

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

KATHRYN RICHMOND, a married woman as  
to her separate estate,

Plaintiff,

vs.

TERESSA HERNANDEZ, a single woman, and  
JOHN and JANE DOES 1 – 4,

Defendants.

Case No.: 16-2-21723-1 SEA

AMENDED OPPOSITION TO PLAINTIFF'S  
MOTION FOR ATTORNEY'S FEES AND  
COSTS; JUDGMENT ON THE VERDICT;  
AND WRIT OF RESTITUTION

**I. INTRODUCTION**

On November 8, 2016, the jury for the trial held relating to this matter entered a verdict partially against the Defendant. Per the Civil Rules, Plaintiff's counsel submitted a proposed judgment setting forth the specific relief sought. In this proposed judgment, Plaintiff requested \$21,937.50 in attorney's fees.

**II. ARGUMENT**

In submitting a legal billing fee application, the prevailing party is to make certain that "billing judgment" is properly exercised and that a good faith effort to exclude from the submission hours that are excessive, redundant, or otherwise unnecessary. Plaintiff's counsel has not attempted to exercise "billing judgment." Instead, a general "block billing" method was used, providing no specifics as to what tasks demanded the amounts of work time indicated.

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1 Two of the initial considerations in reducing attorney's fees are whether the hours  
2 requested have been satisfactorily documented; and whether the hours have been expended on  
3 activities that were unproductive, unnecessary, or otherwise unreasonable. *See Hensley*, 461 U.S.  
4 at 433-34; *Sorensen v. Mink*, 239 F.3d 1140, 1146-47 (9<sup>th</sup> Cir 2001). Plaintiff's request for  
5 attorney's fees should be reduced for both of these reasons.  
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7 U.S.C. §330(3)(A) provides that:

8 "In determining the amount of reasonable compensation to be awarded, the  
9 court shall consider the nature, the extent and the value of such services,  
10 taking into account all relevant factors, including

11 (a) the time spent on such services; ...

12 (c) whether the services were necessary...or beneficial...toward the  
13 completion of, a case under this title;... [and]

14 (d) whether the services were performed at a reasonable amount of  
15 time commensurate with the complexity, importance, and nature of  
16 the problem, issue or task addressed..."

17 One of the first things noticeable about the invoice submitted is the block billing provided,  
18 which plainly had little thought put into it prior to submittal. According to the lodestar method for  
19 calculating attorney's fees, hours may be withheld from compensation under three circumstances,  
20 two of the reasons being that the fees are "excessive, redundant, or otherwise unnecessary..."; and  
21 because they "are inadequately documented." The American Bar Association has noted that "[F]ee  
22 applicants 'must make every effort to submit time records which specifically allocate the time  
23 spent...' Time records must also 'fully explain' the individual tasks for which the fee applicant is  
24 billing to ensure that the court is not 'at a loss to determine the reasonableness of the task.' The  
25 general rule is that where a court cannot determine the reasonableness of a task, the fee request for  
26



1 that task is deducted from the overall fee request.”<sup>1</sup> Mr. Bittner’s time was inadequately  
2 documented in a way that did not allocate the time spent on specific tasks, ensuring that upon  
3 review of this fee request the court would not be at a loss to determine reasonableness for the time  
4 alleged therein.

5  
6 It is quite clear why I question Mr. Bittner’s billing entry dated 8/31/16 (Bittner Dec.) after  
7 review of the 10 day notice referenced and the lease that the 10 day notice is purported to reflect.  
8 The quality of work performed would have indeed been most likely detrimental (as opposed to  
9 beneficial) had the Defendant been endowed at the time with funding for competent representative  
10 counsel because Mr. Bittner unwaveringly based a large part of his arguments during trial on these  
11 severe errors in documenting, glaring misstatements, or flat out untruths. The notice references  
12 four alleged violations, two of which plainly don’t match up with the lease. These two provisions  
13 are as follows (Hernandez Dec., Ex. B):  
14

15 (1) The Lease prohibits pets other than one cat; and

16 (3) Allows for only one occupant.

