

No. 65399-7-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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LORA BRAWLEY,

Appellant,

v.

LEYLA ROUHFAR and REZA FIROUZBAKHT, husband and wife,  
and the marital community composed thereof,

Respondents.

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REPLY BRIEF OF APPELLANT LORA BRAWLEY

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A. INTRODUCTION

Nothing in the brief of respondents Leyla Rouhfar and Reza Firouzbakht<sup>1</sup> should dissuade this Court from reversing the trial court order summarily dismissing appellant Lora Brawley's ("Brawley") slander *per se* claim on the basis that the Rouhfars are immune from liability under RCW 4.24.510 for reporting Brawley's alleged abuse of their son.

The Rouhfars waived their claim that their allegations about Brawley are privileged and that they are statutorily immune from liability. More importantly, Brawley's lawsuit is no Strategic Litigation Against Public Participation ("SLAPP") suit. There is no evidence that she knew about the Rouhfars' allegations to the police or to Child Protective Services ("CPS") when she filed her complaint. Thus, her lawsuit could not have been brought in retaliation for those reports.

Brawley met her limited burden of presenting specific facts to create a genuine issue as to whether the Rouhfars' abused their qualified common interest privilege, thereby precluding summary judgment.

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<sup>1</sup> As she did in her opening brief, Brawley will refer to Leyla Rouhfar and Reza Firouzbakht collectively as "the Rouhfars" unless the context requires them to be identified by their first names. Again, no disrespect is intended.

Where the trial court's dismissal of Brawley's claim pursuant to RCW 4.24.510 was improper, this Court should reverse. Since RCW 4.24.510 does not apply, the attorney fees, costs, and statutory damages awarded to the Rouhfars should be vacated.

The trial court abused its discretion by finding Brawley's request for attorney fees unreasonable because the fee request was disproportionately large when compared to the small amount of wages Brawley recovered. The Court should reverse and remand to the trial court with directions to recalculate Brawley's fee award.

#### B. RESPONSE TO THE COUNTERSTATEMENT OF FACTS

Brawley provided the Court with her markedly different version of the facts in her opening brief and will therefore not repeat those facts here. App. br. at 5-15. She offers the following additional facts for the Court's consideration:

The Rouhfars seem to insinuate in their statement of the facts that their son's stutter was caused by stress surrounding his relationship with Brawley. Rouhfar br. at 3. Other than the Rouhfars' own self-serving allegations, there is no medical evidence that the child truly stuttered or that the stutter was caused by his contact with Brawley. CP 441-51 (sealed). The child's medical providers make no such diagnosis. *Id.*; CP 449. In fact, the child was extremely articulate and had above-average

language skills. CP 59. He was fluent in two languages. *Id.* When Leyla asked Brawley about her perceptions of the child's alleged stutter, Brawley responded that his occasional use of the word "um" when he searched for the right word in either English or Farsi was not a stutter in her professional opinion. *Id.* None of the child's teachers at his private Montessori school ever observed or reported that he stuttered or suffered from speech delays. CP 60-61.

The Rouhfars maintain that their son complained "Nanny Lora hit me and pushed me on my tummy." Rouhfar br. at 4. But that is not what he said. The transcript of the actual voicemail message reflects that the child said Brawley had pushed him and held on, and pushed him in the tunnel. CP 37, 71. His statement likely relates to a trip to the park he took with Brawley where she pushed him on the swings, and pushed him down a slide and through the tunnel at the end. CP 41, 71. The child's statement that Brawley pushed him is a far cry from his parents' repeated accusations that Brawley hit and abused him, or that she "routinely and without thought or care battered and assaulted" him. CP 119, 577.

As for the trip to the dinosaur exhibit, neither the child nor Brawley slept well the night before the trip. CP 68. Brawley did not sleep well because she had been fired the day before. *Id.*, CP 74. The child likely did not sleep well because he was ill. CP 68.

The Rouhfars make no mention of the fact that they alleged they witnessed Brawley physically abusing their son, but later had to retract those statements when they proved false. CP 18, 71. They later argued their physical abuse claim was simply a drafting error. CP 102.

The Rouhfars also fail to mention that after they terminated Brawley's employment on the basis that the child's grandmother was available to care for him, they still wanted her to care for him on "date nights." CP 69, 513. Moreover, Leyla insisted Brawley owed them hours. CP 513.

Although the Rouhfars contend Brawley exhibited a hostile attitude and that she refused to follow their requests, Rouhfar br. at 3, they failed to produce any evidence to support their allegations. CP 65. Carrie Morris ("Morris"), head of the nanny placement agency responsible for placing Brawley with the Rouhfars, confirmed the Rouhfars reported no issues with Brawley until Brawley demanded her severance payment due to her termination without cause as the child's nanny. CP 159. Brawley was always courteous and professional, but firm. CP 490, 492-96, 498-99, 521.

C. ARGUMENT

(1) Standards of Review

Although the Rouhfars appropriately describe the burden of proof in a summary judgment proceeding, Rouhfar br. at 8-9, they fail to mention that the facts, and all inferences from them, must be construed in a light most favorable to the nonmoving party. See *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 223, 45 P.3d 186 (2002); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Brawley was entitled to receive the benefit of all factual inferences as the nonmoving party, but did not.

The Rouhfars similarly fail to mention the standard of review governing this Court's interpretation and application of RCW 4.24.510. The Court's review of the statute is *de novo*. *Emmerson v. Weilep*, 126 Wn. App. 930, 935, 110 P.3d 214, *review denied*, 155 Wn.2d 1026, 126 P.3d 820 (2005).

(2) The Child's Medical Records Are Sealed

Brawley begins where the Rouhfars end – their request that the Court strike clerk's papers 441-56 and award them attorney fees or other sanctions for what they characterize as Brawley's improper designation of the child's medical records. Rouhfar br. at 28-29. Their request should be denied because Brawley did not intentionally include those records on appeal and, to the extent they are included in the record, they are sealed.

Brawley designated docket sub number 82, which is identified simply as a declaration docketed by the court clerk on February 10, 2010.<sup>2</sup> The docket entry is further described as: “Declaration Of Saperonia [sic] Young/sealed Per Sub 89a” (“declaration”). The declaration contains attachments that include the child’s medical records. CP 441-56. When the declaration was filed, the Rouhfars moved to have the medical records sealed. The trial court granted the motion and ordered the declaration sealed.<sup>3</sup> It also attached to the order a copy of the declaration without the medical records and directed the court clerk to file the declaration as sub number 82(a).

