**IN THE CIRCUIT COURT FOR THE STATE OF OREGON**

**COUNTY OF JOSEPHINE**

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|---|---|
| CASEY MARIE HOUTSINGER, an individual,<br><br>Plaintiff,<br>v.<br><br>US Support, LLC, a Nevada limited liability company, and JASON WATSON, an individual,<br><br>Defendants. | Case No. 24CV49697<br><br>**PLAINTIFF'S RESPONSE AND OBJECTIONS TO DEFENDANTS' MOTION FOR COSTS AND ATTORNEYS' FEES**<br><br>ORS 31.152; ORS 20.190 |

Plaintiff Casey Houtsinger, by and through undersigned counsel, responds and objects to Defendants' motion for costs and attorney fees pursuant to ORS 31.152(3), Oregon's anti-SLAPP law, and prevailing party fee under ORS 21.190(3). In particular, Plaintiff objects as follows:

1. Plaintiff acted reasonably in bringing suit against Defendants because Defendants' success in their anti-SLAPP motion to strike hinged on novel interpretations of ORS 133.875;
2. The hourly rates for Defendants' counsel are excessively high for Southern Oregon, some even being over three times as much as the median rate for similarly experienced attorneys in Southern Oregon;
3. Defendants' fees unrelated to the anti-SLAPP motion should not be included in the fee award because ORS 31.152 only authorizes fees relating to the anti-SLAPP motion; and



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4. Many of Defendants' time entries reflect impermissible block billing, and some of the requested fees are not supported by a detailed statement itemizing the reason for fees, as required by ORCP 68.

Further reduction against Defendants' requested award is warranted because:

1. Plaintiff's sole claim was neither unreasonable nor frivolous;
2. Awarding fees to Defendants in a case presenting new statutes and/or questions of first impression is likely to deter future litigants from litigating good-faith cases applying new laws or where questions of law remain unresolved;
3. Awarding fees to Defendants is unlikely to deter parties from bringing bad-faith claims because no claim was brought in bad faith; and
4. Defendants were made aware that an $85,000 settlement agreement would bankrupt Plaintiff and would likely be uncollectable, yet Defendants now request significantly more.

## INTRODUCTION AND BACKGROUND

In May of 2020, Plaintiff was arrested for driving under the influence. Her booking photo was posted on the Oregon Department of Corrections' (DOC) Offender Search website. Defendants copied Plaintiff's booking photo from the DOC website to their privately owned website, Arre.st. At the time of the photo's publication on Arre.st, Defendants offered a pay-for-removal service, in which users could purchase the right to remove their photo from the website for just under $200.

On 1/1/22, ORS 133.875 went into effect. The statute creates a private right of action against publications that charge for the removal of booking photos from public display. These publications are knowns as "publish-for-pay publications" (PFPP). ORS 133.875(3)(b). Should a person request the removal of her booking photo from the PFPP, the owner and/or operators of the PFPP must comply with the request within 30 days and may not condition removal on payment of more than $50. ORS 133.875(1). If the charges underlying the arrest have been dismissed, ORS 133.875(2) prohibits charging any amount for removal of the photo, and the



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PFPP must comply with the request within seven days. For each day that the request is not honored after the seven- or thirty-day compliance period, the PFPP is liable for statutory damages of $500 under ORS 133.875(1) or $1,000 under ORS 133.875(2).

After many unsuccessful attempts having her photo removed from Arre.st, Plaintiff brought suit under ORS 133.875 on 10/17/24. Plaintiff successfully served Defendant US Support LLC on 10/21/24 but was unsuccessful in serving Defendant Watson after several attempts. Plaintiff filed a notice of intent to take default against US Support LLC on 1/16/25 and moved for alternate service on Watson on 1/27/25.

Soon after, Defendants hired the Randazza Legal Group, who contacted Plaintiff's counsel and agreed to accept service on behalf of Watson. Defendants' counsel requested an extension until 3/21/25 to respond to the Complaint. Plaintiff agreed to the extension and elected to withdraw her notice of default against US Support LLC, despite that such withdrawal was unnecessary. Plaintiff agreed to a further extension until 4/4/25 for Defendants' to respond to the complaint.

On 4/4/25, Defendants filed a combined motion to dismiss for lack of personal jurisdiction and special motion to strike under Oregon's anti-SLAPP law, ORS 31.150. As to the anti-SLAPP motion, Defendants made three arguments. First, Defendants argued that Plaintiff could not prevail on her claim because Defendants were immune under Section 230 of the Communications Decency Act. Second, Defendants argued that ORS 133.875 is unconstitutional because it violates the First Amendment of the United States Constitution. And third, Defendants argued that Plaintiff's claim was factually impossible.

In support of its factual argument, Defendant had two theories: First, Plaintiff made only one effective removal request after ORS 133.875 came into effect, and that request was made *after* Arre.st ended its pay-for-removal service, thereby making it a PFPP no longer, and the statute inapplicable. Second, Defendants reduced the price of removal to $49.80, an amount below the $50 threshold required by ORS 133.875(1), and Plaintiff had not tendered that



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payment.[1] Plaintiff, after discovering new facts relevant to the case, filed an amended complaint with her response to the motion. The motion to dismiss/strike was dismissed as moot, and Defendants filed a second combined motion comprised of substantially the same arguments as the original. The Court heard oral argument on the motion on 6/6/25.

