities make the initiation of this action frivolous from the
8 start. *Id.* at 7. Moreover, the CAFA suit was essentially moot at this point. *Id.*

9 Further clarification is denied.

10 Non-Party Nathan Budke does not have standing to file a motion for
11 clarification or modification. *See Citibank Int'l v. Collier-Tratno, Inc.*, 809 F.2d
12 1438 (9th Cir. 1987) (non-party “lacked standing to make the motion and,
13 therefore, also lacks standing to maintain this appeal.”). Accordingly, his motion
14 is stricken.

In reviewing the billing entries, the Court did not include any duplicative work or unsuccessful efforts.¹¹ It agrees with Robinhood that it is not reasonable to bill a partner with 12 years of experience (Ms. Rainwater) at the same rate as a 5-year associate (Mr. Franz). However, it agrees with Gordon and Judge Rice that the hourly fees sought are too high to be reasonable. Anticipating this possibility, Robinhood encouraged a 25% discount (\$936,646.96) to the fee award. Gordon argued that the most this Court should award was significantly less: hourly rates that Judge Rice determined as reasonable on a motion (\$698,802) and asserted that anything more than \$250,000 was unreasonable.¹² None of these are appropriate.

Seattle billing rates are significantly higher than Spokane; *i.e.*, what may be reasonable in a large metropolitan area with higher costs may not be reasonable somewhere else.¹³ Indeed, part of Robinhood’s submission supporting its fee request included counsel for Gordon’s request

¹¹ *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151 (1993); *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 538 (2007); *Berryman v. Metcalf*, 177 Wn. App. 644 (2013); *see also, Welch v. Met. Life Ins. Co.*, 480 F.3d 942, 950 (9th Cir. 2007)(quotation omitted)(“recycled submissions”).

¹² PLAINTIFF’S RESPONSE AND OBJECTIONS TO DEFENDANT’S FEE REQUEST, at p. 11, ll. 3-11, p. 12, ll. 17-19.

¹³ *See, e.g., Gonzales v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013)(considering prevailing market rates in relevant community).

for fees as a part of settlement in King County. In that case, Gordon's attorneys unsuccessfully asked for a significantly higher hourly rate based on King County's higher rates.

While Seattle billing rates are much higher than those in Spokane, the experience, skill, and reputation of the attorneys requesting the fees must be considered as well. Ms. Drake,¹⁴ Gordon's co-counsel prior to withdrawing as set forth in declarations filed in federal court, was nationally known being a very experienced "all-star" in consumer litigation. Accordingly, Robinhood similarly sought highly experienced attorneys who specialized in class action CEMA litigation to defend itself against putative statewide class action that sought damages in excess of \$5 million dollars.

In addition to the billing entries, the Court also reviewed in detail the docket text from the federal litigation, which Robinhood submitted to support its fee request.¹⁵ As noted in the color-coded summary attached as App. B, there was significant litigation activity during the nearly two years after this case was removed to federal court. To prevent disclosure of the misleading information, which Plaintiffs answered under oath and in violation of court rules, there was significant briefing, motions and a number of hearings involving five additional lawyers, including those who represented third-parties (plaintiff counsel's relatives and a friend) seeking to quash subpoenas. As noted in Judge Rice's decision referenced earlier, the activities surrounding the initiation of Gordon's suit made the suit frivolous from the start. In short, there were many heavily contested motions over the course the two years the parties were litigating. Time related to the few motions that were stipulated were not included in the billing submissions.

Gordon also argues that the amount in dispute should factor into the analysis. This argument is misleading. Prior to decertification in federal court, plaintiffs asserted the amount in controversy was \$5 million dollars in damages for the putative class. However, after decertification the amount in controversy was less than \$10,000.¹⁶

This Court has independently reviewed the 109 pages of single-spaced, small font billing entries submitted to support Robinhood's fee award. There were several entries where there no charges assessed or sought. The time entries involving Robinhood's unsuccessful FRCP 12(b)(6)

¹⁴ Ms. Drake, a nationally recognized and successful attorney who graduated with honors from Harvard law school, and had 20 years of experience specializing in class action consumer litigation.

¹⁵ Ex. 42 to DEC. OF KENNETH PAYSON.

¹⁶ *Id.*, at p. 5, ll. 7-12.

motion to dismiss and motion for reconsideration for reconsideration of the same were excluded.

III. Order

It is reasonable to discount Robinhood's fee request of \$1,248,862.62 discounted by 33% (\$836,738) to reflect reasonable rates for Spokane.

Robinhood had the burden to support its fee request. The fee entries contained countless redactions. Those related to attorney-client communications were not included in any further discount. However, many provided an insufficient basis from which to determine whether the time spent on the one-word verb that wasn't redacted was reasonable. For those entries, Robinhood did not meet its burden. They could have provided an unredacted version for in camera review, but did not. The total amount of entries that provided insufficient basis from which to determine reasonableness (\$109,141). This figure, however, was the sum of entries using the undiscounted fees. Accordingly, the value of the excluded fees should also be subject to a 33% reduction (\$73,124).

While Robinhood was largely successful in most of the litigation, a reasonable fee award would exclude entries involved unsuccessful efforts related to the 12(b)(6) motion and reconsideration of the denial (\$21,225). Again, this total was based on the undiscounted fees and should be subject to the same 33% reduction (\$14,221).

Combining the discounted reductions (\$87,345), a total fee award of \$749,393 is reasonable under the circumstances present in this case.

DATED: February 3, 2023

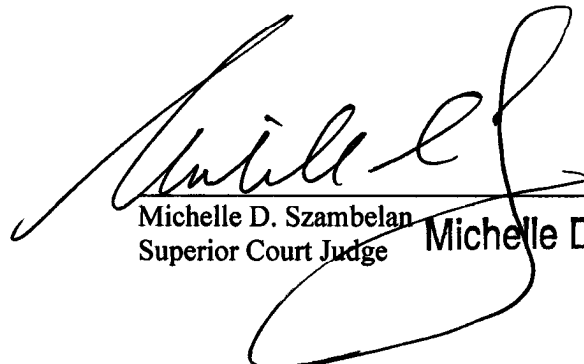

Michelle D. Szambelan
Superior Court Judge Michelle D. Szambelan

Exhibit 5

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TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

FILED

AUG 12 2022

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

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

ISAAC GORDON,

Plaintiff,

v.

ROBINHOOD FINANCIAL LLC,

Defendant.

No. 19-2-04574-32

DECLARATION OF KENNETH
E. PAYSON IN SUPPORT OF
ROBINHOOD FINANCIAL
LLC'S FEE REQUEST AND
SUBSTANTIATION

I, Kenneth E. Payson, declare as follows:

1. **Identity of Declarant.** I am an attorney at the law firm Davis Wright Tremaine LLP ("DWT"), and am counsel of record for Defendant Robinhood Financial LLC ("Robinhood") in this action. I make this declaration based on personal knowledge or information provided to me by DWT personnel working under my supervision.