A review of the superior court case summary reflects that the court clerk did not file a copy of the declaration without the attachments as sub number 82(a) because the docket entries go sequentially from sub number 82 to sub number 83. More importantly, the June 3, 2010 Index to Clerk’s Papers unmistakably states that the designated declaration contains sealed

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<sup>2</sup> A copy of the superior court case summary in this case, taken from the Washington Court’s Judicial Information System Website on November 17, 2010, is included in the Appendix for the Court’s convenience.

<sup>3</sup> Brawley recently designated the trial court’s February 11, 2010 order as part of the record on review. A copy of the order is in the Appendix for the Court’s convenience.

documents.<sup>4</sup> Brawley’s designation of the declaration does not unseal the previously sealed medical records. They remain sealed and unavailable to the public. Accordingly, the Court should deny the Rouhfars’ request for attorney fees or other sanctions.

(3) The Rouhfars Waived Their Immunity Defense

The Rouhfars contend they did not waive use of RCW 4.24.510 as a defense. Rouhfar br. at 9. They are mistaken.

To avoid surprise, CR 8(c) lists certain defenses that must be pleaded affirmatively.<sup>5</sup> While the list of affirmative defenses does not specifically mention immunity under RCW 4.24.510, CR 8(c) extends to “any other matter constituting *an avoidance* or affirmative defense.” (Emphasis added.) Generally, affirmative defenses are waived unless affirmatively pled. *See, e.g., Farmers Ins. Co. of Washington v. Miller*, 87 Wn.2d 70, 76, 549 P.2d 9 (1976). *See also, Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 134, 144 P.3d 1185 (2006) (corporation waived affirmative defense of estoppel by failing to properly

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<sup>4</sup> Brawley recently designated the June 3, 2010 Index to Clerk’s Papers as part of the record on review. A copy of the index is in the Appendix for the Court’s convenience.

<sup>5</sup> CR 8(c) states, in part:

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, . . . , and any other matter constituting an avoidance or affirmative defense.

plead it). A waived affirmative defense may not thereafter be considered as a triable issue in the case. *Farmers*, 87 Wn.2d at 76.

The Rouhfars mistakenly claim that immunity under RCW 4.24.510 is not an affirmative defense that must be pleaded to avoid waiver. Rouhfar br. at 10. Their half-hearted attempt to cast doubt on *Port of Longview v. Int'l Raw Materials, Ltd.*<sup>6</sup> and *Doe v. Gonzaga Univ.*<sup>7</sup> is unavailing to their position.

In *Port of Longview*, the shipping company filed an answer to the Port's complaint that included "*affirmative defenses of immunity, under RCW 4.24.510, and retaliatory eviction[.]*" 96 Wn. App. at 435 (emphasis added). The Port moved to dismiss the affirmative defenses and the trial court dismissed them both. On appeal, Division II implicitly acknowledged that immunity under RCW 4.24.510 is an affirmative defense when it analyzed both defenses under the heading "Affirmative Defenses." *Id.* at 436, 455. Division II eventually concluded the statute was inapplicable because the Port sought no damages or civil liability against the shipping company and its "sole purpose" in instituting the

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<sup>6</sup> 96 Wn. App. 431, 979 P.2d 917 (1999).

<sup>7</sup> 99 Wn. App. 338, 992 P.2d 545 (2000), *aff'd in part, reversed in part on other grounds*, 143 Wn.2d 687 (2001), *cert. denied*, 534 U.S. 1103, *judgment reversed in part*, 536 U.S. 273 (2002).

action was to terminate the shipper's at-will tenancy and regain possession of the subject commercial property. *Id.* at 455.

In *Doe*, the Supreme Court did not just hold that RCW 4.24.510 could not be raised for the first time on appeal as the Rouhfars maintain. Instead, the Court specifically recognized the statute as an affirmative defense by holding: “We agree with John Doe, that this claim [that Gonzaga is immune from liability for negligent reporting under RCW 4.24.510] *is an affirmative defense* which may not be raised for the first time on appeal.” (Emphasis added.) As an affirmative defense, it must be affirmatively pled or it will be waived. *See Farmers Ins. Co.*, 87 Wn.2d at 76; *Taliesen Corp.*, 135 Wn. App. at 134.

The Rouhfars contend an objection to a failure to comply with CR 8(c) is waived where there is written and oral argument to the court without objection on the legal issues raised in connection with the defense. Rouhfar br. at 10. Yet they admit that Brawley objected to the trial court's consideration of their motion before briefing was complete and before the court issued its ruling. Rouhfar br. at 11 n.3. Although they complain the trial court did not grant the parties leave to raise new arguments, they also admit the trial court considered all of Brawley's supplemental briefing and the materials she submitted. *Id.* The court could have, but did not, strike that supplemental material; it clearly considered her materials. CP 118.

Here, the Rouhfars do not deny that they failed to raise the immunity defense in their answer and did not raise it in an amended answer. CP 16-17, 123, 281-82. They likewise do not deny that they failed to assert it in a CR 12(b)(6) motion. Their inaction constitutes a waiver of the defense. Consequently, they were not entitled to rely on the defense as a basis for summary judgment. *See Farmers*, 87 Wn.2d at 76 (noting a waived affirmative defense is not a triable issue). Because summary judgment was therefore inappropriate, this Court should reverse.

(4) The Rouhfars' Statements Are Not Protected

The Rouhfars next contend Brawley is precluded from arguing for the first time on appeal that her lawsuit is no SLAPP suit.<sup>8</sup> Rouhfar br. at 12. The fatal flaw in this argument is that Brawley raised the issue below.<sup>9</sup>

The general rule in Washington is that the Court will not consider an issue or theory raised for the first time on appeal. *Peoples Nat'l Bank of Wash. v. Peterson*, 82 Wn.2d 822, 829-30, 514 P.2d 159 (1973). *See also, Lindblad v. Boeing Co.*, 108 Wn. App. 198, 207, 31 P.3d 1 (2001)

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<sup>8</sup> The Rouhfars also argue that if Brawley had raised this issue below, they would have answered that they meet the plain language of the statute. Rouhfar br. at 12-13. Their statement is disingenuous because they made essentially the same argument to the trial court in their motion for summary judgment. CP 32-33.