In a letter opinion dated 8/12/25, this Court denied Defendants' motion to dismiss, ruling that the Court had personal jurisdiction over Defendants, and granted the motion to strike. The Court rejected Defendants' arguments relating to Section 230 immunity and declined to reach the issue of constitutionality but agreed with Defendants' arguments that the claim was factually impossible.

Oregon's anti-SLAPP law entitles a defendant who prevails on a special motion to strike to a reasonable award of attorney fees and costs, which Defendants now seek. ORS 31.152(3). Defendants also seek an award of a prevailing party fee of $5,000 under ORS 21.190(3).

Importantly, as far as all parties and the Court could tell, ORS 133.875 has never been invoked in a lawsuit or subject to interpretation by a court before this case.

## LEGAL STANDARDS

Oregon's anti-SLAPP law provides:

> A defendant who prevails on a special motion to strike made under ORS 31.150 shall be awarded reasonable attorney fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to a plaintiff who prevails on a special motion to strike.

ORS 31.152(3). The anti-SLAPP statute does not provide discretion for a court to determine whether to make award of attorney fees and costs, *id.* ("a defendant who prevails on a special

[1] Plaintiff disputes that Defendants ever actually reduced the price below the original $200 amount. Defendants' only evidence that such price reductions were made was the declaration of Defendant Watson that Arre.st automatically sent price reduction notices to Plaintiff via email. Yet, Plaintiff has no record of receiving such reductions, and Defendants have not offered either the email address to which the notices were allegedly sent or any documentary evidence that such reduction notices were ever sent in the first place. See Decl. Watson dated 4/2/25 (filed on 4/4/25 in support of original motion); Decl. Houtsinger dated 4/21/25 (filed 4/21/25 in support of response to motion).



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motion to strike...*shall be awarded* reasonable attorney fees and costs"), but the court is given broad discretion to determine the amount of attorney fees that is reasonable to award. *Mouktabis v. Clackamas Cty.*, 327 Or App 763, 780 (2023); *Griffin v. Tri-County Metro. Transp. Dist.*, 112 Or App 575, 584 (1992). The Court's fee award is overturned only where the court obviously abused its discretion in making the fee adjustment. ORS 20.075(3).

The latitude given to the Court in adjusting fee awards is extensive, with some cases even upholding a trial court's fee award as low as zero dollars. *Jones v. Nava*, 264 Or App 235, 244 (2014) (citing *State v. Starr,* 210 Or App 409, 414 (2007) and *State v. Nyhuis*, 251 Or App 768, 772 (2012) as prior cases allowing a fee award of $0.00).

Although Oregon law does not explicitly require the Court to make special findings of fact when determining a reasonable fee award, such findings are required should appellate review be necessary. *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 95-96 (1998). "To be adequate, the court's findings need not be lengthy or complex, but they must describe the relevant facts and legal underlying the court's decision in terms that are sufficiently clear to permit meaningful appellate review." *Makarios-Oregon, Ltd. Liab. Co. v. Ross Dress-For-Less, Inc.*, 293 Or App 732, 741 (2018).

In determining a reasonable fee award, the Court is required to consider the factors set forth in ORS 20.075(1) and (2). *Mouktabis*, 327 Or App at 779. Those factors are as follows:

> (1)...
> (a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.
> (b) The objective reasonableness of the claims and defenses asserted by the parties.
> (c) The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.
> (d) The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.
> (e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.
> (f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.
> (g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.



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(h) Such other factors as the court may consider appropriate under the circumstances of the case.

(2)...

(a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.

(b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.

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

(d) The amount involved in the controversy and the results obtained.

(e) The time limitations imposed by the client or the circumstances of the case.

(f) The nature and length of the attorney's professional relationship with the client.

(g) The experience, reputation and ability of the attorney performing the services.

(h) Whether the fee of the attorney is fixed or contingent.

(i) Whether the attorney performed the services on a pro bono basis or the award of attorney fees otherwise promotes access to justice.

ORS 20.075. Imperatively, nothing in ORS 20.075 "authorizes the award of an attorney fee in excess of a reasonable attorney fee." ORS 20.075(4).

"The lodestar method is the prevailing method for determining the reasonableness of a fee award...." *Griffith v. Prop. & Cas. Ins. Co. of Hartford*, 339 Or App 40, 47 (2025); *Hosp. Mgmt., Inc. v. Preferred Contractors Ins. Co. Risk Retention Grp. LLC*, No. 3:18-cv-00452-YY, 2023 U.S. Dist. LEXIS 62110, at *6 (D. Or. Mar. 23, 2023) (referring to the lodestar method as the "guiding light" when determining reasonable fees). Under the lodestar approach, the Court determines a reasonable hourly rate and multiplies it by a reasonable number of hours to work on the case, the adjusts for the factors considered, such as those under ORS 20.075. *Id.*

Defendants also seek a prevailing party fee under ORS 20.090(3), which grants the Court discretion to award up to $5,000 upon consideration of several enumerated factors. The parties agree that the factors to be considered under ORS 20.090(3) are substantially identical to those in ORS 20.075(1) and (2). Accordingly, arguments relating to the ORS 20.090 factors are not distinguished from those relating to ORS 20.075.



