

72663-3

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NO. 72663-3

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CINDI BRIGHT,

Plaintiff-Appellee,

v.

FRANK RUSSELL INVESTMENTS,

Defendant-Appellant.

2015 APR - 9 AM 11:05
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
HONORABLE KEN SCHUBERT

BRIEF OF APPELLANT FRANK RUSSELL INVESTMENTS

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ORIGINAL

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The trial court—erroneously persuaded that the liberal construction of Washington’s Law Against Discrimination (WLAD) divests a trial court of its ordinary discretion—failed to scrutinize or adjust plaintiff’s fee application. The trial court did not segregate plaintiff Cindi Bright’s unsuccessful race-based claims from her successful failure to accommodate claim. But even if these separate claims were somehow intertwined, the trial court abused its discretion by its complete failure to review Ms. Bright’s degree of success. Applying standard non-dispositive quantitative benchmarks, Ms. Bright achieved between a 18% and 50% success. This accords with the trial court’s reduction of Ms. Bright’s *post-trial* fees by 43% when the trial court properly exercised its discretion.

Ms. Bright, a former employee of defendant Frank Russell, initiated this case with claims of race discrimination. After full-blown discovery, the trial court dismissed Ms. Bright’s claim for race-based discrimination because she failed to set forth even a *prima facie* case. The trial court rejected Ms. Bright’s reconsideration motion, and the jury rejected Ms. Bright’s efforts to repackage her untenable race-based claims as a retaliation claim. Ms. Bright similarly asserted unfounded claims against Russell’s general counsel individually. Again, after the close of discovery these claims were dismissed because Ms. Bright’s own

testimony established a failure to state a claim. These facially defective claims in no way advanced WLAD's purpose and needlessly increased the cost of litigating this case by up to 80%.

After the case was filed, Ms. Bright amended her complaint to add a "stand-alone" claim alleging Russell failed to accommodate her post traumatic stress disability. The jury awarded Ms. Bright \$475,000 for lost pay and emotional distress arising from this claim.

Post-trial, Ms. Bright submitted a \$1 million fee application for all of her fees and costs associated with the case. Other than removing charges for a different case, duplicate charges for this case, and some but not all of the charges for the motion for reconsideration, Ms. Bright asked for 100% of her fees at top of market rates, including an unscheduled mid-year upward adjustment of 43% for one timekeeper.

The trial court refused or failed to make any adjustments whatsoever based on the mistaken understanding that when claims arise under the WLAD they cannot be segregated, or Russell's litigation strategy of "painting the plaintiff in a bad light" somehow intertwined plaintiff's otherwise separate race and accommodation claims beyond segregation. But even if the trial court could not segregate the unsuccessful claims—which applying the proper standard should have occurred—the trial court had a paramount obligation to assess the

plaintiff's degree of success based on non-dispositive quantitative and non-quantitative factors. The trial court further abused its discretion by its failure to even undertake this assessment.

Russell respectfully requests this Court reverse the order awarding fees and costs and remand for the trial court with instructions to deny fees and costs for services on the unsuccessful claims, or reduce the fees and costs based on Ms. Bright's lack of success.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in finding claims arising under WLAD cannot be segregated.
2. The trial court erred in finding defendant's litigation strategy of "painting the plaintiff in a bad light" intertwined plaintiff's race and accommodation claims beyond segregation.
3. The trial court erred in failing to exercise its discretion to undertake any consideration of plaintiff's lack of success.

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Did the trial court err by finding Ms. Bright's meritless race-based claims advanced WLAD's purpose?
2. Did the trial court err in finding Ms. Bright's meritless individual liability claims advanced WLAD's purpose?
3. Did the trial court err in failing to exercise its discretion to reduce costs associated with the unsuccessful claims, or to require plaintiff to furnish detail necessary to evaluate the basis for these costs?