<sup>9</sup> The Rouhfars' later complaints, Rouhfar br. at 17, about Brawley's reliance on *Moe v. Wise*, 97 Wn. App. 950, 989 P.2d 1148 (1999) are likewise misplaced.

(refusing to consider disparate treatment theory on appeal where it was never mentioned throughout the proceedings in the trial court). *Cf. State v. Zumwalt*, 79 Wn. App. 124, 129-30, 901 P.2d 319 (1995), *overruled in part on other grounds by State v. Bisson*, 156 Wn.2d 507, 520, 130 P.3d 820 (2006) (concluding the defendant preserved his factual basis argument for appeal by citing enough facts and the relevant law to draw the trial court's attention to his contention).

A review of the record reveals that Brawley consistently argued to the trial court that her lawsuit was no SLAPP suit.<sup>10</sup> She also consistently reiterated that she filed her complaint before she was even aware that the Rouhfars had contacted the police or CPS to report her alleged abuse of their son. *See, e.g.*, CP 72 (declaration), 105 (declaration), 120 (supplemental brief), 280 (response), 284 (declaration). Thus, her lawsuit

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<sup>10</sup> Typically, SLAPP suits “are suits that chill, stifle and intimidate expressions by citizens attempting to participate in governmental activity and public policy.” Joshua R. Furman, *Cybersmear or Cyber-Slapp: Analyzing Defamation Suits Against Online John Does As Strategic Lawsuits Against Public Participation*, 25 Seattle U. L. Rev. 213 (Summer 2001 (citation omitted)). They are retaliatory lawsuits filed against an individual whose constitutionally protected use of the political process offends their opponents. Michael Eric Johnston, *A Better SLAPP Trap: Washington State's Enhanced Statutory Protection for Targets of "Strategic Lawsuits Against Public Participation,"* 38 Gonz. L. Rev. 263 (2002-03) (citing George W. Pring & Penelope Canan, *SLAPPS: Getting Sued for Speaking Out*, 8-9 (1996)). “The hallmark of a SLAPP suit is that it lacks merit, and [that it] is brought with the goals of obtaining an economic advantage over a citizen party by increasing the cost of litigation to the point that the citizen party's case will be weakened or abandoned . . . .” *Newsham v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 970-71 (9th Cir. 1999). Brawley's lawsuit bears none of these characteristics.

could not have been brought in retaliation for those reports.<sup>11</sup> She also argued that the Rouhfars' efforts to paint her lawsuit as a retaliatory SLAPP were factually incorrect and that she did not retaliate against them for the resulting fall-out from those complaints. CP 120 (supplemental brief), 122 (declaration), 280-82 (response), 284 (declaration). Although her argument could perhaps have been articulated more clearly, it was sufficiently raised below to preserve the issue for appeal. *See Bennett v. Hardy*, 113 Wn.2d 912, 917-18, 784 P.2d 1258 (1990). Moreover, there is no rule that prevents Brawley from presenting this Court with case law not presented at the trial court level. *See Walla Walla County Fire Prot. Dist. No. 5 v. Washington Auto Carriage, Inc.*, 50 Wn. App. 355, 385 n.1, 745 P.2d 1332 (1987). Where Brawley adequately preserved her argument for appeal, the Court can address the substance of her claim.

The Rouhfars next contend that Brawley should be estopped from asserting inconsistent positions on appeal to gain an advantage. Rouhfar br. at 14. They contend Brawley took the position below that her lawsuit sought to hold them accountable for statements they made to the police, but on appeal she now argues inconsistently that her lawsuit was not based

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<sup>11</sup> The Rouhfars contend that whether Brawley knew about the Rouhfars' statements to the police and CPS is irrelevant. Rouhfar br. at 13. On the contrary, when Brawley knew about those specific allegations is critical to determining whether her lawsuit is properly characterized as a SLAPP suit. If she was unaware of those specific

on statements to government authorities. *Id.* at 15 (citing CP 51). Brawley's position throughout this case has been consistent.

CP 51 does not support the Rouhfars' contention. There, Brawley was responding to the Rouhfars' contention in their summary judgment motion that they were absolutely immune from liability under RCW 4.24.510 for their reporting of Brawley's abuse of their son to the police and to CPS. CP 50-51. She merely argued at CP 51 that they were not immune from liability because their communications were made in bad faith. She did not argue, as the Rouhfars' contend, that their statements to government authorities were the basis for her complaint.

As Brawley noted in her opening brief, she brought her complaint based on allegations that the Rouhfars made defamatory statements to a potential future employer and to Morris.<sup>12</sup> App. br. at 28-29. Those allegations alone are sufficient to ruin her career and her volunteer opportunities. CP 74-75. She did not know the Rouhfars had reported their child abuse allegations to the police until *after* she had filed her

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allegations at the time of her complaint, then her lawsuit cannot be characterized as a retaliatory SLAPP suit.

<sup>12</sup> Brawley's slander claim specifically states that the Rouhfars accused her of abusing their son, and that those allegations constitute a claim that she committed a criminal act. CP 6. She further alleges the Rouhfars' allegations were untrue and made to avoid paying her wages following her termination without notice. *Id.* Finally, she claims that those allegations will damage her reputation. *Id.* Her slander claim does allege that the Rouhfars' allegations were made to government authorities *because it*

complaint. Nor did she know that the Rouhfars had contacted CPS until *after* they had filed their summary judgment motion. *Supra*. Brawley's position on appeal is consistent with her position before the trial court.

The Rouhfars next claim the trial court properly dismissed the reminder of Brawley's defamation claim based on the common interest privilege and her failure to demonstrate that they abused the privilege by clear and convincing evidence. Rouhfar br. at 16-23. The trial court erred in dismissing Brawley's claim where the qualified privilege does not apply. Even if it does, Brawley convincingly demonstrated that the Rouhfars abused it.

