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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 362914-III

**IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III**

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

BRIEF OF RESPONDENT / CROSS-APPELLANT

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ASSIGNMENTS OF ERROR	2
III.	STATEMENT OF THE CASE	3
IV.	GROUNDINGS FOR RELIEF AND ARGUMENT	9
A.	The Law of the Case Applies and this Court’s Previous Controlling Rulings Should not be Overturned.....	9
1.	The Law Of The Case Has Already Determined That Cronin Timely Appealed His Request For a Statutory Hearing For Both his Notice of Discharge and Nonrenewal.....	9
a.	The Law Of The Case Doctrine applies as there would be manifest injustice if this Court reconsidered its previous holdings.....	12
b.	The Law Of The Case Doctrine applies because there is no change in law or intervening law between the previous and current appellate court proceedings.....	14
B.	The District Has Waived and Failed to Preserve Issues for this Appellate Proceeding.....	14
1.	The District Waived Its Argument in 2014 That Cronin Failed to Appeal The Notice of Nonrenewal.....	15
2.	The District Waived Several Other Issues On Appeal In Its Opening Brief.....	16
C.	Cronin Timely and Properly Appealed His Notice of Nonrenewal and Judge Cooney Correctly Determined that Cronin Was Entitled to Back Pay and Benefits Up and Until the Decision by the Statutory Hearing Officer.....	18
1.	Cronin Requested a Hearing for the Decision to Nonrenew his Contract.....	18
2.	Cronin is Entitled to Back Pay and Benefits Up and Until the Statutory Hearing Officer’s Decision on the District’s Notice to Nonrenew his Contract.....	20
3.	The District Fails to Accept Responsibility For Its Decision to Deny Cronin a Statutory Hearing.....	27
D.	The Trial Court Erred In Denying Double Damages To Cronin When It Found There Was A Bona Fide Dispute As To Whether Cronin’s Wages Were Willfully Withheld.....	29

E. The Trial Court Erred When it Determined It Had No Equitable Or Other Statutory Authority to Make An Award To Cronin For Tax Consequences.....	35
F. The Trial Court Erred When It Reduced Cronin’s Attorney’s Hourly Fee Rate.....	39
V. ATTORNEY’S FEES	42
VI. CONCLUSION	45
APPENDIX	A1

TABLE OF AUTHORITIES

Cases:

224 Westlake, LLC v. Engstrom Properties, LLC, 169 Wn. App. 700 (2012).....39

Allard v. First Interstate Bank of Wash. N.A., 112 Wn.2d 145 (1989)..... 39

Allstot v. Edwards, 114 Wn. App. 625 (2002).....31

Baker v. Fireman’s Fund Ins. Co., 5 Wn. App. 2d 604 (2018).....39

Blair v. Wash. State Univ., 108 Wn.2d 558 (1987).....36

Blanchard v. Golden Age Brewing Co., 188 Wn. 396 (1936).....36

Blaney v. Int’l Ass’n of Machinists & Aerospace Workers, Dist. No. 160, 151 Wn. 2d 203 (2004) 37, 38, 39

Brand v. Dept. of Labor & Indus., 139 Wn.2d 659 (1999).....40

Burchfield v. Boeing Corp., 149 Wn.App. 468 (2009).....19

Busey v. Richland Sch. Dist., 172 F. Supp. 3d 1167 (E.D. Wash. 2016) 30, 31, 35

Champagne v. Thurston County, 163 Wn. 2d 69 (2008).....19

Crafts v. Pitts, 161 W.2d 16 (2007).....36

Cronin v. Central Valley School District, 2016 WL 1533377 (Div III, April 14, 2016)6, 7, 28, 29

Cronin v. Central Valley School District, 186 Wn.2d 1021 (2016).7, 13

Curtis Lumber Company v. Sortor, 83 Wn.2d 764 (1974).....19

Davis v. Tacoma School District, 2015 WL 4093904 (Div. II July 7, 2015)..... 23, 24

Folsom v. County of Spokane, 111 Wn. 2d 256 (1988).....11-13

Greene v. Rothschild, 68 Wn.2d 1 (1965).....13

<i>Highland School Dist. No. 203 v. Racy</i> , 149 Wn. App. 307 (Div III, 2009).....	21
<i>Hill v. Garda CL Northwest, Inc.</i> , 191 Wn. 2d 553 (2018).....	30
<i>J.L. Cooper & Co., v. Anchor Sec. Co.</i> , 9 Wash.2d 45 (1941).....	28
<i>Jackson v. Quality Loan Serv. Corp.</i> , 186 Wn. App. 838 (2015).....	15, 18
<i>Kadoranian v. Bellingham Police Dep't.</i> , 119 Wn.2d 178 (1992).....	15
<i>Lutheran Day Care v. Snohomish County</i> , 119 Wn. 2d 91 (1992).....	11
<i>Mahler v. Scucs</i> , 135 Wn. 2d 398 (1998).....	39
<i>Manning v. Potomac Elec. Power Co.</i> , 230 Md. 415 (1963).....	36
<i>McKee v. American Home Products, Corp.</i> , 113 Wn. 2d 701 (1989).....	15
<i>Morgan v. Kingen</i> , 166 Wn.2d 526 (2009).....	39
<i>Mehlenbacher v. DeMont</i> , 103 Wn. App. 240 (2000).....	40
<i>Puget Sound Plywood, Inc. v. Mester</i> , 86 Wn. 2d 135 (1975).....	15
<i>Roberson v. Perez</i> , 156 Wn. 2d 33 (2005).	11 , 12
<i>In re Saltis</i> , 94 Wn.2d 889 (1980).....	19
<i>Schilling v. Radio Holdings, Inc.</i> , 136 Wn. 2d 152 (1998).....	30
<i>Schlosser v. Bethel School Dist.</i> 183 Wn. App. 280 (2014).....	21, 22, 23
<i>Sears v. Atchison, Topeka & Santa Fe Ry., Co.</i> , 749 F.2d 1451 (10 th Cir. 1984).....	36-39
<i>Smith v. King</i> , 106 Wn. 2d 443 (1986)	15
<i>Specialty Asphalt & Contr., LLC v. Lincoln County</i> , 191 Wn.2d 182 (2018).....	15
<i>State v. Roy</i> , 147 Wn. App. 309 (2008).....	11
<i>State v. Sauve</i> , 33 Wn. App. 181 (1982).....	12
<i>State v. Schwab</i> , 163 Wn. 2d 664 (2008).....	12
<i>Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.</i> , 175 Wn.2d 822 (2012)....	3

Statutes:

CR 8	19
RAP 2.5	11, 12 , 13
RAP 8.3	43
RAP 10.3	15
RAP 18	42
RCW 28A.405.210	<i>passim</i>
RCW 28A.405.300	<i>passim</i>
RCW 28A.405.310	<i>passim</i>
RCW 28A.405.350	27, 38
RCW 49.48.030	42, 43
RCW 49.52.050	30, 31
RCW 49.52.070	30, 31, 42, 43

Secondary Sources

3 Wn. Prac. Rules Practice RAP 103. (8th ed.)	15
15 L. Orland & K. Tegland, Wash. Prac., <i>Judgments</i> § 380, at 55 (4th ed. 1986)	11

I. INTRODUCTION

Respondent Michael F. Cronin (“Cronin”) was employed as a teacher at Central Valley School District (“District”) for seven years. He was terminated from employment when the District violated his due process rights by deliberately refusing to accept his union representative’s timely served request for a statutory hearing on the merits of his termination.

After seven years and two trips to the Court of Appeals, the Trial Court ordered the District to a statutory hearing and also ordered the District to pay Cronin his back wages and benefits, pre-judgment interest, along with attorney’s fees and costs because of its failure to afford him a statutory hearing when he lawfully appealed his termination. In addition, the Trial Court required the District to reinstate Cronin’s pay and benefits pending the statutory hearing, which the District never did. The District requested a stay of the Trial Court’s order requiring that it reinstate Cronin’s pay and benefits pending the statutory hearing. That request was denied.

A statutory hearing date was set and took place starting in November 2018, but the District continued to intentionally and blatantly ignore the Trial Court’s order to provide Cronin his pay and benefits during the course of the hearing and pending a decision. So Cronin brought a contempt motion before the Trial Court. Four days after Cronin filed his contempt motion, the District sought a stay with this Court which was denied by Commissioner Wasson on November 30, 2018.

In the meantime the parties went through a sixteen day statutory hearing. The

District requested a modification of Commissioner Wasson's ruling which was denied by the Court of Appeals on February 22, 2019. The hearing officer upheld the District's termination of Cronin by decision dated December 21, 2018. The hearing officer's decision is presently on appeal to the Superior Court. At no time did the District pay Cronin his wages and benefits during the pendency of the hearing as ordered by the Trial Court, all of which was in direct violation of a lawful court order. The District was found in Contempt of Court at a hearing on January 10, 2019. A final order on contempt, including an award for remedial sanctions, was entered on February 27, 2019.

The District continues to attempt to relitigate this Court's clear mandate that Cronin's request for hearing was timely made and he was entitled to a statutory hearing on both the discharge and nonrenewal. The District once again argues that Cronin did not appeal the notice of nonrenewal so his judgment for back pay and benefits cannot stand. The District did not raise the nonrenewal issue in any previous appeal before this Court. The District ignores their clear and deliberate violation of Cronin's due process rights when it disregarded his request for a statutory hearing that was timely served. Judge Cooney said it best when he remarked in his June 1, 2018, letter decision denying the District's motion for reconsideration, that "...here the District disregarded Mr. Cronin's request [for hearing]. As such, Mr. Cronin's statutory rights have, at worst, been completely ignored and, at best, delayed over six years."

II. ASSIGNMENTS OF ERROR

1. Whether the Trial Court erred when it followed the clear and express

Mandates issued by the Court of Appeals as the Law of the Case.

2. Whether the Trial Court erred in denying Cronin's claim for double damages for wages owed when there was no bonafide dispute that wages were owed that the District willfully and intentionally failed to pay.
3. Whether the Trial Court erred in denying Cronin's claim for an additional amount for tax consequences resulting from the back pay and benefit award on the basis that it had no equitable or other statutory authority to do so.
4. Whether the Trial Court erred when it reduced the hourly fee rate in awarding Cronin's counsel his attorney's fees rather than utilizing the attorney's market rate that the Court found was reasonable but low.

III. STATEMENT OF THE CASE

In January 2012, Cronin was employed with the Central Valley School District as a teacher. (CP 311-14). He had good performance evaluations and his classroom performance was never an issue. (CP 353). Although he had an alcohol problem outside of school, he was never under the influence at school or while teaching. (CP 314).

On September 30, 2011, Cronin voluntarily entered an alcohol treatment program at Sundown M Ranch near Yakima with knowledge and notice to the District. (CP 313). After discharge from treatment on October 27, 2011, he reported to Geiger Correctional Facility to serve out a 120-day sentence on the previous DUI/Physical Control charge. *Id.*

On January 6, 2012, 10 days before his release and while still incarcerated, Cronin received a certified letter from the District terminating his employment. (CP 371-72). Since he was still incarcerated, he had his union representative, Sally McNair ("McNair") timely file a Request for a Statutory Hearing with the

Superintendent of Central Valley School District, which she did on January 11, 2012. (CP 373).

On February 21, 2012, Cronin's attorney faxed a letter to the District's attorney inquiring about Cronin's paycheck and requesting reinstatement of his benefits pending the requested statutory hearing. (CP 22-24). On February 22, 2012, the District's attorney responded by e-mail stating that he was out of the office but would try to contact the District that day and get back to Cronin's counsel as soon as possible. (CP 23-25). Cronin's counsel heard nothing from the District's attorney. (CP 23).

Six days later on February 28, 2012, McNair received a certified letter from the District. (CP 32, 50). In that letter the Superintendent stated that McNair's request for statutory hearing on behalf of Cronin was not properly presented since she was not an employee of the District and had no authority from Cronin to file the request. *Id.* As a result, the District took the position that Cronin had waived his right to a statutory hearing. *Id.*

On March 23, 2012, Cronin filed an action for declaratory relief and summary judgment to enforce his request for a statutory hearing and for payment of wages and benefits pending a decision on the merits by a statutory hearing officer. (CP 1-10). The District also moved for summary judgment claiming that the Trial Court lacked subject matter jurisdiction because pursuant to RCW 28A.645.010, 1) Cronin failed to file his declaratory action within 30 days of the superintendent's uncommunicated decision not to give effect to McNair's letter requesting a statutory hearing on behalf of Cronin; and 2) Cronin had failed to

file his action within 30 days after the 15 days had expired from when the District failed and refused to appoint a nominee to select a hearing officer. (See CP 87-134).

On November 29, 2012, the Honorable Jerome Leveque entered an Order granting the defense Motion for Summary Judgment holding that the Court lacked subject matter jurisdiction. *Id.* Cronin moved for reconsideration on November 20, 2012. The Trial Court denied reconsideration on December 17, 2012. Cronin's Appeal to this Court followed and was filed on December 21, 2012. Oral argument occurred on February 5, 2014, and an unpublished opinion in favor of Cronin was issued on March 13, 2014. (CP 300-08). The District requested reconsideration of Division III's decision, which was denied on April 10, 2014. The District petitioned the Washington State Supreme Court for discretionary review which was also denied on August 6, 2014.

Having reversed the Trial Court and determining that subject matter jurisdiction existed, this Court remanded the matter to the Trial Court finding,

...the court erred in granting the District's request for summary judgment and not reaching the merits of Cronin's declaratory suit.

The parties briefed whether Ms. McNair was a proper representative of Mr. Cronin and whether the District improperly withheld wages from Mr. Cronin. Because we hold the summary dismissal of Mr. Cronin's request for declaratory relief was improper and remand for a determination on the merits, we leave these matters for trial court resolution.

(CP 307-08).

On remand this matter was assigned to the Honorable Kathleen M. O'Connor who entered an Order on December 19, 2014, granting the defense Motion for

Summary Judgment dismissing Cronin's appeal on the basis that he had failed to timely elect a remedy. (CP 589-92). Cronin's Notice of Appeal to this Court followed on January 5, 2015.

After oral argument on January 28, 2016, and by unanimous written decision dated April 14, 2016, this Court once again reversed the Trial Court's dismissal and remanded the matter to the Trial Court to compel the school district to participate in a statutory hearing on the merits regarding Cronin's employment discharge and nonrenewal. This Court treated the analysis of Cronin's notice and request for a statutory hearing for discharge and nonrenewal as one in the same stating, "Although discharge and nonrenewal are distinct acts, our analysis remains the same for each act and we will collectively refer to both as a 'discharge.'" *Cronin v. Central Valley School District*, 2016 WL 1533377 *4 (Div III, April 14, 2016). This Court also stated, "Before the trial court, the school district noted McNair's failure to mention the nonrenewal of the contract in her letter. On appeal, the school district does not contend that [Cronin] never challenged nonrenewal of the teaching contract." *Id.* at *9.

In the opinion, this Court noted that the law may entitle Cronin to pay and benefits "pending and regardless of the outcome of the statutory hearing since he exercised his right to appeal." *Id.* at 16. However, since the issue was not addressed previously and not briefed, this Court permitted Cronin on remand to renew his request before the superior court. *Id.* This Court further noted that any harm or prejudice to the school district was incurred because "[T]he school district took the uncategorical position that the notice [of appeal] was void...

Instead, because of the legal position taken, the school district has incurred significant costs in attempting to deny Michael Cronin his right to the statutory hearing procedure.” *Id.* This Court recognized when it remanded this matter to the Trial Court that it was the school district’s actions, not Cronin’s, which created the exaggerated delay for a hearing on the merits. The Supreme Court of Washington denied review on November 2, 2016. *Cronin v. Central Valley School District*, 186 Wn.2d 1021 (2016).

After remand, Cronin thereupon brought a motion for summary judgment before the Trial Court to compel the District to proceed to a statutory hearing, pay him back wages and benefits, reinstate present pay and benefits pending a decision on the merits by a statutory hearing officer, pay prejudgment interest, make an additional award for relief from the tax consequences of the back pay and benefit award, and pay attorney’s fees and costs. The District brought its own motion for summary judgment which was heard at the same time. (See CP 642-678).

The cross-motions for summary judgment were heard on April 27, 2018. In his oral ruling, the Honorable Judge John Cooney granted partial summary judgment to Cronin, and denied the District’s motion.¹ (CP 1100-03) On May 8, 2018, the District moved for reconsideration which was denied in a written decision dated June 1, 2018. (CP 1105-1121).

¹ Judge Cooney denied Cronin’s request for double damages for the intentional failure to pay wages owed and tax consequences of the back pay and benefit award. Those issues are the subject of Cronin’s cross-appeal before this Court.

On June 29, 2018, the Trial Court entered an order granting Cronin's requested relief (without an award for double damages on wages owed or for tax consequences) including Cronin's request for immediate restoration of his employment status so that wages and benefits could be paid to him pending a statutory hearing on the merits. (CP 1501-04). The amount of damages, including an award for back pay and benefits owed, attorneys' fees and costs, whether Cronin was entitled to pre-judgment interest and an additional award in equity for tax consequences was reserved and set for a subsequent hearing on additional briefing. *Id.*

On July 17, 2018, the District moved the Trial Court for a limited stay of the June 29, 2018, order that immediately restored Cronin's pay and benefits pending the hearing officer's decision. (CP 1529-33). On August 22, 2018, the Trial Court denied the District's Motion for Limited Stay and entered a judgment in favor of Cronin for back wages, benefits, pre-judgment interest, and attorney's fees. (CP 1625-33). The District ignored and never abided by the Trial Court's order to reinstate pay and benefits pending the statutory hearing. It did, however, agree to go forward with a statutory hearing, but intentionally refused to place Cronin on pay and benefits.

As a result of the District's blatant refusal and failure to comply with the Trial Court's June 29, 2018, final order, on September 7, 2018, Cronin filed a Motion for an Order Finding the District in Contempt of Court and for Remedial Sanctions, with a hearing noted for September 21, 2018. (CP 1661-71).

Subsequently, four days later on September 11, 2018, the District filed a Motion

for Stay before this Court, arguing for the first time that it “is a debatable issue” whether the Superior Court had authority to reinstate Cronin. (Appellant Mot. To Stay, 14, September 11, 2018).

On September 21, 2018, Judge Cooney reserved ruling on Cronin’s Motion for Contempt, awaiting the decision by Commissioner Wasson on the District’s Motion to Stay. (CP 1729-30). On October 24, 2018, Commissioner Wasson heard the District’s Motion to Stay. On November 30, 2018, she denied the District’s Motion for Stay. On December 28, 2018, the District moved to modify Commissioner Wasson’s ruling that denied the stay sought by the District. The District’s motion to modify was denied on February 22, 2019.

Per Judge Cooney’s earlier reserved ruling, Cronin re-noted and on January 10, 2019, argued his Motion for Contempt against the District. (See A3-5). Judge Cooney found the District in contempt and that it intentionally and willfully failed to pay wages owed, doubled the wages owed, found that the sums owed were liquidated so awarded pre-judgment interest along with attorney’s fees. (A64-79).

IV. GROUNDS FOR RELIEF AND ARGUMENT

A. The Law of the Case Applies and this Court’s Previous Controlling Rulings Should not be Overturned.

1. The Law Of The Case Has Already Determined That Cronin Timely Appealed His Request For a Statutory Hearing For Both his Notice of Discharge and Nonrenewal.

The District argues that this Court must review and reconsider its two previous decisions. The Law of the Case in this matter is clear and unambiguous.

The District is simply electing to ignore those parts of the Court's two previous decisions it does not agree with. However, in sum, the following rulings and orders issued by this Court govern this case:

- a) Cronin timely appealed to the Superior Court the District's decision to refuse to hold a statutory hearing under RCW 28A.645.010. (CP 300, 306-08).
- b) The District refused to comply with the statutory hearing procedure as set forth in RCW 28A.405.310 in 2012. (CP 305). The District unequivocally rejected Cronin's request for a hearing. (CP 307-08).
- c) Sally McNair had the authority as an agent and under the statutes to request a statutory hearing on Cronin's behalf. (CP 624-26).
- d) Cronin's request for a hearing for both nonrenewal and discharge was sufficient to compel the District to participate in the statutory hearing on both issues (CP 608, 613). Under the undisputed facts, Cronin exercised his right to a statutory appeal to resolve the merits "of Cronin's discharge from employment and nonrenewal of his teaching contract." (CP 637).
- e) Although being distinct acts, the analysis of both the discharge and nonrenewal were the same and were collectively referred to as "discharge" in the Court's 2016 Mandate. (CP 613).
- f) The District previously waived the issue of whether Cronin properly requested a hearing on the notice of nonrenewal. That issue was before the trial court prior to the second appeal, but was neither argued nor challenged subsequently by the District on appeal. (CP 615, 618).
- g) After the second trip to the Court of Appeals, this matter was remanded for the trial court to enter an order compelling the District to participate in the statutory hearing process on the merits of both discharge and nonrenewal. (CP 638).
- h) The Trial Court could address the issue of the District's failure to pay Cronin his back pay and benefits resulting from the District's failure to accept his appeal for a statutory hearing. (CP 637).

