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IN THE CIRCUIT COURT OF THE STATE OF OREGON

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FOR THE COUNTY OF GRANT

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OREGONIAN PUBLISHING COMPANY,
LLC, an Oregon limited liability
corporation; and LES ZAITZ,

No. 16-0596 CV

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Plaintiffs,

PLAINTIFFS' STATEMENT FOR
ATTORNEY FEES, COSTS AND
DISBURSEMENTS

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v.

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GRANT COUNTY SHERIFF'S OFFICE,
GLENN PALMER, in his official capacity;
and SALLY DeFORD, in her official
capacity,

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Defendants.

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Pursuant to UTCR 5.080, the undersigned attorney offers the following facts and

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argument in support of an award to Plaintiffs of reasonable and necessary attorney fees,

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costs, and disbursements.

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I. INTRODUCTION

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In early 2016, Defendant Sheriff Glenn Palmer continued a pattern of placing himself

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in the national spotlight by publicly sympathizing with persons occupying the Malheur

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National Wildlife Refuge. Already the subject of considerable attention and publicity,

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Sheriff Palmer's status as an elected official and his conduct with respect to the Malheur

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occupation raised additional questions regarding the use of his office and his views and

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actions with respect to matters of public concern. Consistent with the First Amendment right

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to gather and report on the news, and pursuant to the Oregon Public Records Law, in

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February 2016 Plaintiffs began requesting public records from Defendants that related to

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these significant issues. *See Branzburg v. Hayes*, 408 US 665, 681 (1972) ("Without some

STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205
Main (503) 224-3380 Fax (503) 220-2480

1 protection for seeking the news, freedom of the press could be eviscerated.”); *Houchins v.*
2 *KQED, Inc.*, 438 US 1, 11 (1978) (“There is an undoubted right to gather news ‘from any
3 source by means within the law ***.’”); *Leigh v. Salazar*, 677 F3d 892, 897 (9th Cir 2012)
4 (“newsgathering is an activity protected by the First Amendment.”) (citation omitted).

5 For months, however, Plaintiffs met a stone wall of resistance. Defendants failed to
6 respond to lawful public requests. Defendants did not produce responsive documents.
7 Defendants asserted frivolous exemption claims. Defendants’ complete lack of cooperation
8 required Plaintiffs to initiate this suit to vindicate the public’s basic right to be informed of
9 the conduct of government officials. Even after commencing this litigation, Plaintiffs
10 continued to face delays and circumstances that required the expenditure of significant
11 resources, including delays in production and discovery, motion practice, and, most
12 significantly, evidence that suggested that public records had been destroyed.

13 Consistent with the positions that they have taken throughout this litigation, Plaintiffs
14 anticipate that Defendants will object entirely to any award of attorney fees or costs in this
15 case. As explained below, neither the Public Records Law, case law, nor logic support that
16 position. Disallowing all fees in this case would simply reward recalcitrance, encourage
17 gamesmanship on the part of public bodies, and undermine the very goals of transparency
18 and open government that the Public Records Law and its one-way attorney fee provision
19 intend to foster.

20 II. LEGAL BASIS FOR ATTORNEY FEE AWARD

21 Plaintiffs brought this action under ORS 192.450(2). By its terms, ORS 192.490
22 applies to actions brought under ORS 192.450(2). ORS 192.490(3) provides, in relevant
23 part:

24 If a person seeking the right to inspect or to receive a copy of a
25 public record prevails in the suit, the person shall be awarded
26 costs and disbursements and reasonable attorney fees at trial
and on appeal. If the person prevails in part, the court may in
its discretion award the person costs and disbursements and

1 reasonable attorney fees at trial and on appeal, or an
2 appropriate portion thereof.

3 This attorney fee provision is mandatory as to persons who prevail in their suits
4 seeking public records. *Bacote v. Johnson*, 333 Or 28, 33, 35 P3d 1019 (2001) (“The term
5 ‘shall’ is a command expressing what is mandatory.”). Plaintiffs prevailed in this action by
6 obtaining all of the non-exempt documents they requested, and they are entitled to an award
7 of costs, disbursements, and reasonable attorney fees under ORS 192.490(3). Additional
8 legal authority supporting the award of fees in this case is outlined in Section V below.

9 **III. FACTUAL BASIS FOR ATTORNEY FEE AWARD**

10 **A. Plaintiffs’ Public Records Requests and Defendants’ Responses (February-May
11 2016)**

12 Beginning in February 2016, Plaintiffs sent several public records requests to
13 Defendants pursuant to the Oregon Public Records Law, ORS 192.410 to 192.505.

14 **1. February 16, 2016 Request**

15 On February 16, 2016, Plaintiffs sent a letter to Defendant Palmer requesting records
16 pursuant to the Public Records Law (the “February 16 Request”). (First Am. Compl., Ex. 1.)
17 The requested records included the following categories of documents:

- 18 1. All emails, received and sent, to your email account of
19 gepalmer400@centurytel.net from Jan. 2, 2016, to
20 present. This request is limited to emails that relate to
21 public business, including but not limited to your
22 performance as sheriff, matters relating to the Harney
23 County occupation, matters relating to the community
24 meeting in John Day, matters in any way relating to
25 dealings by your or others with militia members,
26 patriots, and others. This request does NOT include
purely personal emails that in no manner relate to the
conduct of public business.
2. The record of all telephone calls received or sent from
your cell phone of (541) 620-2420. This can be
provided by providing access to your cell phone or by
producing printed call records in which calls relating
purely to personal business may be redacted.