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## ANALYSIS AND ARGUMENT

1. **ORS 20.075(1)(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation.**

Prior to the onset of this litigation, Plaintiff made several attempts to contact Defendants regarding the removal of her booking photo. While it is undisputed that she did not pay any fee for removal during the time that Arre.st was a PFPP, it is disputed whether Defendant ever notified Plaintiff that the removal fee had ever been reduced below the $50 threshold required by ORS 133.875(1), or even whether the price was truly discounted. As noted in Plaintiff's briefing on the anti-SLAPP motions, Defendants did not disclose the email address to which they allege to have sent the discount notices despite being given opportunity to do so (see Plaintiff's Response to Motion to Strike at p.13, filed 5/19/25), and Plaintiff has no record of receiving any discounts (Decl. Houtsinger, filed in support of Defendant's Response to Original Motion to Strike, signed 4/21/25 [Decl. Houtsinger 4/21/25]). Accordingly, Plaintiff's failure to pay the alleged $49.80 amount when notifying Defendants of her removal request should weigh in her favor when determining the fee award.

Defendants have offered no evidence or argument as to the conduct of any party relating to the occurrences giving rise to the litigation. Except as noted above, this factor should weigh neutrally with respect to the fee award amount.[2]

2. **ORS 20.075(1)(b) The objective reasonableness of the claims and defenses asserted by the parties.**

Under this factor, the Court considers only conduct during the proceeding, not conduct giving rise to the proceeding. *Niman v Niman*, 206 Or App 400, 420 (2006).

Defendants argue that Plaintiff's sole claim under ORS 133.875 was unreasonable, and Plaintiff should have known that her claim was bound to fail because the Court agreed with Defendants that the claim was factually impossible. Defendants ignore that hindsight informs their entire argument; the outcome of the claim could not be reasonably predicted. The 8/12/25

[2] Plaintiff defers its calculations of a reasonable reduced award until her conclusions at the end of this document.



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Letter Opinion granting the motion to strike reached the conclusion of factual impossibility based on at least two implicit interpretations of ORS 133.875.

The Court held that Plaintiff's claim could not prevail because "1) Plaintiff's request to remove the booking photo...did not tender payment to defendant for the (undisputed[3]) fee of $49.80 to trigger ORS 133.875(1) and 2) even if the fee was tendered, by the time the request was made on defendant, it is undisputed that he was not a 'publish for pay publication.'" Op. Letter (8/12/25). Implicit in the Court's conclusion is that ORS 133.875 does not impose liability on former PFPPs if the takedown request is submitted after they end their pay-for-removal service. Also implicit is that a one-time PFPP is not obligated to remove a booking photo, even if paid, because they are no longer a PFPP.

Each of these interpretations creates new precedent because ORS 133.875 has never (as far as the Court and parties have determined) been the subject of a lawsuit. Each interpretation answers a legal question of first impression. Despite Defendants' assertions otherwise, neither of these interpretations are apparent in the plain language of ORS 133.875.[4] Questions of first

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[3] Defendants' removal fee reduction is disputed by Plaintiff. *See* Note 1

[4] The full text of ORS 133.875 is as follows:

(1) Except as provided in subsection (2) of this section:
(a) A publish-for-pay publication shall remove and destroy a booking photo of a person who submits a request for removal and destruction within 30 calendar days of the date of the request.
(b) A publish-for-pay publication may not condition the removal or destruction of a booking photo on the payment of a fee of more than $50.
(c) If the publish-for-pay publication does not remove and destroy a booking photo as required by this subsection, the publish-for-pay publication is liable for:
(A) All costs, including reasonable attorney fees, resulting from any legal action the person brings in relation to the failure of the publish-for-pay publication to remove and destroy the booking photo; and
(B) Statutory damages of $500 per day for each day after the 30-day deadline described in this subsection that the booking photo is visible or accessible in or on the publish-for-pay publication.
(2)(a) A publish-for-pay publication shall remove and destroy a booking photo of a person who submits a request for removal and destruction within seven calendar days of the date of the request if:
(A) The booking photo relates to a criminal charge for which the person was acquitted or not prosecuted, or to a criminal charge resulting a criminal conviction that has been set aside, vacated or pardoned; and



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impression are necessarily reasonable. *See, e.g., Githens v. Githens*, 230 Or App 586, 594 (2009) (holding that a party's position was not objectively unreasonable because it was an issue of first impression). Thus, Plaintiff's claim for relief was *in no way* unreasonable.