The Law of the Case is clear and unequivocal. Judge Cooney stated:

If the Court of Appeals didn't make a determination as to the adequacy of the request for a hearing on the nonrenewal, then Judge Fearing wouldn't have directed this court to compel the school [district] to participate in a nonrenewal hearing. By compelling the District, the Court of Appeals found there was an adequate request for a hearing.

(RP April 27, 2018, 6).

The term “law of the case” refers to different things in different circumstances. *Lutheran Day Care v. Snohomish County*, 119 Wn. 2d 91, 113 (1992). In this case it means “the binding effect of determinations made by the appellate court on further proceedings in the trial court on remand.” *Id. quoting* 15 L. Orland & K. Tegland, Wash. Prac., *Judgments* § 380, at 55 (4th ed. 1986). The term is also used to “express the principle that an appellate court will generally not make a redetermination of the rules of law which were necessarily implicit in such prior determination.” *Id.* A second appellate court will generally not revisit the holdings of the first appellate court in the same case. *Roberson v. Perez*, 156 Wn. 2d 33 (2005). The law of the case doctrine precludes re-deciding the same legal issues in a subsequent appeal. *Folsom v. County of Spokane*, 111 Wn. 2d 256, 263 (1988). Under the law of the case doctrine, appellate courts presume rulings on a prior appeal will not be reviewed again. *State v. Roy*, 147 Wn. App. 309, 314 (2008). The doctrine provides that once there is an appellate court ruling, this holding must be followed in all subsequent levels of the same litigation. *Id. citing Roberson*, 156 Wn.2d at 41. “This doctrine ‘seeks to promote finality and efficiency in the judicial process’”. *Id.*

It is also the rule that questions determined on appeal or which might have been determined had they been presented, will not again be considered in a subsequent appeal if there is no substantial change in the evidence at a second determination of the case. *Id.* RAP 2.5(c)(2) does not automatically revive every issue or decision which was not raised in an earlier appeal. In *State v. Sauve*, the

court declined to consider issues that could have been presented in a prior appeal, but were not. 33 Wn. App. 181, 183 fn 2 (1982).

However, the law of the case doctrine is discretionary and not mandatory. RAP 2.5(c)(2). *Id.* at 264. The *Roberson* court acknowledged that RAP 2.5(c)(2) codified two historically recognized exceptions to the law of the case doctrine. *Roberson*, 156 Wn. 2d at 42. First, the appellate court may reconsider a prior decision in the same case where the decision is “clearly erroneous, ... [and] the erroneous decision would work a manifest injustice to one party” and no corresponding injustice would result to the other party if the erroneous holding were set aside. *Id.*; *see also Folsom*, 111 Wn. 2d at 264.; *State v. Schwab*, 163 Wn. 2d 664, 672 (2008). The second exception under RAP 2.5(c)(2), allows consideration of the law in effect at the time of the later review, allowing a prior appellate holding in the same case to be reconsidered where there has been an intervening change in the law. *Schwab*, 163 Wn.2d 672-73 *citing Roberson*, 156 Wn.2d at 42.

Neither exception applies in this case nor was argued by the District. Therefore, the law of the case should be the controlling doctrine in this case. This Court should not revisit and overrule its previous ruling that Cronin timely and properly requested a statutory hearing on both the notice of discharge and nonrenewal.

- a. The Law Of The Case Doctrine applies as there would be manifest injustice if this Court reconsidered its previous holdings.

The first exception under RAP 2.5(c)(2) deals with the notion of justice and

unfairness. The appellate court may overrule prior appellate holdings if “it lays down or tacitly applies a rule of law which is clearly erroneous, and if to apply the doctrine would work a manifest injustice to one party, whereas no corresponding injustice would result to the other party if the erroneous decision should be set aside.” *Folsom*, 111 Wn. 2d at 264 citing *Greene v. Rothschild*, 68 Wn.2d 1, 10 (1965). There is no evidence that the Court of Appeals decision in 2016 is clearly erroneous.² The District chose not to raise this argument before the Court of Appeals previously. (CP 615, 618). Having failed to raise it before the Court of Appeals, it is deemed waived. The Court of Appeals further determined that the analysis for the request for a statutory hearing of a nonrenewal and discharge, although distinct acts, was the same. (CP 613). This was not erroneous.

On remand before Judge Cooney, the District made the same argument it could have previously argued before the Appellate Court, but did not. Judge Cooney rejected this argument as well and agreed that the mandate was clear. Cronin was to be afforded a statutory hearing on the merits of both his discharge and nonrenewal. (CP 1501-04).

Further, it would work an enormous injustice to Cronin if the decision by this Court were now overruled. Essentially, it would nullify the last seven years of litigation, including a 16+ day statutory hearing. Cronin, like the Trial Court,

² The Supreme Court denied review of this Court’s analysis and opinion. *Cronin v. Central Valley School District*, 186 Wn.2d 1021 (2016).

relied upon this Court's clear and express rulings on remand ordering a statutory hearing for both the nonrenewal and discharge. His litigation strategies and choices were dependent on this Court's ruling. Cronin, like the Trial Court, should be able to rely on this Court's mandate and rulings on remand. To re-litigate this issue after the fact would be prejudicial and work a great injustice to Cronin. To reverse itself now would negate all of the time, expense, and litigation that has taken place since this Court's ruling in 2016. The District's motive in seeking review of this issue now is because this Court decided that issue in Cronin's favor, not because the law of the case was erroneous and should be overruled.

b. The Law of the Case Doctrine applies because there is no change in law or intervening law between the previous and current appellate court proceedings.

The second exception permits re-visiting a prior appellate holding when the law in effect at the time of the second appeal has changed between the current and former proceedings. The District has never argued that there was any new or intervening law that would justify this Court disturbing its earlier rulings. Further, the District does not cite nor rely on a single case that was issued in 2016 or later. Therefore, the Law of the Case Doctrine should apply. The Court should not overrule its decision that Cronin timely and properly requested a statutory hearing for both his nonrenewal and discharge.

B. The District Has Waived and Failed to Preserve Issues for this Appellate Proceeding.

Claims and issues not raised and not supported by argument and citations of authority are waived. *McKee v. American Home Products, Corp.*, 113 Wn. 2d

701, 705 (1989); *see also* RAP 10.3; 3 Wn. Prac. Rules Practice RAP 103. (8th ed.). When an assignment of error is neither argued nor briefed, the Court of Appeals deems it waived. *Specialty Asphalt & Contr., LLC v. Lincoln County*, 191 Wn.2d 182, 196 (2018) *citing* *Kadoranian v. Bellingham Police Dep't.*, 119 Wn.2d 178, 191 (1992). An appellate court will not consider a claim of error that a party fails to support with legal argument in their opening brief. *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 845 (2015)(emphasis added)(citations omitted); *see also* *Smith v. King*, 106 Wn. 2d 443, 451-452 (1986)(The court considered the issue waived where the issue was neither stated, nor argued, nor was any legal authority bearing on that issue cited); *Puget Sound Plywood, Inc. v. Mester*, 86 Wn. 2d 135, 142 (1975)(The Washington Superior Court held it considered an issue waived where petitioner failed to state, argue, or even reference an issue in its brief).

1. The District Waived Its Argument in 2014 That Cronin Failed to Appeal The Notice of Nonrenewal.

Judge Fearing expressly stated in the opinion issued on March 14, 2016, that “Before the trial court, the school district noted McNair’s failure to mention the nonrenewal of the contract in her letter. On appeal, the school district does not contend that Michael Cronin never challenged nonrenewal of the teaching contract.” (CP 615) Additionally, the opinion pointed out that the school district asked the trial court to rule “McNair only requested a hearing on discharge and not on nonrenewal”. (CP 618). The District, however, was silent on that issue on appeal. Therefore, the District’s failure to claim an error, argue and support an

issue that was before the trial court and could have been argued before the appellate court, resulted in that argument being waived.

After having waived the argument when this matter was previously on appeal, the District cannot now re-raise and attempt to litigate the same issue. The District failed to preserve the issue to argue on this appeal. Accordingly, the Court should affirm its previous ruling and decline to revisit the issue of whether Cronin's request for appeal of his nonrenewal was adequate.

2. The District Waived Several Other Issues On Appeal In Its Opening Brief.

The District's Notice of Appeal stated that it was appealing "the final judgment in this case and all relief granted to Plaintiff, including an order to restore Plaintiff to employment as a teacher and the denial of Defendant's request for a stay during the pendency of the appeal." (CP 1634-35).

On August 22, 2018, Judge Cooney awarded Cronin (1) a money judgment for back wages and benefits owed from September 1, 2012, to June 29, 2018, the date of his decision; (2) restoration of his employment so that wages and benefits could be reinstated pending a statutory hearing; (3) attorney's fees and costs; and (4) prejudgment interest. (CP 1659-60).

After Judge Cooney refused to grant the District's motion to stay the reinstatement of pay and benefits pending a decision by the statutory hearing officer, the District moved this Court to review that decision. It argued that there were "debatable issues" on appeal that would justify a stay of pay and benefits. In fact, the District expressly represented in its briefing and oral argument before

Commissioner Wasson and briefing to this Court, that it 1) intended not only to appeal Cronin's right to and the Trial Court's authority to order a statutory hearing for both nonrenewal and discharge, but 2) would also be appealing the Trial Court's subject matter jurisdiction and authority to reinstate Cronin's employment to restore wages and benefits pending the statutory hearing.

(Appellant's Mot. For Stay, 14-16, September 11, 2018; Appellant's Mot. To Modify, 11-14, December 28, 2018). The District argued that power and authority was vested solely with the statutory hearing officer and not the Court.

Id. The District has unquestionably abandoned any such notion and failed to argue what it earlier represented were debatable issues. This underscores the District's candor with this Court. It had no intention of arguing "debatable issues" on appeal when it made its argument to support a request for stay.

Otherwise it would have made those arguments in its opening brief. It did not. It has therefore waived any such argument and claim on appeal in that regard.

At this time, the District has only argued the validity and adequacy of Cronin's request for a hearing on the nonrenewal in its effort to limit the District's financial exposure to only payment for Cronin's 2011-2012 teaching contract. In so doing, the District has waived any argument relating to: (1) the calculation and amount of back wages and benefits owed; (2) the court's authority and jurisdiction to reinstate pay and benefits pending a decision by the statutory hearing officer; (3) the basis, calculation and amount of attorney's fees and costs; (4) the award and calculation of pre-judgment interest; and (5) the Court's authority to compel a statutory hearing on both the nonrenewal and

discharge.

The District's failure to (1) assign error to, (2) argue, and (3) support with legal authority any of the issues delineated above in their opening brief waives any and all argument and claims as to those issues. *See Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App 838, 846 (2015).

C. In the Alternative, Cronin Timely and Properly Appealed His Notice of Nonrenewal and Judge Cooney Correctly Determined that Cronin Was Entitled to Back Pay and Benefits Up and Until the Decision by the Statutory Hearing Officer.

In the alternative, should this Court elect to revisit the issue of whether Cronin timely appealed his notice of nonrenewal, this Court should hold that Cronin did adequately appeal the decision to terminate him and request a statutory hearing for both nonrenewal and discharge.

1. Cronin Requested a Hearing for the Decision to Nonrenew his Contract.

In McNair's letter, she requested a hearing on Cronin's behalf for a determination of sufficient cause of the District's "decision." (CP 34-35, 74-76, 93). Her letter requested a hearing pursuant to RCW 28A.405.310, which expressly incorporates the nonrenewal statute RCW 28A.405.210. Further, RCW 28A.405.210 expressly references RCW 28A.405.310. The District was put on notice that Cronin was exercising his statutory rights to a hearing for a determination of sufficient cause for the District's decision to adversely affect his contract.

The District issued one notice and one decision. (CP 34, 40-41). The decision to discharge and nonrenew Cronin was a single decision based on the same

causes and the same core set of facts. The District did not distinguish or identify which cause or causes applied to the decision to nonrenew or to discharge Cronin. Rather, the District – as recognized previously by this Court – made a single decision to terminate Cronin’s employment on the basis of alleged misconduct, and employed two mechanisms to do so through both the nonrenewal and discharge statutes. McNair’s letter requested a hearing pursuant to RCW 28A.405.310 which is the procedure to request a hearing for *both* nonrenewal and discharge.

It was Cronin’s intent to have a hearing officer determine whether there was sufficient cause to adversely affect his contract. If there was not sufficient cause to discharge Cronin, there would likewise not be sufficient cause to nonrenew him. A hearing for either nonrenewal or discharge would establish identical evidence against Cronin, as the causes and bases for either were factually identical. The nonrenewal and discharge were premised on the same causes and claims.

Washington is a notice pleading state requiring “only a short and plain statement of the claim showing the pleader is entitled to relief.” *Burchfield v. Boeing Corp.*, 149 Wn.App. 468, 495 (2009) citing CR 8(a)(1) and *Champagne v. Thurston County*, 163 Wn. 2d 69, 84 (2008). Pleadings must be construed to do substantial justice. CR 8(f). The Superior Court Civil Rules and Rules of Evidence apply in teacher termination cases. RCW 28A.405.310(6)(c) and (7)(a). The nonrenewal and discharge statutes are “notice” statutes. They require that the teacher give notice to the district of their intention to request a hearing.

General notice of the teacher's intent to request a hearing is all that is required. The only jurisdictional element of the statute is that a request for hearing must be filed within 10 days. "Substantial 'compliance' with procedural rules is sufficient, because 'delay and even the loss of law suits (should not be) occasioned by unnecessarily complex and vagrant procedural technicalities.'" *In re Saltis*, 94 Wn.2d 889, 896 (1980) quoting *Curtis Lumber Company v. Sortor*, 83 Wn.2d 764, 767 (1974).

Cronin sufficiently and substantially complied with the notice requirements under RCW 28A.405.210, .300 and .310. The District was on notice that he was actively attempting to keep his employment with the District. The issue in this case is not whether the District was on notice that Cronin wanted a statutory hearing, the issue is that the District elected to categorically ignore his request. It is disingenuous for the District to allege any issue with Cronin's notice and request for hearing when the District refused altogether to give Cronin a hearing on *either* nonrenewal or discharge. The District's actions in failing to afford Cronin a statutory hearing in 2012 was blatant and intentional. It culminated in nearly a seven year delay before his statutory hearing took place. The hearing that *already took place* in November and December 2018, with the statutory hearing officer was on *both* the issue of nonrenewal and discharge.

2. Cronin is Entitled to Back Pay and Benefits Up and Until the Statutory Hearing Officer's Decision on the District's Notice to Nonrenew his Contract.

The reason the District is so focused on whether Cronin requested a hearing for nonrenewal is because it is trying to cut off its financial liability after August

31, 2012, the last day of Cronin's 2011-2012 contract. The District's position is that it is immaterial when a statutory hearing takes place because the end result is that Cronin's termination was upheld by the hearing officer anyway so he is not entitled to any pay and benefits after his contract expires. That position however begs the issue. It was the District who categorically refused to afford Cronin a statutory hearing until ordered by this Court. It is the District who violated Cronin's due process rights in failing to allow a statutory hearing in 2012. It is the District who has been defiant in not paying Cronin during the statutory hearing as ordered by Judge Cooney. The District should not benefit by its wrongful conduct simply because ultimately a hearing officer upheld Cronin's termination. The fact the District ultimately prevailed before a hearing officer does not mean that its refusal to allow a statutory hearing had merit. *Cf. Highland School Dist. No. 203 v. Racy*, 149 Wn. App. 307, 311 (Div III, 2009)(The Court of Appeals affirmed the trial court's dismissal and imposition of attorney's fees against the school district for frivolous litigation after it tried to enjoin the union from arbitrating discipline against two teachers, despite the school district having ultimately prevailed at arbitration on whether the grievance was, in fact, subject to arbitration).

The District relies on *Schlosser v. Bethel School Dist.* 183 Wn. App. 280 (2014) to support its position. However, such reliance is misplaced. *Schlosser* determined that a teacher is not entitled to a hearing *prior to* a school district's decision to nonrenew a teacher's contract. *Id.* at 288. *Schlosser* did not argue about the timing of the statutory hearing designated in RCW 28A.405.310, but

whether a teacher was entitled to a pretermination hearing prior to the issuance of a notice to nonrenew. *Id.* at 291-92. The Court held that a teacher has a property interest in the statutory hearing designated in RCW 28A.405.310, and if the District *follows those procedures*, there is no deprivation of that interest requiring further due process such as a pretermination hearing. *Id.* at 291. The court determined that no pre-notice or pre-nonrenewal hearing was necessary if a school district followed the procedures for a statutory hearing for nonrenewal as allowed in RCW 28A.405.310.

Unlike *Schlosser*, the District did not follow the statutory procedures and deprived Cronin of his due process rights. This is a critical distinction. The District claims that *Schlosser* supports its contention that Judge Cooney essentially ordered a pretermination hearing on Cronin's nonrenewal, prior to having his contract and pay terminated. (Appellant School District's Opening Brief, 16, January 14, 2019). To the contrary, Judge Cooney's order was in keeping with this Court's direct mandate to provide Cronin a statutory hearing on the merits of his nonrenewal and discharge pursuant to RCW 28A.405.310. Cronin had never had a hearing on the merits because the District refused his request. All Cronin was asking was that the District follow the same procedures in the statute that the *Schlosser* court noted, so that he too could be afforded his due process right to a statutory hearing, not a pretermination hearing.

The District misquotes FN 14 of the *Schlosser* opinion leaving out of its brief the first full sentence of the footnote that has nothing to do with providing a statutory hearing, but rather deals with a prenotice or pretermination hearing. As

the court stated: “The District also emphasizes that requiring a **pretermination or prenotice of nonrenewal hearing** for every decision not to renew a teacher’s contract would overburden schools.” *Id.* at FN 14 (emphasis added). As cited by the District, the footnote continues to give statistics about how burdensome that would be on a district. However, the District intentionally left out the first sentence which expressly states that the *Schlosser* court was emphasizing the undue burden of dealing with pretermination/prenotice hearings for nonrenewals, not the statutory hearing process as outlined in RCW 28A.405.210 and .310.

The District argues that under *Schlosser*, “a teacher is not entitled to a hearing before a teacher’s contract is nonrenewed. (Appellant School District’s Opening Brief, 15, January 14, 2019). However, nowhere in the *Schlosser* opinion does it state or even imply that a teacher’s right to a statutory hearing can take place *after* August 31 of that year. Accordingly, the District’s reliance on *Schlosser* for such a contention is clearly misplaced.

The District continues to cite to an unpublished opinion that has no precedential value, *Davis v. Tacoma School District*, 2015 WL 4093904 (Div. II July 7, 2015). The crux of the *Davis* decision was whether the school district complied and gave proper notice of nonrenewal under the statute. *Id.* at *4. There, the teacher had his statutory hearing. He lost at that hearing and thereafter went back and sought to recover wages beyond the last date of the teaching contract. *Id.* *Davis* does not stand for the proposition that a teacher is not entitled to any wages beyond the current term of the contract regardless of when the statutory hearing is finally held. If that were the case, then every school district

would act just as Central Valley School District did here and deny any teacher their right to a statutory hearing, nonrenew each contract without a hearing, and force the teacher to litigate the matter. This would eviscerate the statutory hearing process and the legislative intent behind it.

All the court in *Davis* determined was that the District's determination to discharge and nonrenew was correct. The case does not provide any details regarding a hearing on nonrenewal. Any argument to the contrary is speculation and pure conjecture. *Davis* does not stand for the proposition that wages and benefits do not have to be paid pending a statutory hearing.

The legislature clearly intended to create an expedited procedure for statutory hearings. Under the discharge statute, RCW 28A.405.310(4), approximately 40 days should pass between a notice of termination from the District and the statutory hearing. Under the nonrenewal statute, RCW 28A.405.210, the intention is that any nonrenewal is heard before the end of any August 31 contract term. It states:

Every such employee so notified, at his or her request made in writing and filed with... the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day the employee submits the request for a hearing.

The statute continues, "If any such notification or opportunity for hearing is

not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the [district].” RCW 28A.405.210.