1 As of May 20, 2016, Defendants Sheriff’s Office and Palmer had not provided copies
2 of the documents identified in the February 16 Request. As of May 20, 2016, Defendants
3 Sheriff’s Office and Palmer had not responded in writing to the February 16 Request, as
4 required by the Oregon Public Records Law. ORS 192.440(2) (requiring public body to
5 “respond as soon as practicable and without unreasonable delay” to requests; response must
6 “acknowledge receipt of request” and include specific information).

7 **2. March 14, 2016 Request**

8 On March 14, 2016, Plaintiffs sent a letter to Defendant DeFord at Defendant Grant
9 County Sheriff’s Office requesting records pursuant to the Public Records Law (the “March
10 14 Request”). (First Am. Compl., Ex. 3.) The records requested in that letter included the
11 following categories of records, which had also previously been requested of Sheriff Palmer
12 on February 16, 2016:

- 13 1. The record of the total number of concealed handgun
14 licenses issued by the sheriff’s office in 2014, including
15 the Oregon county or state of residence for each issued
16 license. Note I am not requesting specific identifying
17 information about each license holder.
- 18 2. The record of the total number of concealed handgun
19 licenses issued by the sheriff’s office in 2015, including
20 the Oregon county or state of residence for each issued
21 license. Note I am not requesting specific identifying
22 information about each license holder.
- 23 3. The record of the total number of concealed handgun
24 licenses issued by the sheriff’s office so far in 2016,
25 including the Oregon county or state of residence for
26 each issued license. Note I am not requesting specific
identifying information about each license holder.
4. The record of every arrest report in which Glenn
Palmer was the primary arresting officer in 2015.
5. The record of crimes reported to the sheriff’s office in
2015, including the category of crimes and the number
of arrests for each crime category.

1 Plaintiffs received no response to the March 14 Request, and on March 28, 2016, they
2 petitioned the Grant County District Attorney for review of that Request (among others),
3 pursuant to ORS 192.460.

4 On March 24, 2016, Plaintiffs wrote a letter to Sheriff Palmer enclosing three
5 outstanding public records requests and requesting a response. (*See* Declaration of Brad
6 Daniels in Support of Statement for Attorney Fees, Costs, and Disbursements (“Daniels
7 Dec.”), Ex. 1.) On March 29, 2016, Defendant Palmer sent an email to Plaintiff Zaitz, stating
8 that he would make certain documents available, but was not specific as to which documents.
9 On March 31, Defendant Palmer provided Zaitz with an invoice relating to his official cell
10 phone number ((541) 620-1493) and with certain records relating to the appointment of two
11 deputy sheriffs—Judy Kerr and Terry George. Defendant Palmer also attempted to respond
12 to the March 14 Request by including handwritten notations next to each paragraph of the
13 records requested in March 2016, as listed in the petition to the District Attorney. (First Am.
14 Compl., Ex. 4.) In most instances—including with respect to the records listed above—
15 Defendant Palmer indicated “None” next to the requests. Plaintiffs did not believe that it was
16 plausible that Defendants did not possess such documents as concealed handgun license
17 information or crime statistics.

18 On April 4, 2016, the Grant County District Attorney issued an Order to Make
19 Available for Inspection requiring Defendant Sheriff’s Office and Defendant DeFord to make
20 available for inspection all of the documents requested in the March 14 Request, including
21 the documents listed above. (First Am. Compl. Ex. 5.) As of May 20, 2016, Defendants did
22 not make any documents available in response to the April 4 Order, indicate that documents
23 were forthcoming, or indicate their intention to seek judicial review of the April 4 Order.

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1 **3. March 31, 2016 Request**

2 On March 31, 2016, Plaintiffs sent a letter to Defendant Palmer requesting records
3 under the Public Records Law (the “March 31 Request”). (First Am. Compl., Ex. 5.) The
4 records requested in that letter are as follows:

- 5 1. Records of all communications in whatever form
6 between you and Salvatore “Sal” Cascuccio in any
7 manner regarding concealed handgun licenses, his role
8 as Grant County special deputy, and his role in
9 processing CHL applications and permits. This includes
10 but is not limited to letters, memos, emails and any
11 other record.
- 12 2. Records of all communications in whatever form
13 between you and the Oregon Firearms Federation in
14 any manner regarding concealed handgun licenses. This
15 includes but is not limited to letters, memos, emails and
16 any other record.
- 17 3. Records of all communications in whatever form
18 between you and FRED GRANT KELLY, including
19 any attachments, research materials or any other record.
- 20 4. Records of all your posts, comments, and other entries
21 from Jan. 1, 2016, to present made to your two
22 Facebook accounts. This request covers only material
23 related to your position as sheriff, produced in your
24 position as sheriff, or otherwise relating to the conduct
25 of public business. This request does not cover purely
26 personal social media entries.