IV. STATEMENT OF THE CASE

A. Ms. Bright's Employment

By her own description, Ms. Bright's employment history reflects unusual difficulties. According to a declaration submitted on Ms. Bright's behalf, prior to these events she worked with another employment attorney, Sidney Strong, relating to the termination of her employment at Genoa Healthcare, Weyerhaeuser, and Safeco. CP 1569-70. Ms. Bright joined Russell's human resources department in November 2009. CP 548. She was terminated by Russell on December 13, 2012. CP 115.

B. Ms. Bright's Race-Based Claims

In spring 2012, Russell received three internal complaints regarding Ms. Bright's compliance with Russell's Code of Conduct and Code of Ethics. CP 138-40 (Golob decl. ¶¶ 8; 16-17; 21). On July 24, 2012, Ms. Bright's supervisor, Carmel Orr, and Russell's general counsel, Brian Golob, interviewed Ms. Bright to discuss the complaints, including the contention she incurred travel expenses to watch her son's college basketball games, and engaged in inappropriate and unprofessional conduct. *Id.* ¶¶ 8-22; CP 369 (Bright dep. 512:15-21). During the interview, Ms. Bright was admittedly untruthful in some of her answers. CP 140 (Golob decl. ¶ 23); CP 325 (Bright dep. 239:5-14). An audit of her travel determined that she had incurred over \$29,000 of travel

expenses, while colleagues performing similar functions incurred little or no travel expenses. CP 140 (Golob decl. ¶ 19); RP (Vol. 11) 95:7-18; 96:6-19; 101:22-102:7; 103:7-23. Russell also solicited performance feedback from her colleagues. These reports recognized her contributions but consistently referenced “serious trust issues” between Ms. Bright and the teams she worked with and supported. CP 130; 133. A human resources colleague commented that on future projects Ms. Bright would be the “last BP or Director that I would ask to contribute.” CP 135.

On November 8, 2012, Ms. Bright filed a lawsuit against Russell and Mr. Golob alleging race discrimination and retaliation arising from the ethics investigation. CP 1-4 (Complaint). The complaint did not allege direct evidence of racial discrimination like the use of slurs or derogatory comments on account of race. *Id.* Instead, Ms. Bright contended Russell was more lenient in its ethics investigations of white employees. CP 548:1-4; CP 563:17-19.

Ms. Bright did not make any allocation between tasks and time spent on the considerable discovery related to her race-based claims. Russell therefore made its own allocation, which identifies the discovery related to her race-based claims:

	Plaintiff amended witness disclosure	Documents requested/produced	Depositions
Race claims	27 witnesses	73 RFPs; 85,250 pages	2 mixed
Other claims	1 witness	1 RFP; 742 pages	4

CP 1338-39. Discovery closed on May 12, 2014. CP 1656.

On May 9, 2014, Russell filed a motion for partial summary judgment to dismiss Ms. Bright’s race-based discrimination claim. CP 143-66. The trial court dismissed Ms. Bright’s claim for race-based discrimination because she failed to set forth a *prima facie* case. *See* CP 1115:18-1116:3; RP (June 6, 2014) 42:17-43:11. In the course of her unsuccessful effort to preserve the race discrimination claim, Ms. Bright filed an opposition, multiple declarations, CP 568-802 (Lonnquist decl), CP 803-05 (Bright decl.); and participated in oral argument. Ms. Bright’s motion for reconsideration was similarly denied because she again failed to make a *prima facie* case of unlawful discrimination. CP 1115-17.

Unwilling to abandon her failed race discrimination claim, Ms. Bright recycled the same allegations into a retaliation claim. As Ms. Bright explained to the trial court in her opposition to Russell’s summary judgment motion, because of her retaliation claim “the facts supporting race discrimination will be at issue in this case throughout the trial.” CP 557. But changing the form of the race-based claim from discrimination

- CORRECTED -

to retaliation did not change the result. The jury rejected Ms. Bright's retaliation claim. CP 1188-89.