2. **Identities of Attorneys Who Performed Legal Work for Robinhood in This Matter.** The primary attorneys who performed the legal work for which Robinhood seeks to recover fees in its Motion for Attorneys' Fees (Dkts. 34, 35) are myself, Lauren B. Rainwater, and Eric A. Franz. The primary paralegals who performed legal work are Sarah Hebard and Ericka Mitterdorfer. Several other attorneys, paralegals, and staff performed additional work on discrete projects as staffing needs required.

1 3. I am a partner in the Seattle office of DWT and have served as lead counsel for
2 Robinhood in this action. DWT is a full-service firm with approximately 620 lawyers in ten
3 offices throughout the United States. My practice at DWT focuses on class action litigation,
4 including defending so-called “blast text” and robocall class actions involving claims under the
5 federal Telephone Consumer Protection Act and similar state laws such as Washington’s
6 Commercial Electronic Mail Act. I co-chair the firm’s Class Action Defense Group. I have a
7 nationwide practice and have appeared in more than 20 different jurisdictions across the country.
8 I have been named one of the “Best Lawyers in America” in Commercial Litigation by Best
9 Lawyers from 2013 to the present. I am a 1996 graduate of the University of California,
10 Berkeley School of Law and previously served as an adjunct law professor at Seattle University
11 School of Law and law clerk to former Chief Justice Barbara Durham of the Washington State
12 Supreme Court. I believe the work I performed on this case was both reasonable and necessary.
13 My work on this case was billed to Robinhood at the hourly rate of \$745.00 per hour in 2019;
14 \$775.00 in 2020; \$805.00 in 2021; and \$855.00 in 2022. These rates are the same as or similar
15 to those charged to other clients of the firm during the same time periods. Based on my
16 experience, these rates are similar to rates regularly charged by lawyers with similar credentials,
17 training, experience, and seniority at comparable firms performing comparable work during the
18 same time periods.

19 4. Lauren B. Rainwater is a partner at the Seattle office of DWT, with extensive
20 experience in class action litigation. She is a 2010 graduate of Cornell Law School and
21 previously served as a law clerk for Judge John C. Coughenour in the United States District
22 Court for the Western District of Washington. I believe the work Ms. Rainwater performed on
23 this case was both reasonable and necessary. Her work on this case was billed to Robinhood at
24 the hourly rate of \$495.00 per hour in 2019; \$525.00 in 2020; \$560.00 in 2021; and \$635.00 in
25 2022. These rates are the same as or similar to those charged to other clients of the firm during
26 these time periods. Based on my experience, these rates are similar to rates regularly charged by

1 lawyers with similar credentials, training, experience, and seniority at comparable firms
2 performing comparable work during the same time periods.

3 5. Eric A. Franz is an associate in the litigation group at DWT, with substantial
4 experience in class action litigation. He is a 2017 graduate of the University of Washington
5 School of Law and previously served as a law clerk for Judge James L. Robart in the United
6 States District Court for the Western District of Washington. I believe the work Mr. Franz
7 performed on this case was both reasonable and necessary. His work on this case was billed to
8 Robinhood at the hourly rate of \$420.00 in 2020; \$465.00 in 2021; and \$535.00 in 2022. These
9 rates are the same as or similar to those charged to other clients of the firm during these time
10 periods. Based on my experience, these rates are similar to rates regularly charged by lawyers
11 with similar credentials, training, experience, and seniority at comparable firms performing
12 comparable work during the same time periods.

13 6. The additional attorneys who performed legal work on this case for which
14 Robinhood was billed are Sarah Caruana (14.7 hours billed, \$510.00 per hour); Bruce E.H.
15 Johnson (0.2 hours billed, \$845.00 per hour); Sara Fairchild (0.6 hours billed, \$450.00 per hour);
16 Rachel Herd (3.9 hours billed, \$455.00 per hour); Rose McCarty (5.6 hours billed, \$425.00 per
17 hour); Jordan Harris (35.5 hours billed, \$395.00 per hour); Ben R. Robbins (85.9 hours billed,
18 \$375.00 per hour); Lauren Dorsett (3.9 hours billed, \$490.00 per hour); and Alicia LeDuc (55.3
19 hours billed, \$400.00 per hour). I believe the work these attorneys performed on this case was
20 both reasonable and necessary. These rates are the same as or similar to those charged to other
21 clients of the firm during these time periods. Based on my experience, these attorneys' rates
22 were similar to rates regularly charged by lawyers with similar credentials, training, experience,
23 and seniority at comparable firms performing comparable work during the time periods these
24 attorneys performed legal work on this case. Attached as **Exhibits 1-12** are copies of the
25 resumes of each of the attorneys discussed in paragraphs 3-6 above.

26 7. ***Plaintiff's Counsel and Their Comparable Billing Rates.*** Plaintiff's counsel
27 Kirk D. Miller had identified in filings with this Court that his firm is located in Spokane,

1 Washington. In a CEMA-based class action in which Plaintiff's counsel Kirk D. Miller
2 represented plaintiffs, he declared that "[a] reasonable hourly rate for my class action contingent
3 fee cases in western Washington is \$625.00 per hour" for work completed in 2020 through 2022.
4 *Hillman v. Evergreen Market (Auburn), Inc.*, No. 20-2-09385-8 SEA, Dkt. 38 (King Cnty. Sup.
5 Ct. Apr. 25, 2022) (Ex. 14 at 74 ¶ 24). In that matter, Mr. Miller also asserted that Brian
6 Cameron's hourly rate was \$550.00 per hour for work completed in 2020 and 2021. *See id.* at
7 81. Mr. Miller and Mr. Cameron sought a total of \$300,000 in fees, with a lodestar of
8 \$112,609.17, for a matter that settled before the parties completed any discovery and before any
9 motion practice occurred. *See id.* Dkts. 37 & 40 (Exs. 13 & 16). Attached as **Exhibits 13–17** are
10 true and correct copies of filings from that matter referenced in this paragraph, with relevant
11 portions highlighted.

12 8. In two other class actions in which Plaintiff's counsel Kirk D. Miller represented
13 plaintiffs, Mr. Miller sought fees at an hourly rate of \$525.00 in 2021. *Morris v. FPI Mgmt.,*
14 *Inc.*, No. 2:19-cv-0128-TOR, Dkt. 46 (E.D. Wash. Nov. 12, 2021) (Ex. 19 at 146 ¶ 23); *see also*
15 *id.* Ex. 18 at 124 (seeking a combined \$400,000 in attorneys' fees in a CEMA-based class
16 settlement); *Daley v. Greystar Real Estate Partners, LLC*, No. 2:18-cv-00381-SMJ, Dkt. 137
17 (E.D. Wash. Aug. 28, 2021) (Ex. 20 at 152) (seeking a total \$625,000 in attorneys' fees in a class
18 settlement). In the *Daley* matter, Plaintiff's counsel Brian Cameron sought fees at an hourly rate
19 of \$425.00 per hour. *Id.* Ex. 21 at 171 ¶¶ 11–12. Mr. Miller is a 2007 graduate of the Gonzaga
20 School of Law. Ex. 19 at 142 ¶ 4. According to his LinkedIn profile, Mr. Cameron is a 2011
21 graduate of the Gonzaga School of Law. Attached as **Exhibits 18–22** are true and correct copies
22 of the filings referenced in this paragraph and a copy of Mr. Cameron's LinkedIn profile, with
23 relevant portions highlighted. Exhibits 18 and 20 have been excerpted to reflect only relevant
24 portions of those documents.