This statute demonstrates that the hearing for nonrenewal is intended to take place before August 31, the date of the expiration of the contract. RCW 28A.405.210 states that if a teacher’s contract is being nonrenewed for budgetary reasons, it has 10 days from July 15 to designate a hearing officer. Under RCW 28A.405.310, there is normally 15 days from receipt of the notice to designate a hearing officer. Accordingly, a hearing would take place within 35 days of July 15, or by August 20, unless agreed upon by the teacher to continue the hearing. The District has an obligation to provide a statutory hearing on a nonrenewal prior to the expiration of the contract under the statute. This clearly evidences the intent of the legislature to ensure that when a teacher requests a hearing that a hearing take place prior to any adverse action on the teacher’s contract. The statutory scheme and legislative intent clearly provide that a District cannot take adverse action against a teacher’s contract unless the teacher (1) does not request a hearing; or (2) until after the requested statutory hearing occurs. RCW 28A.405.310.

Further, under RCW 28A.405.210 and .300, if a statutory hearing isn’t timely provided, the teacher cannot be nonrenewed or discharged until a decision is made by a hearing officer. Both the nonrenewal and discharge statutes contemplate what happens “in the event any such notice or opportunity for a hearing is not timely given”. See

RCW 28A.405.210 and .300 (emphasis added). Under the nonrenewal statute, if an opportunity for a statutory hearing is not timely given, the employee is entitled to “be conclusively presumed to have been reemployed by the district for the next ensuing term” as if the employees’ contract had been renewed. RCW 28A.405.210. Under the discharge statute, if an opportunity for a statutory hearing is not timely given, “such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice[.]” RCW 28A.405.300. Whether an opportunity for a statutory hearing is timely given is determined by the statutory hearing procedure as outlined in RCW 28A.405.310. The hearing procedure has strict and specific deadlines. Under subsection (6)(d), it is clear that the only time the hearing procedure is not required to be strictly followed by a school district is when the employee, not the school district, requests a continuance. Only the employee is permitted to request a continuance. RCW 28A.405.310 requires school districts to adhere to the timeliness provisions. Failure to timely adhere to these provisions and provide a teacher an opportunity for a hearing prohibits a district from taking any adverse action on a teacher’s contract.

The fact is, since it took nearly seven years for Cronin’s statutory hearing to occur that the legislature intended would take place within 40 or so days of his January 5, 2012, termination, Cronin is conclusively presumed to be employed with the District until his hearing occurred. His notice for hearing was timely served on the District. His hearing was not timely provided. As an opportunity for a hearing was not timely given, Cronin was conclusively presumed to have been reemployed by the District as if

his contract had been renewed (RCW 28A.405.210), and not discharged or otherwise adversely effected (RCW 28A.405.300).

RCW 28A.405.350 gives the Court authority to award damages to a teacher for loss in compensation. Accordingly, since Cronin was entitled to a hearing prior to any adverse action on his contract under both the nonrenewal and discharge statutes, the Trial Court has authority to award Cronin his back pay and wages up and until the statutory hearing officer's decision on December 21, 2018. The Trial Court did not err.

3. The District Fails to Accept Responsibility For Its Decision to Deny Cronin a Statutory Hearing.

It has already been held and determined by this Court that Cronin fulfilled his obligation under RCW 28A.405.310 by requesting a hearing. It was the District that intentionally refused to comply with the statute by rejecting Cronin's request for a hearing. (CP 305-08). Now, without any legal authority and for the first time in any of its appeals before either superior court or this Court, the District argues that Cronin was somehow responsible for triggering the timelines under RCW 28A.405.310 with the legal obligation to first suggest a hearing officer. The District offers no authority for its position.

This argument is tantamount to the same argument raised in front of Judge Leveque that Cronin had the obligation of forcing the District to name a designee and his failure to do what the District was legally and statutorily obligated to do was jurisdictional. (CP 100-02). The fact is that Cronin timely appealed his termination. The District refused to proceed with a statutory hearing. It failed to identify a nominee or designee as it was statutorily obligated to do under RCW 28A.405.310. It decided that

strategically, nothing needed to be done. And it did nothing during the seven intervening years until forced by this Court to go forward with a statutory hearing.

Cronin's declaratory judgment action to force the appointment of a hearing officer and to proceed to a statutory hearing was precisely what the District now claims Cronin failed to do. (CP 1-10). In the face of the District's complete denial to name a designee or nominee and its position over the past 7 years to ignore Cronin's request for a statutory hearing, Judge Cooney was correct in determining that the District failed to follow statutory procedures in 2012, not when the hearing officer was discussed or appointed by the parties finally in 2018. (CP 1202-03). The District continues to deny responsibility for its failure to afford Cronin a statutory hearing when he timely appealed in 2012. This Court and Judge Cooney have already determined that issue in Cronin's favor. *Id. see also* (CP 637-38).

Furthermore, the District now requests this Court revisit issues already decided and cut off the District's liability as of August 31, 2012, overturning Cronin's judgment for past wages and benefits owed, on the grounds of "fairness". (Appellant School District's Opening Brief, 22-23, 38, and 40, January 14, 2019). However, one of the fundamental principles of equity is that the even if the original wrong-doer sustains a great or greater injury, a party with unclean hands cannot seek equitable relief. *J.L. Cooper & Co., v. Anchor Sec. Co.*, 9 Wash.2d 45, 71-73 (1941). The original wrong-doer ought to bear the burden and the consequences of their own folly. *Id.* It was the District that categorically and intentionally refused to follow the statutory hearing procedures provided in RCW 28A.405.310 and violated Cronin's due process rights. *Cronin v. Central Valley School District*, 2016 WL 1533377 *16 (Div III, April 14,

2016). The District was the original wrong-doer. It cannot now take a position that notions of equity and fairness justify re-litigating the law of this case. Nor can arguments of “fairness” to the District and a “windfall” for Cronin be the basis for this Court to award the District the relief it now seeks. The District has ignored the laws of the state, Cronin’s statutory hearing rights, this Court’s clear and express mandates, and the Trial Court’s valid court orders. To seek relief from the judgment entered against it by the Trial Court on the basis of fairness is contrary to the very principles of equity.

D. The Trial Court Erred In Denying Double Damages To Cronin When It Found There Was A Bona Fide Dispute As To Whether Cronin’s Back Wages Were Willfully Withheld.

The Trial Court held that Cronin was not entitled to double damages on the back wages owed because Cronin “would have to show that the District willfully, and with intent to deprive Mr. Cronin, withheld his wages” and that there was a bona fide dispute. (RP April 27, 2018, 9-10). The Trial Court continued, “It doesn’t appear that the District necessarily willfully failed to give Mr. Cronin his statutory hearing.” (*Id.*) (emphasis added).

The Trial Court abused its discretion when so ruling as it framed the issue of a bona fide dispute over Cronin’s entitlement to a hearing rather than whether wages were owed. The Trial Court also erroneously placed the burden of proof on Cronin as the employee, rather than the District as the employer, to prove a bonafide dispute. Furthermore, Judge Cooney also failed to acknowledge that the District did not pay the wages that it acknowledged were due and owing to Cronin to the end of his 2012 contract, August 31, 2012. Double damages and

pre-judgment interest should have been assessed for the failure to timely pay wages owed at least up to that time as there was no bonafide dispute.

Under RCW 49.52.050 and .070, employers “shall be liable” for a judgment for twice the amount of the wages unlawfully withheld if: the employer withheld the wages (1) willfully and (2) with the intent to deprive the employee of any part of his or her wages and (3) the employee did not knowingly submit to such violations. *Hill v. Garda CL Northwest, Inc.*, 191 Wn. 2d 553, 561 (2018) (emphasis added). The standard for proving willfulness is low, and failure to pay will be deemed willful unless it was a result of “carelessness or error” *Id.* (citations omitted). However, an employer can defeat a showing of willful deprivation of wages if it shows there was a bona fide dispute about whether all or part of the wages were really due. *Id.* at 561-62. “The burden is on the employer to show the existence of such a bona fide dispute.” *Id.* at 562 *citing Wash. State Nurses Ass’n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 834 (2012) (emphasis added).

A bona fide dispute has both an objective and a subjective component. The employer has the burden of showing “genuine belief” in the dispute at the time of the wage violation (this is the subjective component), and must demonstrate the dispute is objectively reasonable—“that is, the issue must be ‘fairly debatable’”. *Hill*, 191 Wn.2d at 562 *citing Schilling v. Radio Holdings, Inc.*, 136 Wn. 2d 152, 161 (1998). The “fairly debatable” issue is not whether Cronin was entitled to a statutory hearing, but whether it was “fairly debatable” an employment relationship existed and whether wages must be paid to Cronin. *Busey v.*

Richland Sch. Dist., 172 F. Supp. 3d 1167, 1181 (E.D. Wash. 2016) *aff'd* 732 F. App'x 577 (9th Cir. 2018). The delay in payment for any portion of wages owed also evidences a willful withholding of wages. *Allstot v. Edwards*, 114 Wn. App. 625, 634-35 (2002)(Court reversed summary judgment for employer on double damages when the employer withheld wages under a contract that it eventually paid to the employee four years later).

It is undisputed that the District willfully stopped paying Cronin on December 31, 2011, 6 days prior to issuing its Notice of Probable Cause. (CP 15-6). This was intentional. This was willful. It was neither careless nor in error. It was done before the District even terminated Cronin. The District intended to terminate Cronin's pay and benefits effective December 31, 2011, knowing full well that his teaching contract for the 2011-2012 school year did not end until August 31, 2012, eight months later.

Subsequently, on June 29, 2012, the District paid Cronin four months' pay, attributing that payment to wages owed for January 1, 2012, through April, 2012. (CP 1558). Then, five years later on July 31, 2017, the District paid Cronin not quite all of the remaining four months' pay it owed him (May 1, 2012, through August 31, 2012) recognizing it should have paid Cronin at least through the end of his 2012 teaching contract. *Id.* These admitted payments by the District demonstrate that *at a minimum* Cronin was owed wages and benefits from January 1, 2012, through August 31, 2012. The District cannot meet its burden under RCW 49.52.050 and .070 that it objectively and subjectively believed Cronin was not owed wages on December 31, 2011. Eventually paying what the

District knew it owed five and one-half years later was undeniably a willful and intentional withholding of wages owed. It knowingly and intentionally failed to at least timely pay Cronin the wages and benefits it acknowledged were owed after his termination. By ultimately paying him almost all of his wages owed through August 31, 2012, which was the end of his 2011-2012 teaching contract, the District expressly acknowledged there was no bonafide dispute about whether he was owed wages for at least that time period. The delay in payment was a willful and intentional withholding of Cronin's wages. Cronin is entitled to at least double damages from May 1, 2012, through August 31, 2012, as a matter of law, along with pre-judgment interest. With a timely appeal for a statutory hearing, Cronin's employment status and teaching contract were preserved.

Even assuming Cronin never appealed his termination with a request for a statutory hearing, the *earliest* the District could have stopped paying his wages and benefits would have been 10 days after his receipt of the Notice of Probable Cause for discharge. That is because under RCW 28A.405.300 and .310., Cronin had 10 days to appeal the District's notice of termination which he received January 6, 2012. (CP 31). If he failed to appeal, his termination became final and binding ten days after the notice. *Id.*

Accordingly, the withholding of wages on December 31, 2011, was unlawful, intentional, and willful. There was no bona fide dispute nor was it fairly debatable whether an employment relationship existed or whether wages must be paid to Cronin after that. Cronin timely requested a hearing. As a result, on and after December 31, 2011, Cronin was owed continued wages and was an

employee of the District until a decision by the statutory hearing officer determined otherwise.

Additionally, the District did not argue nor offer support at the Trial Court level that it subjectively and objectively believed Cronin was not owed wages after August 31, 2012. It simply continues to claim and argue that it was only obligated to pay Cronin through the end of his 2012 teaching contract because he failed to request a statutory hearing on his nonrenewal so his nonrenewal became final and effective August 31, 2012. After that, the District claims, Cronin was owed nothing. However, that position disregards this Court's determination that Cronin timely requested a hearing on both his nonrenewal and discharge, and was entitled to and received a statutory hearing on both.

Accordingly, the District failed to carry its burden of proof on the issue of double damages. Under the law of this case, Cronin properly requested a statutory hearing for his discharge and nonrenewal. Even if the District considered Cronin's request for a hearing a bona fide dispute, the District could not lawfully stop paying Cronin on December 31, 2011. Nor could the District stop paying Cronin after that pursuant to his timely request for a hearing. The District failed to carry its burden on summary judgment and Judge Cooney's decision in that regard should be reversed. Double damages and prejudgment interest should be awarded to Cronin from January 1, 2012, until Judge Cooney's June 29, 2018,

order on the back wage amount owed, less a credit for payments already made.³

The District has a pattern of willfully and intentionally withholding Cronin's wages. On January 10, 2019, Judge Cooney found the District in contempt for violating his order requiring that the District pay Cronin wages and benefits from and after June 29, 2018, until a decision by the statutory hearing officer. (A64-69). The District failed and refused to pay anything to Cronin although Cronin in good faith went forward with the statutory hearing. Notwithstanding its intentional and flagrant violation of the Trial Court's order, the District believed that it could simply ignore Judge Cooney's order and appeal the issue to the Court of Appeals. The District's position has never been upheld in any appeal in this matter.

As Judge Cooney noted, the statutory hearing officer's decision occurred before Cronin's contempt motion could be heard. *Id.* Although the Trial Court could not reinstate Cronin for purposes of pay and benefits pending the statutory hearing decision, the Court could still order the District to pay the wages and benefits owed as a loss to Cronin under the contempt statute. *Id.* Judge Cooney awarded double damages on the wages owed from June 30, 2018 until December 21, 2018, the date of the statutory hearing officer's decision finding sufficient cause to terminate Cronin. (A72-79). This was based on the District's intentional

³ In addition to its two payments for wages and benefits, the District also paid Cronin an amount for interest owed at the time the July 2017 payment was made. The amount for interest and wages/benefits owed up to August 31, 2012, has not yet been resolved between the parties and was reserved by Judge Cooney in his August 22, 2018, order in the event the parties were unable to agree. (CP 1629).

refusal to pay wages and benefits pending the statutory hearing decision. (A77). The District has appealed Judge Cooney's order to the Court of Appeals. (Cause No. 36669-III).

Under the law of this case, Cronin properly requested a statutory hearing for his discharge and nonrenewal. Even if the District considered Cronin's request for a hearing a bona fide dispute, the District could not lawfully stop paying Cronin on December 31, 2011. Nor could the District stop paying Cronin after that pursuant to his timely request for a hearing. The District failed to carry its burden on summary judgment and Judge Cooney's decision in that regard should be reversed.

As of the time this brief is filed, the District has still not paid Cronin what they were ordered to pay under Judge Cooney's June 29, 2018, order, and subsequent February 27, 2019, contempt order.⁴

In the alternative, the issue of whether the withholding of wages was willful and whether a bona fide dispute existed is a question of fact. *Busey*, 172 F. Supp. 3d at 1181. If this Court does not find that Cronin was entitled to double damages as a matter of law from September 1, 2012, until June 29, 2018, the matter should be remanded to the trier of fact for a determination.

⁴ Judge Cooney's Order provides a credit to the District at the time the August 22, 2018, judgment is paid to avoid any duplication of payments to Cronin. (CP 1628-29)

E. The Trial Court Erred When it Determined It Had No Equitable Or Other Statutory Authority to Make An Award To Cronin For Tax Consequences.

The Trial Court erred when it determined there was no statutory basis or equitable power which authorized the court to order an additional award for tax consequences (RP August 3, 2018, 47). The appellate courts review the authority of a trial court to fashion equitable remedies under an abuse of discretion standard. *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 564 (1987).

This Court has broad powers of equity that may be exercised according to the necessities of each case. *Blanchard v. Golden Age Brewing Co.*, 188 Wn. 396, 417-418 (1936). The powers of a court of equity are flexible, and those powers may accommodate the remedy to the circumstances presented. *Id.* at 418. “Equity will not suffer a wrong to be without a remedy.” *Crafts v. Pitts*, 161 W.2d 16, 23 (2007) quoting *Manning v. Potomac Elec. Power Co.*, 230 Md. 415, 422 (1963).

Judge Cooney recognized that the majority of cases that grant an additional amount for tax consequences because of a back pay award are discrimination cases. The seminal federal Title VII case where a court awarded additional compensation for tax consequences was *Sears v. Atchison, Topeka & Santa Fe Ry. Co.*, 749 F.2d 1451 (10th Cir. 1984). In that case, the Tenth Circuit affirmed the award for additional tax liability to class members that resulted from receiving over seventeen years of back pay in one lump sum. *Id.* at 1456. In affirming the award, the Tenth Circuit reasoned that not all Title VII cases necessitate a tax component, however, that case presented special circumstances because of the “protracted nature of the litigation.” *Id.* The award was made pursuant to the

Court's equitable powers, not any statutory authority. *See Id.*

It was the *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers*, Dist. No. 160, 151 Wn. 2d 203 (2004) decision in Washington, a discrimination case, that first addressed an award for tax consequences. There, the Supreme Court awarded an additional recovery to plaintiff because of the additional taxes due from the lump sum award. *Id.* Without an additional award, the plaintiff's recovery was otherwise reduced because of the tax consequences by an amount she would not have otherwise had but for the discrimination. *Id.* at 208. As a result of the lump sum award, the plaintiff was now required to pay a portion of the award in taxes that she would not otherwise have paid if there had been no discrimination and her wages had been paid in due course. *Id.*

Although the *Blaney* decision interpreted the discrimination statute, RCW 49.60 et.seq., to include tax consequences as part of damages afforded a discrimination plaintiff, the same policy considerations exist for the court to make such an award as part of its equitable powers. Like Ms. Blaney, Cronin has been awarded back pay to replace the compensation that he would have earned in due course, absent the District's violation of his due process rights to a statutory hearing. Like *Blaney* and *Sears*, such an added award to Cronin is necessary to place him in the same economic position he would have enjoyed absent the violation of his statutory and due process rights.

The trial court has broad powers in equity to fashion a remedy to make a party whole. Cronin is not made whole without an additional award for tax consequences if he is to be paid six years wages in one lump sum. He suffers tax

consequences that require an additional award of over \$100,000 in order to place him into the position he would have been placed had the District not violated his due process rights and refused to go forward with a statutory hearing. (CP 1226-42, 1585-89).

Judge Cooney also felt there was no statutory basis to justify an award of tax consequences. The reason there is no applicable statutory provision under RCW 28A.405 is because the legislature never envisioned a statutory hearing on the merits taking seven years to occur. Rather, the statute clearly demonstrates the legislative intent of having an expedited hearing shortly after the notice of probable cause is issued. RCW 28A.405.310. The legislature could not have anticipated a seven year delay.

Regardless, the legislature did provide statutory authority in RCW 28A.405.350 that an employee is entitled to an award of damages for “loss of compensation.” The additional tax consequences in this case are within the damages lost by Cronin. How can a teacher receive “loss of compensation” if that compensation is eaten away by the tax consequences resulting from a lump sum award? Tax consequences are part of a “loss in compensation” that Cronin would not otherwise have had because he now receives a lump sum payment for six years’ wages due to the District’s violation of his due process rights and the prolonged proceedings.

Accordingly, this Court has broad powers in equity to fashion a remedy that makes a plaintiff whole. The circumstances in *Sears* with a long, drawn out litigation are present in this case. The policy and purpose of making a plaintiff

whole underlying the award for tax consequences found in *Sears* and *Blaney* are also applicable in this case. For these reasons, this Court should reverse and remand to the Trial Court to determine the amount of tax consequences to be awarded to Cronin.

F. The Trial Court Erred When It Reduced Cronin's Attorney's Hourly Fee Rate.

Judge Cooney erred when he determined that although the hourly fee rate charged by Cronin's counsel was reasonable (and even below market rates), he reduced it from \$300 to \$250 an hour taking into consideration counsel's experience, the undesirability of the case, and claims that Cronin did not prevail on. (RP August 3, 2018, 45-46).

The primary consideration in determining an appropriate award of attorney fees is reasonableness. *Baker v. Fireman's Fund Ins. Co.*, 5 Wn. App. 2d 604, 614-15 (2018) citing *Allard v. First Interstate Bank of Wash. N.A.*, 112 Wn.2d 145, 153 (1989). In Washington, the preferred method for determining reasonable attorney's fees is the lodestar method. *Mahler v. Scucs*, 135 Wn. 2d 398, 433 (1998). The lodestar method is the calculation of the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Morgan v. Kingen*, 166 Wn.2d 526, 539 (2009). The court limits the lodestar to hours reasonably expended and discounts hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time. *224 Westlake, LLC v. Engstrom Properties, LLC*, 169 Wn. App. 700, 734-35 (2012).