Furthermore, during the life of this litigation, the Plaintiff has acted more than reasonably. Plaintiff permitted Defendant US Support LLC to avoid default, despite that it had failed to appear and respond within the required time to respond to the Complaint. In an effort to reach the merits of the case rather than engage in a protracted procedural battle, Plaintiff's counsel withdrew the notice of default and permitted Defendants two extensions of time in which to respond to the Complaint.

This factor weighs heavily in favor of a reduced fee award.

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> (B) The person submits to the publish-for-pay publication documentation of a disposition described in subparagraph (A) of this paragraph.
>
> (b) A publish-for-pay publication may not condition the removal or destruction of a booking photo described in this subsection on the payment of any fee or other consideration.
>
> (c) If the publish-for-pay publication that receives a request described in paragraph (a) of this subsection does not remove and destroy the booking photo as required by this subsection, the publish-for-pay publication is liable for:
>
> (A) All costs, including reasonable attorney fees, resulting from any legal action the person brings in relation to the failure of the publish-for-pay publication to remove and destroy the booking photo; and
>
> (B) Statutory damages of $1,000 per day for each day after the seven-day deadline described in this subsection that the booking photo is visible or accessible in or on the publish-for-pay publication.
>
> (d) An act by a publish-for-pay publication seeking to condition removal or destruction of a booking photo described in this subsection on the payment of any fee may be prosecuted as theft by deception under ORS 164.085.
>
> (3) As used in this section:
>
> (a) "Booking photo" means a photograph of a person taken by a law enforcement agency for identification purposes when the person is booked into custody.
>
> (b) "Publish-for-pay publication" means a publication or website that requires the payment of a fee or other consideration in order to remove or delete a booking photo from the publication or website.



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**3. ORS 20.075(1)(c) & (d) The extent to which an award would deter meritless or, alternatively, good-faith claims in similar cases.**

As discussed above, the disposition of Plaintiff's claim is based on new interpretations of a statute that had never been invoked or interpreted before. Given Plaintiff's willingness to avoid procedural battles around removal and default, her obvious goal was to reach the substance of the case and develop new case law around ORS 133.875. *See* Decl. Leijon ¶¶ 4-5 filed in support of this response (Decl. Leijon). Plaintiff's claim was merited by its novelty. Thus, *any* fee award necessarily cannot have the effect of deterring meritless claims. *State ex rel. Pend-Air Citizen's Comm. v. City of Pendleton*, 145 Or App 236 (1996) (affirming a discretionary denial of attorney fees because the non-prevailing party had a reasonable position in an issue of first impression). Instead, it would have the undesirable effect of deterring potential litigants from bringing claims under new law or seeking to answer unresolved questions of law. Undoubtedly, this Court is obligated to make some award, but "there must be a balance between discouraging illegitimate claims and discouraging legitimate ones." *Northon v. Rule*, 494 F Supp 2d 1183, 1185 (D Or 2007). ORS 20.075 factors (1)(c) and (d) thus weigh heavily in favor of a reduced award.

**4. ORS 20.075(1)(e) & (f) The objective reasonableness of the parties during the proceedings and in pursuit of settlement.**

During these proceedings, the counsel for the parties engaged in courteous discussions, negotiations, and correspondence to resolve several matters without needing to involve the Court. *See, e.g.*, Decl. Leijon ¶¶ 4-6, Exhibit 1. Counsel for both parties engaged in meaningful discussions pertaining to the possibility of removal to Federal Court in a successful effort to dispose of the issue without the need for either State or Federal Court resources. *See id.* Plaintiff's counsel permitted two extensions in which Defendants could respond to the Complaint. Counsel for both parties agreed that Plaintiff's Amended Complaint merited revised briefing on Defendants' motion to strike and motion to dismiss. In short, this litigation was nothing short of cordial. Neither party's counsel sought to waste the Court's time, paper the file, or bring frivolous arguments.



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Regarding settlement, however, Defendant Watson seems to have gone against his own counsel's advice and now seeks to recover fees far beyond those that Plaintiff can pay. On the day of the hearing for the combined motion to strike or dismiss, Mr. Alex Shepard and Mr. Stuart Leijon, counsel for Defendants and Plaintiff respectively, discussed the possibility of Defendants seeking a fee award in the case that they prevailed on the motion to strike. *See* Decl. Leijon ¶¶ 8-11. Mr. Shepard informed Mr. Leijon that Defendants would not be seeking the fee award given that it was clear Plaintiff is indigent. *Id.* After the Court issued its Letter Opinion, Mr. Shepard contacted Mr. Leijon by phone to inform him that Defendants would be sending a settlement offer in which Plaintiff would stipulate to a fee award with a liquidated amount, but that enforcement of the award would not be sought so long as Plaintiff adhered to settlement terms relating to confidentiality of the proceedings and other covenants. *Id.*

Defendants' counsel instead sent a settlement demand for $85,000 in exchange for stipulated dismissal of the right to claim fees and costs. *Id*.; Exhibit 2. Mr. Leijon again informed Defendants' counsel that Plaintiff would not be able to pay that and would be forced to file for bankruptcy with such a settlement. Decl. Leijon ¶¶ 8-11; Decl. Houtsinger ¶ 3. Mr. Shepard confirmed that the settlement demand did not align with his previous assertions and that his client had decided otherwise. Decl. Leijon ¶ 11, Exhibit 3. It is known to Defendants that even $85,000 would bankrupt Plaintiff. Thus, it is unreasonable and irrational for Defendants to seek an even greater award, which will almost undoubtedly never be obtainable. Defendants have made no effort to reach a settlement amount that is within Plaintiff's ability to pay and now seek to make determination of such an amount an issue for a bankruptcy court.