18 No documents were produced in response to the March 31 Request. As of May 20,
19 2016, Plaintiffs had received no response from Defendants to their March 31 Request.

20 **4. April 14, 2016 Request**

21 On April 14, 2016, Plaintiffs sent a public records request to the Records Custodian
22 of the Grant County Sheriff’s Office seeking ten categories of documents (the “April 14
23 Request”). (First Am. Compl., Ex. 8.) The records requested in the April 14 Request
24 included the following categories of documents:

- 25 1. All reports, memos, officer notes concerning the
26 investigation and arrest of Scott Willingham in March

1 2016 in Mount Vernon, Oregon. This includes but is
2 not limited to any memo, note or other record generated
3 by the sheriff and any video or audio recording of Mr.
4 Willingham’s appearance at the sheriff’s office prior to
5 his arrest.

6 2. All reports, memos, officer notes, audio and video
7 recordings concerning the purported contaminated
8 envelope episode in 2015 that triggered a haz mat
9 response. This includes but is not limited to the record
10 of any worker’s compensation claim filed by any agent
11 of the sheriff’s office.

12 On April 15, 2016, Defendant Palmer responded on behalf of the Sheriff’s Office by
13 writing handwritten responses next to the individual requests. (First Am. Compl., Ex. 8.) No
14 records were provided in response to the April 14 Request. Instead, as to the documents
15 requested on April 14, Defendant Palmer responded: “Active case” and “Investigative
16 reports are not a public record,” respectively. These responses appeared to invoke
17 exemptions under the Public Records Law.

18 On April 27, 2016, attorneys for Plaintiffs sent a petition to the Grant County District
19 Attorney seeking disclosure of, inter alia, the documents requested in the April 14 Request.
20 (*See Daniels Dec.*, Ex. 2.)

21 On May 2, 2016, the Grant County District Attorney responded that he did not
22 believe that he was authorized to act on the petition and indicated:

23 The requests that have been made by Les Zaitz/the Oregonian
24 have been to the elected Grant County Sheriff through his
25 custodian of records. It appears that I do not have the authority
26 to issue an order pursuant to those petitions seeking relief.
Further, I have not been approached by the Sheriff seeking
advice as to whether any public record should be disclosed.

By statute, Zaitz/the Oregonian will need to seek relief by
initiating a proceeding in the Grant County Circuit Court.

(*Id.*, Ex. 3.)

1 **5. April 26, 2016 Request**

2 On April 26, 2016, Plaintiffs sent a letter to the custodian of records of Defendant
3 Sheriff's Office requesting records under the Public Records Law, ORS 192.410 to 192.505
4 (the "April 26 Request"). (See First Am. Compl. Ex. 7.) The records requested in that letter
5 included the following categories of documents:

6 a. All emails, received and sent, to Sheriff Glenn Palmer's
7 email account of gepalmer400@centurytel.net for the periods:

- 8 i. Nov. 1, 2015, to Dec. 31, 2015
- 9 ii. Feb. 16, 2016, to present

10 This request is limited to emails that relate to public business,
11 including but not limited to your performance as sheriff. This
12 request does NOT include purely personal emails that in no
13 manner relate to the conduct of public business.

14 b. The billing statement covering telephone calls received
15 or sent from cell phone of (541) 620-2420 for the periods:

- 16 i. Nov. 1, 2015, to Dec. 31, 2015
- 17 ii. Feb. 16, 2016, to present

18 c. Sheriff Glenn Palmer's duty "permanent notebook" for
19 the period Nov. 1, 2015, through present. Section 58 of the
20 Grant County Sheriff's Office Policy and Procedure Manual
21 outlines the requirement for such notebook.

22 On April 27, 2016, Defendant Palmer purported to respond to the April 26 Request to
23 Palmer with handwritten notations next to the records request. With respect to the
24 documents listed in paragraphs (a) and (b) above, Defendant Palmer stated: "I do not have
25 these in my possession." With respect the documents requested in Paragraph (c), Defendant
26 Palmer stated: "Notebook is not a public record."

B. Plaintiffs' Complaint

As outlined above, by May 20, 2016 it was apparent that Defendants were either not
responding to public records requests, or their responses were inadequate. It also was

1 apparent that the District Attorney no longer believed that he was authorized to issue orders
2 directing the Grant County Sheriff’s Office to make records available, due to Sheriff
3 Palmer’s status as an elected official. Furthermore, even when the District Attorney had
4 issued orders to make documents available, those documents were not provided.

5 On May 20, 2016 Plaintiffs filed an action asserting five claims for declaratory and
6 injunctive relief under the Oregon Public Records Law to declare the records outlined above
7 to be “public records” and to obtain disclosure of those records. On May 24, 2016, Plaintiffs
8 filed a First Amended Complaint attaching relevant documents as exhibits. The five claims
9 corresponded to the records sought in the February 16 Request, the March 14 Request, the
10 March 31 Request, the April 26 Request, and the April 14 Request, respectively.