The Rouhfars moved for summary judgment alleging the qualified privilege protected their statements about Brawley's alleged abuse of their son to school personnel, doctors, and family members. CP 33. Brawley countered that they abused, and therefore lost, that privilege. CP 49-53. A conditional privilege may be abused and its protection lost if the person making the statement had knowledge of, or exercised reckless disregard for, the falsity of the defamatory matter. *Bender v. Seattle*, 99 Wn.2d 582,

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*could not*. She was not aware of those specific reports until *after* her complaint had been filed. The Rouhfars seem to forget this fact.

600, 664 P.2d 492 (1983); *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 564 P.2d 1131 (1977). This inquiry is virtually identical to an inquiry into whether the Rouhfars acted negligently.

Here, Brawley had the burden of showing by clear and convincing evidence that the Rouhfars made their statements knowing of their falsity or with reckless disregard for their falsity. *See Bender*, 99 Wn.2d at 601. Contrary to the Rouhfars' assertions, Rouhfar br. at 19, Brawley met her limited burden of presenting specific facts to raise factual questions about the fairness and impartiality of the Rouhfars' investigation as well as the existence of reasonable grounds for their expressed beliefs. App. Br. at 31-32. Although the child's medical records reflect the Rouhfars' abuse allegations, there is no evidence that he was abused or even a diagnosis that he was abused. CP 441-51 (sealed). The Rouhfars knew that before they made their statements to Morris and Brawley's future employer. *Id.*; CP 523, 539.

The parties' conflicting testimony created a classic "he said, she said" case in which credibility became decisive and summary judgment improper. *See Margoles v. Hubbart*, 111 Wn.2d 195, 210, 760 P.2d 324 (1988) (Anderson, J., dissenting). Here, the trial court erred by failing to construe the evidence in a light more favorable to Brawley.

Finally, the Rouhfars contend in a footnote that the trial court did not determine that Brawley was a public figure and there is no suggestion that such a determination affected the trial court's ruling.<sup>13</sup> Rouhfar br. at 18 n.5. They maintain the issue is irrelevant to the privilege issue raised in their motion. *Id.* On the contrary, the trial court's implicit determination that Brawley was a public figure subjected her to a heightened standard that she was unable to meet.

As Brawley noted in her opening brief at 24, the necessary degree of fault required to establish defamation depends on whether the defamed party is a private individual or a public figure. If the defamed party is a public figure, he or she must establish actual malice. *Id.* If the defamed party is a private figure, he or she must only show that the statement was negligently made to establish fault. *Id.* Here, the record does not show where the trial court definitely decided the issue of Brawley's status as a private or public figure; however, the court had to have implicitly determined she was a public figure because it required her to demonstrate that the Rouhfars' abused their qualified common interest privilege by acting with actual malice rather than with negligence. CP 217. This determination greatly impacted Brawley's case because the court granted

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<sup>13</sup> The Rouhfars admit they did not argue to the trial court that Brawley was a public figure. Rouhfar br. at 18 n.5. It is too late for them to do so now.

the Rouhfars' summary judgment motion after concluding Brawley failed to sustain her burden of proving they acted with actual malice. *Id.* This was error where Brawley, as a private figure, should have only had to prove the Rouhfars' statements were negligently made. *See Dunlap v. Wayne*, 105 Wn.2d 529, 542, 716 P.2d 842 (1986).

(5) Brawley's Fee Award Should Be Recalculated

Both parties agree the lodestar method is the preferred method for calculating attorney fee awards under Washington law. App. br. at 34-35; Rouhfar br. at 25. Under that method, a court must multiply a reasonable number of hours by a reasonable hourly rate. *Id.* They disagree, however, whether the trial court could properly limit the amount of fees awarded based on the small amount of unpaid wages Brawley recovered. App. br. at 34; Rouhfar br. at 26.

The Rouhfars' principal argument is that the amount Brawley recovered was insignificant when compared with the attorney fees she claims she incurred. Rouhfar br. at 26-28. They contend the trial court properly considered this lack of proportionality when reducing Brawley's fee award. *Id.* Yet the Rouhfars' conduct and their litigation strategy compelled Brawley to incur the fees at issue here. *See, e.g.*, CP 316-17, 278, 282, 326.

While the amount of recovery may be one factor in the lodestar analysis, it is by no means the decisive factor. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 409-10, 675 P.2d 193 (1983); *Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998). As Brawley noted in her opening brief at 36, *Mahler* is dispositive of the issue. There, the Supreme Court unequivocally stated “We will not overturn a large attorney fee award in civil litigation merely because the amount at stake in the case is small.” *Id.* The courts have consistently reiterated this principle. *See, e.g., Taliesen*, 135 Wn. App. at 144 (noting it is within the scope of the trial court’s discretion to award fees in an amount greatly exceeding the underlying judgment); *Mayer v. City of Seattle*, 102 Wn. App. 66, 83, 10 P.3d 408 (2000), *review denied*, 142 Wn.2d 1029 (2001) (noting the trial court may award attorney fees in an amount disproportionate to the underlying judgment, provided it follows the lodestar method). Indeed, in *Banuelos v. TSA Washington, Inc.*, 134 Wn. App. 607, 141 P.3d 652 (2006), the Court of Appeals allowed for a fee award of \$90,175, including a 1.5 multiplier, in case where the plaintiff recovered only \$4.27. *See also, Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 204 P.3d 885 (2009) (damage to CPA claimants was cost of obtaining credit report, postage, and parking to consult attorney).

The trial court abused its discretion by finding Brawley's request for attorney fees unreasonable and reducing the award based on the small amount of wages she recovered. This Court should remand the award to the trial court with directions to recalculate it without considering the small amount at stake.

(6) Brawley Should Be Awarded Attorney Fees and Costs on Appeal

Brawley argued in her opening brief that she is entitled to an award of attorney fees and costs on appeal under RAP 18.1 and RCW 49.49.030 and RCW 49.52.070 once this Court reverses the order granting in part and denying in part her motion for attorney fees and costs on her wage claim. App. br. at 37-38. She thus satisfied the requirements of RAP 18.1(b) by devoting a portion of her opening brief to this request. Brawley is entitled to her reasonable attorney fees and costs on appeal.

(7) The Rouhfars' Request for Attorney Fees Should Be Denied

Although the Rouhfars seek to be awarded their attorney fees on appeal, they do so without any argument in their brief. Rouhfar br. at 23. Accordingly, their request should be denied.