C. Ms. Bright's Claims Against Brian Golob

Ms. Bright also asserted her claims individually to impose personal liability against Russell's general counsel, Brian Golob. Ms. Bright alleged Mr. Golob subjected her to "harassment, ridicule and abuse" by conducting an interview designed to elicit her version of events related to the three ethics complaints filed against her. CP 3 ¶ 9; CP 140 (Golob decl. ¶ 22). After the close of discovery, Mr. Golob filed a motion for partial summary judgment to dismiss the claims against him as a matter of law. CP 157-58. In support of his motion, Mr. Golob relied on the deposition testimony of Ms. Bright acknowledging he did not have any supervisory responsibility over her, and settled legal authority from the Washington Supreme Court dating back over a decade that non-supervisors cannot be held individually liable under the WLAD. *Id.* With even a modicum of factual and legal research, these claims would not have been brought. Ms. Bright's response cited no disagreement with Mr. Golob's characterization of her testimony or the applicable law, and agreed to dismiss all of her claims against Mr. Golob with prejudice. CP 546 n.1.

D. Ms. Bright's Accommodation-Based Claim

From September 4, 2012 to November 26, 2012, Ms. Bright took FMLA medical leave. During her leave, Ms. Bright began classes at the UW executive MBA program and took a trip to the Bahamas. CP 368 (Bright dep. 499:7-13); RP (Vol. 14) 52:7-11. She also visited a psychologist, Dr. Coryell, who diagnosed her with post-traumatic stress disorder triggered by the “exposure” to her “work environment.” CP 65. Dr. Coryell recommended a “leave of absence from her workplace and interactions with her co-workers.” CP 66.

Ms. Bright proposed for Russell to accommodate her disability (i) with an extended leave of absence; (ii) reassigning her to a position outside of human resources or Seattle; or (iii) working remotely. CP 67. On November 27, 2012, Ms. Bright discussed her accommodation request with her supervisor, Ms. Orr. CP 99. On December 6, 2012, Russell sent Ms. Bright a letter documenting its reasons for rejecting Ms. Bright's proposed accommodations. CP 104-06.

On March 19, 2013, four months after initiating her race-based lawsuit, Ms. Bright amended her complaint to add claims alleging Russell discriminated against her because she was disabled by post-traumatic

stress disorder (Count II)¹ and refused to provide reasonable accommodation for this disability (Count III). CP 13-17 (Amended Complaint).

E. Trial of the Retaliation and Accommodation Claims

Trial of the case took place from July 7, 2014 to August 1, 2014. CP 1191. During trial, Ms. Bright proffered extensive evidence regarding alleged race discrimination in support of her retaliation claim. In defense of the accommodation claim, Russell offered medical testimony contesting her post traumatic stress disability diagnosis, RP (Vol. 14) 53:13-80:11, and testimony as to why the proposed accommodations were unworkable. RP (Vol. 13) 191:1- 199:25. As Ms. Bright did not make any allocation, Russell performed the following allocations based on time at trial and plaintiff's total fees:

	Trial time	Total time (Bright's bills)
Race claims	13 days	2,438.7 hours
Other claims	3 days	261.8 hours

CP 1339-40.

At trial, Ms. Bright's economist, Dr. Christine Tapia, calculated the present value of Ms. Bright's earnings and benefits at Russell at over \$3.4 million. CP 1363 ¶ 28. After mitigation for new employment, Dr. Tapia calculated Ms. Bright's damages for earnings and benefits at

¹ Before trial, Ms. Bright voluntarily dismissed this claim. CP 1343.

between \$1 million and almost \$1.3 million, *id.*, and other economic damages of over \$127,000. RP (Vol. 16) 196:6-10.