This factor weighs heavily in favor of a reduced award.

**5. ORS 20.075(1)(g) The amount the court has awarded as a prevailing party fee under ORS 20.190.**

The factors to be considered when determining whether to award a prevailing party fee and how much should be awarded are substantively identical to the factors otherwise considered



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in this document. For the reasons set forth throughout this document, the Court should decline to award a prevailing party fee, and this factor should likewise weigh in favor of a reduced award.

**6. ORS 20.075(1)(h) Other factors.**

As discussed above, Plaintiff cannot pay even $85,000. In part, this is because Plaintiff's employment prospects have been hampered by the publication of her booking photo on Arre.st and continued publication of her arrest record, sans photo. This factor weighs in favor of a reduced award.

**7. ORS 20.075(2)(a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.**

Plaintiff refers the Court to its arguments relating to ORS 20.075(1)(b) above and (2)(c) and (g) below.

**8. ORS 20.075(2)(b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.**

Defendants argue that Randazza Legal Group (RLG) is a small firm with limited case capacity. However, analysis of the time entries submitted in their supporting exhibits reveals that the attorneys and staff for RLG completed work between 1/24/25 and 9/30/25 and billed on a total of 97 days over the course of a little over 35 weeks. They claim total billed hours of 162.8 on this case. Assuming an eight-hour workday and a five-day workweek over the course of 35 weeks, the total billable time available is 1,400 hours. 162.8 hours represents 11.6% of those hours. While this case may have precluded RLG from taking on some other, small matters, it is unlikely that it demanded a substantial portion of firm resources.[5] This factor weighs in favor of a reduced award.

[5] Defendants note that they did reduce their actual billed hours, but it is unclear from their motion how many hours they reduced and whether those reductions would be necessary as a matter of course.



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**9. ORS 20.075(2)(c) The fee customarily charged *in the locality* for similar legal services.**

Fee award claimants have the burden of establishing the reasonableness of the fees they request. *Moro v. State*, 360 Or 467, 483 (2016). "A court should not rubberstamp hourly rates, particularly when an attorney seeks rates beyond what he or she ordinarily would receive from paying clients and when the rates sought are at the very top of the market...." *Id.* at 484.

Defendants' counsels' hourly rates and fees are unreasonably high for Southern Oregon. The 2022 OSB Economic Survey[6] presents the benchmark for reasonable attorney fees in the State of Oregon. Oregon courts use the Survey as a starting point for determining reasonable fees and then adjust according to factors considered when determining a reasonable fee award, such as the factors enumerated in ORS 20.075. Oregon law permits an enhancement of hourly rates only when it is supported by the facts and circumstances of the case. *Strunk v Pub. Employees Ret. Bd.*, 343 Or 226, 246 (2007).

The median hourly rate in the Survey for attorneys in Southern Oregon is $270 and the highest hourly rate is $600—less than any attorney at RLG billed on this case. For attorneys with 10-16 years of practice experience, like Mr. Shepard who has 10 years (*see* Decl. Randazza, Exhibit 6 to Motion for Fees), the median rate in southern Oregon is $250. For attorneys with 21-30 years of experience, such as Mr. Ronald Green (*id.*) and Mr. Marc Randazza (*see* https://www.avvo.com/attorneys/89117-nv-marc-randazza-1269075.html), the median rate is $300 per hour. Defendants are asking for more than three times these rates for Mr. Randazza, nearly three times these median rates for Mr. Shepard, and over double these rates for Mr. Green.

Defendants claim that the OSB Survey is out of date because it does not account for "recent significant inflationary trends in both the legal industry and the U.S. in general." Motion at 9. But there is no evidence that the legal services market is as volatile as gas, food or rent or other commodities in the Consumer Price Index, and available multi-state rate surveys do not

[6] Available at https://www.osbar.org/_docs/resources/Econsurveys/22EconomicSurvey.pdf



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indicate that average hourly rates have risen at the rate of inflation. See, e.g., https://www.lawpay.com/about/blog/lawyer-hourly-rate-by-state/.