25 9. Thus, Mr. Miller's and Mr. Cameron's years of practice and hourly rates are
26 comparable with those of Ms. Rainwater.

1 10. Plaintiff's former lead counsel for part of the Eastern District of Washington
2 proceedings, Eleanor Michelle Drake, had identified in filings with that court that her office is
3 located in Minneapolis, Minnesota. In 2022, Ms. Drake represented plaintiffs in a class action
4 settlement and sought fees at an hourly rate of \$920.00 and argued that this rate (among many
5 others) was "reasonable," had "been approved repeatedly in courts throughout the country," and
6 was "commensurate with rates charged by other attorneys in national class action consumer
7 protection litigation." *Stewart v. LexisNexis Risk Data Retrieval Servs., LLC*, No. 3:20-cv-
8 00903-JAG, Dkt. 76 (E.D. Va. June 9, 2022) (Ex. 23 at 191, 201-02) (seeking a total of \$2.6
9 million in attorneys' fees). Likewise, in 2021, Ms. Drake represented plaintiffs in a class action
10 settlement and sought fees at an hourly rate of \$820.00. *Pang v. Credit Plus, Inc.*, No. 1:20-cv-
11 00122-ELH, Dkt. 55-1 (D. Md. Sept. 21, 2021) (Ex. 24 at 206, 219 & n.6) (seeking a total of
12 \$300,000 in attorneys' fees in class action settlement); *id.* Ex. 25 at 226 (declaration setting forth
13 rates). According to her firm biography, Ms. Drake is a 2001 graduate of Harvard Law School.
14 Attached as **Exhibits 23-26** are true and correct copies of the filings referenced in this paragraph
15 and a copy of Ms. Drake's firm biography, with relevant portions highlighted.

16 11. While I have been practicing law for five more years than Plaintiff's former
17 counsel Ms. Drake, Ms. Drake has sought fees at an hourly rate exceeding mine.

18 12. ***Identities of Paralegals and Other Staff Who Performed Legal Work for***
19 ***Robinhood in This Matter.*** Sarah Hebard was a paralegal at DWT until July 2021, and has
20 extensive experience with class action litigation. She is a 2005 graduate of University of
21 California, Santa Cruz. I believe the work Ms. Hebard performed on this case was both
22 reasonable and necessary. Her work on this case was billed to Robinhood at the hourly rate of
23 \$325.00 in 2020 and \$340.00 in 2021. These rates are the same as or similar to those charged to
24 other clients of the firm during these time periods. Based on my experience, these rates are
25 similar to rates regularly charged by paralegals with similar credentials, training, experience, and
26 seniority at comparable firms performing comparable work during the same time periods.

1 13. Ericka Mitterndorfer is a paralegal at DWT with over 25 years of litigation
2 experience, including extensive experience with class action litigation. She obtained her
3 Certificate in Paralegal Studies at Edmonds Community College in 1996. I believe the work Ms.
4 Mitterndorfer performed on this case was both reasonable and necessary. Her work in 2021 on
5 this case was billed to Robinhood at the hourly rate of \$355.00, and her work in 2022 on this
6 case was billed to Robinhood at the hourly rate of \$380.00. These rates are the same as or
7 similar to those charged to other clients of the firm during these time periods. Based on my
8 experience, this rate is similar to rates regularly charged by paralegals with similar credentials,
9 training, experience, and seniority at comparable firms performing comparable work during the
10 same time periods.

11 14. The additional paralegals who performed legal work on this case for which
12 Robinhood was billed are Stephanie Childs (1.2 hours billed at \$340.00 per hour); Carla
13 Jutamakasame (5.7 hours billed at \$355.00 per hour); Nara Neves (.8 hours billed at \$320.00 per
14 hour and 19.9 hours billed at \$355.00 per hour); Jason A. Schattenkerk (2.6 hours billed at
15 \$255.00 per hour); Nicole Greene (4.5 hours billed at \$380.00 per hour); and Jodi Savitsky (3.4
16 hours billed at \$320.00 per hour). I believe the work these paralegals performed on this case was
17 both reasonable and necessary. These rates are the same as or similar to those charged to other
18 clients of the firm during these time periods. Based on my experience, these rates are similar to
19 rates regularly charged by paralegals with similar credentials, training, experience, and seniority
20 at comparable firms for comparable work during the same time periods.

21 15. The research staff who performed legal work on this case for which Robinhood
22 was billed are Jason J. Callan (0.4 hours billed at \$280.00 per hour, 0.2 hours billed at \$295.00
23 per hour, and 2.4 hours billed at \$310.00 per hour); Jennifer Dollar (4.1 hours billed at \$295.00
24 per hour and 2.8 hours billed at \$310.00 per hour); Erica Hemmen (0.9 hours billed at \$295.00
25 per hour and 0.9 hours billed at \$310.00 per hour); Bret Masterson (2.4 hours billed at \$295.00
26 per hour, 6.3 hours billed at \$310.00 per hour, and 1.1 hours billed at \$330.00 per hour); Stacey
27 Shelton (0.8 hours billed at \$295.00 per hour); Rachel McMillen Pratt (2 hours billed at \$310.00

per hour); and Laurie Daley (2.3 hours billed at \$295.00 per hour and 4 hours billed at \$310.00 per hour). I believe the work these research staff members performed on this case was both reasonable and necessary. These rates are the same as or similar to those charged to other clients of the firm during these time periods. Based on my experience, these rates are similar to rates regularly charged by research staff with similar credentials, training, experience, and seniority at comparable firms for comparable work during the same time periods.

16. My belief that the rates of the attorneys, paralegals, and research staff on this case are reasonable is supported by the concurrently filed Declaration of Brian Fanning, DWT's Director of Client Services and Pricing, who manages the process of setting billing rates for DWT personnel.

17. *Summary of Hours Worked and Amount Billed to Robinhood.* Below is a table summarizing the hours worked and amount billed for the attorneys, paralegals, and research staff who performed work in this case, totaling Robinhood's requested amount of **\$1,248,862.62**.

Name	Position	Hours Billed	Fees Billed
Kenneth E. Payson	Partner, Lead Counsel	619.3	\$477,097.19
Lauren B. Rainwater	Partner	542.6	\$282,775.90
Eric A. Franz	Associate	872.6	\$391,348.50
Additional Attorneys	Partners & Associates	205.6	\$51,490.95
Total Fees for Attorney Work: \$1,202,712.54			
Sarah Hebard	Paralegal	35.6	\$11,667.00
Ericka Mitterndorfer	Paralegal	36.7	\$13,145.91
Additional Paralegals	Paralegals	38.1	\$12,267.17
Total Fees for Paralegal Work: \$37,080.08			

Research Staff	Research Staff	30.6	\$9,070.00
Total Fees for Research Staff Work: \$9,070.00			
<u>TOTAL REQUESTED: \$1,248,862.62</u>			

18. *Summary of Hours Worked and Amount Billed to Robinhood by Phase.* Below is a table that summarizes the hours worked and amount billed in each phase of the case.