To receive an award of attorney fees on appeal, a party must devote a section of the brief to the fee request. RAP 18.1(b). But the rule requires more than a bald request for attorney fees on appeal. *Thweatt v.*

*Hommel*, 67 Wn. App. 135, 148, 834 P.2d 1058, *review denied*, 120 Wn.2d 1016, 844 P.2d 436 (1992). Argument and citation to authority are required. RAP 18.1(b); *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998). Here, the Rouhfars fail to provide the Court with any real argument to support their request for fees. The Court should therefore deny it.

Moreover, when the Court reverses the trial court's grant of summary judgment, the Rouhfars' defense will have failed and RCW 4.24.510 will not apply here. *See Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 475-76, 238 P.3d 1107 (2010).

#### D. CONCLUSION

Nothing in the Rouhfars' brief should dissuade this court from reversing the trial court order summarily dismissing Brawley's slander *per se* claim.

The Rouhfars waived their immunity defense by failing to properly plead it. Consequently, the trial court should not have relied upon it as a basis for granting the Rouhfars' summary judgment motion. Where summary judgment dismissal of Brawley's slander *per se* claim was inappropriate, this Court should reverse and remand to the trial court for a trial on the merits. Since RCW 4.24.510 does not apply, the attorney fees, costs, and statutory damages awarded to the Rouhfars should be vacated.

The trial court's decision to reduce Brawley's fee award based in part on the small amount of her recovered wages was improper. The Court should reverse and remand the fee award to the trial court for recalculation.

The Rouhfars are not entitled to an award of fees and costs. Costs on appeal, including reasonable attorney fees, should be awarded to Brawley.

DATED this 22nd day of November, 2010.

Respectfully submitted,



---

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# APPENDIX



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### Superior Court Case Summary

**Court:** King Co Superior Ct  
**Case Number:** 08-2-34697-8

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Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	10-08-2008	SUMMONS & COMPLAINT	Summons & Complaint	
2	10-08-2008	SET CASE SCHEDULE JDG0052	Set Case Schedule Judge Bruce Heller, Dept 52	03-29- 2010ST
3	10-08-2008	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
4	10-16-2008	NOTICE OF APPEARANCE	Notice Of Appearance /defts	
5	10-24-2008	RETURN OF SERVICE	Return Of Service	
6	10-24-2008	RETURN OF SERVICE	Return Of Service	
7	10-29-2008	SUBPOENA DUCES TECUM	Subpoena Duces Tecum	
8	10-30-2008	AFFIDAVIT OF MAILING	Affidavit Of Mailing	
9	11-10-2008	ANSWER & COUNTER CLAIM	Answer & Counter Claim /defts	
-	11-10-2008	FILING FEE RECEIVED	Filing Fee Received	200.00
10	11-21-2008	ORDER FOR CHANGE OF JUDGE JDG0015	Order For Change Of Judge Judge Mary Yu, Dept 15	
11	12-02-2008	ANSWER TO COUNTERCLAIM	Answer To Counterclaim /pla	
12	12-02-2008	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
13	03-19-2009	CONFIRMATION OF JOINDER: OTHER	Confirmation Of Joinder: Re Arb	
14	06-03-2009	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
15	06-16-2009	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
16	06-17-2009	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
17	06-18-2009	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
18	07-15-2009	NOTICE OF ASSOCIATION OF COUNSEL	Notice Of Association Of Counsel	
19	09-04-2009	NOTICE OF INTENT TO WITHDRAW	Notice Of Intent To Withdraw	
20	11-16-2009	DECLARATION	Declaration /leyla Rouhfar	
21	11-16-2009	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment /deft	
22	11-16-2009	DECLARATION	Declaration Of Reza Firouzbakht Converted To File Exhibit	
23	11-16-2009	NOTICE OF HEARING	Notice Of	12-18-

### Contact Information

King Co Superior Ct  
 516 3rd Ave, Rm C-203  
 Seattle, WA 98104-2361  
**Map & Directions**  
 206-296-9100[Phone]  
 206-296-0986[Fax]  
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24	12-01-2009	NOTICE	Hearing /summ Jdgt Notice/conversion Of Filing To File Exhibit	2009
25	12-08-2009	OBJECTION / OPPOSITION	Objection / Opposition /pltf	
26	12-08-2009	DECLARATION	Declaration /lora Brawley	
27	12-08-2009	DECLARATION	Declaration /saphronia Young	
28	12-08-2009	DECLARATION	Declaration /carolyn Stulberg	
29	12-08-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
30	12-09-2009	LIST	List Of Exhibits /plt	
31	12-09-2009	LIST	List Of Exhibits /plt	
32	12-10-2009	JURY DEMAND RECEIVED - TWELVE	Jury Demand Received - Twelve	250.00
33	12-11-2009	NOTICE OF HEARING	Notice Of Hearing /stk Declaration	12-18- 2009
34	12-16-2009	OBJECTION / OPPOSITION	Opposition To Brawley Motion To Partially Strike Delcarations /defs	
35	12-17-2009	REPLY	Reply To Defs Mt For Partial Summ Jdg /def	
36	12-17-2009	REPLY	Reply To Defs Mt For Partial Summ Jdg /def	
37	12-17-2009	DECLARATION	Declaration Of Leyla Rouhfar /supp	
38	12-17-2009	NOTICE OF HEARING	Notice Of Hearing /stk Pleadings	12-18- 2009
39	12-18-2009	SUMMARY JUDGMENT HEARING JDG0015	Summary Judgment Hearing Judge Mary Yu, Dept 15	
40	01-06-2010	BRIEF	Brief /supplemental/defs	
41	01-07-2010	DECLARATION	Declaration Of Saphronia Young	
42	01-07-2010	DECLARATION	Declaration Of Carolyn Stulberg	
43	01-07-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
44	01-07-2010	MOTION	Motion For Protective Ord/brawley	
45	01-07-2010	NOTICE OF HEARING	Notice Of Hearing /prot Order	01-13- 2010
46	01-07-2010	ATTACHMENT	Attachment/motion Exhibits A-e	
47	01-07-2010	MOTION TO COMPEL	Mtn To Compel Discov/sanctions/pltf	
48	01-07-2010	NOTICE OF HEARING	Notice Of Hearing /compel	01-13- 2010
49	01-07-2010	DECLARATION	Declaration Of Saphronia Young	
50	01-07-2010	ATTACHMENT	Attachment/mtn Exhibits A-i	
51	01-07-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
52	01-11-2010	OBJECTION / OPPOSITION	Deft Object To Plt Mt	