The court does not need to reduce attorney fee awards in all cases in which

the plaintiff fails to succeed on each claim brought where the claims for relief involve a common core of facts or will be based on related legal theories. *Brand v. Dept. of Labor & Indus.*, 139 Wn.2d 659, 672-73 (1999). This is in contrast to cases in which the claims are based on different facts and legal theories. *Id.*

It is not until *after* the lodestar figure is calculated that the court may then consider an adjustment either increasing or decreasing the award based on additional factors, such as desirableness, nature of success, quality of work performed, etc. *Id.* at 735. Further, when an award is less than requested, the trial court must provide some explanation of how it computed the award and why the amount is less than requested. *Mehlenbacher v. DeMont*, 103 Wn. App. 240, 249 (2000).

In this case, the Trial Court found the attorneys' hourly rate reasonable, but then reduced the award by reducing the hourly rate based on several factors, including unsuccessful claims from the declaratory judgment complaint. This was an error and abuse of discretion. Rather, upon finding the hourly rate reasonable, the Court should have determined whether the claims that were unsuccessful were related to a common or core set of facts. If so, the time spent by the attorney is reasonable. If not, the Trial Court should have made specific findings, explicitly stating why and which hours relating to which claims it was deducting hours. The reasonable hourly rate should then be multiplied by the reasonable time spent. After, and only after that, should the Court have considered reducing or increasing the award based on other lodestar factors.

Cronin's claims in this case all share a common or core set of facts. They are

all based on the same facts and circumstances surrounding the District's issuance of its Notice for Probable Cause, the District's theories for termination (discharge and nonrenewal), Cronin's request for a statutory hearing, the District ignoring Cronin's request and refusing to participate in the statutory hearing process, and the damages that resulted. Clearly, these claims all arise from the same common core set of facts.

On summary judgment before the Trial Court, Cronin did not prevail on his request for double damages and a request for an additional award for tax consequences. But he did prevail on his request for back pay and wages owed, pre-judgment interest and attorney's fees. (CP 1501-04). All of these claims arise out of the same common core of facts. Likewise, the District claims that Cronin did not prevail on all of his claims brought under his declaratory judgment complaint. However, like his claims before the Trial Court, all of those claims are related to the same common set of facts. Specifically, the discharge and nonrenewal issues arose directly out of the same set of facts. There were no additional facts or work done on those particular issues since they were argued and developed by both sides at the previous levels of litigation in this matter. As the Court of Appeals noted, a discharge under the facts and merits of the case would presumably also mean a nonrenewal. (CP 613).

As a consequence, there was nothing additional or different that would have been done by Cronin's counsel, since the theories of recovery and liability all arose out of the same common core of facts. Therefore, the segregation of hours was not necessary.

Additionally, Cronin provided three declarations from three well respected local trial attorney's advocating Cronin's request for his award of attorney's fees. (CP 1273-89). Those lawyers' declarations provided evidence that under the circumstances, not only was the time reasonable, but a multiplier was indicated as well. *Id.* Those declarations were unrebutted in the record. The only evidence produced by the District to controvert Cronin's request for fees was defense counsel's personal declaration disputing the request for fees. (CP 1539-42). Under these circumstances, considering the work performed during this seven year appeal, the quality of work performed, taking into consideration the reputation of counsel and the declarations of attorneys Keller Allen, Michael Hines, and William Symmes, Jr., a multiplier should have been allowed and the market rate for counsel's time should have been utilized in any lodestar calculation. The award for attorney's fees should not have been reduced. Accordingly, Cronin respectfully request this court reverse the Trial Court's award reducing Cronin's counsels' hourly rate to \$250. A multiplier was reasonable under the circumstances as was the hourly rate of \$300. The award of attorney's fees should be recalculated accordingly.

V. ATTORNEY'S FEES

Pursuant to RAP 18.1, Cronin requests an award of attorney's fees and costs relating to this appeal. Cronin requests an award of reasonable attorney's fees under RCW 49.48.030, based on his claim for back wages owed. Further, if this Court awards double damages pursuant to the District's willful and intentional withholding of Cronin's wages, he requests an award of reasonable attorney's

fees pursuant to RCW 49.52.070.

In addition, Cronin also requests an award of attorney's fees for the time and expense incurred having to defend the District's Motion to Stay and Motion to Modify the Commissioners Ruling. Cronin's counsel had to address arguments that the District asserted would be made on appeal but were not and have now been waived. An award to Cronin for the time spent responding to these motions is justified based on the complete waiver and abandonment by the District of the arguments it represented in its briefing and at oral argument would be directly addressed in this appeal.

The District claimed that there were "debatable issues" pursuant to RAP 8.3 that they intended to argue on appeal before this Court, including the Trial Court's authority and jurisdiction to reinstate Cronin to his employment or its authority to order the District to pay Cronin wages and benefits pending a statutory hearing on the merits. (Appellant's Mot. for Stay, 14, September 11, 2018; Appellant's Mot. To Modify, 11-14, December 28, 2018). The District claimed that such authority was solely within the purview of the statutory hearing officer and was one "which the District will present on its appeal as a matter of right". *Id.*

What is troubling is the fact that the District's opening brief here is entirely devoid on these claimed "debatable issues" which were argued for purposes of convincing this Court to issue a stay. The District never raised this issue before the Trial Court in its motion to stay before Judge Cooney, and subsequently failed to raise it in its brief now. Failure to argue this position results in the

District waiving this claim. The District can no longer prevail on appeal on this “debatable issue”.

It is apparent that the reason these arguments were made to this Court was to avoid, or at least, delay a finding of contempt by the Trial Court because the District has never taken one step or made any good faith effort to comply with the Trial Court’s valid order and pay Cronin pending the statutory hearing. Since no argument has been made by the District regarding these “debatable issues,” the motives of the District in appealing to this Court and representing the existence of such “debatable issues” are called into question. It appears there was no intention to argue these debatable issues since its opening brief is silent. Cronin was required to address them nonetheless in responding to the District’s request for a stay.

Nor can the District claim that it simply decided to abandon these “debatable issues” in light of this Court’s decision to deny the District’s Motion to Modify the Commissioner’s Ruling. That is because the District filed its opening appeal brief on January 14, 2019, well before this Court issued its Order denying the District’s Motion to Modify the Commissioner’s Ruling, on February 22, 2019. So the District could not have known what this Court was going to decide on the motion to modify. Yet it failed to make any argument it represented it was appealing that created “debatable issues” that would justify a reversal of Commissioner Wasson’s decision.

The District has a pattern of presenting inconsistent and new theories at every level of litigation, arguing anything regardless of its previous arguments in order

to avoid any liability for violating Cronin's due process rights. For these reasons, Cronin respectfully requests an award of reasonable attorney's fees incurred for this appeal as well as incurred defending the District's Motion to Stay and Motion to Modify the Commissioner's Ruling denying the stay.

VI. CONCLUSION

The Trial Court's judgment entered on August 22, 2018, should be affirmed. In addition, this Court should find double damages as a matter of law for wages owed as there was no bonafide dispute and the wages were willfully and intentionally withheld. An additional award for tax consequences should also be allowed, and the attorney's fees reduced by the Trial Court should be reinstated along with a multiplier as shown by the uncontroverted evidence provided to the Trial Court. Cronin is entitled to pre-judgment interest on all liquidated sums.

Lastly, this Court should award Cronin attorney's fees pursuant to RCW 28A.405.350, RCW 49.48.030, or RCW 49.52.070 for having to respond to the District's motion to stay and its Motion to Modify Commissioner's Ruling. The argument and briefing in those motions about "debatable issues" has been abandoned and now waived.

Respectfully submitted this 25th day of March, 2019.

POWELL, KUZNETZ & PARKER, P.S.

By 
Larry J. Kuznetz, WSBA #8697
Attorney for Respondent

Certificate of Service

I HEREBY CERTIFY that on the 25th day of March, 2019, I caused a true and correct copy of Brief of Respondent, to be sent by the method indicated below to:

Paul E. Clay	<input type="checkbox"/> U.S. Mail
Stevens Clay, P.S.	<input checked="" type="checkbox"/> Hand Delivery
421 W. Riverside Ave., Ste. 1575	<input type="checkbox"/> Facsimile Transmission
Spokane, WA 99201-0409	

Breean L. Beggs	<input type="checkbox"/> U.S. Mail
Paukert & Troppman, PLLC	<input checked="" type="checkbox"/> Hand Delivery
522 W. Riverside, Ste. 560	<input type="checkbox"/> Facsimile Transmission
Spokane, WA 99201	

DATED at Spokane, WA this 25th day of March, 2019.



Ashley Sandaine

APPENDIX

Table of Contents

1)	Plaintiff's Motion for an Order Finding Defendant in Contempt of Court and for Remedial Sanctions 12.28.18	A3 – A5
2)	Memorandum of Authorities in Support of Plaintiff's Motion for Order Finding Defendant in Contempt of Court, for Remedial Sanctions, Wages, and Double Damages, Prejudgment Interest, and Attorney's Fees 12.28.18	A6 – A12
3)	Second Declaration of Larry J. Kuznetz RE Order for Contempt of Court and Remedial Sanctions 12.28.18	A13 – A26
4)	Central Valley School District's Opposition to Plaintiff's Motion for Contempt 1.3.19	A27 – A34
5)	Declaration of Paul E. Clay (without attachments) 1.3.19	A35 – A36
6)	Plaintiff's Reply Memorandum to Central Valley School District's Opposition to Plaintiff's: Motion for Contempt 1.8.19	A37 – A58
7)	Supplemental Declaration of Larry J. Kuznetz RE Attorney's Fees on Order for Contempt of Court and Remedial Sanctions 1.8.19	A59 – A63
8)	Findings of Fact, Conclusions of Law, and Order of Contempt 2.1.19	A64 – A69
9)	Judgment Summary 2.27.19	A70 – A71
10)	Findings of Fact, Conclusions of Law, and Order and Judgments on Contempt, Setting of Amounts Owed for Wages, Benefits, Double Damages on Wages Owed, Pre-Judgment Interest, and Reasonableness of Attorney's Fees 2.27.19	A72 – A79

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Troppmann, PLLC

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

MICHAEL F. CRONIN

Plaintiff,

No. 12-2-01155-3

-vs-

CENTRAL VALLEY SCHOOL
DISTRICT

Defendant.

PLAINTIFF'S MOTION FOR AN
ORDER FINDING DEFENDANT
IN CONTEMPT OF COURT AND
FOR REMEDIAL SANCTIONS

MOTION/RELIEF REQUESTED

COMES NOW, Plaintiff Michael Cronin, by and through his attorney of record Larry J. Kuznetz, and re-notes his Motion for An Order Finding Defendant in Contempt of Court and for Remedial Sanctions for the District's failure to restore Mr. Cronin's pay and benefits as ordered by this Court in its June 29, 2018, Order on Summary Judgment.

Plaintiff also moves this Court for an award of wages owed, double damages, and attorney's fees and costs. Defendant has and is intentionally disobeying the lawful Order of the Court and has failed and refused to reinstate Mr. Cronin's pay and benefits pending a decision by a statutory hearing officer on the merits of the Defendant's notice of discharge and notice of non-renewal.

PLAINTIFF'S MOTION FOR AN ORDER FINDING
DEFENDANT IN CONTEMPT OF COURT AND FOR
REMEDIAL SANCTIONS - 1

LAW OFFICE OF
POWELL, KUZNETZ & PARKER
A PROFESSIONAL SERVICE CORPORATION
316 W. BOONE, ROCK POINTE TOWER, STE. 380
SPOKANE, WASHINGTON 99201-2346
PHONE: (509)455-4151
FAX: (509)455-8522

1 This motion is brought pursuant to this Court's Order entered on
2 September 21, 2018, in which it reserved ruling on contempt until after the
3 Court of Appeals had ruled on the District's then-pending motion to stay this
4 Court's June 29, 2018, order. That order required of the District the
5 immediate restoration of pay and benefits pending a decision by a statutory
6 hearing officer.

7 On December 4, 2018, the parties received the Court of Appeals
8 November 30, 2018, ruling which denied the District's motion to stay. A true
9 and correct copy of the Court of Appeal's ruling is attached to the second
10 declaration of Larry J. Kuznetz as **Exhibit A**.

11 Therefore, Plaintiff re-notes his motion for an order finding:

12 1. That the District is in contempt of court for intentionally and
13 willfully disobeying the Court's June 29, 2018, Order, specifically, for failing
14 to immediately reinstate Plaintiff to his employment and restore his pay and
15 benefits;

16 2. That remedial sanctions are appropriate and be awarded;

17 3. That back wages from June 29, 2018 to the present be
18 awarded;

19 4. That double damages be awarded to Plaintiff for the failure to
20 intentionally pay wages from June 29, 2018 to the present;

21 5. That pay and benefits continue unless and until such time as
22 an adverse decision on the merits is made by the statutory hearing officer;

23 6. That prejudgment interest on the amount of back wages due be
24 awarded at the rate of 12% per annum; and

25 7. That Plaintiff be awarded his attorney's fees and costs for
26 having to bring this motion.

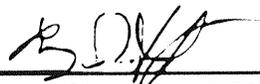
27 Plaintiff reincorporates herein the pleadings, briefing, and oral argument
28 previously submitted in support of his motion for contempt filed on
29 September 7, 2018.

30
31 PLAINTIFF'S MOTION FOR AN ORDER FINDING
32 DEFENDANT IN CONTEMPT OF COURT AND FOR
REMEDIAL SANCTIONS - 2

1 This motion is further based upon the Second Declaration of Larry J.
2 Kuznetz re Attorney's fees and Costs; and the attached Supplemental
3 Memorandum of Authorities re: Contempt.

4
5 DATED: December 28th 2018.

6 POWELL, KUZNETZ & PARKER, P.S.

7
8
9 By 

10 _____
11 Larry Kuznetz, WSBA #8697
12 Attorney for Plaintiff
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31 PLAINTIFF'S MOTION FOR AN ORDER FINDING
32 DEFENDANT IN CONTEMPT OF COURT AND FOR
REMEDIAL SANCTIONS - 3

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Troppmann, PLLC

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

MICHAEL F. CRONIN

Plaintiff,

No. 12-2-01155-3

-vs-

CENTRAL VALLEY SCHOOL
DISTRICT

Defendant.

MEMORANDUM OF
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ORDER FINDING DEFENDANT
IN CONTEMPT OF COURT, FOR
REMEDIAL SANCTIONS, WAGES
AND DOUBLE DAMAGES,
PREJUDGMENT INTEREST, AND
ATTORNEY'S FEES

I. RELIEF REQUESTED

Plaintiff Michael Cronin respectfully requests this Court issue an Order finding the District in Contempt of Court for failing to comply with a lawful Court Order entered on June 29, 2018, and for intentionally refusing to reinstate Mr. Cronin's pay and benefits pending a decision in his statutory hearing. Plaintiff requests that remedial sanctions be imposed in an amount to be determined at the discretion of the Court, up to \$2,000 per day, for each day the District has disobeyed and continues to disobey the Court's lawful Order and refuses to reinstate Plaintiff's pay and benefits pending a decision on the merits.

Memorandum Of Authorities In Support Of Plaintiff's
Motion For Order of Contempt - 1

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SPOKANE, WASHINGTON 99201-2346
PHONE: (509)455-4151
FAX: (509)455-8522

1 Per the Court's order of June 29, 2018, Plaintiff is entitled to his pay and
2 benefits pending the statutory hearing on the merits. Therefore, Plaintiff
3 requests an Order holding the District in contempt until such time as it pays
4 retroactive wages and benefits owed to Plaintiff as of June 29, 2018, and
5 reinstates those wages and benefits pending the statutory hearing. Until
6 such time that Defendant complies with the Court's order, it is in contempt.
7

8 Additionally, Plaintiff moves the Court for an award of double damages
9 pursuant to RCW 49.52.070 for the intentional and deliberate failure of the
10 Defendant to pay wages owed since June 29, 2018.

11 Further, Plaintiff moves for an award of prejudgment interest as the
12 sums owed for wages and benefits can be determined with exactness and
13 without reliance on opinion or discretion.

14 Finally, Plaintiff moves the Court for an award of reasonable attorney's
15 fees pursuant to RCW 7.21.030(3) and per RCW 49.48.030 for the failure to
16 pay wages as owed.
17

18 **II. PROCEDURAL POSTURE/STATEMENT OF FACTS**

- 19 1. This matter was remanded to Spokane County Superior Court for further
20 proceedings pursuant to a mandate and opinion issued by the Court of
21 Appeals, Division III, on December 28, 2016.
- 22 2. Following remand, the parties filed cross motions for summary judgment.
- 23 3. The parties' motions for summary judgment were heard on April 27,
24 2018, before Honorable Judge Cooney.
- 25 4. On June 29, 2018, an order granting Plaintiff's summary judgment,
26 including granting Plaintiff's request for immediate restoration of his pay
27 and benefits pending a statutory hearing on the merits was entered. The
28 amount of the judgment for damages, including an award for wages owed,
29 attorney's fees and costs, interest and tax consequences, was reserved for
30 a subsequent hearing.
31

32 Memorandum Of Authorities In Support Of Plaintiff's
Motion For Order of Contempt - 2

- 1 5. On July 17, 2018, the District filed a motion for limited stay, requesting
2 the Court stay the portion of the June 29, 2018, Order which ordered the
3 District to immediately reinstate Cronin's pay and benefits pending a
4 decision on the merits of his discharge and non-renewal.
- 5 6. The District's motion was denied by order entered on August 22, 2018.
6 That Order included the Court's ruling on damages, including an award
7 for prejudgment interest.
- 8 7. On August 28, 2018, the District filed a Notice of Appeal to the Court of
9 Appeals of the August 22, 2018, Order including an appeal to the denial
10 of the stay orders requested.
- 11 8. Plaintiff filed his Motion for Contempt and supporting pleadings on
12 September 7, 2018.
- 13 9. On September 11, 2018, the District filed with the Court of Appeals a
14 Motion to Stay the payment of present pay and benefits pending a
15 decision in the statutory hearing.
- 16 10. On September 21, 2018, oral argument on Plaintiff's Motion for
17 Contempt was heard by this Court. The Court reserved its ruling, pending
18 a decision on the District's motion to stay before the Court of Appeals.
- 19 11. On October 24, 2018, oral argument was held on the District's motion to
20 stay before the Court of Appeals.
- 21 12. On December 4, 2018, the parties received the Court of Appeals ruling,
22 filed November 30, 2018, denying the District's motion to stay.
- 23 13. The District has not ever reinstated Plaintiff's pay or benefits.

24 **III. LEGAL ARGUMENT/MEMORANDUM OF AUTHORITIES**

25 **A. Cronin Reincorporates His Arguments and Memorandum of Authorities** 26 **Filed on September 7, 2018.**

27 Plaintiff previously briefed the issues supporting his motion for a finding
28 of contempt of court against the District, for remedial sanctions in an
29 Memorandum Of Authorities In Support Of Plaintiff's
30 Motion For Order of Contempt - 3
31
32

1 amount up to \$2,000 per day the District intentionally violated this Court's
2 lawful order, for wages and benefits owed and double damages, and for an
3 award of attorney's fees. Plaintiff reincorporates his legal argument herein.

4 B. Cronin is Entitled to an Award of Prejudgment Interest.

5 Plaintiff additionally requests an award of pre-judgment interest. Pursuant
6 to the laws of the State of Washington, and the law of this case wherein this
7 Court previously held that the District had waived its sovereign immunity for
8 prejudgment interest as to judgment amounts for wages and benefits owed,
9 Plaintiff is entitled to an award at this time for prejudgment interest at the rate
10 of 12% per annum for all liquidated sums. Therefore, Plaintiff respectfully
11 requests an award for pre-judgment on wages and benefits owed.
12

13 The District has previously taken a legally incorrect position that
14 prejudgment interest does not apply to a school district as a government
15 entity in briefing related to the August 22, 2018, Order and Judgment
16 Setting Damages. As this is not a tortious conduct claim and this Court
17 previously held that the District waived sovereign immunity when it lawfully
18 entered into contracts with Cronin, the judgment on contempt for the
19 amount for wages and benefits owed is subject to pre-judgment interest at
20 the rate of 12% per annum.
21

22 A trial court may award pre-judgment interest on a liquidated claim. *Safeco*
23 *Ins. Co. v. Woodley*, 150 Wn.2d 765, 773 (2004). Washington courts generally
24 favor pre-judgment interest based on the premise that "a party that retains
25 money it should have paid to another should be charged interest." *Pierce*
26 *County v. State*, 144 Wn. App. 783 (2008). Under the doctrine of sovereign
27 immunity, the State cannot be held to interest on its debts without consent;
28 however, the State can consent to liability for interest by waiving immunity,
29 either expressly or impliedly. *Architectural Woods, Inc. v. State*, 92 Wn.2d 521,
30 523-526 (1979). In *Architectural Woods*, the Washington Supreme Court held
31 Memorandum Of Authorities In Support Of Plaintiff's
32 Motion For Order of Contempt - 4

1 that the consent to liability for interest is not limited to the express statutory or
2 contractual consent, but that “the act of entering into an authorized contract...
3 absent a contractual provision to the contrary, thereby waives its sovereign
4 immunity... and impliedly consents to the same responsibilities and liabilities
5 as the private party, including liability for interest.” *Id.* at 526-27.