Initial Filing in Spokane County Superior Court

Phase Number	Description	Hours Billed	Fees Billed
1.1	Initial Investigation	12.7	\$6,012.50

Removal to Eastern District of Washington

Phase Number	Description	Hours Billed	Fees Billed
2.1	Removal and CAFA jurisdictional briefing	83.1	\$45,878.00
2.15	Motions to dismiss, answer, and initial steps in federal court ¹	252.2	\$90,026.50
2.2	Rule 26(f) conference, joint status report, and initial disclosures	19.2	\$10,152.50
2.3	Class certification opposition	187.4	\$97,301.00
2.4	Pre-stay fact discovery, investigation (including the work that uncovered Plaintiff's misconduct), and potential class notice	465.6	\$265,142.00
2.5	Motion to stay and related filings	106.8	\$55,891.50

¹ Robinhood excluded from this calculation fees incurred preparing a motion to dismiss Robinhood Markets, Inc. for lack of personal jurisdiction, as Robinhood Markets previously recovered the fees incurred on that motion.

1	2.6	Post-stay party discovery and discovery motions	139.8	\$73,270.50
2	2.7	Post-stay third-party discovery and related motions re: Plaintiff's misconduct, including opposing two motions to modify a subpoena and four motions to quash, and preparing and filing four motions to compel	305.5	\$157,726.00
3				
4				
5	2.8	Motions to withdraw and substitute (Plaintiff's counsel and Plaintiff)	69.4	\$38,584.50
6				
7	2.9	Motion to decertify class / disqualify Plaintiff's counsel and motion for reconsideration	232.6	\$129,433.00
8				

9
10 **Remand to Spokane County Superior Court**

11	Phase	Description	Hours Billed	Fees Billed
12	Number			
13	3.1	Motion to stay and related motions and strategy	55.7	\$33,374.38
14				
15	3.2	Motion for CR 60 relief and motion for reconsideration and appeal of same	130.2	\$71,656.74
16				
17	3.3	Response to motion to clarify in federal court	42	\$23,170.50
18				
19	3.4	Motion for attorneys' fees and CR 11 sanctions	283.5	\$151,243.00

20 19. Not included in the amount of requested fees are:

21 a. Hours billed for work Robinhood performed on its successful motion to
22 dismiss Plaintiff's claim against Robinhood Markets, Inc. ("RHM") for lack of personal
23 jurisdiction. The federal court granted in part Robinhood's motion for attorneys' fees and
24 awarded Robinhood \$7,965.00 for those hours. *See Gordon v. Robinhood Financial LLC*, No.
25 19-0390, Dkt. 29 (E.D. Wash. Apr. 1, 2020).

26 b. Hours worked by attorneys, paralegals, and research staff for which DWT
27 did not bill Robinhood. In total, DWT recorded 202.9 hours of billable work on the matter

1 totaling \$95,275.50 in legal services that was not billed to Robinhood. These time entries are
2 included in the detailed accounting of DWT's legal services in this matter attached as **Exhibits**
3 **27-41** but show \$0.00 in the "BilledAmount" column, with the unbilled value showing in the
4 "WorkAmount" column.

5 c. Hours billed for work performed by Robinhood's local counsel at
6 Witherspoon Kelley.

7 20. ***Detailed Accounting of Legal Services Billed to Robinhood.*** Attached as
8 **Exhibits 27-41** are a detailed accounting of the legal services our firm provided to and billed
9 Robinhood for in this case. These exhibits are derived from the contemporaneous records of
10 attorney time maintained by our firm, which have been revised to (a) redact client confidences,
11 work product, and privileged matters, and (b) to remove the above-described hours billed for
12 work Robinhood performed on its successful motion to dismiss Plaintiff's claim against RHM.
13 The time entries on these exhibits accurately summarize the services DWT performed for
14 Robinhood in this case, and all the time in the "Billed Amount" column was billed to Robinhood.
15 The exhibits have further been broken down into subparts based on the phases referenced in
16 Paragraph 18, with the total fees billed to Robinhood for each phase included at the bottom of the
17 "BilledAmount" column.

18 21. ***Discussion of the Substantial Amount of Work Performed in This Case.*** The
19 time DWT's attorneys, paralegals, and staff spent on this case was justified by the nature of the
20 claim; the complex factual, legal, and procedural issues involved; and the result obtained. This is
21 particularly so where much of the work my firm undertook in this case was necessary to
22 understand, expose, and correct the litigation misconduct that this Court and the federal district
23 court found that Plaintiff and his counsel committed.

24 22. Plaintiff's claim was novel in that at the time it was filed, few if any plaintiffs had
25 filed CEMA cases based on refer-a-friend text messages sent not by a defendant but by a
26 defendant's nonparty customers. Plaintiff's counsel Kirk D. Miller claims that this legal theory
27 was "developed by my firm and my co-counsel at Cameron Sutherland, PLLC." Dkt. 63 ¶ 11.

1 Given that paucity of case law interpreting CEMA, defending this case during its initial stages
2 required advanced legal research, analysis, and expertise in assessing analogous statutory
3 schemes to navigate successfully and to carefully assess the level of risk of potential liability and
4 financial exposure to Robinhood.

5 23. Robinhood was forced to expend significant time and resources opposing class
6 certification and then defending against the claims of a certified class of several hundred
7 thousand Washington residents before Plaintiff's and his counsel's misconduct came to light.

8 24. Discovery throughout this case was complex. After the class was certified, early
9 discovery to Robinhood centered around the detailed and highly technical process through which
10 certain Robinhood in-App activity was and is recorded and stored. Plaintiff's discovery requests
11 sought massive quantities of highly technical data, records from Robinhood's databases and
12 systems, and a deposition of one of Robinhood's data scientists. Significant time was required to
13 interface with Robinhood's data scientists, engineers, and other employees to prepare and
14 provide accurate discovery responses and testimony about Robinhood's records, databases, and
15 systems. Significant time was also required to negotiate and pull a list of Robinhood customers
16 that Plaintiff sought to present to the Court as a class list for purposes of class notice, and to
17 evaluate Plaintiff's class notice proposal.

18 25. Just before class notice was to be sent, on April 29, 2021, after a year and a half
19 of litigation, Plaintiff served discovery responses that claimed he was "uncertain" as to the
20 identity of those who sent him Robinhood referral text messages but included the phone number
21 and the Robinhood referral code included in those text messages. This information was not
22 previously available to Robinhood. Robinhood's counsel's subsequent investigation—including
23 review and analysis of several sets of detailed Robinhood records—uncovered in less than two
24 weeks that (a) Plaintiff's counsel's brother and son's friend sent the text messages at issue;
25 (b) that Plaintiff's counsel Brian Cameron sent Robinhood referral text messages to his brother
26 John Cameron, through which John Cameron set up a Robinhood account; (c) that John Cameron
27 in turn sent to Plaintiff one of the referral text messages, which in fact was the text message

1 Plaintiff identified in his Complaint; (d) that Brian Cameron sent a referral link to his son, Ewan
2 Cameron; (e) that Ewan Cameron opened a Robinhood account and, the next day, initiated a
3 referral text to Gordon; and (f) that the other text message Gordon identified was received from
4 Nathan Budke, Ewan Cameron's high school classmate and friend on social media, and a repeat
5 client of Brian Cameron in spurious CEMA lawsuits. Robinhood's counsel then filed a
6 successful motion to stay class discovery and class notice on the basis that Plaintiff's claim was
7 manufactured by Plaintiff and his counsel. This investigation and motions practice was the first
8 step in decertifying the class, and saved Robinhood countless tens of thousands of dollars in
9 additional fees it would have incurred in continued defense of Plaintiff's certified class action.

