NO. 102036-8

SUPREME COURT OF
THE STATE OF WASHINGTON

THE CHURCH OF THE DIVINE EARTH

Petitioner,

vs.

CITY OF TACOMA,

Respondent.

CITY OF TACOMA'S ANSWER TO PETITIONER'S PETITION FOR REVIEW BY WASHINGTON STATE SUPREME COURT

WILLIAM C. FOSBRE, City Attorney

Barret J. Schulze
WSBA No. 45332
Attorney for Respondent/Cross-Appellant
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, Washington 98402
(253) 591-5885

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

COURT RULES

I. Introduction

The Church of the Divine Earth (the "Church") identifies ten issues for review in its *Petition for Review by Washington State Supreme Court* (the "Petition"). *See* Petition (at its Section III). There are not ten distinct issues that could possibly be reviewed by this Court; there are actually only four – none of which should be reviewed by this Court. The Church believes: (1) it is entitled to a higher allocation of its claimed recoverable lodestar hours; (2) those hours should be compensated at a higher billable rate; (3) a multiplier should be applied; and, (4) the Church's pastor, Mr. Kuehn, who billed as a litigation assistant below, should be compensated for his fees (hereinafter the "Four Points of the Church's Appeal").

In order for this Court to accept the *Petition*, the Church must meet at least one of the grounds for review set out in RAP 13.4(b). At the outset of its Argument, the *Petition* presents those four grounds with a citation to RAP 13.4, offers a conclusory argument that each of the four grounds are satisfied in this matter,

but then it appears that the Church immediately loses sight of its need to demonstrate satisfaction of at least one of the grounds of RAP 13.4(b). *See* Petition, 9. Instead, the Church then regurgitates its previous arguments on the *Four Points of the Church's Appeal*. The Church is relegated to this tactic because none of RAP 13.4(b) grounds for Supreme Court review are met here.

This *Petition* stems from an award of attorney's fees, and whether the trial court's ruling was properly supported – nothing else. The parties agree that fees and costs to be awarded to the Church are limited to those incurred as the Church litigated its Land Use Petition Act claims pursuant to RCW 64.40.020. Through that successful claim, the Church was awarded $8,640 in damages. On this claim valued at $8,640, the trial court awarded the Church $253,543.66 in attorney's fees. The Court of Appeals of the State of Washington Division II ("Division II") confirmed that the trial court's provided analysis and

justifications for the award were sufficient under Washington law.

II. No Assignment of Error

The City of Tacoma provides this Answer and does not assign any error. The City accepts Division II's decision to affirm the trial court's rulings below and is not pursuing its Cross Appeal further. The City respectfully requests that this Court deny the Church's *Petition.*

III. Statement of the Case

A. Factual Summary

While this case's factual and procedural history is long and complex[1], the *Petition* only relates to the attorneys' fees to be awarded to the Church on its successful RCW 64.40 claim.

The Church brought a summary judgment motion on the issue of damages under RCW 64.40, which was decided by Judge Bryan Chushcoff on January 22, 2021. The Church sought

[1] For more detail, this Court may wish to review its earlier decision in this matter. 194 Wn.2d 132, 449 P.3d 269 (2019).

damages in the amount of $35,016.00. Judge Chushcoff awarded damages of $8,640.00 plus interest of $1,036.80. CP 578-79. The basis of the award was the finding that the City's actions delayed the Church from starting construction on its parsonage for approximately six months. CP 335:9-12. Thereafter, based on the six-month construction delay that resulted in damages totaling less than $9,000 – without any finding that there was a taking of real property without just compensation or other constitutional violation – the Church sought an award of attorney fees and costs in the total amount of $626,185.88. *See* CP 389-90. Judge Chushcoff heard the Church's motion regarding attorney fees and ultimately entered Findings of Fact and Conclusions of Law on Attorney Fees on March 19, 2021. CP 418-23. The subsequent Judgment entered by Judge Chushcoff held that the Church was entitled to $253,543.66 in attorney's fees and $13,123.80 in costs. CP 424-26. Despite the City's expectation of an appeal, the City paid the Judgment in full to the Church.