Ms. Bright succeeded on her failure to accommodate claim and was awarded a total of \$475,000. CP 1188-89. The jury based her total award on: \$300,000 in past loss of wages and benefits, \$0 in future loss of wages and benefits, and \$175,000 in emotional distress damages. *Id.* The jury rejected Ms. Bright's retaliation claim. *Id.*

F. Ms. Bright's Fee Petition

After trial Ms. Bright filed a petition for attorney's fees and costs. CP 1193-1213. For trial, the petition requested \$951,822 in fees and \$48,970.73 in costs. CP 1212. In support of her petition, Ms. Bright submitted a declaration by her attorney, Judith Lonnquist. CP 1214-24. Ms. Lonnquist declared that the billing records (attached as Exhibit G) were "*true and correct*" copies of the firm's "computerized time records for Ms. Bright's case." CP 1222 ¶ 27 (emphasis added). Ms. Lonnquist testified that even after the exercise of billing judgment over 98% of her time was compensable. *Id.* Exhibit G to the declaration shows and calculates her modest write-offs as handwritten adjustments giving rise to the impression she had printed out and annotated actual time records. *See, e.g.*, CP 1260; 1265; 1275; 1291; 1296; 1310.

But the time records submitted by Ms. Lonnquist in support of the fee petition did not square. CP 1358 ¶ 14. In its opposition, Russell attached copies of other fee petitions, which showed *lower* billing rates for work by the firm during this *same* timeframe as the work being performed in this case. CP 1462-67 (April 2014 petition); CP 1532-36 (August 2014 petition).

Ms. Lonnquist then submitted a supplemental declaration disclosing that effective June 2014, she had increased her billing rates, CP 1599 ¶ 7, by sending a “dear client” notice that makes no reference to Ms. Bright and contains no acknowledgment by Ms. Bright. CP 1603. The supplemental declaration does not address how “true and correct copies” of computerized records would in most instances list the higher billing rate for work performed *prior* to June 2014. *See, e.g.*, CP 1254-58; 1266; 1274. By the expedience of sending an unscheduled notice in the fifth month of the year, Ms. Lonnquist increased her time keeper fees by up to 43% for work during the same time period. Compare CP 1535 (August 2014 declaration: Cameron \$175/hour) to CP 1222 (September 2014 declaration: Cameron \$250/hour).

Ms. Lonnquist’s supplemental declaration removes 23.8 hours of time on the billing records which Russell identified as duplicates or billed

to the wrong matter. “As many times as I reviewed such records, I inadvertently missed those entries.” CP 1598 ¶ 6.

Ms. Bright’s fee petition also relied on the declaration of employment attorney Scott Blankenship. CP 1626. In a decision issued during the same time period, a federal district court for the Western District “question[ed]” whether Mr. Blankenship’s own hourly rate for work on a WLAD claim was “reasonable” and described it as “near the upper end of the range of rates that experienced employment counsel charge in this District.” *Conti v. Corp. Servs. Grp., Inc.*, 30 F. Supp. 3d 1051, 1079-80 (W.D. Wash. 2014). But rather than adjust Mr. Blankenship’s rate, the district court decided to simply adjust downward the firm’s entire fee. *Id.* The district court first removed 40% of Mr. Blankenship’s paralegal time as “not compensable,” and then reduced the resulting subtotal (which included compensable attorney and paralegal fees) by 48%. *Id.* at 1080 & 1085.

On September 30, 2014, the trial court issued its order, which with a few exceptions adopted Ms. Bright’s proposed findings of fact and conclusions of law virtually word-for-word: (i) In paragraph 9, Ms. Lonquist described her work as “excellent.” The trial court described it as of “high quality”; (ii) in paragraph 10, the trial court noted the rates charged by plaintiff’s counsel were “significantly higher” than the rates

charged by defense counsel. CP 1625-33. The court granted 100% of the requested fees and costs for work through trial. The only adjustment the trial court made to Ms. Bright's request related to post-trial fees, which the court reduced by 43%. CP 1629. On October 24, 2014, the trial court issued a revised judgment to incorporate the award of fees and costs. CP 1631-33. Russell timely appealed. CP 1634-35.

V. ARGUMENT

A. Ms. Bright's Race-Based and Individual Liability Claims Did Not Advance WLAD's Purpose

WLAD's fee shifting provision allows discrimination victims to pursue lawsuits that in pure commercial terms would be economically irrational. *Martinez v. City of Tacoma*, 81 Wn. App. 228, 242, 914 P.2d 86 (1996) ("Money damages are an inadequate yardstick for measuring the results of discrimination."). In this case, Ms. Bright's attorneys recorded work in progress with a stated value of \$1 million towards recovery of a judgment of less than half that amount. "However, the WLAD's liberal construction clause is not without limitation." *Pham v. City of Seattle*, 159 Wn.2d 527, 537, 151 P.3d 979 (2007) (collecting cases).