10 26. Robinhood's counsel then conducted discovery from Plaintiff and from the third
11 parties involved in manufacturing Plaintiff's claim, including subpoenas to Nathan Budke, Ewan
12 Cameron, and John Cameron. This discovery was vigorously contested resulting in extensive
13 motions practice, including multiple motions to compel and responses to motions to quash.
14 While these discovery motions were pending, Robinhood's counsel prepared a successful motion
15 to decertify the class.

16 27. Robinhood's counsel then navigated difficult procedural questions when the
17 federal court remanded this case *sua sponte* to this Court, and Plaintiff and his counsel quickly
18 obtained a dismissal without prejudice without notice to Robinhood. After the federal court
19 remanded to this Court, Robinhood filed a motion to stay to prevent Plaintiff from voluntarily
20 dismissing the case. While the motion to stay was pending, Plaintiff voluntarily dismissed the
21 case to avoid a judgment on the merits and other adverse consequences—a mechanism that
22 Plaintiff's counsel previously routinely utilized whenever similar alleged misconduct was
23 discovered in other cases. Robinhood was then forced to file a motion for relief from a judgment
24 to obtain a dismissal with prejudice. Addressing these issues required significant additional
25 briefing, including a motion for reconsideration and a motion for clarification filed by Plaintiff
26 with the federal court.


1 28. The work described above resulted in findings by both the federal court and this
2 Court that Plaintiff's claim was frivolous from the start and dismissal of Plaintiff's claims with
3 prejudice, an unqualified success for Robinhood, particularly given the risk to Robinhood that as
4 alleged—if Plaintiff's misconduct were not uncovered—Robinhood could have faced millions of
5 dollars in potential exposure.

6 29. The foregoing is but a partial summary of the work DWT performed in this
7 matter. Attached as **Exhibit 42** is a true and correct copy of the 229 docket entries from the
8 federal district court proceedings in this matter. And the Court is well aware of the 87 docket
9 entries in these state court proceeding.

10 30. *The Court of Appeals' July 29, 2022 Order.* On July 29, 2022, the Court of
11 Appeals confirmed that it has stayed consideration of Plaintiff's appeal pending this Court's
12 ruling on the amount of attorneys' fees owed by Plaintiff and his counsel. Attached as
13 **Exhibit 43** is a true and correct copy of that order with relevant portions highlighted.

14 I declare under penalty of perjury that the foregoing is true and correct to the best of my
15 knowledge.

16 Executed on this 12th day of August, 2022, in Seattle, Washington.

17
18 

19
20 _____
Kenneth E. Payson

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under penalty of perjury under the laws of the state of
3 Washington, that on the 12th day of August, 2022, the foregoing was delivered to the following
4 persons in the manner indicated:

5 Kirk D. Miller
6 Kirk D. Miller, PS
7 421 W. Riverside Ave., Ste. 660
8 Spokane, WA 99201
9 ***Counsel for Plaintiff***

- Hand Delivery
- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile Transmission
- Via Electronic Mail:
kmiller@millerlawspokane.com

10 Brian G. Cameron
11 Shayne Sutherland
12 Cameron Sutherland, PLLC
13 421 W. Riverside Ave., Ste. 660
14 Spokane, WA 99201
15 ***Co-Counsel for Plaintiff***

- Hand Delivery
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- Facsimile Transmission
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bcameron@cameronsutherland.com
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16 Philip A. Talmadge
17 Talmadge Kirkpatrick
18 2775 Harbor Avenue SW
19 Third Floor, Suite C
20 Seattle, WA 98126
21 ***Counsel for Plaintiff and***
22 ***Plaintiff's Counsel***

- Hand Delivery
- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile Transmission
- Via Electronic Mail:
phil@tal-fitzlaw.com

23 **WITHERSPOON · KELLEY**


24 
25 _____
26 Alicia Asplint, Legal Assistant

Exhibit 6

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

RUSSELL ELLIS, JR., GABRIEL GOLDEN,
HAMANI NOWLEN, DAMIEN TAYLOR, and
KARINN YOUNG,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON POLICE
DEPARTMENT, A DIVISION OF THE
UNIVERSITY OF WASHINGTON, AN AGENCY
OF THE STATE OF WASHINGTON,

Defendant.

Case No. 21-2-11501-9 SEA

**ORDER GRANTING PLAINTIFFS’ MOTION
FOR ATTORNEYS’ FEES AND COSTS**

THIS MATTER came before the Court on Plaintiffs’ Motion for Attorneys’ Fees and Costs.
Prior to ruling, the Court considered the following:

1. Plaintiffs’ Motion for Attorneys’ Fees and Costs;
2. Declaration of Toby J. Marshall in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs;
3. Declaration of Jeffrey D. Boyd in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs;
4. Declaration of Katherine Chamberlain in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs;
5. Declaration of Daniel F. Johnson in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs;

1 Defendant and its counsel capably and vigorously defended the cases. Defendant filed
2 over 50 pre-trial motions, including motions for judgment on the pleadings, motions for partial
3 summary judgment, and numerous discovery motions and motions in limine. Defendant took
4 30 depositions and served twelve sets of interrogatories and fifteen sets of requests for
5 production. Plaintiffs took 33 depositions, served four sets of interrogatories, six sets of
6 requests for production of documents, and one set of requests for admission to Defendant.
7 Plaintiffs filed multiple discovery motions to compel Defendant's production of important
8 documents and other evidence. Plaintiffs also sought discovery through other means, including
9 by serving subpoenas on several of Defendant's current employees and numerous third parties.

10 III. Risk at Outset of Litigation

11 This case involved a significant degree of risk to Plaintiffs because of Defendant's
12 identity and public reputation, the inherent risk in employment litigation and cases seeking
13 emotional distress damages, and the nature of cases raising issues of racism, particularly in the
14 context of policing. These types of cases often turn largely on witness testimony, as this case
15 did, and Plaintiffs could not know at the outset how that evidence, and other evidence solely in
16 Defendant's possession, would impact their claims. Plaintiffs also asserted a claim for
17 retaliatory hostile work environment, which is supported by precedent but not yet sufficiently
18 settled to appear in the model jury instructions.

19 Plaintiffs' counsel undertook contingent fee representation under these circumstances.
20 The litigation required Plaintiffs' counsel to invest over fourteen thousand hours of attorney
21 and staff time and advance more than \$600,000 in costs, with the risk of no recovery at all.