As a part of the appellate proceedings below, Division II considered extensive briefing and oral argument on the dueling appeals. On January 23, 2023, Division II issued its unpublished decision affirming the trial court in all relevant respects – confirming that "the superior court provided sufficient reasoning such that we have insight into the superior court's exercise of discretion and the superior court did not abuse its discretion" in making the lodestar award. Petition, *Appendix 4* (hereinafter as the "Decision") at 1.

B. "What this case is NOT about"

The Church devotes the majority of its argument in its *Petition* to support the proposition that this is a "civil rights" case in which a massive award of attorney's fees with a multiplier is justified; however, a review of the procedural history clearly demonstrates that this is not – and has never been – a "civil rights" case.

This Court already reviewed this matter once. CP 135-36. This Court definitively and clearly stated:

> We should first settle what this case is **not** about. This is not a case challenging the constitutionality of a land use decision; the propriety of the permit condition was already resolved by the lower court and is not before us on appeal. And because the superior court invalidated the permit condition, this is not a claim for just compensation for a taking. Instead, what we have before us is a claim for damages under RCW 64.40.020 for an attempted exaction of land through an unlawful permit condition.

CP 136; *also at* 194 Wn.2d 132, 136, 449 P.3d 269 (2019) [emphasis added]. This Court has already undeniably established that this is not a civil rights case.

It is also significant that the Church brought a *Motion to Amend Petition* below (CP 442-60), which sought to bring a claim for "civil rights violation pursuant to 42 U.S.C. 1983." CP 445:11-13. That aspect of the *Motion to Amend* was denied. CP 513. The Church then brought a *Motion for Reconsideration* of its request to bring a 42 U.S.C. 1983 claim. *See* CP 516-65. The trial court properly denied the *Motion for Reconsideration*. CP 577.

The only active issue in this action for this Court to consider is whether RAP 13.4 can be met as to any of the *Four Points of the Church's Appeal*. As confirmed by Division II, there was sufficient articulation by the trial court on each of the *Four Points of the Church's Appeal* – such that this Court should affirm Division II's unpublished opinion and the trial court's decisions below by rejecting the *Petition*.

IV. Argument

A. Standard of Review

RAP 13.4 states:

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). None of the grounds for permissible review by this Court are demonstrated by the *Petition*.

B. RAP 13.4(b)(1) is not met by the *Petition*

The Church fails to identify any decision issued by this Court that is in direct conflict with the analysis and conclusions offered by Division II below.

1. Church's Arguments regarding Allard

The Church relies upon this Court's 1989 decision issued in Allard v. First Interstate Bank, N.A., 112 Wn.2d 145, 798 P.2d 998 (1989). The *Petition* accurately cites to Allard for the proposition that the "presence of a contingent fee agreement is NOT the sole determination in determining multiplies and attorney fees." Petition, 11. While the citation is accurate, the related argument is inapposite. Neither the trial court nor Division II considered the nature of the fee agreement as the "sole" factor in determining the appropriate lodestar award or whether a multiplier is appropriate. Division II commented that all cases cited in support of the Church's arguments for a multiplier were contingency fee cases – thereby distinguishing those authorities from this matter. Decision, 22-23. Notably, the

trial court did not comment on the type of fee agreement between the Church and its counsel in any capacity and there is no evidence that suggests the form of that agreement factored into the trial court's decision in any measurable way. Further, Division II highlighted that the trial court considered: the "blended rate" to be "somewhat high for this case"; and, the case was "not complicated factually nor did the case present novel legal issues." Id., 23. With these and other justifications offered by the trial court, Division II properly concluded that the trial court did not summarily deny the multiplier "as argued by the Church." Id. As a reviewing court will only overturn a fee award, including the possible application of a multiplier, for manifest abuse (Id.), this Court should see through the Church's attempt to create a conflict with Allard where none exists. Allard cannot satisfy RAP 13.4(b)(1) here.