			Protect Ord	
53	01-11-2010	DECLARATION	Declaration /sarah Duran	
54	01-11-2010	OBJECTION / OPPOSITION	Deft Oppo To Plt Mt To Compel Disc	
55	01-11-2010	DECLARATION	Declaration /sarah Duran	
56	01-11-2010	DECLARATION	Declaration /bruce Johnson	
57	01-11-2010	BRIEF	Brief On Oppo To S/j /plaintiff	
58	01-11-2010	BRIEF	Brief On Oppo To S/j /plaintiff	
59	01-12-2010	REPLY	Reply Of Motion For Prot Ord/lora B	
60	01-12-2010	CITATION	Citation Of Additional Authority	
61	01-12-2010	REPLY	Reply On Mtn To Compel Discovery /pltf	
62	01-22-2010	ORDER GRANT PARTIAL SUMMARY JDG	Order Grant Partial Summary Jdg For Defs	
63	01-22-2010	ORDER DENYING MOTION/PETITION	Order Denying Motion For Protective Order	
64	01-27-2010	ORDER COMPELLING DISCOVERY	Order Compelling Discovery /grant Deny In Part	
65	02-01-2010	MOTION TO DISMISS	Motion To Dismiss Counterclaim /def	
66	02-01-2010	NOTICE OF HEARING	Notice Of Hearing /dismissal	02-11-2010
67	02-01-2010	MOTION	Motion For Attorney Fees /def	
68	02-01-2010	NOTICE OF HEARING	Notice Of Hearing /atty Fees	02-11-2010
69	02-01-2010	DECLARATION	Declaration Of Reza Firouzbakht	
70	02-01-2010	DECLARATION	Declaration Of I Keith Gorder Jr	
71	02-01-2010	DECLARATION	Declaration Of Sarah K Duran	
72	02-01-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
73	02-02-2010	NON-COMPLIANCE SANCTIONS RECEIVED	Non-compliance Sanctions Received	250.00
74	02-04-2010	NOTICE OF HEARING	Notice Of Hearing /mtn To Compel	02-12-2010
75	02-04-2010	MOTION TO COMPEL	Motion To Compel /pltf	
76	02-04-2010	DECLARATION	Declaration /sarah K Duran	
76A	02-08-2010	PROTECTIVE ORDER	Protective Order Re Pltf Current Employer And Medical Records	
77	02-10-2010	OBJECTION / OPPOSITION	Objection / Opposition /lora B	
78	02-10-2010	DECLARATION	Declaration /saphronia Young	
79	02-10-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	

80	02-10-2010	RESPONSE	Response To Brief On Fees/brawley	
81	02-10-2010	DECLARATION	Declaration Of Lora Brawley Re Fees	
82	02-10-2010	DECLARATION	Declaration Of Saperonia Young /sealed Per Sub 89a	
83	02-10-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
84	02-10-2010	REPLY	Reply To Motion /def	
85	02-10-2010	DECLARATION	Declaration Of Darah Duran	
86	02-11-2010	REPLY	Reply To Mtn For Calculation/suppl	
87	02-11-2010	REPLY	Reply To Mtn To Compel/pltf	
88	02-12-2010	ORDER GRANTING MOTION/PETITION	Order Granting Motion For Atty Fees	
89	02-12-2010	ORDER	Order Dismissing Defs Counterclaims	
89A	02-12-2010	ORDER SEALING DOCUMENT	Order Sealing Document /sub 82	
89B	02-12-2010	DECLARATION	Declaration Of Saphronia Young /redacted Version Of Sub 82	
90	02-17-2010	ORDER DENYING MOTION/PETITION	Order Denying Motion/petition	
91	02-19-2010	ORDER ON PRE-TRIAL CONFERENCE	Order On Pre-trial Conference	
92	02-22-2010	NOTICE OF HEARING ACTION	Notice Of Hearing Pla Mtn For Reconsideration/sanctns	03-01-2010
93	02-25-2010	OBJECTION / OPPOSITION	Opposition To Reconsider /def	
94	02-25-2010	DECLARATION	Declaration Of Sarah K Duran	
95	03-02-2010	NOTICE OF ASSOCIATION OF COUNSEL	Notice Of Association Of Counsel	
96	03-09-2010	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
97	03-19-2010	CERT OF SETTLMT WITHOUT DISMISSAL	Cert Of Settlmt Without Dismissal	03-29-2010AU
98	03-19-2010	NOTICE OF HEARING	Notice Of Hearing /award Fees	03-29-2010
99	03-23-2010	NOTICE OF HEARING	Notice Of Hearing /calculate Fees	04-02-2010
100	03-23-2010	COPY	Copy Plfts Motion For Award	
101	03-23-2010	COPY	Copy Declaration Of S Young	
102	03-23-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
103	03-30-2010	ORDER DENYING MOTION/PETITION	Order Denying Motion/reconsider	
104	03-31-2010	OBJECTION / OPPOSITION	Opposition /to Pla Mtn For Award	
105	04-01-2010	BRIEF	Brief In Reply In Supp Plfts Mtn	
106	04-01-2010	REPLY	Surreply In Opposition To Mtn For Award Of Fees/defs	