17 The drafter of this notice either severely erred in their interpretation of facts, or otherwise  
18 greatly misstated the information for reasons currently unknown, because upon review of the lease  
19 document itself (Hernandez Dec., Ex. C), you will find:  
20

21 (1) The lease states on p. 1 at “PETS:” No pets shall be allowed on the Premises.

22 (2) There is no provision in the lease indicating, limiting, or otherwise setting guidelines  
23 for the number of occupants at the Premises.

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26 <sup>1</sup> Brooks Magratten, Robert D. Phillips Jr., Thomas Connolly, Renee Feldman, Isaac Mamaysky, *Trial Practice*  
*Calculating Fee Awards*, A.B.A. *GPSOLO*, March 2010  
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1 This entry at 8/31/16 should be deducted from the total amount of Plaintiff's fee request,  
2 as the other two alleged violations did not occur (Plaintiff asserted Hernandez was smoking  
3 cigarettes and "drugs" inside the unit because of an illegally taken photograph showing a pack of  
4 cigarettes on a table inside the unit), and that required maintenance of the premises was not  
5 performed. There was and is not any damage to the premises and it is in excellent condition.  
6

7 On 9/6/16, Plaintiff's counsel indicates two hours were spent to "Draft Declaration and  
8 prepare Complaint exhibits." Bittner Dec. There were six exhibits to Plaintiff's complaint. The  
9 first exhibit was a one-page document provided to him by Plaintiff, the second was the lease related  
10 to the lawsuit. The third exhibit was another two-page document provided by Plaintiff, copies of  
11 correspondence from a financial institution. The fourth exhibit was a declaration and billed for  
12 separately, and exhibits five and six were drafted by Mr. Bittner's office. In sum, there was no  
13 legal editing work required to prepare these documents for submission to the court, which means  
14 Mr. Bittner must have spent two hours drafting the declaration used as an exhibit to the complaint,  
15 which was purportedly drafted by the Plaintiff's sister and revised by the Plaintiff before  
16 submission to the Court. Id. at 9/8/16. In addition to these two hours, on 9/7/16, Bittner billed  
17 one hour for "draft declaration and forward to client; prepare service order." As he did not submit  
18 a declaration with the complaint, one would have to assume that the better part of a total of three  
19 hours has now been billed to a two-page declaration of which Bittner was not the signing author.  
20 And again, on 9/8/16, Bittner block billed indicating a "redrafting" of the declaration he had spent  
21 three hours combined on the two days prior, for a total of about five hours. Id. Plaintiff's counsel  
22 should have fees reduced due to this negligence at the Court's discretion.  
23  
24

25 Page two of Exhibit A to Bittner's declaration indicates two hours spent on 9/14/16 to  
26 "review affidavit of service, draft statutory rent pleadings." By this entry, one can only assume he



1 means the document that Plaintiff served on Hernandez regarding certification of rent alleged due  
2 in accordance with the statute RCW 59.18.375. It is self-explanatory why this entire entry should  
3 be deducted from the total fees requested by Plaintiff after you review the document "drafted" by  
4 Mr. Bittner at Hernandez' Ex. D, where it appears Bittner located a form, handwrote the caption  
5 on the first page and handwrote Hernandez' service address on the second page. That is the  
6 document in his entirety. This entry also notes review of "affidavit of service," but what date the  
7 service was performed, what document was served, who the document was served on, etc. is  
8 nowhere to be found in the billing entries submitted by Plaintiff's counsel. This entry should be  
9 entirely removed from the total for Plaintiff's request for attorney's fees.  
10

11 On October 13, Plaintiff's counsel bills for "calendar case schedule," among other things  
12 in this block billing for 3.5 hours, which I would like specifics of this total requested for. Here  
13 was no case schedule in this matter, and the document provided to both parties, though captioned  
14 as a case schedule, contained no deadlines, therefore, nothing to calendar.  
15