The special privilege to act as a private attorney general, and command top of market fees for this work, comes with an equal weight of responsibility. Meritless claims of race discrimination do not advance the

purpose of the WLAD. Crying “wolf” in cases involving race discrimination makes it more difficult for legitimate victims to seek redress. Here, Ms. Bright’s counsel, who enjoys the sobriquet “dean of the employment bar,” RP (Sept. 26, 2014) 18:25-19:1, brought race discrimination claims that were summarily dismissed after the close of extensive discovery because they did not set forth a *prima facie* case. Refusing to acknowledge this basic defect, counsel tried to keep these claims alive in a motion for reconsideration and a retaliation claim. The court rejected the motion for reconsideration; the jury rejected the retaliation claim. Although Ms. Bright’s various race-based claims needlessly increased the cost of adjudicating this case by up to 80%, the trial court improperly determined Russell should pay *all* of these costs both on its own behalf *and* Ms. Bright.

Similarly, Ms. Bright filed claims against Russell’s general counsel, Mr. Golob, individually. While WLAD allows a plaintiff to sue a person in their individual capacity under appropriate circumstances, the decision to do so carries special responsibility to investigate the merits before bringing such a claim. In this case, all of the information necessary to make this determination was known or available to counsel before she filed the claim. Mr. Golob’s motion for summary dismissal was based on Ms. Bright’s own testimony that he was not her supervisor, and

controlling case law providing a party fails to state a claim when they assert personal liability against a non-supervisor. CP 157-58. Ms. Bright did not oppose Mr. Golob’s motion, and with proper pre-filing investigation by experienced and knowledgeable counsel, the claim would never have been filed. Not only have defendants incurred the costs of defense, the trial court abused its discretion by shifting plaintiff’s counsel’s cost for these meritless claims to defendants who prevailed.

B. Ms. Bright’s “Stand-Alone” Failure To Accommodate Claim Was Distinct From Her Unsuccessful Race-Based Claims

In the proper exercise of discretion, the trial court “should discount hours spent on unsuccessful claims.” *Pham*, 159 Wn.2d at 538. The trial court, however, rejected Russell’s argument for a fee “reduction” based on a “lack of success” because Ms. Bright’s claims were “all based on the Washington Law Against Discrimination.” CP 1628 ¶ 14. As illustrated by *Pham*, the mere fact the successful and unsuccessful claims were both asserted under the WLAD does not insulate the unsuccessful claim from scrutiny. In *Pham*, the trial court distinguished between harassment/retaliation claims and a disparate treatment claim even though they “related to a common core of facts—management’s refusal to intervene to stop workplace discrimination.” *See Pham v. City of Seattle*, 124 Wn. App. 716, 727, 103 P.3d 827 (2004). To the extent the trial court

in this case refused to segregate unsuccessful claims because they all arose under WLAD, it abused its discretion.

Although filed under WLAD, the race-based claims and the accommodation claims differed significantly. One test courts use to evaluate this distinction is whether the claims could have been filed as separate lawsuits. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Here, Ms. Bright filed her race-based claims in her original lawsuit, CP 1-4, and did not add the failure to accommodate claims until four months later. CP 5-11. As reflected in the jury instructions, each claim has different legal elements, CP 1172 (Inst. 7) (retaliation elements) and CP 1175 (Inst. 9) (accommodation elements), and the special verdict form separately asked the jury to determine liability for each claim as defined in the instructions. CP 1189. The trial court's conclusory finding that the retaliation and discrimination "did not involve discrete and severable claims" identified nothing more than the fact both claims arise under WLAD. CP 1640 ¶ 14.