107	04-20-2010	NOTICE OF PRESENTATION	Notice Of Presentation To Ex Parte	
108	04-20-2010	CERTIFICATE OF MAILING	Certificate Of Mailing	
108A	04-20-2010	ORDER DENYING MOTION/PETITION	Order Denying Motion	
109	04-21-2010	NOTICE OF HEARING	Notice Of Hearing /final Jdgmt	04-30-2010
110	04-21-2010	MOTION	Motion For Final Jdgmt/pltf	
111	04-21-2010	DECLARATION	Declaration /saphronia Young	
112	04-21-2010	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
113	04-28-2010	RESPONSE	Response To Mtn For Final Jdgmt /defs	
114	04-28-2010	REPLY	Reply On Mtn For Final Jdgmt/pltf	
115	04-28-2010	CERTIFICATE OF MAILING	Certificate Of Mailing	
116	05-06-2010	JUDGMENT	Judgment	
117	05-11-2010	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
-	05-11-2010	APPELLATE FILING FEE	Appellate Filing Fee	280.00
118	06-02-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers Trans Coa 6/16/2010 65399-7/hart-biberfeld/ Pgs 1-438 & 439-458 Sealed	
119	06-03-2010	INDEX	Index Cks Pprs Pgs 1-438	
-	06-03-2010	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 704220-cp/hart-biberfeld/pd 6/14/10	254.00
120	06-03-2010	INDEX	Index Cks Pprs Pgs 439-458 Sealed	
121	06-03-2010	NOTICE	Notice Re Dates From Coa	
122	06-09-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers-supp 65399-7/hart-biberfeld/ Pgs 459-475 Trans Coa 7/7/2010	
123	06-11-2010	INDEX	Index Cks Pprs Pgs 459-475	
-	06-11-2010	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 704245-cp/hart-biberfeld/pd7/1/2010	33.50
124	06-15-2010	COMMENT ENTRY	Cks Pprs Pgs 1-438	
125	06-15-2010	COMMENT ENTRY	Csks Pprs Pgs 439-458 Sealed	
126	07-02-2010	COMMENT ENTRY	Cks Pprs Pgs 459-475	
127	08-13-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers -supp 65399-7/ Talmadge/ Pgs 476-610 Trans Coa 9/1/10	
128	08-16-2010	INDEX	Index Cks Pprs Pgs 476-610	

-	08-16-2010	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 704453-cp/ Talmadage/ Pd 8/27/2010	92.50
129	08-27-2010	COMMENT ENTRY	Cks Pprs Pgs 476-610	
130	09-15-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers -supp 65399-1/ Duran/ Pgs 611-651 Trans Coa 10/20/10	
131	09-16-2010	INDEX	Index Cks Pprs Pgs 611-651	
-	09-16-2010	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 704536-cp/ Duran / Pd 10/15/10	45.50
132	09-17-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers -supp 65399-1/duran / Pgs 652-667	
133	09-20-2010	INDEX	Index	
-	09-20-2010	CLERK'S PAPERS - FEE ASSESSED	Clerk's Papers - Fee Assessed 704553-cp/ Duran	33.00
134	10-19-2010	COMMENT ENTRY	Cks Pprs Pgs 611-651	

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Title: BRAWLEY VS ROUHFAR ET ANP

Case No.: 08-2-34697-8 SEA

[Sealed Documents]

Index Date: 06-03-2010

Appeal No.: 65399-7-1

Desg. Party: EMMELYN HART-BIBERFELD

[Sealed Documents]

Pages: 439 - 458

[Sealed Documents]

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Sub No.	Document Description	Page#
82	DECLARATION OF SAPERONIA YOUNG	439 - 458

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

LORA BRAWLEY,

Plaintiff,

v.

LEYLA ROUHFAR and REZA  
FIROUZBAKHT, Husband and Wife, and the  
marital community thereof,

Defendants.

) No. 08-2-34697-8 SEA

) ORDER GRANTING DEFENDANTS'  
) MOTION TO SEAL MEDICAL RECORDS:  
) (Sub 82)

) **[CLERKS ACTION REQUIRED]**

RECEIVED  
10/26/10

THIS MATTER came before the undersigned on Defendants' Motion to seal medical records that were attached to the Declaration of Saphronia Young (sub 82). The court reviewed the Motion, the Response and Reply. Having been duly advised on the premises,

IT IS HEREBY ORDERED that the Motion to Compel IS GRANTED as follows:

1. The Clerk shall seal sub #82. The said Declaration contains attachments that are medical records which are in the first instance private. Attached is another copy of the Declaration of Saphronia Young which the Clerk shall file as Sub 82 (a). This Declaration does not have the medical records attached.
2. The court directed disclosure of the medical records to Plaintiff's counsel but ordered that such records shall not be published. This directive was included in a

Discovery Order (1/27/2010) and a subsequent Protective Order (2/8/2010).

Publication of the medical records by filing them in the court file is a direct and willful violation of the court's orders.

3. Plaintiff's counsel was warned that failure to obey the court's order would subject her to sanctions. The tenor of the pleadings and the issues in this case raises a concern as to whether it is the client or counsel that is directing noncompliance with court orders and who should be sanctioned. Because counsel is responsible under the Rules for Professional Conduct for the ultimate direction of this litigation, the court imposes sanctions on counsel, Ms. Saphronia Young, in the amount of \$1,000.00 for willfully violating the court's orders by publishing the medical records. The sanctions shall be paid to Defendants' no later than 30 days from the date of this order.

IT IS SO ORDERED this 11<sup>th</sup> day of February, 2010.



---

Judge Mary Yu

Honorable Mary Yu

Department 15

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN KING COUNTY - AT SEATTLE

LORA BRAWLEY,

Plaintiff,

vs.

LEYLA ROUHFAR and REZA

FIROUZBAKHT, Husband and Wife,

AND THE MARITAL COMMUNITY

THEREOF,

Defendants.

Case No.: 08-2-34697-8 SEA

SAPHRONIA YOUNG'S DECLARATION  
CONCERNING FEES

My name is Saphronia Young, and I am the attorney for plaintiff in this action. I file this declaration under penalty of perjury of the Laws of the State of Washington, and based upon my personal knowledge of the facts stated herein.

1. I filed this litigation on plaintiff's behalf only because the defendants refused a request stated in my correspondence to opposing counsel of September 18, 2008 to pay my client her severance wages, and also refused to promise to stop defaming her by claiming "child abuse."
2. They were aware, based on the medical records that we recently received after winning a motion to compel discovery, that their child had not been "abused." This necessarily means that

DECL. OF YOUNG: DEFENSE

MOTION FOR FEE CALCULATION - 1

Amer & Young, PLLC  
222 East Main Street, Suite M  
Auburn, WA 98002  
Telephone: (253) 833-3004  
Fax: (253) 833-0899

1 they knew that Avesta had not been abused by Lora Brawley. [See, Ex. A, which is a true and  
2 correct copy of the medical documents].

3 3. My letter to opposing counsel did not demand that the defendants retract any statements  
4 already made to any public authority. [See attached Exhibit B, which is a true and correct copy  
5 of that letter].