16 Mr. Bittner's October 22 entry indicates he performed service on Hernandez utilizing a  
17 drop serve method. I challenge the legal effect of this. Is a plaintiff's attorney authorized by  
18 statute, rules, or otherwise to serve defendant when service by defendant on plaintiff's attorney is  
19 not valid?  
20

21 Many businesses and individuals have a standard for the quality of service they expect  
22 when they retain a lawyer because of the amount of money requested by these professionals for  
23 such services. Mr. Bittner erroneously served Defendant with default pleadings even after the  
24 Defendant had appeared, and when statute for this type of matter (RCW 59.12.121 re unlawful  
25 detainer) clearly allows that any answer to Plaintiff's complaint (aside from the appearance notice)  
26 be made "[O]n or before the day fixed for his or her appearance..." The billing entries made on



1 9/1916 and between 9/22/16 and 9/30/16 are all block billed with the majority or all of the block  
2 billing relating to the default hearing erroneously noted and should be removed from Mr. Bittner's  
3 request for attorney's fees.

4  
5 Upon review of the invoice submitted by Mr. Bittner, many clerical duties are included in  
6 his block billed hourly rate fees. Depending on the type of task, the necessary duties are usually  
7 not billed for, or compensated at a much lower fee than an attorney's hourly rate. Typically, costs  
8 for work categorized as secretarial in nature are "considered overhead expenses reflected in an  
9 attorney's hourly billing rate, and are not properly reimbursable.<sup>2</sup>" Unless otherwise proven, fees  
10 and costs for secretarial duties are included in an attorney's hourly rate and are not separately  
11 recoverable. At least 13 entries out of 31<sup>applicable</sup> entries in Plaintiff's invoice contain clerical tasks that  
12 are block billed with the time Mr. Bittner allegedly spent on tasks of billable nature related to this  
13 matter. These entries are identified as follows and as found at Exhibit A to the Declaration of James  
14 U. Bittner and should be removed and Plaintiff's counsels billing should be reduced at this Court's  
15 discretion:  
16

17 8/29/16 Prepare for service

18 8/30/16 Check on service

19 9/1/16 Serve 10 day notice

20 9/2/16 Confirm service

21 9/7/16 Prepare service order

22 9/9/16 "Complile," file and serve complaint  
23  
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<sup>2</sup> Orme v. Burlington Coat Factory, 2010 WL 1838740 (D. Or. 2010).  
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1 9/12/16 Confirm service; ... organize documents and pleadings