2. Church's Arguments regarding Blair

This Court's decision in Blair v. Wash. State Univ., 108 Wn.2d 558, 740 P.3d 1379 (1987), is cited to by the Church in

support of its arguments that a "civil rights case" warrants a higher fee award regardless of the form of the fee agreement. *See* Petition, 10.

Blair involved alleged sexual discrimination claims brought under the Equal Rights Amendment and the Washington Law Against Discrimination ("WLAD"). Blair, 108 Wn.2d at 560. As discussed *supra*, this Court found this is not a civil rights case; instead, this Court already definitively determined that "what we have before us is a claim for damages under RCW 64.40.020 for an attempted exaction of land through an unlawful permit condition." CP 136; also at 194 Wn.2d 132, 136, 449 P.3d 269 (2019). The Church was never deprived of its land or other civil rights; instead, the less than $9,000 damages awarded to the Church pursuant to Chapter 64.40 RCW was awarded based on a six-month construction delay. CP 335:9-12. All the citations offered by the Church to "civil rights" cases are inapposite for this reason.

Blair did not focus on the form of a fee agreement, as the Church suggests. This Court described the issue it considered in Blair as follows:

> This court has also held a trial court cannot deny an award of attorney fees simply because the party is represented by a public interest group. Fahn v. Cowlitz Cy., 95 Wn.2d 679, 685, 628 P.2d 813 (1981). The present issue of whether a court may reduce the award for the same reasons is one of first impression in Washington.

Blair, 108 Wn.2d at 570. Counsel for the Church was not working this case as pro bono or as a public interest group. The Blair case provides little to no guidance on this *Petition*, and cannot justify review in this matter under RAP 13.4(b)(1).

3. Church's Argument regarding Clausen

The Church cites this Court's decision in Clausen v. Icicle Seafoods, Inc., 174 Wn.2d 70, 272 P.3d 827 (2012). Petition, 25. The holding from Clausen cited by the Church is that "[a]ppellate courts, however, have permitted the use of a percentage reduction in segregating fees and costs when, as here, the specifics of the case make segregating actual hours difficult."

Clausen, 174 Wn.2d at 82. The Church offers this citation to suggest that the trial court erred in disregarding the Church's PRA fee segregation. Petition, 25. There is nothing in the record that confirms the trial court "disregarded" the Church's voluntary fee segregation. The trial court did not reduce the Church's fee award based on an additional allocation of hours that the trial court determined to be spent on the PRA cause of action. Instead, as Division II confirms, the trial court "here addressed outright that it believed many hours were not reasonably expended" (Decision, 12), that the "Church pursued various unsuccessful claims" (Id.), and that "the record shows the superior court considered each phase [of the litigation below] and made a deliberate decision as to the number of hours it reduced" (Id., 13).

It is telling that the Church now argues that the "Trial Court erred by disregarding the Church's [PRA] fee segregation" (Petition, 25); however, when arguing before Division II, the Church argued that the trial court "erred *if* it disregarded the

Church's PRA fee segregation." Decision, 13 [emphasis added]. This change in the Church's argument is yet another example of how the Church has attempted to contort the facts and this record in order to secure a higher and undeserved award of attorney fees. The Church fails to explain how this matter conflicts with Clausen. The Church fails because no reasonable observer can find an inconsistency with Clausen justifying this Court's review under 13.4(b)(1).

4. Church's Argument regarding Fahn

Fahn v. Civil Serv. Com, 95 Wn.2d 679, 628 P.2d 813 (1981), involved a claim brought under WLAD. This case is cited by the Church for the same purposes that it cites to Blair. For the same reasons the Church's reliance on Blair is misplaced (*see* Petition, 10), so is its reliance on Fahn. As stated above and throughout this record, all the citations offered by the Church to "civil rights" cases are inapposite. Further, Judge Chushcoff did not consider the form of the compensation arrangement between the Church and its counsel, and Division II discussed this concept

in order to distinguish the facts below from the precedent relied upon by the Church. As with Blair, the Fahn case does not provide grounds upon which review is warranted under RAP 13.4(b)(1).