6 This implied waiver is the result of two distinct acts: (1) a statute
7 authorizing the State or political subdivision to enter into the contract, and, (2)
8 the State entering into the legislatively authorized contract. *Id.* The Court found
9 in *Architectural Woods* that the State impliedly waived sovereign immunity
10 when it entered into the authorized contract. *Id.* at 856-67. The Court
11 concluded, “[a]s a matter of fairness, when the State chooses to contract with a
12 private party, courts must treat it as an equal to the other party, rather than a
13 sovereign.” *Id.* at 856 citing *Architectural Woods*, 92 Wn. 2d at 528-29. The
14 Court reasoned that when the State entered into the contract it “laid aside its
15 attributes as a sovereign and bound itself substantially as one of its citizens
16 does when he enters into a contract.” *Architectural Woods*, 92 Wn. 2d at 528.
17 Further, when the legislature consents that one of its political subdivisions
18 may be sued on its express contracts, “the waiver of sovereign immunity
19 should extend to every aspect of its contractual liability including the right to
20 the other contracting party to recover interest where it is customarily
21 included.” *Id.* quoting *Shapiro v. Kansas Pub. Employees Retirement System*, 216
22 Kan. 353, 357 (1975).

23 **IV. DAMAGES SOUGHT**

24 From the date of the Court’s June 29, 2018, Order to the date of this
25 hearing on January 10, 2019, over six months (195 days) has passed. Plaintiff
26 respectfully requests sanctions and damages as follows:
27
28
29

30
31 Memorandum Of Authorities In Support Of Plaintiff’s
32 Motion For Order of Contempt - 5

1 1. Remedial sanctions at the rate of \$2,000 per day for 195 days for the
2 intentional and deliberate failure of the District to follow the Court's order.
3 This would total a sanction of \$390,000 (\$2000/day x 195 days);

4 2. As previously ordered in the June 29, 2018, Order but not paid, the
5 amount of wages from June 29, 2018, to the present which shall continue and
6 only terminate at such time if the Hearing Officer issues a decision adverse to
7 plaintiff on whether the District had sufficient cause to terminate him on
8 January 5, 2012;

9
10 3. Double damages on the amount of wages owed since June 29, 2018 until
11 paid for the intentional and willful withholding of wages ordered. There is no
12 bonafide dispute that the wages and benefits are owed. *Hill v. Garda CL*
13 *Northwest, Inc.*, 191 Wn.2d 553, 561-562 (August 2018);

14 4. As previously ordered in the June 29, 2018, Order but not paid, benefits
15 from June 29, 2018 to the present which shall continue and only terminate at
16 such time if the Hearing Officer issues a decision adverse to plaintiff on
17 whether the District had sufficient cause to terminate him on January 5, 2012;

18 5. Pre-judgment interest on the amount of wages and benefits owed since
19 June 29, 2018, at the rate of 1% per month or 12% per annum; and

20
21 5. Attorney's fees and costs pursuant to RCW 49.48.030, RCW 49.52.070,
22 and RCW 7.21.030(3).

23 **V. CONCLUSION**

24 The District is intentionally disobeying this Court's lawful Order, refusing
25 to reinstate Plaintiff's pay and benefits effective June 29, 2018, as expressly
26 ordered. These acts are intentional and deliberate. The Plaintiff respectfully
27 requests this Court issue an Order finding the District in Contempt of Court.

28 Further, as the District appears to have no intention of complying with
29 the Court's Order whatsoever, Plaintiff additionally requests remedial
30 sanctions be imposed in an amount to be determined by the discretion of
31 Memorandum Of Authorities In Support Of Plaintiff's
32 Motion For Order of Contempt - 6

1 this Court, up to \$2,000 per day, for each day the District has intentionally
2 disobeyed and continues to disobey the Court's lawful Order until the
3 District complies with the Court's Order.

4 The Court should enter an order requiring the Defendant to:

5 1) pay Plaintiff retroactive wages and benefits from June 29, 2018, to the
6 present which shall continue and only terminate at such time if the Hearing
7 Officer issues a decision adverse to plaintiff on whether the District had
8 sufficient cause to terminate him on January 5, 2012;

9 2) award Plaintiff double damages for the intentional and willful
10 withholding of wages owed;

11 3) find the District in contempt and award sanctions to Plaintiff of \$2,000
12 per diem until such time as Defendant complies with the Court's order of
13 June 29, 2018, and vitiates the contempt;

14 4) award Plaintiff prejudgment interest on all liquidated sums at the rate
15 of 12% per annum; and

16 5) award Plaintiff his attorney's fees and costs pursuant to RCW
17 49.48.030, RCW 49.52.070, RCW 7.21.030(3) and for having to bring this
18 motion to enforce his rights under the Court's lawful Order entered on June
19 29, 2018.
20
21

22 DATED: December 28, 2018.

23
24 POWELL, KUZNETZ & PARKER, P.S.

25
26
27 By 
28 Larry Kuznetz, WSBA #8697
29 Attorney for Plaintiff
30

31 Memorandum Of Authorities In Support Of Plaintiff's
32 Motion For Order of Contempt - 7

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DEC 28 2018

STEVENS, CLAY P.S.

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Paukert &
Troppmann, PLLC

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Original Filed
DEC 28 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendants.

NO. 12-2-01155-3

SECOND DECLARATION OF
LARRY J. KUZNETZ RE ORDER
FOR CONTEMPT OF COURT
AND REMEDIAL SANCTIONS

I, LARRY J. KUZNETZ, declare as follows:

1. I am the attorney of record for Plaintiff in the above captioned matter.
2. As of December 7, 2018, Defendant Central Valley School District has refused to comply with this Court's Order entered on June 29, 2018.
3. Attached hereto as **Exhibit A** is a true and correct copy of the Court of Appeals, Division III, Commissioner's Ruling on the District's Motion to stay filed November 30, 2018.
4. Attached hereto as **Exhibit B** is the compilation of the time spent by each attorney in this matter. Said time is contemporaneously kept when the work is performed.
5. I spent 8.30 hours at a rate of \$300 per hour working on this matter. Ms. Harmon has spent 11.60 hours at a rate of \$175 per hour working on this

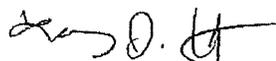
SECOND DECLARATION OF LARRY J. KUZNETZ RE
ORDER FOR CONTEMPT OF COURT
AND REMEDIAL SANCTIONS - 1

LAW OFFICE OF
POWELL, KUZNETZ & PARKER
A PROFESSIONAL SERVICE CORPORATION
316 W. BOONE AVE., ROCK POINTE TOWER, STE. 380
SPOKANE, WASHINGTON 99201-2346
PHONE: (509)455-4151
FAX: (509)455-8522

1 matter. The total amount for attorney's fees incurred as of this date is \$4,520.
2 This amount may be supplemented in Plaintiff's reply pleadings.

3
4 I declare under penalty of perjury under the laws of the State of Washington that the
5 forgoing is true and correct.

6
7 Signed at Spokane, Washington this 28 day of December, 2018

8
9 
10 _____
11 Larry J. Kuznetz

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31 SECOND DECLARATION OF LARRY J. KUZNETZ RE
32 ORDER FOR CONTEMPT OF COURT
AND REMEDIAL SANCTIONS - 2

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Exhibit A

The Court of Appeals
of the
State of Washington
Division III

NOV 30, 2018

MICHAEL F. CRONIN,)	No. 36291-4-III
)	
Respondent,)	
)	
v.)	COMMISSIONER'S RULING
)	
CENTRAL VALLEY SCHOOL DIST.,)	
)	
Appellant.)	
<hr/>		

On August 28, 2018, Central Valley School District filed a notice of appeal of the Spokane County Superior Court's August 23, 2018 "Findings of Fact, Conclusions of Law, Order and Judgment on Reasonableness of Attorney Fees, Setting of Back Wages, Benefits, Pre-Judgment Interest and Denial of Limited Stay." The court entered the judgment after it had granted Michael F. Cronin's motion for partial summary judgment on June 29, 2018, in his action against the District for wrongful termination. In addition to awarding Mr. Cronin damages, the amount of which was left for later determination, the court ordered the District "to restore [Mr. Cronin's] employment," and it "reinstated"

his “wages and benefits.” June 29, 2018 Order at 3.

1. Motion for Stay.

Both parties agree that the District has a right to stay enforcement of the money judgment pending appeal, *see* RAP 8.1(b)(1), and is not required to post a supersedeas bond. *See* RCW 4.96.040. The District asks this Court to also stay the portion of the superior court’s Order that it “restore” Mr. Cronin’s employment and “reinstate” his wages and benefits pending a statutory hearing on the merits of his dismissal. Mr. Cronin objects to any stay of the superior court’s order to restore his employment.

Under RAP 8.1(b)(3), in civil cases other than those that impose money judgments or affect property, this Court may grant a stay. In evaluating whether to stay enforcement, the Court considers whether the appellant has presented a debatable issue, and it weighs the relative injuries to the parties if a stay is or is not granted.

The District contends it has presented a debatable issue as to whether the superior court had the authority to reinstate Mr. Cronin as a classroom teacher. In this regard, the Court observes that the superior court referred Mr. Cronin’s case to a statutory hearing officer who, at the time of this ruling, has conducted several days of proceedings with additional proceedings scheduled in December 2018. The issue before the statutory hearing officer concerns the merits of the District’s discharge of Mr. Cronin. The District contends here that only the statutory hearing officer has the authority to reinstate

No. 36291-4-III

Mr. Cronin as a teacher. As for injury, without a stay, the District has to reinstate Mr. Cronin before a hearing officer decides the merits of the District's reasons for discharge.

This Court does not read the superior court's directive that the District restore Mr. Cronin's employment to mean that the District must place Mr. Cronin back in the classroom *before* the statutory hearing officer decides the merits of his discharge. Rather, the superior court intended the District to restore Mr. Cronin's employment status and pay him wages and benefits pending the hearing officer's determination on the merits. Otherwise, no referral to a hearing officer was needed.

So viewed, the superior court's Order does not present a need for a stay. The superior court did not order the District to place Mr. Cronin back in the classroom as a teacher. Instead, the Order directed that the hearing take place that Mr. Cronin previously had not been accorded. Actual reinstatement would occur only if the hearing officer determined that the District lacked probable cause to discharge him. As in all teacher discharge proceedings, the teacher's employment status and pay and benefits continues pending the hearing officer's decision.

Insofar as the District's request for a stay of the superior court's Order that it pay wages and benefits to Mr. Cronin pending the hearing officer's decision, this Court, after consideration of the factors in RAP 8.1(b)(3), denies that request.

2. Motion to Strike.

No. 36291-4-III

Mr. Cronin moves to strike pages 2-8 of the District's motion for stay and Exhibit F attached to the Declaration of Paul Clay. He contends that the facts and evidence alleged in the District's Statement of Facts and in Exhibit F, are not relevant to this Court's determination of that motion.

In light of this Court's ruling, as set forth above, the motion to strike is granted. The allegations against Mr. Cronin were not relevant as the superior court did not order the District to reinstate Mr. Cronin in the classroom but instead referred the merits of his discharge to a statutory hearing officer.

In sum, this Court rules that the superior court did not order the District to place Mr. Cronin back in the classroom but instead referred that question to the statutory hearing officer. Therefore, a stay is not needed. The District's motion for stay of the superior court's Order that it pay Mr. Cronin wages and benefits pending the hearing officer's decision is denied. Mr. Cronin's motion to strike is granted.

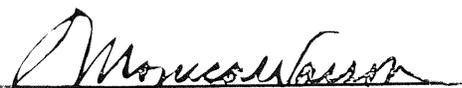

Monica Wasson
Commissioner

Exhibit B

Selection Criteria

User.Selection Include: L.J. Kuznetz
 Slip.Transaction Date 9/5/2018 - Latest
 Clie.Selection Include: WEA.Cronin/CVSD
 Slip.Transaction Type Time
 Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
	TIME	L.J. Kuznetz	0.70
9/6/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review draft motion and memorandum for contempt revise; conference with SH; email to client			
93078	TIME	L.J. Kuznetz	0.10
9/7/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review email SH; review SH revised draft of motion; revise with additional changes			
93079	TIME	L.J. Kuznetz	0.20
9/7/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review email SH; review SH draft of LJK declaration; revise with additional changes			
93080	TIME	L.J. Kuznetz	0.70
9/7/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review email SH; review SH draft of memorandum for contempt; revise with additional argument			
93081	TIME	L.J. Kuznetz	0.20
9/7/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Phone conference SH re revisions and added research			
93082	TIME	L.J. Kuznetz	0.30
9/7/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review email SH re final documents; brief review final documents			

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
	TIME	L.J. Kuznetz	0.70
9/17/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review and revise draft reply brief to District's response to our motion for contempt			
93139	TIME	L.J. Kuznetz	0.50
9/18/2018		file break	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Final revisions to reply brief; email to SH re revisions and review			
93260	TIME	L.J. Kuznetz	0.60
9/21/2018		Ph	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Prepare for hearing on motion for contempt; review pleadings; prepare argument			
93261	TIME	L.J. Kuznetz	1.30
9/21/2018		att	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Attend hearing on plaintiff's contempt motion			
93262	TIME	L.J. Kuznetz	0.60
9/21/2018		Meet	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Meeting with client			
94602	TIME	L.J. Kuznetz	0.40
12/4/2018		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review and revise draft motion for contempt			
94737	TIME	L.J. Kuznetz	0.80
12/15/2018		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review and revise memorandum of authorities; add damages section			
94799	TIME	L.J. Kuznetz	0.70
12/19/2018		revi	0.00
WIP		WEA.Cronin/CVSD	0.00
Revise memorandum of authorities			
94880	TIME	L.J. Kuznetz	0.50
12/21/2018		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Research added argument; revise declaration on			

Slip ID	User	Units
Dates and Time	Activity	DNB Time
Posting Status	Client	Est. Time
Description	Reference	Variance
fees		
Grand Total		
	Billable	8.30
	Unbillable	0.00
	Total	8.30

Selection Criteria

User Selection Include: Sarah Harmon
 Slip.Transaction Date 9/5/2018 - Latest
 Clie.Selection Include: WEA.Cronin/CVSD
 Slip.Transaction Type Time
 Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
	TIME	Sarah Harmon	1.10
9/5/2018		lr	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Legal research re findings of contempt of court, statutory authority, and remedial sanctions			
93143	TIME	Sarah Harmon	2.20
9/5/2018		Dr	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Drafted motion for an order finding defendant in contempt and for remedial sanctions; drafted memorandum in support of motion			
93144	TIME	Sarah Harmon	0.30
9/5/2018		fr	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
File/docket review for procedural posture of case for memo re: contempt motion			
93145	TIME	Sarah Harmon	0.20
9/5/2018		Review	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Review, edit, and revise motion and memo for LJK review			
93146	TIME	Sarah Harmon	0.20
9/6/2018		Dr	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Draft decl of LJK			
93147	TIME	Sarah Harmon	0.40
9/7/2018		lr	0.00
Billed	G:22868	10/1/2018 WEA.Cronin/CVSD	0.00
Legal research re: remedial sanctions and retroactive application; and citations for LJK revisions			

Slip ID	User	Units
Dates and Time	Activity	DNB Time
Posting Status	Client	Est. Time
Description	Reference	Variance
	Sarah Harmon	0.30
9/7/2018	Ph	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Phone calls with LJK re motion and declaration revisions		0.00
93149	Sarah Harmon	0.10
9/7/2018	Ph	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Phone call with Judicial Assistant noting hearing for motion		0.00
93150	Sarah Harmon	0.80
9/7/2018	revi	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Revise motion, memo, and declaration; finalize for filing and service		0.00
93151	Sarah Harmon	1.00
9/17/2018	lr	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Legal research- cases cited by opposing counsel in response and cases for reply		0.00
93152	Sarah Harmon	2.00
9/17/2018	Dr	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Draft reply brief and supplemental declaration of LJK		0.00
93153	Sarah Harmon	0.40
9/17/2018	Review	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Review and edit brief for LJK review		0.00
93154	Sarah Harmon	0.60
9/18/2018	revi	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Review and revise reply for filing		0.00
93155	Sarah Harmon	0.10
9/18/2018	revi	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Revise supplemental declaration of LJK		0.00
93501	Sarah Harmon	0.60
9/18/2018	Review	0.00
Billed	G:22868 10/1/2018 WEA.Cronin/CVSD	0.00
Review and revise reply to motion for contempt and		0.00

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
LJK declaration			
94614	TIME	Sarah Harmon	0.80
12/4/2018		Dr	0.00
WIP		WEA.Cronin/CVSD	0.00
Draft re-noted motion for contempt and notice of hearing			0.00
94615	TIME	Sarah Harmon	0.10
12/4/2018		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review, edit, and finalize motion after LJK revisions			0.00
94616	TIME	Sarah Harmon	0.10
12/4/2018		Ph	0.00
WIP		WEA.Cronin/CVSD	0.00
Phone call to JA for hearing date/time			0.00
94617	TIME	Sarah Harmon	0.20
12/5/2018		Dr	0.00
WIP		WEA.Cronin/CVSD	0.00
Draft Second Declaration of LJK			0.00
94618	TIME	Sarah Harmon	0.10
12/5/2018		e-mail	0.00
WIP		WEA.Cronin/CVSD	0.00
E-mail to MZ re atty fees and LJK declaration			0.00
Grand Total			
		Billable	11.60
		Unbillable	0.00
		Total	11.60

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1 BREEAN L. BEGGS, WSBA #20795
2 Paukert & Troppmann, PLLC
3 522 W. Riverside Avenue, Suite 560
4 Spokane, WA 99201
5 (509) 232-7760
6 Attorney for Plaintiff

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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

JAN - 3 2019

POWELL, KUZNETZ
& PARKER, P.S.

10 SUPERIOR COURT OF WASHINGTON
11 IN AND FOR SPOKANE COUNTY

14 MICHAEL F. CRONIN,

15 Plaintiff,

16 vs.

17 CENTRAL VALLEY SCHOOL DISTRICT,

18 Defendant.

No. 2012-02-01155-3

**CENTRAL VALLEY SCHOOL
DISTRICT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
CONTEMPT**

21 I. INTRODUCTION

22 Plaintiff has renewed his motion for contempt without fully informing this Court of the
23 procedural and substantive issues before the Court. Plaintiff's renewed motion is based on a
24 ruling by a Court of Appeals Commissioner that is effectively moot and that is subject to the
25 School District's motion to modify. *See* Declaration of Paul Clay, Ex. A. It is moot because the
26 statutory Hearing Officer issued a decision that the School District had sufficient cause, as of
27 January 5, 2012, to discharge Plaintiff and to nonrenew his teaching contract with the School
28
29

30 CENTRAL VALLEY SCHOOL DISTRICT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR CONTEMPT
• NO. 2012-02-01155-3 • Page - 1

PAUKERT & TROPPMANN, PLLC
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1 District.¹ Clay Decl., Ex. B. Thus, this Court's order (and thereby the Commissioner's ruling)
2 reinstating Mr. Cronin pending the outcome of his statutory hearing is moot and has effectively
3 been converted exclusively to monetary relief.

4
5 In addition, because the Commissioner's ruling is being appealed to the Court of Appeals,
6 the same reason still exists as to why this Court previously denied Mr. Cronin's initial motion.
7 Previously, this Court determined that it did not want to issue a ruling on Plaintiff's motion
8 pending a decision from the Court of Appeals because of a concern about inconsistent rulings.
9 That same concern exists today, given that the School District has sought review of the
10 Commissioner's ruling by a motion for modification, which was filed by the School District on
11 December 28, 2018. Clay Decl., Ex. C. Thus, the School District is not intentionally disregarding
12 this Court's order; rather, it is playing by the court rules, which expressly allow motions to modify
13 (and for good reason).² Thus, if this Court does not deny Plaintiff's motion based on mootness, it
14 should at least wait to entertain his motion until the Court of Appeals has decided the School
15 District's Motion to Modify.
16
17
18

19 Finally, if this Court does make a finding that the School District is in contempt, the
20 School District asks this Court to deny Mr. Cronin's request to impermissibly impose punitive
21 sanctions on the School District for conduct prior to any formal finding of contempt.
22
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25

26 ¹ The Hearing Officer issued his decision on December 21, 2018—a week before Plaintiff filed his current motion for
27 contempt. However, Plaintiff did not disclose that fact to this Court in his recitation of the procedural posture and
28 statement of facts regarding this case.