2 9/14/16 Forward statutory ... demand

3 9/15/16 Check on service

4 9/28/16 Proof and serve motion

5 9/29/16 Track service and request proof

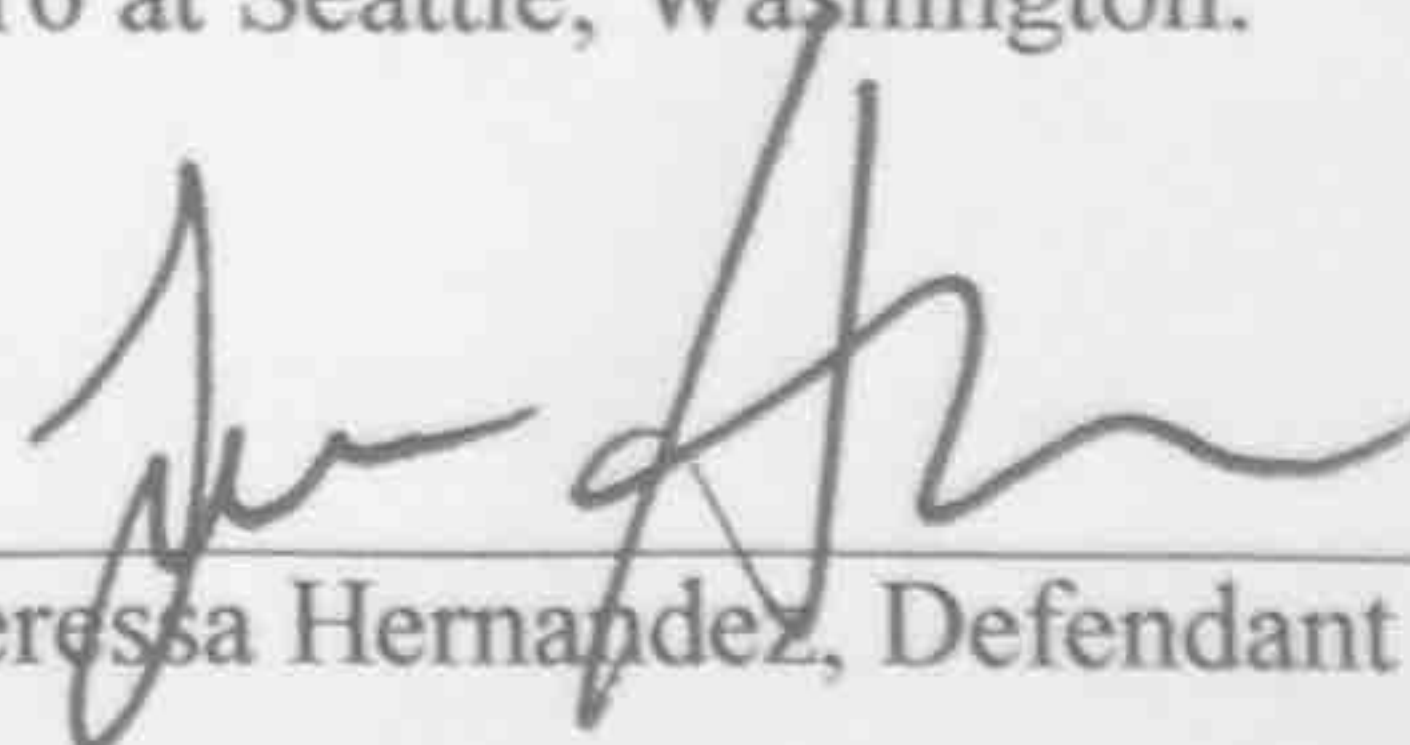
6 9/30/16 Proof and file motion - (*Note: proofed 2x*)

7  
8 10/13/16 Obtain case schedule, calendar case schedule (*Note: there was nothing to*  
9 *calendar on case schedule*)

10  
11 The entry dated 10/25 indicates subpoenas were drafted (multiple) and the entry of 10/27  
12 indicates Mr. Bittner was following up on acceptance of one of the subpoenas. I was never copied  
13 on these documents. Were they actually drafted and finalized? I don't see an entry for finalizing  
14 and proofing these documents, an entry Mr. Bittner made relating to any other document he drafted.

15 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of November, 2016 at Seattle,  
16 Washington.

17  
18 Dated this 29<sup>th</sup> day of November, 2016 at Seattle, Washington.

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22 Teresa Hernandez, Defendant  
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## CERTIFICATE OF SERVICE

I, Teressa Hernandez, certify under penalty of perjury under the laws of the State of Washington that on November 29<sup>th</sup>, 2016, I coordinated service of the following documentation in the manner so described:

I e-mailed and faxed a copy of the foregoing document(s) to James U. Bittner, Kasperson & Bittner, PLLC, attorneys for plaintiff, at the following e-mail address and fax number as provided by plaintiff: [jbittner@bittnerlaw.com](mailto:jbittner@bittnerlaw.com), (206) 682-1197.

DATED this 29<sup>th</sup> day of November, 2016 at Seattle, Washington.

/s/Teressa Hernandez

Teressa Hernandez, Defendant