22 IV. Trial and Judgment

23 The six-week jury trial began on October 23, 2023, and concluded on December 14,
24 2023. The parties collectively identified 137 fact witnesses in their witness disclosures, and
25 ultimately called approximately 60 witnesses at trial, including 6 expert witnesses.

26 On December 21, 2023, the jury returned a verdict for Plaintiffs on their harassment
27 claims and for Plaintiff Ellis on his retaliatory hostile work environment claim. The jury also

1 found that Defendant failed to prove its mitigation defense as to any Plaintiff. The jury awarded
2 each Plaintiff individual damages for past economic loss, future economic loss, and emotional
3 harm, collectively totaling \$16,662,511.

4 On January 10, 2024, the Court entered judgment on the verdicts.

5 **V. Plaintiffs Are Entitled to Reasonable Attorneys' Fees**

6 Plaintiffs who prevail on WLAD claims are entitled to recover their costs of suit,
7 including reasonable attorneys' fees. RCW 49.60.030(2); *Broyles v. Thurston County*, 147 Wn.
8 App. 409, 446, 195 P.3d 985 (2008). Attorneys' fee awards are a critical component of WLAD
9 because "discrimination is not just a private injury which may be compensated by money
10 damages; the Legislature has declared that discrimination is 'a matter of state concern, that ...
11 threatens not only the rights and proper privileges of its inhabitants but menaces the
12 institutions and foundation of a free democratic state.'" *Martinez v. City of Tacoma*, 81 Wn.
13 App. 228, 241–42, 914 P.2d 86 (1996) (alteration in original) (quoting RCW 49.60.010).

14 As the Washington Supreme Court has explained, "the Legislature's goal in enacting the
15 fee shifting statute was 'to enable vigorous enforcement of modern civil rights litigation and to
16 make it financially feasible for individuals to litigate civil rights violations.'" *Id.* at 235 (quoting
17 *Hume v. American Disposal Co.*, 124 Wn.2d 656, 674, 880 P.2d 988 (1994)). Thus, in bringing an
18 employment discrimination action, the prevailing party acts as a "private attorney general by
19 enforcing a public policy of substantial importance." *Allison v. Seattle Housing Authority*, 118
20 Wn.2d 79, 86, 821 P.2d 34 (1991).

21 Washington courts use the lodestar method to calculate a reasonable attorneys' fee for
22 successful WLAD plaintiffs. *See Broyles*, 147 Wn. App. at 452. The lodestar is calculated as "the
23 total number of hours reasonably expended" on the litigation "multiplied by the reasonable
24 hourly rate of compensation." *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675
25 P.2d 193 (1983).

26 Under Washington law, the prevailing party's attorney should be paid on a basis
27 equivalent to attorneys being paid by fee-paying clients, which includes compensation "for all

1 Mr. Marshall, who has 21 years of experience and served as lead counsel, billed at an
2 hourly rate of \$525 to \$575 over the course of the litigation. He is a founding member of the
3 Terrell Marshall firm who represents clients in a wide variety of class actions and other complex
4 litigation, including wage and hour, product defect, civil rights, and consumer protection cases.
5 He has served as co-lead counsel in numerous class and collective actions and has tried and
6 won individual and class cases in state and federal court. He has also argued several times
7 before the Washington Supreme Court, the Washington Court of Appeals, the Ninth Circuit
8 Court of Appeals, and the United States Court of Appeals for the Federal Circuit.

9 Ms. Terrell, who is also a founding member of Terrell Marshall with over thirty years of
10 experience in complex litigation, including the prosecution of consumer protection, defective
11 product, and wage and hour class actions, billed at an hourly rate of \$600. She has served as co-
12 lead counsel on multi-state, multi-district, and nationwide class actions, resulting in hundreds
13 of millions of dollars in settlements for consumers and workers, and represents individual
14 employees with wage and hour, workplace exposure, and discrimination claims. Ms. Terrell has
15 tried and won cases in state and federal courts and argued before the Washington State Court
16 of Appeals and the Washington State Supreme Court as well as several federal circuit level
17 courts. She served as the President of the Public Justice Foundation Board of Directors from July
18 2019 to July 2020, serves on the Equal Justice Works' Board of Counselors, and is Chair of both
19 the Northwest Consumer Law Center and the Washington Employment Lawyers Association.

20 Mr. Tack-Hooper, who has 14 years of experience in litigating class actions and other
21 complex litigation to protect employees, consumers, and people whose civil rights have been
22 violated, billed at a rate of \$400 to \$500 over the course of the litigation. He has been co-lead
23 counsel in successful litigation across the country in state and federal courts, including cases
24 involving discrimination on the basis of disability, religion, speech, and race. Before joining
25 Terrell Marshall, Mr. Tack-Hooper was the Legal Director of the American Civil Liberties Union
26 of Delaware, where he practiced civil rights law. He has also served as an adjunct professor of
27 law at the University of Pennsylvania Law School, where he taught legal writing.

1 Ms. Nordby has three years of experience as an attorney and billed at an hourly rate of
2 \$325. She concentrates her practice on complex civil litigation, including consumer protection
3 and wage and hour class actions. During law school, Ms. Nordby served as Executive Managing
4 Editor of the Washington Journal of Environmental Law and Policy and received the WSBA
5 Labor & Employment Section 2019 Summer Grant for her public service work and commitment
6 to labor and employment issues. Before joining the firm as an attorney, Ms. Nordby was a
7 senior paralegal at Terrell Marshall from the time the firm opened in 2008 until she started law
8 school in 2018.

9 Ms. Boschen is a senior paralegal at Terrell Marshall who billed at a rate of \$175 to \$195
10 over the course of the litigation. She has worked at the firm since its inception in 2008 and is
11 qualified to perform substantive legal work based on her training and experience. Ms. Boschen
12 was also an integral part of the team that investigated and prosecuted the *Wilbur v. City of*
13 *Mount Vernon* litigation, performing indispensable work throughout the case and at trial. She
14 was also the paralegal in *Lummi Nation v. Cooke Aquaculture Pacific, LLC*, King County Case No.
15 20-2-12869-4 SEA, which was tried via Zoom over three weeks in May and June of 2022.

16 Mr. Boyd, who is a founding member of his firm with 42 years of experience advocating
17 for the rights of clients in a wide variety of claims including those against negligent vehicle
18 operators, insurance companies for casualty and coverage disputes in cases involving wrongful
19 death, traumatic brain injuries, and legal malpractice, billed at a rate of \$600. Mr. Boyd has
20 participated in more than 100 civil trials and arbitrations in 48 state and federal jurisdictions in
21 Ohio and Washington. He has also served as a mediator and as an arbitrator on countless cases
22 over the past forty-one years. In addition to his private legal practice, Mr. Boyd has an active
23 trial consulting business, Boyd Trial Consulting PLLC, that conducts interactive focus groups and
24 mock trials, prepares witnesses, creates demonstrative exhibits, and assists with jury selection.
25 He has been selected by the American Association for Justice on many occasions to conduct
26 interactive focus groups as a faculty member of their Case Plus program for plaintiff's lawyers
27 across the country.