29 ² Indeed, good reason exists to for the School District's motion to modify. After all, the Commissioner issued her
30 ruling before the Hearing Officer's decision, rendering it moot. Likewise, the Commissioner appears to have
inadvertently failed to address the nonrenewal issue put before her by the School District.

II. ARGUMENT

A. This Court's Order Reinstating Plaintiff and any Motion for Contempt is Moot.

When the Hearing Officer issued his decision that sufficient cause existed as of January 5, 2012, to discharge Plaintiff and nonrenew his teaching contract, this Court's order restoring Plaintiff to his employment pending the outcome of his statutory hearing became moot. The Court's prior order was only to reinstate Plaintiff until the hearing officer made his decision. The Hearing Officer has now rendered his decision against Plaintiff. Because Plaintiff has already been discharged and his contract has been nonrenewed with sufficient cause, he cannot now have this Court reinstate him. At most all he can do is ask this Court to require the School District to pay him back wages through the end of his hearing. But because the award of back wages is a money judgment, the School District has a right to stay enforcement of that judgment while the Court of Appeals reviews this case. RAP 8.1(b) ("Any party to a review proceeding has the right to stay enforcement of a money judgment . . . pending review."); *see* Clay Decl., Ex. A ("Both parties agree that the District has a right to stay enforcement of the money judgment pending appeal, *see* RAP 8.1(b)(1), and is not required to post a supersedeas bond.").

Therefore, because this Court cannot reinstate Mr. Cronin to his employment and because the School District is entitled to stay enforcement of any money judgment this Court has entered against it while this case is pending review in the Court of Appeals, this Court should deny Mr. Cronin's motion for contempt as moot.

B. This Court Should Wait Until the Court of Appeals Decides the School District's Motion to Modify before Entertaining Plaintiff's Motion.

To ensure that the School District gets the full benefit of its appeal if it prevails, the rules of appellate procedure allow the School District to seek a stay of this Court's order while this case

1 is pending review. *See* RAP 8.1, 8.3; *Purser v. Rahm*, 104 Wn.2d 159, 177 (1985). And the School
2 District is appropriately taking advantage of that opportunity—not intentionally disregarding this
3 Court’s order. The School District appropriately filed a motion to stay this Court’s order with the
4 Commissioner, and she denied that motion subject to the School District’s right to file a motion
5 for modification with the full panel. So, the School District appropriately filed such a motion on
6 December 28th. *See* RAP 17.7(a) (“[A]n aggrieved person may object to a ruling of a
7 commissioner or clerk . . . by a motion to modify the ruling directed to the judges of the court
8 served by the commissioner or clerk.”); Clay Dec., Ex. C. And as this Court has previously
9 determined, it does not make sense to entertain Plaintiff’s motion until the Court of Appeals has
10 reviewed and decided the School District’s motion; otherwise, the parties may receive
11 inconsistent rulings from this Court and the Court of Appeals.³ Therefore, if this Court is not
12 willing to deny Plaintiff’s Motion for Contempt based on mootness, it should at least wait to rule
13 on his motion until the Court of Appeals has decided the School District’s Motion to Modify.
14
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16

17
18 **C. If this Court Finds the School District in Contempt, It Cannot Impose \$390,000
19 of Punitive Sanctions on the School District.**

20 Plaintiff asks this Court to impose \$390,000 of “remedial” sanctions on the School
21 District—\$2,000 for each day from the date of this Court’s June 29, 2018 order. However,
22 Plaintiff is not really asking this Court to impose remedial sanctions; he is asking it to impose
23 punitive sanctions for conduct prior to a finding of contempt—which it cannot do without
24 affording the School District the procedural protections provided under RCW 7.21.040. *E.g., State*
25 *v. Sims*, 1 Wn. App.2d 472, 480 (2017) (“Here, the trial court did not afford DSHS the procedures
26
27
28

29 ³ In fact, it is likely that there would be inconsistent rulings if this Court granted Plaintiff’s motion since there is a
30 high likelihood that the Court of Appeals will grant the School District’s Motion to Modify—especially now that the
Hearing Officer has found sufficient cause for Plaintiff’s discharge and for the nonrenewal of his teaching contract.

1 required under RCW 7.21.040(2). For this reason, the trial court was without authority to impose
2 punitive sanctions.”).

3 *Sims* is dispositive here. In *Sims*, DSHS was ordered on November 20, 2014, to perform
4 a competency evaluation on Mr. Sims by December 2. *Sims*, 1 Wn. App.2d at 477. On November
5 26, Mr. Sims filed a motion asking the court to impose remedial sanctions of \$500 each day past
6 December 2 that DSHS did not perform the evaluation. *Id.* On December 12, the court orally ruled
7 that DSHS would have to pay \$200 each day past December 2 that DSHS did not perform the
8 evaluation, explaining that the sanctions were remedial sanctions under RCW 7.21.030. *Id.* at
9 477–78. DSHS did not perform the evaluation until December 15. *Id.* at 478. On January 16,
10 2015, the court entered a written contempt order, finding DSHS in contempt and requiring it to
11 pay \$200 per day from December 2 through December 14. *Id.* DSHS appealed. *Id.*

12
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14
15 On appeal, Division Three of the Court of Appeals determined that the sanctions imposed
16 by the trial court prior to an order of contempt were punitive, not remedial, saying:

17
18 The legislature defined the distinction between remedial and punitive sanctions.
19 The legislature defined a remedial sanction as a sanction imposed “for the purpose
20 of coercing performance when the contempt consists of *an act that is yet in the*
21 *person’s power to perform.*” RCW 7.21.010(3) (emphasis added). When the trial
22 court, for example found DSHS in contempt on December 12, 2014, DSHS could
23 not perform the competency evaluation earlier than that date. To the extent the
24 sanctions punish DSHS for its failure to perform Mr. Sim’s competency evaluation
25 prior to December 12, 2014, those sanctions are punitive and we order the trial court
26 to strike them.

27
28 *Id.* at 480. The Court of Appeals ordered that the punitive sanctions be struck because the trial
29 court had not afforded DSHS the procedural protections provided under RCW 7.21.040 and, thus,
30 was “without authority to impose punitive sanctions.” *Id.*

Then the Court of Appeals went on to explain that daily sanctions provided under RCW
7.21.030(2)(b)—the type of sanctions Plaintiff seeks this Court to impose on the School District—

1 can only be imposed for each day *after* a court enters a contempt order and a party continues to
2 be in contempt. *Id.* at 481 (“So by statute, once a court makes a finding that a person is in
3 contempt, the court has authority to impose a limited forfeiture for each day the contempt of court
4 continues.”)
5

6 Plaintiff is asking this Court to do the exact same thing that Division Three of the Court
7 of Appeals found impermissible in *Sims*: impose punitive sanctions prior to the formal finding of
8 contempt without providing the protections required under RCW 7.21.040. Prior to any monetary
9 sanctions accruing, this Court must first find the School District in contempt and then set a sum
10 of money to compel compliance with the contempt order. This Court has not yet found School
11 District in contempt since the School District is appropriately exhausting its appellate options.
12 (And now, there is no way the School District could be out of compliance since the Hearing
13 Officer has ruled against Plaintiff.) Therefore, just as the court in *Sims* had no authority to impose
14 punitive sanctions on DSHS, this Court does not have authority to impose punitive sanctions on
15 the School District prior to entering an order of contempt. Accordingly, the School District asks
16 that if this Court finds the School District is somehow in contempt, that it deny Plaintiff’s request
17 for punitive sanctions.⁴
18
19
20
21

22 III. CONCLUSION

23 The School District respectfully requests that this Court either deny Plaintiff’s Motion for
24 Contempt—now that this Court’s order restoring Plaintiff to his employment pending the
25 outcome of his statutory hearing is moot—or wait until the Court of Appeals has decided the
26
27

28 _____
29 ⁴ The Plaintiff is now without a remedy for any claimed lost wages leading up to the adverse decision by the hearing
30 officer. He presumably could seek a monetary judgment for any lost income and benefits subject to a final ruling by
the Court of Appeals.

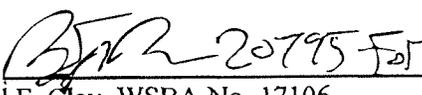
1 School District's Motion to Modify before entertaining Plaintiff's motion. But if this Court does
2 neither of those things and instead finds the School District in contempt, the School District
3 requests that the Court deny Plaintiff's request to impermissibly impose punitive sanctions on the
4 School District for conduct prior to the finding of contempt.
5

6 DATED this 3rd day of January 2019.

7 PAUKERT & TROPPEMAN, PLLC

8
9 By: 
10 Breann L. Beggs, WSBA No. 20795
11 Attorney for Defendant

12 STEVENS - CLAY, P.S.

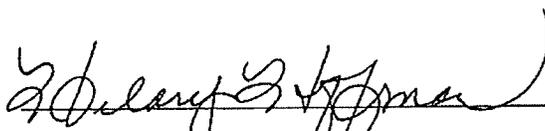
13 By: 
14 Paul E. Clay, WSBA No. 17106
15 Attorney for Defendant

1
2
3 CERTIFICATE OF SERVICE

4 I certify that on the date listed below, I served true and correct copies of the foregoing
5 document on the following, in the method indicated:
6

7 8 Larry Kuznetz 9 Powell, Kuznetz & Parker 10 316 W. Boone Ave. 11 Rock Pointe Tower, Suite 380 12 Spokane, WA 99201-2346	13 14 15 <input type="checkbox"/> Hand Delivery 16 <input type="checkbox"/> U.S. Mail 17 <input checked="" type="checkbox"/> By Legal Messenger 18 <input type="checkbox"/> Fax 19 <input checked="" type="checkbox"/> Email: larry@pkp-law.com
--	---

20
21
22
23
24
25
26
27
28
29
30 DATED: January 3, 2019


Hilary Hoffman, Paralegal

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JAN 03 2019

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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

JAN - 3 2019
POWELL, KUZNETZ
& PARKER, P.S.

SUPERIOR COURT OF WASHINGTON
IN AND FOR SPOKANE COUNTY

MICHAEL F. CRONIN,

No. 2012-02-01155-3

Plaintiff,

DECLARATION OF PAUL E. CLAY

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Defendant.

I, PAUL E. CLAY, under penalty of perjury under the laws of the State of Washington, state and declare that the following is true and correct:

1. I am over the age of eighteen years and am competent to make this declaration based on my personal knowledge.

2. The Commissioner for the Court of Appeals issued a ruling on November 30, 2018, denying the School District's Motion to Stay. A true and correct copy of the Commissioner's ruling is attached and incorporated as **Exhibit A**.

3. On December 21, 2018, Hearing Officer David A. Kulisch rendered a written decision in which he determined that sufficient cause existed as of January 5, 2012, for Plaintiff's discharge and for the nonrenewal of his teaching contract. A true and correct copy of that decision is attached and incorporated as **Exhibit B**.

DECLARATION OF PAUL E. CLAY - 1

STEVENS | CLAY PS
421 W. Riverside, Suite 1575
Telephone (509) 838-8330
Facsimile (509) 623-2131

RECEIVED

JAN 08 2019

STEVENS, CLAY P.S.

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Paukert & Troppmann, PLLC

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Timothy W. Fitzgerald SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

MICHAEL F. CRONIN

Plaintiff,

No. 12-2-01155-3

-vs-

CENTRAL VALLEY SCHOOL DISTRICT

Defendant.

PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION FOR CONTEMPT

I. ARGUMENT

A. The decision of the Hearing Officer does not moot the Court's lawful order of June 29, 2018¹.

The District's effort to ignore this Court's June 29, 2018, order does not become moot simply because the Hearing Officer issued a decision. That order was not contingent on the outcome of the Hearing Officer's decision. It was to place the parties in status quo pending that decision. Cronin would have been on pay and benefits pending a decision if seven years ago the District hadn't violated his rights to due process by ignoring his request for a hearing. They

¹ See attached as Appendix 1, the Court's June 29, 2018, order.

PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION FOR CONTEMPT - 1

1 intentionally ignored Cronin then; they intentionally ignore the Court now. The
2 fact that a decision² has been made is irrelevant. No decision existed at the time
3 the Court issued its order. The District once again attempts to deflect any
4 responsibility for ignoring Cronin and violating his due process rights simply
5 because they received a favorable decision. The Court was clear in its order:
6 place Cronin and pay and benefits pending a decision. They did not do so and
7 have violated the clear intent of the order.
8

9 The Court understands that the District wants to pick and choose the parts
10 of the Order that benefit them. It went forward with a statutory hearing that
11 lasted over two weeks with more than 29 witnesses. It had the audacity to tell
12 the Hearing Officer that it was under an "order" to pay Cronin his wages and
13 benefits during the hearing when it hadn't paid him a dime. The District
14 thumbs their nose at the Court by willfully and intentionally refusing to abide by
15 the Court's lawful Order under the guise that a favorable decision somehow
16 moots this Court's lawful Order. That is contemptuous conduct if there ever was
17 any.
18

19 The District also takes the position that with a favorable decision by the
20 Hearing Officer, the Commissioner's Ruling³ affirming this Court's denial of a
21 stay is moot as well. One has nothing to do with the other. This Court's order
22 and the Hearing Officer's decision are mutually exclusive events. The decision of
23

24 ² On December 21, 2018, after over two weeks of hearing, the Hearing Officer issued a
25 memorandum opinion finding that the District had sufficient cause to terminate
26 Cronin. That opinion is presently being incorporated into findings of fact and
27 conclusions of law, as required by RCW 28A.405.340(7)(c) as the final appealable
28 decision that will be appealed. The decision does not moot this matter.

29 ³ The Commissioner issued her ruling on November 30, 2018. This matter would
30 have been set before this Court before the Hearing Officer's decision, but for the
31 unavailability of counsel and the Court's schedule.

32 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 2

1 the Court to place the parties back in status quo pending a determination on the
2 merits of the District's claim of probable cause for termination was never
3 contingent on the outcome of the statutory hearing. It was to put the parties
4 back into the position they would have been seven years ago when Cronin would
5 have been on pay and benefits while the parties moved forward with selection of
6 a hearing officer that would culminate in a statutory hearing. The District made
7 a conscious, calculated, willful and intentional decision to flaunt this Court's
8 June 29, 2018, order and should not be rewarded for their conduct.
9

10 The District claims this Court was concerned about inconsistent rulings. To
11 the contrary; this Court was concerned about the failure of the District to keep
12 Cronin on pay and benefits pending a decision and the seven year violation of
13 his due process rights. There was no issue about inconsistent findings. If this
14 matter had been heard in 2012, Cronin would have been kept on pay and
15 benefits pending the decision. There is nothing inconsistent with the Court
16 issuing that same ruling and enforcing it.
17

18 What is inconsistent is the District's conduct in complying with one part of
19 the order but not the other. Why would it agree to go forward with the statutory
20 hearing as ordered, but not pay wages and benefits as ordered? The easy
21 answer is because they can withstand whatever the Court might sanction or
22 conclude. It has been their strategy all along - resist any payment to Cronin,
23 obtain a favorable decision from the Hearing Officer, and then argue that the
24 Hearing Officer's decision renders any payment as ordered moot. The District's
25 conduct should not be rewarded, especially when the design was to circumvent a
26 lawful Court order. One would hope that this Court is troubled by the District's
27 position and conduct, especially when the District didn't even move to stay the
28 Court's June 29, 2018, order until July 17, 2018, almost three weeks later.
29
30

31 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
32 SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 3

1
2
3 B. The District's created the circumstances by which it seeks to benefit.

4 Here is the scenario: the District fails to pay wages and benefits as ordered
5 pending the statutory hearing; those wages and benefits accrue because of its
6 failure to pay; the District now claims without any support or authority that it is
7 entitled to stay payment of that pay and benefits because with the Hearing
8 Officer's decision, this matter is now somehow "converted" to a money judgment
9 and the District is entitled to stay enforcement of any money judgment pending
10 review by the Court of Appeals. (Dist. Brief, p. 3, 11, 12-19). Put another way,
11 because the District chose to ignore this Court's ruling and Cronin's back pay
12 and benefits accrued, all Cronin can now seek is a money judgment and the
13 District is entitled to a stay enforcement of any money judgment. In reality, the
14 District seeks to benefit by its misconduct that is only achieved by ignoring this
15 Court's order. There is no authority or support for its position that somehow the
16 Hearing Officer's decision converted this entire matter to a money judgment.
17 The District should not benefit from any argument or claim that results from its
18 intransigence by ignoring the Court's lawful Order. It is all the more reason for
19 the Court to impose sanctions on the District for its unlawful conduct.
20
21
22

23 C. The District is using appellate procedures to avoid complying with a
24 valid, lawful order even after the Commissioner denied issuing a stay.

25 The District claims to be "appropriately taking advantage of that opportunity
26 [to appeal] – not intentionally disregarding this Court's Order." If that were the
27 case, then why did the District only disregard part of the Court's June 29, 2018,
28 Order, but agree to go forward with a Statutory Hearing?
29
30

31 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
32 SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 4

1 Staying a decision at this point is prejudicial to Cronin. He has had no pay
2 and benefits since August 31, 2012. He went through the statutory hearing in
3 good faith. The District did not. Let the Court of Appeals see that this Court is
4 troubled by the District's misconduct in disregarding its order.

5 The District has never intended to pay Cronin, even in the face of a Court
6 order to do so. It continues to ignore Cronin's due process rights. It made a
7 calculated decision to disregard placing Cronin on pay and benefits, but
8 continued to go forward with the statutory hearing. The Court's intent was not
9 to allow a hearing to occur, without pay and benefits reinstated to Cronin.
10 Regardless of the Hearing Officer's decision, the District willfully and
11 intentionally rejected this Court's effort and clear mandate to the parties under
12 the June 29, 2018, Order.

13
14
15 D. The Court has the ability to impose contempt sanctions on the District
16 up to \$2,000 for each day.

17 Plaintiff set his motion for contempt before this Court and was heard on
18 September 21, 2018. The Court elected to see what the Court of Appeals might
19 do with the District's request for stay before addressing plaintiff's motion. The
20 Court noted that the District's acts appeared to be intentional, but that plaintiff
21 could renote his motion after the Court of Appeals decision.

22
23 The Court has already issued its order of June 29, 2018. It doesn't have to
24 issue another order for contempt and wait to see if the District complies. The
25 District already made its choice not to comply. The Court can find contempt
26 from September 21, 2018 forward, not retroactive to June 29, 2018. The District
27 has had an opportunity to present its position to the contempt motion and for
28 remedial sanctions. This Court does not have to wait and see what the District
29 will do after this. It has already shown that it has no intention of paying Cronin
30

31 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
32 SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 5

1 or abiding by the Court's order. To hold otherwise would allow the District to
2 disregard the Court order with impunity under the guise that the Court must
3 first see if it pays after a contempt citation is issued. That seems to be
4 counterintuitive. The District has failed to pay and a contempt citation should
5 issue with remedial sanctions as of September 21, 2018. The fact the District
6 has "taken advantage" of appeal rights does not negate the fact that it
7 intentionally violated this Court's order. Can the District ignore the Court's
8 order, not pay as ordered twice before⁴, bide its time and wait for a contempt
9 citation to issue before it incurs any liability for its conduct? That would make a
10 mockery of the contempt provisions, this Court's lawful order and essentially
11 excuse the District's conduct in this matter.
12

13 The act of implementing the Court's order by placing Cronin on present pay
14 and benefits pending a decision was totally within the control of the District.
15 The Court has the ability to impose sanctions upon the District to enforce its
16 own order. The District contends that there is no way they could be out of
17 compliance with the Court's order since the Hearing Officer has ruled against
18 plaintiff. Does the District honestly believe that its payment to Cronin of pay
19 and benefits pending the statutory hearing under the Court's order was only
20 required if there was a finding of insufficient cause to terminate by the Hearing
21 Officer? That was never the case, nor ever the Court's intention. The District is
22 completely out of compliance with the Court's ruling and the Court should
23 impose contempt sanctions accordingly.
24

25 The District claims that plaintiff is now without a remedy for any claimed
26 lost wages leading up to the adverse decision by the Hearing Officer. That is
27

28 ⁴ Keep in mind that both the June 29, 2018 and August 22, 2018 orders required the
29 District to reinstate Cronin's pay and benefits. The August 22, 2018, order is
30 attached as Appendix 2.

31 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
32 SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 6

1 only true if the Court made its ruling contingent upon the Hearing Officer's
2 decision, not based upon the District's intentional delay and willful failure to
3 implement the Court's ruling.