11 On June 17, 2016, Defendants’ counsel informed Plaintiffs’ counsel via letter that
12 they represented Defendants. (Daniels Dec., Ex. 4.) On June 23, 2016, Defendants’ counsel
13 informed Plaintiffs’ counsel via letter that “our office will respond to all pending public
14 records requests by Mr. Zaitz until further notice.” (Daniels Dec., Ex. 5.)

15 **C. Defendants’ Response to the February 16 Request (First Claim)**

16 **1. Centurytel Emails**

17 On July 8, 2016, Defendants’ counsel indicated with respect to the emails to and from
18 Sheriff Palmer’s Centurytel account (the “Centurytel Emails”) that “Grant County Sheriff’s
19 Office does not possess the records requested.” On July 12, 2016, Plaintiffs’ counsel
20 responded to that assertion indicating:

21 It is indisputable that Sheriff Palmer uses his centurytel email
22 address in connection with public business. That email address
23 (like Ms. DeFord’s email address) is listed on the GCSO
24 website. We know of several examples in which he has used
that email address in connection with public business, two of
which are attached to this letter. Those emails must be
preserved, reviewed, and produced immediately.

25 (Daniels Dec., Ex. 6.)

26

1 On July 15, 2016, Defendants admitted that Sheriff Palmer had used the Centurytel
2 email address to send or receive emails related to public business. (Daniels Dec., Ex. 7.)
3 Responding to the February 16 Request, however, Defendants stated that “Grant County
4 Sheriff’s Office and Sheriff Palmer do not possess the records requested in this specific email
5 account.” (*Id.*, Ex. 8.)

6 In light of Defendants’ responses to Plaintiffs’ requests for the Centurytel Emails,
7 Plaintiffs became concerned that electronic copies of emails sent to and from that account
8 had been and would continue to be deleted. On July 15, 2016, Plaintiffs’ counsel and
9 Defendants’ counsel had a telephone conference related, in part, to that issue. During that
10 telephone conference Defendants’ counsel confirmed that electronic copies of the Centurytel
11 Emails were deleted, but maintained that hard copies of certain emails were retained.

12 On July 22, 2016, Plaintiffs filed a Motion for Temporary Restraining Order seeking
13 an order (1) enjoining Defendants from deleting, destroying, altering, or taking any other
14 action that would alter, delete, or destroy any email sent from, received by, or deleted
15 (temporarily or permanently) from the email address gepalmer400@centurytel.net, including,
16 but not limited to, deleting the electronic version of any email sent from or received by that
17 email address; and (2) ordering Defendants to take all steps necessary to preserve in
18 electronic format all emails sent from, received by, or deleted (temporarily or permanently)
19 from the email address gepalmer400@centurytel.net. The Court granted Plaintiffs’ Motion.

20 Beginning on August 5, 2016 and continuing throughout August, Plaintiffs sought to
21 schedule depositions of Defendants, in part to obtain answers to questions regarding
22 Defendants’ use, retention, and disposition of the Centurytel emails. Defendants’ counsel
23 indicated that they were unavailable until late September.

24 Plaintiffs deposed Defendants on September 20 and 21, 2016. Plaintiffs presented
25 Defendants with copies of Centurytel Emails that Defendant Palmer received and sent, but
26 were not produced in response to Plaintiffs’ public records requests. When Plaintiffs’

1 counsel inquired at the deposition of Sheriff Palmer and Grant County as to how, why, and
2 whether electronic or hard copies of the Centurytel Emails were retained or destroyed,
3 Defendant Palmer declined to answer those questions and asserted his privilege against self-
4 incrimination pursuant to the Fifth Amendment of the U.S. Constitution.

5 **2. Cell Phone Records**

6 As to the second category of records listed in the February 16 Request and the subject
7 of the First Claim (the cell phone records from the (541) 620-2420 number), Defendants
8 stated “Grant County Sheriff’s Office does not possess the records requested. Glenn Palmer
9 does not possess these records in his individual capacity. The request to access Sheriff
10 Palmer’s personal cell phone is denied. *See* Or. Atty. Gen. Public Records Manual at 14
11 (“the right to inspect does not include a right to rummage through ... electronic files’).”
12 (Daniels Dec., Ex. 8.)

13 On July 25, 2016, Plaintiffs sought to clarify Defendants’ response regarding the cell
14 phone records. Notwithstanding their initial objection, on July 28, 2016, Defendants
15 reversed course and indicated that records would be made available, subject to redactions of
16 personal calls, and requesting a fee. (Daniels Dec., Ex. 9.) After payment of the requested
17 fee, on September 13, 2016, Defendants’ counsel provided redacted records of phone calls
18 received and sent from Sheriff Palmer’s cell phone of (541) 620-2420. (Daniels Dec., Ex.
19 10.)