5. Church's Argument regarding Fisher Properties

The Church points to Fisher Properties v. Arden-Mayfair, Inc., 115 Wn.2d 364, 798 P.2d 799 (1990), for the proposition that "a rate adjustment is appropriate in civil rights and other public interest litigation[.]" Petition, 25. Notably, this citation appears under the *Petition*'s Section V(A) regarding multipliers and fee agreements. Petition, 22; 22-25. The Church's reliance on Fisher is misplaced. First, the instant matter did not involve civil rights or other substantial public interests. Second, Fisher did not involve the application of a multiplier. In fact, the Fisher decision affirms the trial court's reduction of the "fee award by 20 percent for time spent outside of trial and by 15 percent for time spent in trial." Id. The "adjustment" discussed in that case was whether the fee should be calculated "using current rates or

adjusting historic rates to account for inflation [which would be designed] to compensate the attorney for delay in payment or the risk of losing and not getting paid at all." Id., at 376. This is an entirely different concept than the Church's requested 1.5 multiplier.

Setting aside the Church's attempt to take this Court's earlier decisions out of context to fabricate support for its position, it is well established that the application of a multiplier is within the trial court's discretion and that multipliers are seldom applied in our State. This is demonstrated by Division I's decision in Berryman v. Metcalf where it was held:

> In Washington, adjustments to the lodestar product are reserved for "rare" occasions. Sanders v. State, 169 Wn.2d 827, 869, 240 P.3d 120 (2010); Mahler, 135 Wn.2d at 434. The United States Supreme Court has concluded that enhancement for contingency under fee-shifting statutes is not permitted at all. City of Burlington v. Dague, 505 U.S. 557, 567, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992). In discussing Dague, our Supreme Court declined to prohibit contingency enhancements altogether. But our court retains the presumption that "the lodestar represents a reasonable fee." Chuong Van Pham, 159 Wn.2d at 542.

Berryman, 177 Wn.App. 644, 665-666, 312 P.2d 745 (2013). The Berryman decision confirms that the "burden of justifying any deviation from the lodestar rests on the party proposing it" and that "our trial courts grant multipliers sparingly." Id., at 666. Adjustments are applied only in "rare" occasions by the Washington Courts. Sanders v. State, 169 Wn.2d 827, 869, 240 P.3d 120 (2010). It is important to note that there are no published or unpublished cases issued by the Washington State courts wherein a multiplier was applied to an attorney fee award secured pursuant to Chapter 46.60 RCW.[2]

[2] The Church has not presented any citation to a case in which a multiplier was applied to a fee award obtained pursuant to RCW 64.40.020. None of the "Notes to Decisions" for RCW 64.40.020 gathered by Lexis Nexis under the heading "Attorney's fees" reflect that a multiplier was applied to the lodestar award issued pursuant to this statute. *See* Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 980 P.2d 1234 (1999); Hamilton v. Pollution Control Hr'gs Bd., 426 P.3d 281, 5 Wn.App.2d 271 (Wash. Ct. App. 2018); Birnbaum v. Pierce County, 167 Wn.1pp. 728, 274 P.3d 1070 (Wash. Ct. App. 2012); Benchmark Land Co. v. City of Battle Ground, 94 Wn.App. 537, 972 P.2d 944 (Wash. Ct. App. 1999); View Ridge Park Assoc. v. Mountlake Terrace, 67 Wn.App. 588, 839 P.2d 343 (Wash. Ct. App. 1992); and, Ivy

C. RAP 13.4(b)(2) is not met by the *Petition*

Despite the Church's best efforts, it has not identified any published decision issued by one of the lower Washington appellate courts that is in direct conflict with the analysis and conclusions offered by Division II below.

1. Church's Arguments regarding Absher Constr. Co.

The Church cites to the published decision from Division I in Absher Constr. Co. v. Kent Sch. Dist., 79 Wn.App. 841, 917 P.2d 1086 (1995), apparently to suggest that if a trial court awards substantially fewer attorney fees than the amount requested, it must "explain why discounts were applied." *See* Petition, 21. There is no inconsistency below in relation to Absher.