4 **II. CONCLUSION**

5 The Court's June 29, 2018, Order was to reinstate plaintiff's pay and
6 benefits until such time as the Hearing Officer made his decision as directed
7 under RCW 28A.405.340(7)(c). That meant that Cronin was entitled to pay and
8 benefits after assignment of the Hearing Officer. The Court's Order was not to
9 reinstate Cronin contingent on the Hearing Officer's decision. It was to place
10 him back in status quo pending any decision.

11
12 Cronin is requesting that the Court award him back wages and benefits at
13 least until the Findings of Fact, Conclusions of Law and a decision is formally
14 made as required by RCW 28A.340(7)(c). The Court should not delay a contempt
15 finding in this matter and issue remedial sanctions accordingly. There is no
16 good reason to delay as Cronin continues to be prejudiced by the District's
17 intentional failure to abide by this Court's ruling.

18
19 DATED: January 7th, 2019.

20
21 POWELL, KUZNETZ & PARKER, P.S.

22
23 By 
24 _____
25 Larry Kuznetz, WSBA #8697
26 Attorney for Plaintiff

27
28
29
30
31 PLAINTIFF'S REPLY MEMORANDUM TO CENTRAL VALLEY
32 SCHOOL DISTRICT'S OPPOSITION TO PLAINTIFF'S: MOTION
FOR CONTEMPT - 7

App. 1

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SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendant.

NO. 12-2-01155-3

ORDER: 1) GRANTING
PLAINTIFF PARTIAL SUMMARY
JUDGMENT; 2) DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; 3)
APPOINTING STATUTORY
HEARING OFFICER; 4) SETTING
SCHEDULE FOR PRESENTMENT
OF JUDGMENTS AND MOTION
FOR TAX CONSEQUENCES

This matter came on for hearing before the court on April 27, 2018, on Cross-Motions for Summary Judgment. The Plaintiff was represented by Larry J. Kuznetz of Powell, Kuznetz & Parker, P.S. The Defendant was represented by Paul Clay of Stevens Clay and Breeah Beggs of Paukert and Troppman, PLLC. The court reviewed the records and files herein and specifically considered the following submissions by the parties:

● ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 1

LAW OFFICE OF
POWELL, KUZNETZ & PARKER
A PROFESSIONAL SERVICE CORPORATION
316 W. BOONE AVE., ROCK POINT TOWER, STE. 310
SPOKANE, WA 99201-2316
PHONE: (509) 455-4161
FAX: (509) 455-4322

- District's Motion for Summary Judgment
- District's Memorandum of Authorities in Support of its Motion for Summary Judgment
- Declaration of Paul Clay with attachments
- Declaration of Jay Rowell with attachments
- Plaintiff's Motion for Summary Judgment
- Memorandum of Authorities in Support of Plaintiff's Motion for Summary Judgment
- Declaration of Larry J. Kuznetz with attachments
- District's Response to Plaintiff's Motion for Summary Judgment
- Second Declaration of Jay Rowell
- Plaintiff's Response Memorandum to District's Motion for Summary Judgment
- Memorandum in Support of Plaintiff's Motion to Strike Portions of Declaration of Jay Rowell
- Plaintiff's Motion to Strike Portions of Jay Rowell Declaration
- Declaration of Teresa Anderson 7.12.17
- Declaration of Sally McNair 7.12.17
- Declaration of Michael Cronin 7.12.17 with attachments
- District's Opposition to Plaintiff's Motion to Strike Portions of Jay Rowell's Declaration
- District's Reply to Plaintiff's Response to District's Motion for Summary Judgment
- Second Declaration of Paul Clay with attachments
- Plaintiff's Reply Memorandum to District's Response to Plaintiff's Motion for Summary Judgment
- Second Declaration of Michel Cronin 7.21.17
- Plaintiff's Reply Memorandum to District's Opposition to Plaintiff's Motion to Strike Portions of Jay Rowell's Declaration

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 2

LAW OFFICE OF
POWELL, KUZNETZ & PARKER
 A PROFESSIONAL SERVICE CORPORATION
 316 W. BOONE AVE., ROCK POINTE TOWER, STE. 300
 SPOKANE, WASHINGTON 99201-2316
 PHONE: (509)455-4151
 FAX: (509)455-4522

After having reviewed the records and files herein including the above documents, and after hearing argument of counsel, and having issued its letter opinion on June 1, 2018,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Summary Judgment be, and the same is hereby partially granted as follows:
 - a. The Court grants Plaintiff's request to restore his employment. Judgment shall be entered against Defendant for back wages and benefits owed Plaintiff from September 1, 2012, to the date of this order. The issue of the amount of pre-judgment interest, if any, shall be determined at the hearing on August 3, 2018 as identified in paragraph 4 below.
 - b. Plaintiff's wages and benefits shall be immediately reinstated effective the date of this order and shall continue until such time as a written decision by a statutory hearing officer determines after a hearing on the merits whether the Defendant has proved sufficient cause for either discharge or nonrenewal of Plaintiff from his employment with Defendant.
 - c. Plaintiff shall be entitled to judgment against Defendant for attorney's fees and costs under RCW 49.48.030 as he prevailed on his claim for wages owed after August 31, 2012.
 - d. Plaintiff's request for attorney's fees under RCW 28A.405.350 is denied.
 - e. Plaintiff shall be entitled to present by motion a request for an additional award to him for damages for tax consequences resulting from the back pay, benefits and attorney's fees and costs judgment.
 - f. Plaintiff's request for double damages for wages owed is denied.
2. Defendant's Motion for Summary Judgment be, and the same is hereby denied.

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 3

LAW OFFICE OF
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3. The court understands that the parties have agreed and the court hereby appoints attorney Dave Kulisch as the statutory hearing officer to hear the merits of the District's claim for discharge and non-renewal.
4. The court shall set a notice of presentment on August 3, 2018 at 2:00PM for entry of judgment referenced in paragraphs 1(a) and (c) above, and for Plaintiff's motion for tax consequences referenced in paragraph 1(e) above. Plaintiff shall provide documentation of back wages and benefits owed, attorney's fees and costs, pre-judgment interest and tax consequences to the Defendant and filed with the court by June 22, 2018. The Defendant shall file any response by July 17, Plaintiff shall file any reply by July 27.

DATED this 29th day of June, 2018.

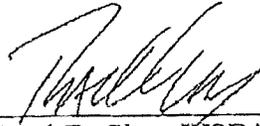
JOHN O. COONEY

Judge John O. Cooney

Presented by:
POWELL, KUZNETZ & PARKER, P.S.

Approved as to Content:
STEVENS CLAY, P.S.

By: 
Larry J. Kuznetz, WSBA 8697
Attorney for Plaintiff

By: 
Paul E. Clay, WSBA #17106
Attorney for Defendant

PAUKERT & TROPFMANN, PLLC

Did not appear at the
By: 6/22/18 presentment
Breean Beggs, WSBA #20795
Attorney for Defendant

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 4

LAW OFFICE OF
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App. 2

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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendant.

NO. 12-2-01155-3

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT ON
REASONABLENESS OF
ATTORNEY'S FEES, SETTING OF
BACK WAGES, BENEFITS, PRE-
JUDGMENT INTEREST AND
DENIAL OF LIMITED STAY

THIS MATTER came before the Court for hearing on August 3, 2018, on plaintiff Michael Cronin's Motion for Reasonable Attorney's Fees pursuant to RCW 49.48.030 and setting damages for back wages, benefits, pre-judgment interest, and tax consequences. Defendant also brought on for hearing its Motion For Limited Stay. In addition to the records and files herein, the Court reviewed the following submissions by the parties:

1. Motion And Affidavit to Set Award For Back Pay, Benefits, Interest, Attorney's Fees And Costs;

FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 1

LAW OFFICE OF
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SPOKANE, WASHINGTON 99201-2346
PHONE: (509)455-4151
FAX: (509)455-6522

- 1 2. Motion And Affidavit For Tax Consequence Adjustment;
- 2 3. Plaintiff's Memorandum of Authorities In Support Of Back Wages And
- 3 Benefits, Attorney's fees, Costs, Pre-Judgment Interest and Tax Consequence
- 4 Adjustment;
- 5 4. Declaration of Marie T. Canas Re Calculation of Back Wages, Benefits
- 6 and Pre-Judgment Interest;
- 7 5. Declaration of William M. Symmes re Attorney's Fees;
- 8 6. Declaration of Keller W. Allen re Attorney's Fees;
- 9 7. Declaration of Larry J. Kuznetz re Attorney's Fees;
- 10 8. Declaration of Michael J. Hines re Attorney's Fees And Costs;
- 11 9. Declaration of William Simer, CPA re An Adjustment For Tax
- 12 Consequences;
- 13 10. Response to Plaintiff's Memorandum in Support of Back Wages And
- 14 Benefits, Attorney's Fees, Costs, Prejudgment Interest and Tax Consequence
- 15 Adjustments;
- 16 11. Declaration of Paul Clay;
- 17 12. Declaration of Jan Hutton;
- 18 13. Declaration of Erick West;
- 19 14. Motion And Memorandum In Support of Limited Stay;
- 20 15. Plaintiff's Reply Memorandum To Defendant's Response To Motion To
- 21 Set Damages And For Tax Consequences;
- 22 16. Second Declaration Of William Simer, CPA In Reply To School District's
- 23 Calculations;
- 24 17. Second Declaration of Marie T. Canas in Reply to School District's
- 25 Calculations;
- 26 18. Supplemental Declaration of Larry J. Kuznetz re Attorney's Fees And In
- 27 Support Of Motion To Set Damages And For Tax Consequences;
- 28 19. Plaintiff's Response Memorandum to District's Motion For Limited Stay;
- 29
- 30

31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 2

LAW OFFICE OF
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PHONE: (509)455-4151
FAX: (509)455-8522

1 from August 31, 2012, to the date of the order plus reasonable attorney's fees
2 and costs. The Court granted Plaintiff's request to restore his employment as of
3 August 31, 2012 and ordered Plaintiff's wages and benefits be reinstated
4 pending a statutory hearing determining the merits of the District's claim for
5 discharge and non-renewal. The Court reserved ruling on any award for tax
6 consequences and pre-judgment interest and calendared the matter for hearing
7 on August 3, 2018, to set the amount of damages, attorney's fees and costs, and
8 to consider an award for prejudgment interest and tax consequences.
9

10 5. Defendant brought its Motion For Limited Stay before the court
11 seeking a limited stay of the Court's order of June 29, 2018, restoring Plaintiff's
12 employment, reinstating pay and benefits pending a statutory hearing, and a
13 limited stay to conduct discovery on mitigation by Plaintiff.

14 6. The financial analysts for both parties determined damages to the end
15 of the current contract, August 31, 2018. Any payments made to Plaintiff
16 between June 29, 2018, when his pay and benefits are reinstated pending a
17 statutory hearing, and August 31, 2018, can be credited if payment is made
18 under this judgment. The intent is that Plaintiff would not double recover for
19 payments made after pay and benefits are reinstated pending the statutory
20 hearing, and damages received and paid from this judgment.
21

22 7. The Court having considered the submissions and argument of the
23 parties regarding back pay and benefits, finds that the amount of \$552,211 to
24 be an accurate calculation of the lost back pay and benefits accrued to Plaintiff
25 since August 31, 2012 to August 31, 2018, based upon the following:

26	a. Back wages owed*	\$429,710.00
27	b. Retirement benefits owed	51,312.00
28	c. Retirement investment earning owed..	7,497.00
29	d. Sick leave benefits owed	1,563.00
30		

31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 4

LAW OFFICE OF
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e. Personal leave benefits owed*	1,901.00
f. Health benefits owed	<u>60,228.00</u>
Total.....	\$552,211.00

(*If awarded by the court, the parties had agreed on the correctness of these calculations.)

8. When the Court made its determination for pay and benefits in the April 27, 2018 decision, it was based upon the belief that all pay and benefits had been paid to Mr. Cronin through August 31, 2012. To the extent he has not received benefits under his 2011-2012 teaching contract, the parties may stipulate to such amount or counsel for Plaintiff may file a motion to set those amounts as additional damages.

9. The Court also finds based on the submissions and argument of the parties that the back pay and benefit amounts are liquidated and that sovereign immunity has been waived as to the judgment amount for back pay and benefits so that it is subject to pre-judgment interest at the rate of 12% per annum. The amount of \$182,865 as pre-judgment interest is reasonable.

10. The court declines to make an additional award for tax consequences as there is no statutory or other equitable basis for such an award. RCW 49.48.010 does not authorize the court to impose tax consequences or equitable relief.

11. As for attorney's fees, the court has taken into consideration the following factors:

a. Plaintiff's counsel has a reduced hourly rate for his work for the union and the matter was not handled on a contingent basis.

b. Plaintiff's counsel is an experienced trial attorney who has an excellent reputation.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 5

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1 c. Plaintiff's counsel is one of the few attorneys in Spokane who
2 practices in this area involving the representation of teacher's in terminations
3 from employment.

4 d. Plaintiff's counsel brought claims under circumstances that were
5 factually undesirable and two trial judges ruled against him. Nonetheless he
6 pursued appeals and prevailed.

7 e. Since there has been no trial in this matter, trial days and time in
8 trial to the exclusion of other matters did not occur.

9 f. Plaintiff's time on any unsuccessful claim hasn't been segregated
10 although litigation has stretched over 6.5 years.

11 g. The Defendant agrees that the amount of hours spent was
12 reasonable for the experience levels of the attorneys involved. Defendant does
13 not object to the number of hours spent in this matter so the Court finds that
14 the number of hours spent is reasonable.

15 h. Plaintiff's counsel charged a range of rates over the past 6.5 years
16 for time spent in this matter. The hourly rate for Plaintiff's counsel is low given
17 his experience.

18 i. Plaintiff has presented detailed time records that were recorded
19 concurrently with the work being performed. The records include itemized
20 details of the work performed, the attorney performing the work, the date, and
21 the number of hours.

22 j. Plaintiff's counsel has excluded duplication, non-productive time,
23 and redundant and non-compensable work.

24 k. After considering the above factors and the totality of the
25 circumstances of this case, the Court will set an hourly rate of \$250 as a
26 reasonable hourly rate for work performed in this matter. The total attorney fee
27 then would be \$152,820.

28
29
30
31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 6

LAW OFFICE OF
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FAX: (509)455-0222

1 received benefits under his 2011-2012 teaching contract, the parties may
2 stipulate to such amount or counsel for Plaintiff may file a motion to set those
3 amounts as additional damages.

4 7. All stays requested by the Defendant are denied.

5 8. The Court shall sign a separate judgment summary in this matter.
6

7
8 DONE IN OPEN COURT THIS 22nd day of August, 2018.
9

10 JOHN O. COONEY

11 JUDGE JOHN O. COONEY

12 Presented by:

13 POWELL, KUZNETZ & PARKER, P.S.
14

15
16 By: 

17 Larry J. Kuznetz, WSBA No. 8697
18 Attorney for Plaintiff

19 Approved:

20 STEVENS - CLAY, P.S.
21

22 By: Approved via email 8/22/18

23 Paul E. Clay, WSBA No. 17106
24 Attorney for Defendant

25 PAUKERT & TROPPEMAN, PLLC
26

27 By: Approved via email 8/22/18

28 Breean L. Beggs, WSBA No. 20795
29 Attorney for Defendant
30

31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 9

LAW OFFICE OF
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Troppmann, PLLC

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JAN 08 2019
Timothy W. Fitzgerald
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendants.

NO. 12-2-01155-3

SUPPLEMENTAL DECLARATION
OF LARRY J. KUZNETZ RE
ATTORNEY'S FEES ON ORDER
FOR CONTEMPT OF COURT
AND REMEDIAL SANCTIONS

I, LARRY J. KUZNETZ, declare as follows:

1. I am the attorney of record for Plaintiff in the above captioned matter.
2. Attached hereto is the compilation of the time spent by each attorney in this matter after December 21, 2018 which was when the last work was performed identified in the December 28, 2018 declaration in support of attorney's fees. Said time is contemporaneously kept when the work is performed.
3. I spent 5.4 additional hours at a rate of \$375 per hour working on this matter. My hourly rate increased as of the first of the year. Ms. Harmon has spent .6 hours at a rate of \$200 per hour working on this matter. Her hourly rate increased as of the first of the year.

SUPPLEMENTAL DECLARATION OF LARRY J.
KUZNETZ RE ATTONREY'S FEES ON ORDER FOR
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS - 1

LAW OFFICE OF
POWELL, KUZNETZ & PARKER
A PROFESSIONAL SERVICE CORPORATION
316 W. BOONE AVE., ROCK POINTE TOWER, STE. 380
SPOKANE, WASHINGTON 99201-2346
PHONE: (509)455-4151
FAX: (509)455-8522

Selection Criteria

User Selection Include: L.J. Kuznetz
 Slip Transaction Date 12/22/2018 - 1/8/2019
 Clie Selection Include: WEA.Cronin/CVSD
 Slip Classification Open

Rate Info - identifies rate source and level

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
95129	TIME	L.J. Kuznetz	1.10
1/4/2019		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review Clay brief on contempt response; draft reply			0.00
95131	TIME	L.J. Kuznetz	0.30
1/4/2019		Ph	0.00
WIP		WEA.Cronin/CVSD	0.00
Phone conference client			0.00
95133	TIME	L.J. Kuznetz	2.70
1/5/2019		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review and revise reply memorandum; review order			0.00
95135	TIME	L.J. Kuznetz	0.10
1/5/2019		e-mail	0.00
WIP		WEA.Cronin/CVSD	0.00
E-mail to SH			0.00
95137	TIME	L.J. Kuznetz	0.10
1/5/2019		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Review email from client; respond			0.00
95165	TIME	L.J. Kuznetz	0.30
1/8/2019		Dr	0.00
WIP		WEA.Cronin/CVSD	0.00
Draft supplemental attorney's fee declaration			0.00
95166	TIME	L.J. Kuznetz	0.80
1/8/2019		Aff	0.00
WIP		WEA.Cronin/CVSD	0.00
Estimated court time for hearing on January 10, 2019, Motion for Contempt and Remedial Sanctions			0.00

<u>Slip ID</u>	<u>User</u>	<u>Units</u>
<u>Dates and Time</u>	<u>Activity</u>	<u>DNB Time</u>
<u>Posting Status</u>	<u>Client</u>	<u>Est. Time</u>
<u>Description</u>	<u>Reference</u>	<u>Variance</u>
Grand Total		
	Billable	5.40
	Unbillable	0.00
	Total	<u>5.40</u>

Selection Criteria

User.Selection Include: Sarah Harmon
 Slip.Transaction Date 12/22/2018 - 1/8/2019
 Clie.Selection Include: WEA.Cronin/CVSD
 Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID		User	Units
Dates and Time		Activity	DNB Time
Posting Status		Client	Est. Time
Description		Reference	Variance
95167	TIME	Sarah Harmon	0.40
1/7/2019		Review	0.00
WIP		WEA.Cronin/CVSD	0.00
Reviewand edit reply brief			0.00
95168	TIME	Sarah Harmon	0.20
1/7/2019		e-mail	0.00
WIP		WEA.Cronin/CVSD	0.00
E-mail to LJK with suggested revisions to reply brief			0.00
Grand Total			
		Billable	0.60
		Unbillable	0.00
		Total	<u>0.60</u>

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STEVENS, CLAY P.S.

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SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

NO. 12-2-01155-3

Plaintiff,

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF CONTEMPT

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendant.

This matter came on for hearing before the court on January 10, 2019. The Plaintiff was represented by Larry J. Kuznetz of Powell, Kuznetz & Parker, P.S. The Defendant was represented by Paul Clay of Stevens Clay and Breean Beggs of Paukert and Troppman, PLLC. The court reviewed the records and files herein and specifically considered the following submissions by the parties:

1. Plaintiff's Motion for an Order Finding Defendant in Contempt of Court and For Remedial Sanctions (filed September 7, 2018).