Defendants point to the Laffey Matrix as evidence of the reasonableness of their rates and cite several cases in support of the Matrix's reasonableness as a guidepost. However, each case cited comes from the Northern District of California, which includes the counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Santa Cruz. The 2019 median incomes for those counties are as follows:[7]

| **County** | **Median Income** |
|---|---|
| Marin | $178,755 |
| Santa Clara | $164,794 |
| San Mateo | $159,894 |
| San Francisco | $140,716 |
| Alameda | $137,588 |
| Contra Costa | $122,292 |
| Santa Cruz | $102,894 |

These counties comprise seven out of ten counties in California with the highest median income. In contrast, the estimated median income for Josephine County in 2023 was $61,575.[8] ORS 20.075(2)(c) specifically notes that the Court's determination of a reasonable rate should be based "in the locality." It is therefore unreasonable to request a benchmark rate from some of the richest counties in California, a state with an economy larger than all but three countries.[9] Plaintiff proposes that the median OSB Survey rates for the attorneys at Randazza Legal Group are reasonable:

- Marc Randazza - $300

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[7] *See State Reports on Median Income for 2019*, STATE OF CALIFORNIA FRANCHISE TAX BOARD *https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/december-2021/california-median-household-income.html*

[8] U.S. Census Bureau, Estimate of Median Household Income for Josephine County, OR [MHIOR41033A052NCEN], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MHIOR41033A052NCEN.

[9] *Only 3 Countries Have Economies Bigger Than California's in 2024*, BRILLIANT MAPS https://brilliantmaps.com/califoria-economy-2024/ (citing sources including the IMF and BEA).



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- Ron Green - $300
- Alex Shepard - $250

Furthermore, Plaintiff has identified approximately 160 of Defendants' itemized time entries that should not result in a fee award because they are (1) not attributable to the anti-SLAPP motion to strike, (2) are examples of impermissible block billing, or (3) are examples of fees on fees (fees relating to preparing fee petitions). A highlighted copy of Defendants' time entries is included with the Decl. Leijon, identifying these entries in yellow, red, and green respectively.

Fees unrelated to the anti-SLAPP motion should not be included in any fee award. Implicit in ORS 31.152(3) is that a party may recover fees for prevailing on the special motion to strike, not fees relating to other claims. ORS 31.152(3) ("A defendant who prevails on a special motion to strike made under ORS 31.150 shall be awarded reasonable attorney fees and costs."). It does not require that fees be awarded for each and every billing entry submitted by Defendants. This is evident in ORS 31.150, the anti-SLAPP statute, which permits a party to file a special motion to strike without forfeiting their opportunity to file the motion to dismiss. ORS 31.150(1) (treating anti-SLAPP motions as ORCP 21 motions but excusing special motions to strike from the ORCP 21 F requirement that all Rule 21 defenses be consolidated). Awarding fees for combining the motion to strike with the motion to dismiss was not the intent of the legislature in passing Oregon's anti-SLAPP law. *See Page v Parsons*, 249 Or App 445, 460 (2012) ("the legislature's intent [is] that special motions to strike be filed early in a case and heard by the court in short order.").

Under Oregon law, a party may recover attorneys' fees "reasonably incurred in the pursuit of (1) *successful claims (2) for which fee recovery is authorized*." *Clausen v. M/V New Carissa*, 171 F Supp 2d 1138, 1142 (D Or 2001) (emphasis added). In *Mouktabis v Clackamas Cty.*, the trial court found it reasonable to withdraw time requests unrelated to anti-SLAPP proceedings. Case No. 21CV14422, Order at p.4 (6/27/24) (included as Decl. Leijon, Exhibit 4). A multitude of Oregon cases support the principle that fees may only be awarded for successful claims



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directly relating to the moving party's success. *See Chinese Consol. Benevolent Ass'n v. Chin*, 316 Or App 514, 525, 504 P3d 1196, 1202 (2021) ("here, as here, defendants do not secure a ruling on a special motion to strike before a voluntary dismissal, and the motion plays no role in the dismissal, then ORS 31.152(3) does not allow for an award of attorney fees for prevailing on the motion"); *Freedland v. Trebes*, 162 Or App 374, 378, 986 P2d 630 (1999) ("If the party asserts several claims that are subject to an award of fees but prevails on only one of them, fees can be awarded only for the time reasonably necessary to prevail on the sole claim on which the party prevailed."); *Norris v. R&T Mfg., Ltd. Liab. Co.*, 266 Or App 123, 126 (2014) (declining to award attorney fees in a collection action where the fees requested were related to the underlying claim because the underlying claim was brought against a different, though related, defendant and it *required proof of separate elements* than the original claim).

The exception to the rule that a party may only recover fees related to their successful claims is where a party succeeds on a fee-generating claim that shares common issues with other claims or unsuccessful efforts; time spent working on those other matters is recoverable if it "was reasonably incurred to achieve the success that the [party] eventually enjoyed in the litigation[.]" *Makarios-Oregon*, 293 Or App at 745. The exception is not relevant here: a substantial portion of the Defendants' counsel's billed time in this case was related to removal strategy, arguments relating to personal jurisdiction, pro hac vice admission, and preparing the fee award motion, all of which are irrelevant to the anti-SLAPP strategy. Analysis of Defendants' counsel's time entries reveals approximately 140 entries that cannot be reasonably attributed to the anti-SLAPP motion and proceedings. See Decl. Leijon, Exhibit 5 (yellow highlights).