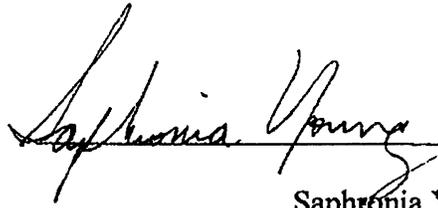
6 4. In fact, at the time that I filed this litigation, I also did not believe that any police report had  
7 been made, because nobody contacted either me or my client from the police.

8 5. We also did not know that the defendant had contacted CPS. She did not mention it in her  
9 attorney's letter, and it was not mentioned in the defendants' discovery answers or counterclaim.

10 6. I filed this suit only to prevent the defendants from continuing in their efforts to harm my  
11 client and her business.

12 7. I believe the rates charged by DWT and the hours claimed are excessive, based upon my  
13 years of litigation experience. I was previously at a large firm, and also worked for a "boutique"  
14 specialty firm. The rates of which I am aware in Seattle, based upon current work with co-  
15 counsel and appellate counsel, are at \$200 for high-level associates, and \$300 for partners.  
16

17 Signed this 8<sup>th</sup> day of February, 2010 at Auburn, WA.

18  
19  
20   
21 Saphronia Young

LAW OFFICES OF  
**SAPHRONIA R. YOUNG**

222 E. Main Street, Ste M  
Auburn, WA  
98002-5440

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September 19, 2008

Ramina Dehkhoda-Steele  
Adorno Yoss Caley Dehkhoda & Qadri  
2340 130<sup>th</sup> Avenue NE, Suite D-150  
Bellevue, WA 98005

Via Fax: (425) 869-4050, email: [ramina@cdglaw.com](mailto:ramina@cdglaw.com); and  
[cdhkhoda@adarno.com](mailto:cdhkhoda@adarno.com) and U. S. mail

RE: Brawley wage claim vs. Firouzbakht / Foughfar

Dear Ms. Dehkhoda-Steele:

This firm represents Lora Brawley with respect to the dispute she has with your clients concerning her wages. As you know, the parties have a written contract requiring 30-days notice for termination without cause. She was advised on August 28, 2008 that she was being terminated due to family problems having nothing to do with her. Mr. Firouzbakht stated that his wife's father was closing his business and returning to Iran, leaving his mother-in-law without support. Accordingly, they had decided to have Avesta's grandmother watch him in the future.

The allegations of abuse never arose until my client was insistent upon her wages. Indeed, my client believes that the decision to terminate her arose from her insistence upon a different payment arrangement after her second attempt to cash a paycheck failed. She explained her need to be paid promptly and without incident to Leyla Rouhfar, and was terminated shortly thereafter. My client believes that your clients were embarrassed by the incident, and slightly offended that the "hired help" would be so assertive with them.

It is understandable that a rash decision would arise out of such an embarrassment. However, my client must have her wages. Even more importantly, she cannot afford to have her reputation impugned. This affects her profession profoundly, and she is determined to protect her reputation from unjustified accusations.

Exhibit *A/B*

Letter to Ramina Dehkhoda-Steele  
RE: Brawley  
9/19/2008  
Page 2 of 2

This letter is a demand for her wages due under the terms of the contract, and subject to Washington wage and hour law. While your client Roza Firouzbakht acknowledged in his email of September 1, 2008 that they owe Ms. Brawley \$1440, his calculations were incorrect. They actually owe her an additional 25 hours. While the contract stated seven hours per day, Mrs. Brawley's actual schedule had changed early in her employment, and she was working eight hours per day since May. Accordingly, that would be an additional 13 hours from August 29, 2008 that she expected to work. Also, he deducted 12 hours as having been paid, but those hours were not paid. He requested, and Ms. Brawley agreed, to "bank them," when they both anticipated future work. Accordingly, his calculations need to be adjusted upward by 25 hours x \$18.00 per hour, for an additional \$450.00 above the \$1440. The total amount wages due now, prior to any litigation, is therefore \$1890.00 (one thousand eight hundred ninety dollars). Ms. Brawley has also incurred attorney fees to date of \$400.00, which is added to this demand. Please have your clients remit \$2290 by Friday of next week, September 26, 2008.

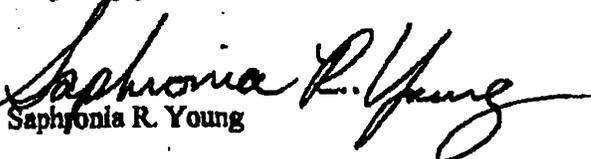
Ms. Brawley does not want to enter into litigation. She would deeply regret the impact that it would likely have upon two busy professionals, and more so upon Avesta, whom she loves and cares for very deeply. However, she cannot afford to be terminated without notice, AND to have her reputation maligned such that future work becomes questionable. Your clients should be aware of the type of clientele for whom Ms. Brawley works. She cannot afford to have these accusations go unchallenged. This is most particularly the case where they are completely unfounded.

Your clients know full well that these accusations are false. Any litigation over the wages will most likely also involve proof issues around this, which will require interviewing of witnesses, possible expert testimony, and extensive discovery. This will be time-consuming and expensive for everyone involved. Accordingly, in addition to her wages, Ms. Brawley must also demand that your clients agree to a mutually acceptable statement as her reference for future employers, and to sign an agreement to cease and desist slandering her. You and I can work out the verbiage of the agreements.

Finally, Ms. Brawley has offered on numerous occasions to make the key and car seat available for your clients to pick up from her. They have insisted that she deliver these items to them, knowing that each trip to their home costs her gasoline and time. She has delivered these items to me, and you may arrange to have your messenger service pick them up from my office at your convenience. My office hours are 8:00 a.m. to 5:00 p.m.

I look forward to hearing from you.

Very truly yours,

  
Saphronia R. Young

Cc: Lora Brawley

DECLARATION OF SERVICE

On said day below I emailed and mailed a true and accurate copy of the following document: Reply Brief of Appellant Lora Brawley in Court of Appeals Cause No. 65399-7-I 08-2-34697-8SEA to the following:

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Original filed by ABC Legal Messengers:

Court of Appeals, Division I  
Clerk's Office  
600 University Street  
Seattle, WA 98101

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: November 22, 2010, at Tukwila, Washington.

  
Paula Chapler, Legal Assistant  
Talmadge/Fitzpatrick