In actuality, the purported overlap rests less on Ms. Bright's claims and more on Russell's litigation strategy. As the trial court explained: "Defendant's [sic] attempt to paint Plaintiff in an unfavorable light.... This defense intertwined Plaintiff's failure to accommodate and retaliation claims." CP 1628 ¶ 15. Ms. Bright made a similar assertions in support of her fee petition: Russell's attorneys, "DWT did not segregate its

records for time on the disability vs. discrimination claims and certainly did not reduce its fees for failing to prevail on the failure to accommodate claim.” CP 1592:2-4. But these assertions rely on a false equivalency. Win or lose the defendant pays its own fees for the entirety of its defense, plus it pays the plaintiff’s prevailing party fees for a *successful claim*. The plaintiff—not the defendant—selects which claims to bring and is rewarded for those that succeed. The trial court’s reformulation of the test as based on common defense themes, instead of common plaintiff claims, rewrites the definition of prevailing party. As redefined, anything from the statute of limitations to a “painting the plaintiff in a bad light” defense unifies the plaintiff’s claims and allows a 100% recovery on claims that were summarily dismissed or rejected by the jury.

The trial court’s determination that Russell’s “painting the picture” strategy “intertwined Plaintiff’s failure to accommodate and retaliation claims” is all the more unprecedented because, it is not an affirmative defense to the accommodation claim. In May 2014, Ms. Bright filed a motion for partial summary judgment on her failure to accommodate claim. Ms. Bright’s motion argued, the “employer can only defend an accommodation claim by demonstrating that it offered the employee a reasonable accommodation, or by providing that the only available reasonable accommodations were an undue hardship.” CP 920. Ms.

Bright emphasized her failure to accommodate claim was a “stand-alone claim” that was “[d]istinct” from any liability arising from the faulty performance or poor character that led to her termination. CP 919.

The trial court abused its discretion by its mechanical determination that so long as multiple claims are filed under WLAD, they do “not involve discrete and severable claims from which the court could or should segregate and reduce the fees.” CP 1628 ¶ 14. The trial court further abused its discretion by ruling a defense strategy can “intertwine” otherwise separate and distinct claims. *Id.* ¶ 15.

C. Trial Court Further Abused Its Discretion By Its Failure to Conduct Any Analysis of Ms. Bright’s Success as a Whole

But even in cases where the claims are related to such a degree that fees cannot be apportioned, the court should examine the plaintiff’s degree of success as a whole. *Pham*, 159 Wn.2d at 538-40 (Supreme Court affirming fee reduction in WLAD case involving “common core of facts and related legal theories.”); *see also Osborne v. Seymour*, 164 Wn. App. 820 n.49, 265 P.3d 917 (2011) (“intertwinement of facts and law in this case” not an “obstacle to reducing the attorney fee award” by one-third); *Collins v. Clark Cnty. Fire District No. 5*, 155 Wn. App. 48, 101-102, 231 P.3d 1211 (2010) (although claims “based on a number of facts essential

to the overall lawsuit” the “trial court properly subtracted [counsel’s] time spent on unsuccessful claims”).

Because an award must be “reasonable in relation to the success achieved,” *Hensley*, 461 U.S. at 440, it is an abuse of discretion for the trial court to “award attorneys’ fees without considering the relationship between the extent of success and the amount of the fee award.” *McGinnis v. Kentucky Fried Chicken of Cali.*, 51 F.3d 805, 810 (9th Cir. 1995) (quotation and citation omitted). Here, having concluded Russell’s defense intertwined Ms. Bright’s claims, the trial court abused its discretion by its mistaken failure to even consider the degree of Ms. Bright’s success. *Berryman v. Metcalf*, 177 Wn. App. 644, 659, 312 P.3d 745 (2013) (“fee award that is unsupported by an adequate record will be remanded for the entry of proper findings of fact and conclusions of law that explain the basis for the award”).