While fees on fees are within the Court's discretion to award, *Anderson v Sullivan,* 311 Or App 406, 414 (2021), it is not required that such fees be awarded. For the reasons otherwise set out in this response, they should not be awarded. Furthermore, it is impossible to tell from Defendants' entries how much of that time is related to collecting fees from anti-SLAPP proceedings. Thus, these entries (highlighted in green in Exhibit 5) are cannot be reasonably associated with the anti-SLAPP motion.



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Block billing is disfavored in Oregon because it is "difficult to reconcile the obligation to provide detailed statements in support of fee requests," making it difficult to determine whether the fees are reasonable. *Makarios-Oregon*, 293 Or App at 744. *See also Anderson*, 311 Or App at 414 (permitting a court to deny fees on fees where the time spent on attorney fees was in part related to unsuccessful aspects of the fee request). Entries that exemplify impermissible block billing in Defendants' entries are identified in red highlight in the copy of RLG's time entries included as Exhibit 5 to the Decl. Leijon. Additionally, Mr. Eric Fournier, local counsel for Defendants, has not presented any itemized time and thus his time should not be included in any fee award. *State v. Grandy*, 52 Or App 15, 19 (1981) ("A mere summation in totaling the hours spent on a case will not suffice to support a petition for attorney fees"); *Parker v. Scharbrough*, 75 Or App 530, 535 (1985) ("The adjective detailed means marked by abundant detail or by thoroughness in treating small items or parts.") (internal quotations and citation omitted). *Thompson v. Long*, 103 Or App 644 (1990) (The court vacated a fee award where the affidavit "fail[ed] to itemize the time devoted to the services rendered and [did] not assist the court in determining if those services were reasonable").

This factor weighs in favor of awarding fees only for those entries that are reasonably related to the anti-SLAPP motion and are not block billing or fees on fees. Plaintiff has not challenged as inadmissible those entries related to case management and processing, strategy discussions, or conferring with the client or Plaintiff's counsel. A summarized hour count for problematic time entries appears below:

| BILLING PARTY | REASON FOR DISCOUNTING | HOURS TO DISCOUNT |
|---|---|---|
| Alex Shepard | Not attributable to anti-SLAPP | 26.2 |
| | Impermissible Block Billing | 2.1 |
| | Fees on Fees | 21.2 |
| | **TOTAL** | **49.5** |



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| | | |
|---|---|---|
| Marc Randazza | Not attributable to anti-SLAPP | 3.9 |
| | Impermissible Block Billing | 2.5 |
| | Fees on Fees | 0.5 |
| | **TOTAL** | **6.9** |

| | | |
|---|---|---|
| Brittani Holt | Not attributable to anti-SLAPP | 0.4 |

| | | |
|---|---|---|
| Ronald Green | Not attributable to anti-SLAPP | 7.1 |
| | Impermissible Block Billing | 0.9 |
| | Fees on Fees | 0.4 |
| | **TOTAL** | **8.4** |

| | | |
|---|---|---|
| Grean Anonuevo | Not attributable to anti-SLAPP | 1.3 |
| | Impermissible Block Billing | 0.3 |
| | **TOTAL** | **1.6** |

| | | |
|---|---|---|
| Leora Dumanlang | Not attributable to anti-SLAPP | 0.5 |
| | Fees on Fees | 1.7 |
| | **TOTAL** | **2.2** |

Should the above amounts be deducted from the overall hour counts, the adjusted billed hours per biller would be:

| **BILLER** | **ORIGINALLY CLAIMED HOURS** | **ADJUSTED HOURS** |
|---|---|---|
| Marc Randazza | 16.6 | 9.7 |
| Ron Green | 11.6 | 3.2 |
| Alex Shepard | 122.3 | 72.8 |
| Grean Anonuevo | 3.6 | 2.0 |
| Brittani Holt | 6.1 | 5.8 |
| Leora Dumanlang | 2.6 | 0.4 |

**10. ORS 20.075(2)(d) The amount involved in the controversy and results obtained.**

Defendants point out that Plaintiff's initial calculation of possible damages was over $1 million. This calculation is based on pre-suit investigation and the best possible outcome of a never-before interpreted statute. However, Plaintiff's initial settlement offer was less than half as



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much. Defendants' initial settlement offer was $0.00. *See* Defendants' Exhibits 3,4 in support of Motion for Fees. Plaintiff reiterates that this case presented issues of first impression. Under the Court's interpretation, Defendants could only be held liable for the time between the effective date of the statute, 1/1/22, and the date they ended their pay-for-removal service, 11/22/22, less the time for ORS 133.875's notice period. In the *best possible scenario* and were the Court to agree that Plaintiff's claim was factually possible, Plaintiff could only stand to recover as much as $318,000 ($1,000 multiplied by 318 days, the number of days after the seven-day notice period and until 11/22/22). Given that Defendants incurred costs of $120,000 only to obtain dismissal at the pre-Answer motion phase, it is likely that Defendants overall fees and costs if the case had gone to trial would be significantly higher than any available award to Plaintiff.

This factor weighs in favor of a reduced fee award.