1 Ms. Nelson, who is also a founding member of Nelson Boyd with 31 years of experience,
2 billed at a rate of \$600. Ms. Nelson concentrates her practice on serious personal injury,
3 complex insurance coverage, insurance bad faith litigation, long term disability insurance,
4 excess and personal counsel for underinsureds, complex litigation, and legal malpractice. She
5 served as President of the Washington State Trial Lawyers Association (now Washington
6 Association for Justice) from 2006 to 2007. Ms. Nelson has participated as counsel of record in
7 multiple class actions, including advocating for multiple Americans with Disability Act claims.
8 She is also a partner in Boyd Trial Consulting PLLC and a frequent lecturer and author on a
9 variety of legal topics.

10 These hourly rates and those of other attorneys and staff members set forth in Mr.
11 Marshall's and Mr. Boyd's declarations are within the range of hourly rates charged by
12 attorneys and staff members of comparable experience in the local market for employment
13 discrimination and other civil litigation. Several highly experienced outside lawyers with
14 substantial experience litigating similar cases in this market attested that Plaintiffs' counsel's
15 rates are reasonable and consistent with the local market. See Declarations of Katherine
16 Chamberlain, Daniel F. Johnson, and Craig Sims.

17 VII. Hours

18 To establish the number of hours reasonably worked, courts look to the amount of
19 hours counsel billed during the litigation and "generally defer to the 'winning lawyer's
20 professional judgment as to how much time he was required to spend on the case.'" *Costa v.*
21 *Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135–36 (9th Cir. 2012) (quoting *Moreno v. City of*
22 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Courts recognize that in contingency cases
23 counsel have little incentive to work unnecessary hours because "the payoff is too uncertain."
24 *Id.* at 1136 (quoting *Moreno*, 534 F.3d at 1111-12).

25 To support the requested lodestar, a plaintiff's attorney must provide "reasonable
26 documentation of the work performed." *Bowers*, 100 Wn.2d at 597; *Wash. State Phys. Ins.*
27 *Exch. and Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 335, 858 P.2d 1054 (1993) ("[a]ttorneys seeking

1 fees must provide reasonable documentation of work performed to calculate the number of
2 hours”). The “documentation need not be exhaustive or in minute detail, but [it] must inform
3 the court” of the number of hours worked, the type of work performed, and the category of
4 attorney who performed the work (i.e., senior partner, associate, etc.)” *Bowers*, 100 Wn.2d at
5 597; *see also Miller v. Kenny*, 180 Wn. App. 772, 821, 325 P.3d 278 (2014) (affirming lodestar
6 calculated based on more than 3,229 hours of work calculated by attorney’s post-judgment
7 review of file and docket and estimates of time related to each item for each timekeeper,
8 rather than contemporaneous time records); *accord Fox v. Vice*, 563 U.S. 826, 838 (2011) (in
9 awarding fees to successful civil rights plaintiffs, the “essential goal” is justice, not “auditing
10 perfection”).

11 Plaintiffs’ counsel provided the Court with detailed time records, attached as Exhibit 1
12 to Mr. Marshall’s declaration, that satisfy the “reasonable documentation” requirement.
13 Counsel’s time is recorded in six-minute increments, identifies the attorney or staff person who
14 performed each task, lists the date on which the work was performed, and provides a narrative
15 description of what was done.

16 Plaintiffs’ counsel seek compensation for the 15,178.1 hours they devoted to litigating
17 this case through December 21, 2023 (14,404.40 for Terrell Marshall Law Group PLLC and 773.7
18 for Nelson Boyd PLCC). Plaintiffs’ counsel eliminated time that was arguably duplicative,
19 inefficient, or clerical; omitted time expended by attorneys and staff members who worked
20 fewer than 50 hours on the case; reduced by 20 percent all time spent by law clerks on the
21 matter; and applied an additional 5% reduction on the lodestar total after those reductions.

22 The time Plaintiffs’ counsel expended on this case was reasonable. This case was
23 vigorously litigated by the defense, requiring a substantial effort by Plaintiffs’ counsel to
24 ultimately prevail. Litigating the claims of all five Plaintiffs in a single lawsuit increased the
25 complexity in some respects, but Plaintiffs’ counsel took concrete steps to enhance efficiency
26 and avoid duplication of effort by, among other things, using new technology and appropriately
27

1 assigning work. This approach undoubtedly reduced the overall fees and costs compared to
2 proceeding with five separate lawsuits.

3 VIII. Lodestar

4 Applying Plaintiffs' counsel's rates to the hours they reasonably expended on this case,
5 after reductions made by counsel, results in a lodestar of \$5,371,377.38. This calculation is set
6 forth in Mr. Marshall's declaration.

7 IX. Multiplier

8 After the lodestar has been calculated, courts may consider increasing it to reflect
9 additional factors. *Bowers*, 100 Wn.2d at 598. Indeed, "Washington courts have recognized that
10 the prospect of an upward adjustment is an important tool in encouraging litigation. This is
11 particularly true in the context of the WLAD, which 'places a premium on encouraging private
12 enforcement.'" *Wash. State Comm'n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174,
13 221, 293 P.3d 413 (2013) (quoting *Chuong Van Pham v. City of Seattle, Seattle City Light*, 159
14 Wn. 2d 527, 542, 151 P.3d 976 (2007)); *see also id.* at 541 ("[A]ttorneys generally will not take
15 high risk contingency cases, for which they risk no recovery at all for their services, unless they
16 can receive a premium for taking that risk"). Courts therefore frequently award upward
17 adjustments in WLAD cases. *See id.* (1.5 multiplier in WLAD case); *see also Broyles*, 147 Wn.
18 App. at 452-53 (affirming multiplier of 1.5 in WLAD case where the trial court appropriately
19 considered "that this was a unique and complex case requiring a high degree of skill and
20 preparation and that the firm took the case on a contingency basis," and the "representation
21 significantly impacted the ability of the lead lawyers to work on other matters and constituted a
22 significant risk to Plaintiffs' law firm if it did not recover fees"); *Carlson v. Lake Chelan Cmty.*
23 *Hosp.*, 116 Wn. App. 718, 743, 75 P.3d 533 (2003) (affirming 1.5 multiplier in WLAD case where
24 "the case was contingent, [plaintiff's counsel] proceeded at considerable risk, defense counsel
25 granted no concessions, and there was no assurance of recovery"); *Berryman v. Metcalf*, 177
26 Wn. App. 644, 666, 682, 312 P.3d 745 (2013) (noting that most multiplier cases "were brought
27

1 under remedial statutes” and discussing ten WLAD cases, “[s]even ended up with multipliers
2 affirmed”).