As confirmed by the Division II below, the trial court provided explanation as to why discounts were applied. For example, the trial court explained that some of the line items on

---

Club Investors Ltd. Partnership v. City of Kennewick, 40 Wn.App. 524, 699 P.2d 782 (Wash. Ct. App. 1985).

the Church's fee/cost sheet were "relatively general" and difficult to determine if they were recoverable under Chapter 46.60 RCW (Decision, 25), not all time claimed by the Church's counsel was "reasonably expended" (Id., 14), counsel's hourly fee was "somewhat high for this case" (Id., 15), the facts in the case were "not complicated […] nor did the case present novel legal issues" (Id.), among other rationale for the reduction in the requested fees. The Church is displeased with the final lodestar award and now complains about the scope of the explanation provided; however, both the trial court and Division II confirm the explanation provided was adequate. There is no direct conflict with Absher justifying this Court's review pursuant to RAP 13.4(b)(2).

2. Church's Arguments regarding Martinez

The Church relies on Martinez v. City of Tacoma, 81 Wn.App. 228, 914 P.2d 86 (1996), from Division II for the proposition that it is entitled to higher fees, as well as a multiplier, because this matter was a "civil rights" case. *See*

Petition, 10, 12, 16-17, 21. The Martinez decision dealt with an attorney fee award in a WLAD case. Martinez, 81 Wn.App. at 230. Again, this Court has already determined that the dispute below was not a "civil rights" issue. Even if this Court is to consider the dispute below as a "civil rights" issue, there is no holding in Martinez that states the prevailing counsel in a civil rights case *shall be* entitled to *all claimed* fees, nor is there any holding in Martinez that states the prevailing counsel in a civil rights case *shall be* entitled to a multiplier. Further, the 1996 Martinez decision cannot overturn and does not conflict with the 2013 Berryman decision, which confirms the following concepts: (1) "A loadstar figure that 'grossly exceeds' the amount in controversy 'should suggest a downward adjustment' even where other subjective factors in the case might tend to imply an upward adjustment" (Berryman, 177 Wn.App. at 661); (2) a lack of "billing judgment" can justify a downward adjustment (Id.); (3) that the "amount of time actually spent by a prevailing attorney is relevant, but not dispositive" for a fee

award (Id.); (4) that it is necessary to "discount for unproductive time" (Id, at 663); (5) that a reasonably attorney award requires consideration of "the attorney's efficiency or 'ability to produce resulting in the minimum time'" (Id., at 664); (6) multipliers to the lodestar are "reserved for 'rare" occasions" (Id., at 665); (7) adjustments are rarely made because "'in virtually every case the quality of work will be reflected in the reasonable hourly rate" without the need for a multiplier (Id., 667); and, (8) that many "plaintiffs have brought risky contingent-fee cases under remedial statutes installed with public interest, and have endured years of litigation and gone through lengthy and complex trials against aggressive and well-funded opponents, and yet their attorneys have not been granted multipliers" (Id., 675). Martinez is a decision in a case with causes of action and subject matter distinguished from those in the case before this Court. Further, Martinez is almost three decades old and the case law that has been developed since Martinez supports the trial court's discretion to adjust the Church's requested fees down and to deny

a multiplier. *See e.g.,* Berryman, *supra*. Martinez does not provide grounds for review of this matter under RAP 13.4(b)(2).

3. Church's Arguments regarding Mayer

Mayer v. City of Seattle, 102 Wn.App. 66, 10 P.3d 408 (2000), from Division I, is cited to by the Church in support of its claim that the trial court erred in holding that it is not required that the trial court "go through six or seven years' worth of billings on an oral record." Petition, 27. Mayer did not hold that the Court must review every line item on a cost bill; instead, the Mayer decision concludes with the following:

> we reverse and remand the MTCA attorney fee award. On remand, the trial court may not award fees for effort spent discovering the cross-appellants' relative fault. Further, the trial court is not limited by the terms of the contingent fee agreement between Mayer and his attorneys. Finally, the court must make thorough findings on the cross-appellants' challenges to specific time entries.