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER OF CONTEMPT - 1

LAW OFFICE OF
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FAX: (509)455-8522

2. Declaration of Larry J. Kuznetz re Order of Contempt of Court and Remedial Sanctions with attachments (filed September 7, 2018).
3. Memorandum of Authorities of Plaintiff's Motion for Order Finding Defendant in Contempt of Court and for Remedial Sanctions (filed September 7, 2018).
4. School District's Response to Plaintiff's Motion for and Order of Contempt and Remedial Sanctions (filed September 14, 2018).
5. Plaintiff's Reply Memorandum re Motion for Order Finding Defendant in Contempt of Court and for Remedial Sanctions (filed September 19, 2018).
6. Supplemental Declaration of Larry J. Kuznetz re Order of Contempt of Court and Remedial Sanctions with attachments (filed September 19, 2018).
7. Order Reserving Ruling on Plaintiff's Motion for an Order Finding Defendant in Contempt of Court and for Remedial Sanctions (filed September 21, 2018).
8. Memorandum of Authorities in Support of Plaintiff's Motion for an Order Finding Defendant in Contempt of Court, for Remedial Sanctions, Wages and Double Damages, Pre-Judgment Interest and Attorney's Fees (filed December 28, 2018).
9. Second Declaration of Larry J. Kuznetz re Order of Contempt of Court and Remedial Sanctions with attachments (filed December 28, 2018).
10. Central Valley School District's Opposition to Plaintiff's Motion for Contempt (filed January 3, 2019).
11. Declaration of Paul E. Clay with attachments (filed January 3, 2019).
12. Plaintiff's Reply Memorandum to Central Valley School District's Opposition to Plaintiff's Motion for Contempt (filed January 8, 2019).
13. Supplemental Declaration of Larry J. Kuznetz re Order for Attorney's Fees on Order for Contempt of Court and Remedial Sanctions with attachments (filed January 8, 2019).

After having considered the parties' submissions and having heard oral argument on the matter, the court now makes the following:

I. FINDINGS OF FACT

1. On June 29, 2018, the Court entered an Order on Summary Judgment based upon its April 27, 2018, decision. Part of that decision involved the immediate restoration of plaintiff's employment as of the date of the Order, along with immediate reinstatement of his pay and benefits pending a Statutory Hearing determination on the merits of the District's claim for termination.

2. On July 17, 2018, Defendant brought its Motion for Limited Stay before the Court seeking a limited stay of that part of the Court's June 29, 2018, Order, which restored plaintiff's employment, and reinstated his pay and benefits pending a Statutory Hearing.

3. On August 22, 2018, the Court denied defendant's request for a stay of pay and benefits pending a Statutory Hearing.

4. On August 28, 2018, Defendant filed an appeal with the Court of Appeals to the June 29, 2018, order and the August 22, 2018 order.

5. On September 7, 2018, plaintiff filed for Contempt and Remedial Sanctions including a request for immediate pay and benefits that should have been instituted based on the June 29, 2018, Order, double damages for the wrongful withholding of wages, pre-judgment interest, along with attorney's fees and costs.

6. On September 11, 2018, the Defendant filed a request for stay with the Court of Appeals to the payment of wages and benefits pending the Statutory Hearing.

7. On September 21, 2018, the Court entered an Order reserving ruling on plaintiff's Motion until a determination by the Court of Appeals was made on the Defendant's request to them for a stay of pay and benefits pending the statutory hearing.

8. On November 30, 2018, the Court of Appeals issued its decision by and through Commissioner Monica Wasson who denied the District's request for a stay.

9. On December 28, 2018, Defendant filed a motion with the Court of Appeals to modify the Commissioner's ruling denying the District's motion to stay.

10. Plaintiff renoted his Motion For Contempt with Remedial Sanctions to be heard on January 10, 2019.

11. The Statutory Hearing Officer issued a memorandum decision on December 21, 2018, upholding the Defendant's termination of Plaintiff from employment.

12. As a result of the Hearing Officer's decision, Plaintiff is no longer considered an employee of Defendant so this Court cannot, as part of any motion for contempt, force the District to reinstate Plaintiff for the purpose of maintaining pay and benefits pending a statutory hearing. Therefore, the Court finds that at this point, the sanctions requested by Plaintiff would be ineffective.

13. This Court may however, exercise remedial powers pursuant to RCW 7.21.030(3) for losses and costs incurred in connection with the contempt and the contempt proceeding, including reasonable attorney's fees and costs, suffered by Plaintiff as a result of Defendant's failure to comply with the Courts June 29, 2018, Order.

14. The June 29, 2018, Order was clear that Defendant was to immediately reinstate Plaintiff effective June 29, 2018, with pay and benefits pending the decision by the Hearing Officer. Placing Plaintiff on pay and benefits pending a decision was within the Defendant's power to perform as intended by the Court. The Memorandum decision by the Hearing Officer now makes it impossible for Plaintiff to be reinstated so the Court is unable to enforce its Order because time has run out.

14. The Defendant willfully violated the June 29, 2018, Order by failing to reinstate Plaintiff for the purpose of paying wages and benefits pending the

statutory hearing. This Court finds that there was no reasonable excuse or bona fide dispute for failing to comply with this Court's Order.

15. The District willfully and wrongfully withheld wages from Plaintiff when it failed to pay as the Court ordered.

16. The District is found to be in contempt of the Court's June 29, 2018, Order.

17. The Court finds that as a result of said contempt, Plaintiff has suffered the following losses:

a. Pay and benefits from June 29, 2018, to December 21, 2018, the date of the Hearing Officer's decision;

b. Pre-judgment interest as the pay and benefits amount is liquidated;

18. This matter shall be set for further hearing for a determination of amounts owed, including reasonable attorney fees and the doubling of damages pursuant to RCW 49.52.050 and .070.

II. CONCLUSIONS OF LAW

1. This Court has personal and subject matter jurisdiction over the parties.

2. Under RAP 7.2(c) the trial court has authority to enforce any decision of the trial court, even pending an appeal with the Court of Appeals by a party.

3. The Defendant willfully violated the June 29, 2018, Order to reinstate pay and benefits and is in contempt.

4. Plaintiff suffered losses of pay, benefits, and pre-judgment interest until December 21, 2018, as a result of the violation of the June 29, 2018 order.

5. Plaintiff is entitled to payment of those losses and reasonable costs and attorney fees by Defendant pursuant to RCW 7.21.030 (3).

6. The Defendant willfully and wrongfully withheld wages owed pursuant to the June 29, 2018 order, violated RCW 49.52.050 and .070, and is entitled to double damages.

III. ORDER

1. The Defendant is in contempt;

2. Pursuant to RCW 7.21.030(3), the Court orders that Defendant shall pay Plaintiff the following:
- a. Wages and benefits from June 29, 2018, to December 21, 2018, the date of the Hearing Officer's decision based upon the Court's remedial powers under the contempt statute;
 - b. Pursuant to RCW 49.52.050 and .070, double damages on the wage amount owed based upon the willful and wrongful withholding of wages;
 - c. Pre-judgment interest at the rate of 12% per annum on the pay and benefits amount since that amount is liquidated;
 - d. Reasonable attorney's fees and costs.
3. This matter shall be set for hearing on February 15, 2019, at 1:30PM for a determination of the amounts owed.

DATED this 15th day of February, 2019.

JOHN O. COONEY

Judge John O. Cooney

Presented by:
POWELL, KUZNETZ & PARKER, P.S.

Approved as to Content:
STEVENS CLAY, P.S.

By: 
Larry J. Kuznetz, WSBA 8697
Attorney for Plaintiff

By:  WSBA #20795 For
Paul E. Clay, WSBA #17106
Attorney for Defendant

PAUKERT & TROPPEMANN, PLLC

By: 
Breann Beggs, WSBA #20795
Attorney for Defendant

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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

(Copy Receipt)	(Clerk's Date Stamp)
<p>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</p> <hr/> <p>MICHAEL F. CRONIN,</p> <hr/> <p style="text-align: right;">Petitioner/Plaintiff(s),</p> <p>vs.</p> <p style="text-align: center;">CENTRAL VALLEY SCHOOL DISTRICT</p> <hr/> <p style="text-align: right;">Respondent/Defendant(s).</p>	<p>CASE NO. 12-2-01155-3</p> <p>JUDGMENT SUMMARY (JDSUM)</p> <p><u>Clerk's Action Required</u></p>

JUDGMENT SUMMARY

1. Judgment Creditor(s): **MICHAEL F. CRONIN**
2. Judgment Debtor(s): **CENTRAL VALLEY SCHOOL DISTRICT**
3. Principal Judgment Amount: \$ 126,209.46
4. Interest to Date of Judgment: \$ 3,959.81
5. Attorney Fees: \$ 15,567.50
6. Costs: \$ _____
7. Other Recovery Amounts: \$ _____

JUDGMENT SUMMARY (3/01)
Page 1 of 2

8. Abbreviated Legal Description (including lot, block, plat, or section, township, and range): _____

9. This judgment resulted from damages awarded in a Tort Motor Vehicle action and must be reported to the Washington State Department of Licensing pursuant to RCW 46.29.310.

10. The principal judgment amount shall accrue interest at 12 % per year.

11. Attorney fees, costs and other recovery amounts shall accrue interest at 12 % per year.

12. Attorney for Judgment Creditor(s): **Larry J. Kuznetz**

13. Attorney for Judgment Debtor(s): **Paul Clay and Breean Beggs**

Dated: 2/27/19

Signed: JOHN O. COONEY
Judge John O. Cooney

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SPOKANE COUNTY CLERK

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7
8 **SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE**
9

10 MICHAEL F. CRONIN,
11
12 Plaintiff,
13 and
14 CENTRAL VALLEY SCHOOL
15 DISTRICT,
16 Defendant.
17
18
19

NO. 12-2-01155-3
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER AND JUDGMENT ON
CONTEMPT, SETTING OF
AMOUNTS OWED FOR WAGES,
BENEFITS, DOUBLE DAMAGES
ON WAGES OWED, PRE-
JUDGMENT INTEREST, AND
REASONABLENESS OF
ATTORNEY'S FEES

20
21 This matter came on for hearing before the court on February 15, 2019, on
22 Plaintiff, Michael Cronin's Motion to Set Amounts Owed for Pay, Benefits,
23 Interest, Double Damages on Wages and Attorney's Fees and Costs. The
24 Plaintiff was represented by Larry J. Kuznetz of Powell, Kuznetz & Parker, P.S.
25 The Defendant was represented by Breean Beggs of Paukert and Troppmann,
26 PLLC. The court reviewed the records and files herein and specifically
27 considered the following submissions by the parties:

- 28 1. Plaintiff's Motion for an Order Finding Defendant in Contempt of Court
29 and For Remedial Sanctions (filed September 7, 2018).

30
31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY'S FEES - 1

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FAX: (509)455-8522

1 2. Declaration of Larry J. Kuznetz re Order of Contempt of Court and
2 Remedial Sanctions with attachments (filed September 7, 2018).

3 3. Memorandum of Authorities of Plaintiff's Motion for Order Finding
4 Defendant in Contempt of Court and for Remedial Sanctions (filed September 7,
5 2018).

6 4. School District's Response to Plaintiff's Motion for and Order of
7 Contempt and Remedial Sanctions (filed September 14, 2018).

8 5. Plaintiff's Reply Memorandum re Motion for Order Finding Defendant
9 in Contempt of Court and for Remedial Sanctions (filed September 19, 2018).

10 6. Supplemental Declaration of Larry J. Kuznetz re Order of Contempt of
11 Court and Remedial Sanctions with attachments (filed September 19, 2018).

12 7. Order Reserving Ruling on Plaintiff's Motion for an Order Finding
13 Defendant in Contempt of Court and for Remedial Sanctions (filed September
14 21, 2018).

15 8. Memorandum of Authorities in Support of Plaintiff's Motion for an
16 Order Finding Defendant in Contempt of Court, for Remedial Sanctions, Wages
17 and Double Damages, Pre-Judgment Interest and Attorney's Fees (filed
18 December 28, 2018).

19 9. Second Declaration of Larry J. Kuznetz re Order of Contempt of Court
20 and Remedial Sanctions with attachments (filed December 28, 2018).

21 10. Central Valley School District's Opposition to Plaintiff's Motion for
22 Contempt (filed January 3, 2019).

23 11. Declaration of Paul E. Clay with attachments (filed January 3, 2019).

24 12. Plaintiff's Reply Memorandum to Central Valley School District's
25 Opposition to Plaintiff's Motion for Contempt (filed January 8, 2019).

26 13. Supplemental Declaration of Larry J. Kuznetz re Order for Attorney's
27 Fees on Order for Contempt of Court and Remedial Sanctions with attachments
28 (filed January 8, 2019).

29 14. Findings of Fact, Conclusions of Law and Order of Contempt (filed
30 February 1, 2019).

31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY'S FEES - 2

1 15. Plaintiff's Motion and Affidavit to Set Amounts Owed for Pay, Benefits,
2 Interest, Double Damages on Wages and Attorney's Fees and Costs (filed
3 February 1, 2019).

4 16. Plaintiff's Memorandum of Authorities in Support of Motion for Order
5 Setting Amounts Due Under Contempt Order (filed February 1, 2019).

6 17. Declaration of Larry J. Kuznetz in Support of Request to Set Amounts
7 Owed and for Attorney's Fees (filed February 1, 2019).

8 18. Declaration of Marie T. Cañas re Calculation of wages and benefits
9 owed from June 29, 2018, to December 21, 2018 (filed February 1, 2019).

10 19. [The District's] Response to Plaintiff's Motion to Set Amounts Owed
11 (filed February 8, 2019).

12 20. Declaration of Paul Clay (filed February 8, 2019).

13 21. Plaintiff's Reply to School District's Response to Plaintiff's Motion to
14 Set Amounts Owed (filed February 13, 2019).

15 22. Declaration of Larry J. Kuznetz in Support of Plaintiff's Reply to School
16 District's Response to Plaintiff's Motion to Set Amounts Owed (filed February 13,
17 2019).

18 23. Declaration of Corey Groh re Central Valley School District's Response
19 to Plaintiff's Motion to Set Amounts Owed (filed February 14, 2019).

20
21 After considering the parties' submissions and having heard oral argument
22 on the matter, the Court now makes the following:

23
24 **I. FINDINGS OF FACT**

25 1. On February 1, 2019, the Court entered Findings of Fact, Conclusions
26 of Law and Order of Contempt which Order is hereby incorporated by reference.
27 In those findings the Court concluded that Defendant willfully violated the June
28 29, 2018, Order to Reinstate Pay and Benefits to Plaintiff pending a decision by
29 the Statutory Hearing Officer and was, therefore, in contempt. The Court
30 determined that although reinstatement of Plaintiff for the purpose of
31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY'S FEES - 3

1 maintaining pay and benefits pending a statutory hearing could no longer be
2 enforced since the hearing officer had issued his decision upholding Plaintiff's
3 termination, the Court could find losses to Plaintiff as a result of the contempt
4 along with any costs incurred in connection with the contempt proceeding,
5 including reasonable attorney's fees pursuant to RCW 7.21.030(3).

6 2. The Financial Analyst for the District, Corey Groh, did not calculate
7 benefits and pay from June 29, 2018, through August 31, 2018, taking the
8 position that those two months were already awarded under the Court's August
9 22, 2018, Order Setting Damages and Judgment. Mr. Cronin's analyst, Marie T.
10 Cañas, assessed damages for both June 29, 2018, through August 31, 2018, as
11 well as September 1, 2018, through December 21, 2018, the date of the hearing
12 officer's decision. What is disputed is whether or not the Court should award
13 Plaintiff pay and benefits from June 29, 2018, to August 31, 2018.

14 3. The Defendant did not offer a calculation nor dispute the accuracy of
15 Plaintiff's calculation for pay and benefits from June 29, 2018, until August 31,
16 2018. Likewise, the parties agreed that the District's calculation with regard to
17 the pay and benefits lost from September 1, 2018, through December 21, 2018,
18 was accurate except insofar as the retirement loss originally calculated by the
19 District's expert, Corey Groh, in the amount of \$6,208.58, did not include the
20 loss in value of investment earnings on Plaintiff's own contribution. The parties
21 agree that an additional \$866 should be added to that figure for that loss, for a
22 total loss of \$7,074.58.

23 4. The Court is mindful that in the August 22, 2018, Order and
24 Judgment, the Financial Analyst for both parties determined damages to the end
25 of Plaintiff's 2018 teaching contract, which was August 31, 2018. In Finding of
26 Fact No. 6 of the August 22, 2018, Order and Judgment, the Court noted that
27 *"any payments made to plaintiff between June 29, 2018, when his pay and*
28 *benefits are reinstated pending a statutory hearing and August 31, 2018, can be*
29 *credited if payment is made under this judgment. The intent is that plaintiff would*
30 *not double recover for payments made after pay and benefits are reinstated*

31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY'S FEES - 4

1 pending the statutory hearing, and damages received and paid from this
2 judgment”.

3 5. The losses the Court finds here are attributable to Defendant’s
4 contempt under the February 1, 2019, Order. It is the Court’s intent to have
5 Defendant pay Plaintiff his wages and benefits from June 29, 2018, through
6 December 21, 2018, regardless of the outcome of Defendant’s appeal to the
7 underlying August 22, 2018, judgment. At this point, Defendant has made no
8 payment to Plaintiff since the end of Plaintiff’s teaching contract (August 31,
9 2012) after his January 5, 2012, termination.

10 6. Once again it is the Court’s intention that Plaintiff cannot receive a
11 double recovery for payments made as part of the August 22, 2018, judgment
12 and this judgment. If Defendant’s are successful in their appeal to the
13 underlying judgment, then it is the Court’s intention that Defendant should still
14 be responsible for payment under this Order and Judgment from June 29, 2018,
15 until December 21, 2018. Should Defendant not prevail in its appeal, then the
16 pay and benefits provided under this Judgment in paragraph 7 below for the
17 time period June 29, 2018, through August 31, 2018, shall be credited when
18 payment is made under the August 22, 2018, Judgment.

19 7. The Court having considered the submissions and arguments of the
20 parties regarding pay and benefits, the Court finds that the amount of \$19,491
21 be an accurate calculation of the pay and benefits lost to Plaintiff for the time
22 period June 29, 2018, through August 31, 2018, based upon the following:

23
24 **From June 29, 2018 – August 31, 2018:**

- 25 a. Salary loss.....\$14,588
26 b. Retirement loss.....\$2,748
27 c. Health insurance benefit loss.....\$1,862
28 d. Personal leave loss.....\$92
29 e. Sick leave loss.....\$201

30
31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY’S FEES - 5

1 Total loss for this period.....**\$19,491**

2 8. The Court finds that the amount of \$51,841.16 to be an accurate
3 calculation of the lost pay and benefits accrued to Plaintiff from September 1,
4 2018, through December 21, 2018, based upon the following:
5

6 **From September 1, 2018 - December 21, 2018:**

- 7 a. Salary loss.....\$40,289.30
8 b. Retirement loss.....\$7,074.58
9 c. Health Insurance benefit loss\$3,655.88
10 d. Personal leave loss.....\$210.00
11 e. Sick leave loss.....\$611.40
12 Total loss for this period.....**\$51,841.16**
13

14 9. The Court finds that based upon the willful and wrongful withholding
15 of wages as ordered pursuant to the June 29, 2018, order, double damages in
16 the amount of \$54,877.30 is found. That calculation is comprised of the salary
17 loss in the amount of \$14,588 from June 29, 2018, to August 31, 2018, and the
18 salary loss of \$40,289.30 from September 1, 2018, through December 21, 2018.

19 10. The Court finds that the back pay and benefit amounts are liquidated.
20 There was no dispute by the Defendant or amount calculated in response to the
21 Plaintiff's calculation for prejudgment interest at the rate of 12% per annum.
22 Therefore, the Court finds that the amount of \$3,959.81 for pre-judgment
23 interest is reasonable.

24 11. As for attorney's fees, the District did not object to the attorney's fees
25 as requested. The Court having reviewed the application for fees and
26 considering counsel's experience, his current charges for work performed, his
27 success in pursuing this motion, and that Defendant does not object to the
28 number of hours spent nor the rates charged, the Court finds that the fees in
29 the amount of \$15,567.50 are reasonable.
30

31 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT
32 ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS,
DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND
REASONABLENESS OF ATTORNEY'S FEES - 6

- a. Salary and benefits in the amount of \$71,332.16;
- b. Double damages on salary wrongfully withheld \$54,877.30;
- c. Pre-judgment interest in the amount of \$3,959.81;
- d. Reasonable attorney's fees in the amount of \$15,567.50;
- e. Post-Judgment interest shall be at the rate of 12% per annum from the date of this Order;
- f. Defendant shall have 30 days to pay the amounts owed under this Order and Judgment. Thereafter, Defendant shall be assessed \$100 per day until the judgment is paid in full;
- g. All of the aforementioned amounts shall bear post-judgment interest at the rate of 12% per annum.
- h. The Court shall sign a separate judgment summary in this matter.

DONE IN OPEN COURT this 27th day of February, 2019.

JOHN O. COONEY
Judge John O. Cooney

Presented by:
POWELL, KUZNETZ & PARKER, P.S.

Approved as to Content:
PAUKERT & TROPPMANN, PLLC

By: 
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By: 
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Attorney for Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT ON CONTEMPT, SETTING OF AMOUNTS OWED FOR WAGES, BENEFITS, DOUBLE DAMAGES ON WAGES OWED, PRE-JUDGMENT INTEREST, AND REASONABLENESS OF ATTORNEY'S FEES - 8