20 **D. Defendants’ Response to the March 14 Request (Second Claim)**

21 On July 15, 2016, Defendants’ counsel responded to the March 14 Request via letter
22 to Plaintiffs’ counsel. With respect to the records requested in paragraphs 1 through 3
23 (concealed handgun licenses), Defendants stated “Grant County Sheriff’s Office does not
24 possess the records requested. Grant County Sheriff’s Office also has no duty to create such
25 records.” (Daniels Dec., Ex. 11.)

26

1 With respect to the records requested in Paragraph 4, Defendants agreed to provide
2 and did provide responsive records subject to payment of a fee. (*Id.*)

3 With respect to the records requested in Paragraph 5, Defendants stated “Grant
4 County Sheriff’s Office does not possess the records requested and has no duty to create such
5 records.” (*Id.*)

6 Plaintiffs’ counsel responded to these responses via email to Defendants’ counsel and
7 stated:

8 With respect to concealed handgun license records, you have
9 apparently interpreted the request to mean a single specific
10 record and have denied access to records on that basis. Fairly
11 read, however, the request calls for ‘record or records sufficient
12 to determine’ the total number of licenses issued. We know
13 that the Sheriff’s Office provides similar information to other
14 media organizations. See <http://www.bluemountaineagle.com/LocalNews/20160621/cops-amp-courts>.

15 Similarly, with respect to crime reports, it does appear that
16 there is at least one annual report filed or compiled with or by
17 the Oregon State Police. (See attached.) Monthly reports may
18 also be provided. Therefore, it does appear that the GCSO has
19 a record or records sufficient to answer this request.

20 (*Id.*, Ex. 12.)

21 On July 28, 2016, Defendants’ counsel responded to Plaintiffs’ counsel via letter and
22 stated: “Defendants did in fact interpret Mr. Zaitz’s requests for ‘*the record* of the total
23 number of concealed handgun licenses issued’ by GCSO for 2014, 2015, and 2016 to be a
24 request for a specific record, or a request to compile a specific record” and made a similar
25 statement with respect to the crime reports. (*Id.*, Ex. 9.)

26 Defendants subsequently provided responsive documents to the March 14 Request
after the exchange above.

E. Defendants’ Response to March 31 Request (Third Claim)

On June 29, 2016, Defendants’ counsel responded to the March 31 Request via letter
to Plaintiffs’ counsel. (Daniels Dec., Ex. 13.) With respect to the records requested in

1 Paragraph 1, Defendants stated that “Grant County Sheriff’s Office does not possess the
2 records requested. Mr. Zaitz has been provided records related to Cascuccio’s deputization
3 for concealed handgun licenses.” With respect to the records requested in Paragraphs 2 and
4 3, Defendants indicated that “Grant County Sheriff’s Office does not possess the records
5 requested.” (*Id.*)

6 With respect to the records requested in Paragraph 4, Defendants indicated that Grant
7 County Sheriff’s Office was not the custodian of the Facebook records requested, but also
8 indicated that, to the extent Facebook records were public records, they would be provided
9 subject to payment of a fee. Plaintiffs paid the fee, and Facebook records were subsequently
10 provided beginning on October 11, 2016.

11 **F. Defendants’ Response to April 26 Request (Fourth Claim)**

12 With respect to the Centurytel emails and the cell phone records requested on April
13 26, 2016, Defendants responded in the same fashion, indicating that Grant County Sheriff’s
14 Office does not possess the records requested. As indicated above, Defendants ultimately
15 produced the relevant cell phone records, but declined to answer questions about the
16 Centurytel emails based on Sheriff Palmer’s invocation of his Fifth Amendment privilege.

17 With respect to Sheriff Palmer’s duty “permanent notebook,” Defendants abandoned
18 the initial claim that the notebook is not a public record and provided copies on July 8, 2016.

19 **G. Defendants’ Response to April 14 Request (Fifth Claim)**

20 With respect to the Willingham arrest records requested in paragraph 1 of the April
21 14 Request, Defendants initially claimed that such records were exempt pursuant to ORS
22 192.501(3). (Daniels Dec., Ex. 14.) After Plaintiffs provided further information indicating
23 that Willingham had, in fact, pleaded guilty, Defendants provided the requested documents
24 via email on July 25, 2016.

25 With respect to the haz-mat incident reports requested in paragraph 2 of the April 14
26 Request, Defendants provided those records on June 29, 2106.

1 **H. Procedural History**

2 On July 15, 2016, Defendants responded to Plaintiffs' First Request for Production
3 and First Request for Admission. As indicated above, on July 22, 2016, Plaintiffs filed a
4 Motion for Temporary Restraining Order seeking an order requiring the Centurytel emails to
5 be preserved. On August 31, 2016, Defendants filed a Motion to Strike. The Motion was
6 granted in part and denied in part, and Plaintiffs subsequently filed a Second Amended
7 Complaint in response to the Court's ruling. Defendants did not file an answer to that
8 complaint.

9 On September 9, 2016, Defendants filed a Motion for Protective Order Regarding
10 Depositions. The Motion was denied.

11 Plaintiffs took Defendants' depositions on September 20 and 21, 2016. After
12 additional documents were provided responsive to Plaintiffs remaining requests, the parties
13 agreed that the case could proceed to judgment. The parties submitted competing forms of
14 judgment to the Court, and the Court signed a General Judgment of Dismissal on November
15 3, 2016.