**11. ORS 20.075(2)(e) The time limitations imposed by the client or the circumstances of the case.**

Defendants point to ORS 31.152, which requires that an anti-SLAPP motion be filed within 60 days of service of the Complaint. However, Plaintiff granted Defendants two extensions and withdrew her notice of default against Defendant US Support LLC. With service of US Support LLC, Defendant Watson was also placed on notice of the suit against him individually because he is the sole owner of US Support LLC. Thus, Defendants, who were effectively served or placed on notice of the suit on 10/24/24, had until 4/4/25 to file their anti-SLAPP motion—162 days after Defendants were placed on notice of the suit. Any time crunch felt by Defendants' counsel was due to Defendants' delay in retaining counsel. This factor weighs in favor of a reduced fee award.

**12. ORS 20.075(2)(f) The nature and length of the attorney's professional relationship with the client.**

Counsel for Defendants had no relationship with the Defendants prior to this litigation. This favor is neutral as to whether enhanced or reduced fees should be awarded.



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**13. ORS 20.075(2)(g) The experience, reputation and ability of the attorney performing the services.**

Despite their claims otherwise, Defendants' significant experience in Section 230, the First Amendment, and anti-SLAPP matters weighs in favor of a reduced award. In *Northon v. Rule*, the District of Oregon found that the defendants' fee request pursuant to their prevailing on an anti-SLAPP motion against a defamation claim should be reduced because the defendant attorneys had significant experience in First Amendment issues and anti-SLAPP motions. 494 F Supp 2d at 1186. The same principle is true here because Defendants' counsel has substantial experience in anti-SLAPP and First Amendment matters. Such extensive fees are not justified, especially because the anti-SLAPP motion to strike was intended to be a cost-saving mechanism. *Id.*at 1185.

As to Mr. Randazza's claim that he was "instrumental" in passing, protecting, and amending Nevada's anti-SLAPP legislation, the record reflects merely that he testified in support of a stronger anti-SLAPP law: whether he was instrumental in its passage is not apparent or supported in the record. Likewise, while Mr. Randazza is a repeat commentator for various news outlets on issues relating to free speech and the First Amendment, this is not the complete story. Mr. Randazza had previously contributed to Alex Jones's InfoWars, a publication notorious for Mr. Jones's false claims that the 2012 Sandy Hook Elementary School shooting was a hoax. The shooting killed 20 first graders and six educators. While Mr. Randazza should not be held responsible for Jones's false statements, and his passionate defense of broad First Amendment protections is commendable, Jones's defamation case is relevant in that Mr. Randazza unsuccessfully attempted to represent Jones in the defamation trial. The Connecticut Superior Court denied Mr. Randazza's motion to appear *pro hac vice* because Mr. Randazza had been suspended from the practice of law in Nevada due to serious misconduct. See Decl. Leijon, Exhibits 6, 7.

This factor weighs in favor of a reduced fee award.



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**14. ORS 20.075(2)(g) and (h). Whether the fee of the attorney is fixed, contingent, or the case was done pro bono.**

Defendants' counsel did not charge a fixed or contingent fee. Plaintiff's counsel took this case on contingency. Decl. Leijon ¶ 12. It is common for attorneys taking cases on contingency —especially cases with unsure outcomes—to seek fees significantly beyond their standard hourly rates to offset the cost of cases lost. *See, e.g., Griffin v Tri-County Metropolitan Trans. Dist.*, 112 Or App 575, 584-85 (1994). Accordingly, Plaintiff's settlement offer earmarking significant sums for attorney fees are warranted and weigh neutrally when determining the fee award.

## CONCLUSION

As discussed in the sections above, Oregon courts use the lodestar method to determine reasonable fees. Given the median ranges presented in the OSB Economic Survey and the factors discussed above, Plaintiff proposes that reasonable rates for the attorneys at Randazza Legal Group are as follows:

- Marc Randazza - $300
- Ron Green - $300
- Alex Shepard - $250

Deducting time not related to preparation and proceedings relating to the anti-SLAPP motion, Plaintiff proposes that the following award calculation is reasonable.

| BILLER | ADJUSTED HOURS | RATE | TOTAL |
|---|---|---|---|
| Marc Randazza | 9.7 | $300 | $2,910 |
| Ron Green | 3.2 | $300 | $960 |
| Alex Shepard | 72.8 | $250 | $18,200 |
| Grean Anonuevo | 2.0 | $175 | $350 |
| Brittani Holt | 5.8 | $175 | $1,015 |
| Leora Dumanlang | 0.4 | $175 | $70 |
| **GRAND TOTAL** | | | **$23,505** |

Furthermore, this case presented multiple issues of first impression, and an award of attorney fees is likely to deter other potential plaintiffs from brining suit under new laws. Lastly,



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Plaintiff is indigent and is unlikely to be able to pay much in the way of fees. For these reasons, Plaintiff requests the Court exercise its broad discretion to further reduce the adjusted fee award as the Court sees fit.

With respect to the fee declaration submitted by Mr. Fournier, Defendants should not be awarded any of his requested fees because no detailed statement itemizing those fees was provided.

Plaintiff respectfully requests such relief.

DATE: November 17, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I caused to be served a copy of the above RESPONSE TO DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS on the following person(s) indicated below by electronic mail:

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