Mayer, 102 Wn.App. at 83.

Even though the 2000 Mayer decision does not stand for the proposition suggested by the Church, it is important to note

that Mayer was clarified by the subsequent 2006 decision in Taliesen Corp. v. Razore Land Co., 144 P.3d 1185, 135 Wn.App. 106 (Wash.App. 2006). Taliesen held that the "findings needed for meaningful review do not ordinarily require such details as an explicit hour-by-hour analysis of each lawyer's time sheets." Taliesen, 144 P.3d at 143.

Mayer confirms that a trial court "may adjust the lodestar fee upward or downward based" based on consideration of various factors (102 Wn.App. at 79); Mayer does not require line-by-line analysis of the prevailing party's time sheets, and Mayer did not involve the application of a multiplier. Mayer does not support review pursuant to RAP 13.4(b)(2).

4. Church's Arguments regarding Perry

Perry v. Costco Wholesale, Inc., 123 Wn.App. 783, 98 P.3d 783 (2004), from Division I, involves a claim brought under WLAD. The Church cites to this case in support of its repetitive claim that it is entitled to a higher attorney fee award because the matter below was a "civil rights" case. *See* Petition, 18-19. The

Perry decision confirms "'The lodestar *may* be adjusted, if appropriate to reflect either the contingent nature of the representation or the quality of the representation, provided those factors have not already been factored into the lodestar amount.'" Perry, 123 Wn.App. at 808 [emphasis added].

Division I remanded the trial court's refusal to apply a multiplier in Perry because the "trial court appears to have concluded that Perry satisfied the necessary factors for a multiplier, but declined to award one based solely on considerations of proportionality. This was improper for this type of case." Perry, 123 Wn.App. at 809. The decision to remand that issue in Perry was appropriate because that trial court considered an "irrelevant factor" in relation to the multiplier. *See* Chuong v. Van Pham v. Seattle City Light, 159 Wn.2d 527, 543, 151 P.3d 976 (2007) ("we have held that the trial court abuses its discretion when it takes irrelevant factors into account" when determining if a multiplier should be applied to the lodestar). At no point below has the Church identified any "irrelevant factor"

considered by the trial court in declining to apply a multiplier. The application of a multiplier remains in the trial court's discretion, as long as it does not consider irrelevant factors. Chuong, at 543-44.

Setting aside that the facts of Perry are entirely distinguishable from those in the case presently before this Court, there is no conflict below with Perry. Review is not justified pursuant to RAP 13.4(b)(2).

5. Church's Arguments regarding Taliesen Corp.

Taliesen Corp. v. Razore Land Co., 135 Wn.App. 106, 144 P.3d 1185 (2006), is a Division I case involving litigation of claims under the Model Toxics Control Act. The Church cites to Taliesen for the same purposes of Absher (*supra*) – i.e., that the trial court did not do enough to explain "how the court arrived at the final numbers and explain why discounts were applied" (Petition, 21). Taliesen confirms that fee awards do not require "such details as an explicit hour-by-hour analysis of each lawyer's time sheets," Taliesen, 144 P.3d at 143, but a "trial court

must provide articulable grounds for its fee award." Id., at 146-47. As clearly established by Division II, Judge Chushcoff provided articulable grounds for the reduction in the fee award and thus went further than the trial judge in Taliesen. The Church's generalized, conclusory argument, and imprecise citation to Taliesen cannot justify the review by this Court under RAP 13.4(b)(2).

D. RAP 14.3(b)(3) and (4) are not met by the *Petition*

The Church is simply dissatisfied with the outcome following the trial court's proper exercise of its discretion in making the lodestar award below. It follows that there is no "significant question of law under the Constitution of the State of Washington or of the United States" (RAP 13.4(b)(3)), nor is there "an issue of substantial public interest" (RAP 13.4(b)(4), at play below that would justify review of this matter by this Court.