16 **IV. SUMMARY OF REQUESTED FEES AND COSTS**

17 The number of hours spent by Plaintiffs, and a description of the work performed by
18 them, are set out in detail in Exhibit 1 to this Statement. The total amount of fees requested
19 is summarized as follows:

20 <u>Name</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Fees</u>
21 Brad S. Daniels, partner	\$425	150.9	\$64,132.50
22 Charles Hinkle, 23 retired partner	\$450	29.7	\$13,365.00
24 Brie Bridegum, associate	\$275	2.4	\$660.00
25			
26		Total Fees:	\$78,157.50

1 Costs and disbursements supported by ORCP 68 A(2), including the prevailing party
2 fee, are set forth in Exhibit 2 and total \$337.00.

3 **V. FACTORS TO BE CONSIDERED IN AWARDING ATTORNEY FEES**

4 ORS 20.075(2) provides that “in determining the amount of attorney fees in any case
5 in which an award of attorney fees is authorized or required by statute,” the court “shall
6 consider” the factors set out in both ORS 20.075(1) and ORS 20.075(2). The court must
7 make “explanatory findings” to explain its attorney fee decision. *McCarthy v. Oregon*
8 *Freeze Dry, Inc.*, 327 Or 185, 187, 957 P2d 1200 (1998). “[T]he court, in its findings, must
9 identify the relevant facts and legal criteria on which the court relies in awarding attorney
10 fees. * * * [T]hat obligation extends only to the facts and legal criteria that the circumstances
11 of the particular case required the court to address in making its decision to award or deny
12 attorney fees. * * * [A] court is under no obligation to make findings about irrelevant or
13 immaterial factual matters or legal criteria in explaining an award of attorney fees.” *Id.* at
14 187-88 (internal brackets, italics, and quotation marks omitted).

15 **A. The ORS 20.075(1) Factors**

16 **1. ORS 20.075(1)(a) (Conduct of the Parties)**

17 As indicated above, this action was caused by Defendants’ patently inadequate
18 responses to multiple pending public records requests. In certain circumstances, Defendants
19 simply failed to respond entirely, as with the February 16 and March 31 Requests. In other
20 circumstances, Defendants responded by asserting exemption claims that were frivolous.
21 The claim that the duty notebook was not a public record, for example, is directly
22 contradicted by the Attorney General’s Public Records and Meetings Manual, which is itself
23 available online. *See id.* at A-5 (“Q: Must police officer notebooks be disclosed? . . .
24 Notebooks and logs are public records.”). The claim that an investigative report from a
25 closed case (the “haz-mat” records sought in the Fifth Claim) is not a public record was
26 similarly incorrect.

1 Defendants’ actions also impeded Plaintiffs’ attempt to obtain public records in other
2 ways. As Defendant Palmer admitted in his deposition, he did not seek or receive training on
3 records requirements, did not review the Public Records Law, and took essentially no steps—
4 other than a five-minute conversation in spring 2016—to ensure that he understood his
5 obligations under the Public Records Law and was complying with those obligations.
6 Although Defendants’ invocation of the Fifth Amendment precluded a full inquiry into the
7 matter of the Centurytel emails, Defendants’ deletion of those emails made their recovery
8 impossible. Defendant Palmer also admitted that he was unaware that, as a public official, he
9 was required to follow the document retention schedules published by the State Archivist.
10 Requests for cell phone records and records of concealed handgun licenses and crime reports
11 were rejected. Defendants’ pre-lawsuit actions demonstrated a cavalier attitude toward their
12 obligation to retain public records and to respond promptly to public records requests.

13 **2. ORS 20.075(1)(b) (Objective Reasonableness of Claims and Defenses)**

14 Plaintiffs’ claims were objectively reasonable and resulted in the production of all
15 public records that were available. Although certain records were redacted, Defendants did
16 not successfully assert an exemption to disclosure of any public record. Defendants failed to
17 file an answer and did not assert any defenses.

18 **3. ORS 20.075(1)(c)-(d) (Deterrent Effect)**

19 ORS 20.075(c) and (d) address the deterrent effects that an award of fees would have
20 on others in asserting good faith or meritless claims and defenses. These elements strongly
21 support full recovery of fees in this case. An award of attorney fees in this case would have
22 no impact on the assertion of good faith claims seeking disclosure of public records, nor
23 would it deter any public bodies from asserting good faith defenses or claims for exemptions.
24 Given that the Court did not address any such defenses, the Court’s decision will not have
25 any precedential effect in this regard.

26

1 An award of full recovery of fees, however, would deter public bodies from asserting
2 groundless defenses or refusing to respond entirely to public records requests. This is not a
3 circumstance where a fee award would “make [public bodies] timorous about pursuing
4 reasonable positions as to what the law is or ought to be.” *Clackamas Cty Assessor v Vill At*
5 *Main St Phase II, LLC*, 352 Or 144, 158, 282 P3d 814 (2012). Nor would it place
6 unreasonable demands on public bodies. As noted above, Plaintiffs waited months before
7 finally initiating this action in response to Defendants’ conduct and the District Attorney’s
8 express unwillingness to issue further orders. Thus, a fee award would encourage public
9 bodies to take their statutory obligations seriously.