Although a court may not use tests of strict proportionality to measure success, qualitative comparisons are encouraged. *Hotchkiss v. CSK Auto, Inc.*, 949 F. Supp. 2d 1040, 1049 (E.D. Wash. 2013); *Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998) (“amount of the recovery” is a “relevant consideration”). To assess whether a plaintiff has fallen short of her goal, courts may consider the amount of damages awarded by the jury as compared to the amount of damages requested by

the plaintiff. *Id.* In this case, Ms. Bright expert calculated damages between \$1 million and almost \$1.3 million, CP 1363 ¶ 28, and other economic damages of over \$127,000. RP (Vol. 16) 196:6-10. By this metric, Ms. Bright achieved between **33%** and **42%** success. *Id.*; CP 1189. During closing, Ms. Bright’s counsel suggested additional emotional distress damages between \$750,000 and \$1,224,000. RP (Vol. 16) 196:16-197:5. Including this claim, reduces Ms. Bright success to between **18%** and **25%**. Another potential metric is the ratio of damages awarded to the amount of attorney’s fees requested. 949 F. Supp. 2d at 1049. Based on this comparison, Ms. Bright achieved a **50%** success. Using these quantitative benchmarks, Ms. Bright achieved between a 18% and 50% success. This range of success accords with the trial court’s findings when it exercised its discretion as to Ms. Bright’s *post-trial* fees, and reduced them by 43%. CP 1629.

If the trial court had undertaken to assess Ms. Bright’s degree of success, it would have also evaluated the non-monetary benefit her award conferred to the public. 949 F. Supp. 2d at 1049. On the high end of the scale are awards “vindicating important constitutional rights,” or that prevail against “the very agency charged with eradicating discrimination.” *Id.* (citations omitted). On the low end of the scale are awards that confer “only an incremental non-pecuniary benefit upon the public.” *Id.* 1051

(jury’s finding “merely another reminder that retaliating against an employee for complaining about harassment is illegal”). This case falls under the low end of the spectrum. Ms. Bright’s successful claim established that by Russell’s failure to provide any accommodation, CP 1107 (“Russell “never offered, proposed, attempted or implemented, even on a trial basis, any accommodation”), it failed to accommodate Ms. Bright’s impairment. CP 1175-76 (Inst. 9); CP 1189 (Verdict). Concurrently, Ms. Bright devoted up to 80% of the time and effort during discovery and trial to meritless race-based claims and individually liability claims that Ms. Bright knew or should have known do a disservice to WLAD. “A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” *Hensley*, 461 U.S. at 439. Whether qualitative success is measured by the accommodation claim alone, or in conjunction with her other claims, the trial court abused its discretion by its failure to evaluate the degree of success.

D. The Trial Court Abused Its Discretion By Its Award of Non-Recoverable Costs

Consistent with its failure to adjust Ms. Bright’s fees, the trial court abused its discretion by its failure to make any adjustments to Ms. Bright’s costs associated with her unsuccessful claims or to reflect her

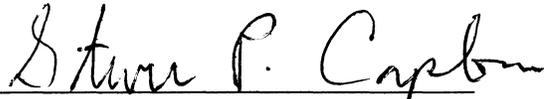
lack of success. The trial court further abused its discretion by overriding Russell's objection to the lack of detail necessary to evaluate the eligibility of recovery of her costs.

VI. CONCLUSION

Russell respectfully requests this Court reverse the order awarding fees and costs and remand to the trial court with instructions to deny fees and costs for services on the unsuccessful claims, or reduce the fees and costs based on Ms. Bright's lack of success.

RESPECTFULLY SUBMITTED this 9th day of April, 2015.

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CERTIFICATE OF SERVICE

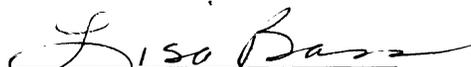
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On April 9, 2015, I caused a true and correct copy of the foregoing to be served upon the following individual in the manner indicated below.

Judith Lonquist
Law Offices of Judith A. Lonquist, P.S.
1218 Third Avenue, Ste. 1500
Seattle, WA 98101-3083
Email: lojal@aol.com

- Hand delivery
- Facsimile transmission
- Overnight delivery
- First class mail
- Electronic mail

Executed this 9th day of April, 2015, in Seattle, Washington.


Lisa Bass