Regardless, the *Petition* cites to various federal cases apparently in support of the argument that there is a question of constitutional law and/or a substantial public interest as a

justification as to why this Court should grant review. Each federal case cited addresses the possibility that a higher fee award *may* be available in a civil rights case. Again, this Court has already determined that the matter below was not a "civil rights" case. Moreover, none of the federal cases cited by the Church establish that there is a significant question of law under the Constitution of our State or nation that must be answered by this Court through review of the subject decisions below. Not only did the Church fail to provide any reasoned discussion of the federal cases it cites, a cursory review of those cases shows they are irrelevant or inapposite to this matter.

Suffice it to say, for the purposes of both RAP 13.4(b)(3) and (4), the Church likely intends to argue that this is a "civil rights" case and higher attorney fee awards are appropriate in such cases so as to encourage experienced counsel to accept those difficult cases where damages are typically low. In reality, the Church is seeking an unreasonable award of attorney fees – that is the only issue that is at play in the *Petition*. The trial court

acted well within its sound discretion to award the Church more than $250,000 in attorney fees on a case involving less than $9,000 in damages. The trial court awarded the Church's attorneys an hourly fee of $385.03 – an hourly fee that would draw more than $800,000 for an attorney billing at that rate for a 2,080-hour work year. That type of return and income is more than ample to attract accomplished attorneys in our State to take on difficult, yet meritorious, civil rights cases or cases involving a substantial public interest (of which the case below is not). There is no merit to an argument by the Church that this Court should accept review of this matter because it involves a constitutional issue or a substantial public interest under RAP 13.4(b)(3) or (4).

V. Conclusion

Based on the foregoing, the City respectfully requests that this Court reject the *Petition for Review*, thereby affirming the trial court and Division II, and allowing this matter to be fully concluded.

VI. Certificate

Pursuant to RAP 18.17(b), the undersigned certifies that this Brief (excluding the caption, table of contents, table of authorities, this certification, the signature block, and any language below) contains 4,996 words.

RESPECTFULLY SUBMITTED this 5th day of July, 2023.

BILL FOSBRE, City Attorney

By: /s/ *Barret Schulze*
BARRET J. SCHULZE
WSBA No. 45332
Deputy City Attorney
Counsel for Respondent City of Tacoma

I, Barret J. Schulze, declare under penalty of perjury and pursuant to the laws of the State of Washington that the foregoing is true and correct.

Signed in Tacoma, Washington on July 5, 2023.

/s/ *Barret Schulze*
BARRET J. SCHULZE

DECLARATION OF SERVICE

I hereby certify that on July 5, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorney for Plaintiff
Richard B. Sanders
Carolyn A. Lake
Goodstein Law Group, PLLC
510 South G Street
Tacoma, WA 98405
Rsanders@goodsteinlaw.com
clake@goodsteinlaw.com

DATED: July 5, 2023

/s/Gisel Castro
Gisel Castro, Legal Assistant
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5499
Fax: (253) 591-5755
gcastro@cityoftacoma.org

CITY OF TACOMA, CITY ATTORNEY OFFICE

July 05, 2023 - 1:36 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,036-8
Appellate Court Case Title:	Church of the Divine Earth v. City of Tacoma
Superior Court Case Number:	14-2-13006-1

The following documents have been uploaded:

- 1020368_Answer_Reply_20230705133605SC915512_6219.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for SC Review-final.pdf

A copy of the uploaded files will be sent to:

- ElofsonMA@gmail.com
- clake@goodsteinlaw.com
- dpinckney@goodsteinlaw.com
- gcastro@ci.tacoma.wa.us
- rsanders@goodsteinlaw.com

Comments:

Sender Name: Barret Schulze - Email: BSchulze@cityoftacoma.org
Address:
747 MARKET ST SUITE 1120
TACOMA, WA, 98402-3726
Phone: 253-591-5888

Note: The Filing Id is 20230705133605SC915512