10 **4. ORS 20.075(1)(e) (Objective Reasonableness of Parties During**
11 **Proceedings)**

12 Plaintiffs asserted objectively reasonable claims limited to defined categories of
13 public records, and attempted to do so in an efficient manner, resulting in minimal discovery
14 and prompt resolution of the action.

15 Although Defendants disclosed several categories of public records when those
16 records were available, Defendants took several steps during this litigation that were
17 objectively unreasonable and increased the cost and expense to the parties. With respect to
18 the Centurytel Emails, for example, Defendants’ initial response was: “Grant County
19 Sheriff’s Office does not possess the requested records.” This vague phrasing—which failed
20 to recognize the distinction between the public bodies at issue—caused Plaintiffs to seek
21 clarification and to present Defendants with specific examples of emails that existed and
22 were responsive. Defendants also flip-flopped on this issue. Although initially stating that
23 the Sheriff’s Office did not “possess” the requested records, Defendants later indicated that
24 some unspecified number of hard copy emails may be available, subject to specification and,
25 presumably, payment of a fee.

26

1 Defendants read the March 14 request in an exceedingly narrow and unreasonable
2 manner. It was clear that Plaintiffs were seeking information sufficient to determine the total
3 number of concealed handgun licenses and arrest reports, but Defendants neither responded
4 nor did they seek clarification of the request. Defendants also filed a Motion for Protective
5 Order seeking unprecedented limitations on the conduct and use of depositions in the action.

6 **5. ORS 20.075(1)(f) (Conduct of Parties in Settlement)**

7 Defendants made no formal settlement proposal, but apparently recognized that their
8 conduct in failing to respond to Plaintiffs’ public records requests was not lawful. The
9 parties did not engage in settlement negotiations, nor were such negotiations deemed
10 necessary or advisable.

11 **6. ORS 20.075(1)(g) (Prevailing Party Fee)**

12 This factor is not applicable.

13 **7. ORS 20.075(1)(h) (Additional Factors)**

14 ORS 20.075(1)(h) is a “catch all” provision that allows the Court to consider “[s]uch
15 other factors as the court may consider appropriate under the circumstances of the case.” In
16 *GASP v Env’tl Quality Comm’n of State*, 222 Or App 527, 548, 195 P3d 66 (2008), the Court
17 of Appeals explained that “the substance of the statute giving rise to the entitlement is
18 properly considered in applying the paragraph (h) catch-all,” and thus the trial court properly
19 considered the public benefit realized from the party’s efforts in the context of the “catch all”
20 exemption when the statute related to that broader public purpose.

21 That rationale is applicable here. The one-way attorney fee provision of the Public
22 Records Law recognizes the important public benefit in requiring agencies and other public
23 bodies to obey the law and to ensure that their conduct is open to public view. That interest
24 was particularly pertinent in this case, as it involved a high-profile elected official whose
25 conduct was the subject of considerable public scrutiny and debate. In that context, requiring
26 the disclosure of public records and ensuring that public records requests are appropriately

1 considered serves the public interest in open government that the Public Records Law
2 embodies.

3 **B. ORS 20.075(2)**

4 Several of the factors listed in ORS 20.075(2) are relevant to the determination of the
5 amount of an attorney fee award in this case.¹

6 **1. ORS 20.075(2)(a) (Time, Labor, and Novelty of Questions Involved)**

7 The chart attached to this Statement as Exhibit 1 contains a description of the work
8 that Plaintiffs' attorneys (Brad Daniels, Charles Hinkle, and Brie Bridegum) on this case
9 from March 23, 2016 through November 15, 2016, together with the amount of time spent on
10 it each day. The time set out in that chart is summarized above.

11 The time and labor involved included: preparation and filing of the complaint and
12 amended complaints; preparation, filing, and negotiation of resolution of a temporary
13 restraining order; preparation and service of document discovery and requests for admission;
14 numerous letters, other correspondence, and communications to and from opposing counsel;
15 opposition to a motion to strike and motion for protective order; preparation for and
16 attendance at court hearings and arguments; taking three depositions; preparation of a form
17 of judgment; and preparation of this attorney fee statement. The hours are reasonable in light
18 of the issues and circumstances involved, and the number and type of tasks from complaint to
19 judgment.

20 Although the basic legal principles governing Defendants' obligations under the
21 Public Records Law are well settled, the case involved certain difficult factual and legal
22 issues, including the disposition and retention of the Centurytel emails and opposing
23 Defendants' request for an onerous and unprecedented protective order limiting the use of
24 Defendants' deposition testimony.

25 ¹ ORS 20.075(2)(b) (preclusion of other cases), ORS 20.075(2)(e) (time limitations),
26 and ORS 20.075(2)(h) (fixed or contingent fee) are not particularly relevant.