3 Courts award “[a]djustments to the lodestar . . . under two broad categories: the
4 contingent nature of success, and the quality of work performed.” *Bowers*, 100 Wn.2d at 598;
5 see also *O’Brien v. Skountrianos DDS MS*, No. 21-2-02851-5, 2023 WL 5322275 (Wash. Super.
6 Ct. June 16, 2023) (awarding 1.5 multiplier where “claims were complex and required a high
7 degree of skill and preparation,” the plaintiff’s counsel “worked on a contingency fee basis for
8 more than three years without pay, taking the risk of no recovery at all,” the “lawsuit was
9 defended vigorously,” the work performed was of “high quality,” and “counsel’s efforts led to
10 an excellent outcome, including a jury verdict, substantial emotional harm damage award and
11 enforcement of important public policies”). Courts “assess the likelihood of success at the
12 outset of the litigation,” which “is necessarily an imprecise calculation and must largely be a
13 matter of the trial court’s discretion.” *Id.* The enhancement is intended “to compensate for the
14 possibility . . . that the litigation would be unsuccessful and that no fee would be obtained.” *Id.*
15 at 598-99.

16 The Court finds that Plaintiffs’ counsel’s lodestar should be adjusted to account for the
17 contingent nature of the case. Because a multiplier is intended to equalize the financial
18 incentive between taking a case on contingency and normal hourly billing, the appropriate
19 multiplier depends on the difference between the likelihood that an hourly billing lawyer
20 collects fees and the likelihood that a contingent fee counsel does so. While even normal hourly
21 fee arrangements carry a small risk of non-collection, there are many different types of risks
22 that arise for lawyers working on contingency. These risks include (1) legal risk: plaintiffs’
23 counsel’s understanding of the law may not be shared by the trial or appellate court; (2) factual
24 risk: plaintiffs’ counsel typically have far less information than the defendant and facts may
25 emerge in the course of the case that foreclose claims or impact damages; (3) trial risk: the
26 outcome of a trial is always uncertain, and the risk is higher in cases where jurors’ biases and
27 pre-existing views may impact their judgment; (4) appellate risk: trial verdicts can be reversed

1 for a wide range of reasons, some of which are outside the control of even highly skilled
2 attorneys; (5) collateral judicial risk: a legal issue in the case may be altered by controlling
3 precedent emerging from an appeal in another matter; (6) legislative risk: the legislature may
4 pass a bill that amends a statute or modifies common law in a way that impacts the plaintiff's
5 claims; (7) client exhaustion risk: because civil litigation is slow and relief uncertain, a plaintiff
6 may accept a settlement offer that does not fully compensate them, a risk that increases with
7 economically vulnerable plaintiffs or those who do not trust they will get a fair hearing from a
8 jury; and (8) solvency risk: even if a case survives all these potential obstacles, plaintiffs' counsel
9 must still collect the judgment.

10 All but the last of these risks was present at the outset of this case, making it high risk
11 even as compared to other contingent fee cases. Defendant challenged the viability of Plaintiffs'
12 retaliatory hostile work environment claim and sought to assert a federal *Faragher-Ellerth*
13 defense. The outcome was also highly unpredictable because Plaintiffs' claims turned largely on
14 testimony of dozens of witnesses and evidence solely in Defendant's possession. Because the
15 litigation concerned Plaintiffs' primary source of income, they were more vulnerable to low
16 settlement offers. The case also centered on racism and policing, topics that can trigger jurors'
17 preconceived notions and implicit or explicit biases. These types of workplace harassment cases
18 are always challenging, and this case was more so because Seattle jurors may have connections
19 to the University or be influenced by the fact that judgments are ultimately paid from the taxes
20 the jurors themselves provide. *See Martinez*, 81 Wn. App. at 242 ("The identity of the
21 defendant made the case both more important to bring and more difficult to win."). And finally,
22 both the WLAD and Washington's Tort Claims Act have been substantively amended many
23 times in the last two decades, creating a legislative risk.

24 Multipliers help ensure an adequate supply of lawyers willing to take risky cases that
25 serve the public interest under these circumstances. *See Chuong Van Pham*, 159 Wn.2d at 541.
26 Plaintiffs' counsel assumed these risks. Two founding partners from each of Plaintiffs' law firms
27 worked on the matter, impacting their ability to develop and pursue other work for their firms.

1 The firms put in thousands of hours of work with no guarantee of compensation, requiring
2 them to finance out-of-pocket the day-to-day operation and overhead of their firms for more
3 than two and a half years. Collectability remains uncertain and further delay is probable given
4 the potential for an appeal.

5 An adjustment to the lodestar is also appropriate because of the high quality of work
6 performed. Plaintiffs' counsel obtained multi-million-dollar verdicts for each of the five
7 Plaintiffs, totaling more than \$16 million. Plaintiffs' counsel also prevailed on motions
8 throughout the course of case, including Defendant's motions to dismiss and motions for
9 judgment on the pleadings, motions for partial summary judgment, and numerous discovery
10 motions. Plaintiffs' counsel achieved these victories over the vigorous efforts of a capable
11 defense team.

12 The Court finds it reasonable to apply a multiplier of 1.2 to Plaintiffs' counsel's lodestar
13 for work leading to the jury verdict on December 21, 2024. The resulting total is \$6,445,652.86.

14 **X. Fees for Litigating Post-Judgment Motions**

15 Plaintiffs' counsel are also entitled to recover their fees for work performed in preparing
16 the motion for attorneys' fees and other post-judgment motions. *See Steele v. Lundgren*, 96
17 Wn. App. 773, 781-82, 982 P.2d 619 (2000) (noting that courts may award fees for time spent
18 on fee petition); *Caterson v. Lynnwood Police Dept.*, No. C04-1571-RSM, 2006 WL 8454656, at
19 *5 (W.D. Wash. Oct. 20, 2006) (plaintiff prevailing on WLAD claim "is entitled to costs and fees
20 for preparation of the fee petition and other post-trial matters"). Plaintiffs' counsel shall
21 supplement their request for fees for litigating post-judgment motions if needed.

22 **XI. Costs**

23 The WLAD permits a prevailing party to recover the costs of litigation. RCW
24 49.60.030(2); *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 573, 740 P.2d 1379 (1987). A plaintiff
25 who prevails under the WLAD is entitled to "liberal recovery of costs," including reasonable
26 expenses incurred for parking, photocopying, computer expenses, depositions, witness and
27 expert fees, supplies, and equipment. *Blair*, 108 Wn.2d at 573. Plaintiffs' litigation costs are

1 detailed in Mr. Marshall and Mr. Boyd's declarations. The Court finds these expenses to be
2 reasonable and awards Plaintiffs \$681,757.29 in costs.

3 **XII. Conclusion and Order**

4 Based on the foregoing, IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Attorneys'
5 Fees and Costs is GRANTED. Defendant is ordered to pay Plaintiffs attorneys' fees of
6 \$6,445,652.86 and costs of \$681,757.29, for a total of \$7,127,410.15. The Court directs
7 Defendant to pay this amount to Plaintiffs' counsel within 15 days of the date of this Order.

8 DATED this 13th day of February, 2024.

9 Electronic signature attached
10 THE HONORABLE WYMAN YIP

11 Presented by:

12 TERRELL MARSHALL LAW GROUP PLLC

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King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-11501-9
Case Title: ELLIS JR ET AL VS UNIVERSITY OF WA POLICE DEPT
Document Title: ORDER RE ATTORNEYS FEES
Signed By: Wyman Yip
Date: February 13, 2024



Judge: Wyman Yip

This document is signed in accordance with the provisions in GR 30.

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