1 **2. ORS 20.075(2)(c) (Fee Customarily Charged)**

2 Defendant seeks an award of attorney fees for Brad Daniels’ work at \$425 per hour,
3 Charles Hinkle’s work at the rate of \$450 per hour, and for Brie Bridegum’s work at the rate
4 of \$275 per hour. These rates are within the range of rates customarily charged for similar
5 services.

6 Oregon courts draw from various sources to assess the reasonableness of the attorney
7 fees sought. For example, applying Oregon law, the federal district court has used the
8 Oregon State Bar (OSB) Economic Survey as a benchmark for comparing an attorney’s
9 billing rate with the fee customarily charged in the locality for purposes of determining the
10 reasonableness of the hourly rate charged. *Roberts v. Interstate Distrib. Co.*, 242 F. Supp. 2d
11 850, 857 (D. Or. 2002); *see also, e.g., Precision Seed Cleaners v. Country Mut. Ins.*
12 *Co.*, 03:10-CV-01023-HZ, 2013 WL 5524689 (D. Or. Oct. 1, 2013). Oregon federal district
13 courts also reference the survey of commercial litigation fees for the Portland market
14 conducted by Forensic Accountant Serena Morones (“Morones Survey”). *See, e.g., Jansen v.*
15 *Experian Info. Solutions, Inc.*, 05-CV-385-BR, 2011 WL 846876, at *5 (D. Or. Mar. 9,
16 2011). Finally, Oregon courts rely the conclusions of other courts. Each of these resources
17 for establishing reasonable attorney fees confirm that the amounts sought by Plaintiffs are
18 reasonable.

19 First, the OSB Survey shows that, as of 2012, the rates requested for Daniels, Hinkle,
20 and Bridegum are within the reported range for their respective years in practice (13-15 years
21 for Daniels, over 30 years for Hinkle, and 4-6 years for Bridegum), and they are between the
22 75th and 95th percentile in each of those respective categories as of three years ago.
23 Adjusted for inflation and the periodic increase in billing rates in the legal industry, the rates
24 are closer to the 75th percentile. (Daniels Dec., Ex. 15.)

25 The Morones Survey is consistent with those results. (Daniels Dec., Ex. 16.) It
26 indicates that the hourly rates for Daniels and Bridegum are slightly higher than the average

1 hourly fees in the Portland market for attorneys at their experience level, while Hinkle’s rate
2 is lower than the average rates of attorneys at his experience level. In both respects, the
3 requested rates are well within the market range, and well below the highest rates
4 commanded by attorneys in Portland.

5 The hourly rate requested in this case is also consistent with previous awards of
6 attorney fees in public records cases. On June 28, 2016, the Marion County Circuit Court
7 entered a judgment in *Cylvia Hayes v. Oregonian Publishing Company*, Marion County
8 Circuit Court No. 15CV04530 in which the court awarded total attorney fees of \$127,760.
9 The fee award was calculated at Hinkle’s standard hourly rate of \$450 and the standard
10 hourly rate of \$410 for Timothy Snider, a Stoel Rives attorney with 13 years of experience.
11 On June 28, 2011, the Multnomah County Circuit Court entered a Supplemental Judgment in
12 *Oregonian Publishing Company LLC v. Waller*, Multnomah County Circuit Court No. 0911-
13 16280, awarding attorney fees in a public records case at Hinkle’s standard hourly rate of
14 \$450 for work done in 2009, 2010, and 2011.² Courts have awarded attorney fees based on
15 Hinkle’s then-current hourly rate in several previous public records cases, including *City of*
16 *Portland v. Oregonian Pub. Co.*, 200 Or App 120, 112 P3d 457 (2005); *Oregonian*
17 *Publishing v. Portland School Dist. No. 1J*, 329 Or 393, 987 P2d 480 (1999); *City of*
18 *Portland v. Anderson*, 163 Or App 550, 988 P2d 402 (1999) and *Laine v. City of Rockaway*,
19 134 Or App 655, 896 P2d 1219 (1995).

20 The rates requested are also consistent with rates previously approved by Oregon
21 courts for other Stoel Rives attorneys. *See, e.g., Schnitzer Steel Industries, Inc. v.*
22 *Continental Casualty Corp.*, USDC Case No. 3:10-cv-01174-MO (Nov. 12, 2014 Opinion
23 and Order) (finding Stoel Rives’ partner rates of \$480 and \$560 reasonable); *U.S. v. Western*
24 *Radio Services Co.*, USDC Case No. 3:11-sv-00638-SI (Mar. 27, 2014 Opinion and Order on

25 ² The judgment on the merits in that case was later reversed on jurisdictional grounds.
26 *Oregonian Publishing Co. v. Waller*, 253 Or App 123, 293 P3d 1046 (2012).

1 Attorney’s Fees and Costs) (finding Stoel Rives’ partner rates of \$525 and \$550 reasonable).
2 In *Bernards v. Summit Real Estate Management, Inc.*, 229 Or App 357, 213 P3d 1 (2009)
3 (order granting fees, Sept. 24, 2009), for example, the Court of Appeals awarded fees for
4 work performed in 2009 by Stoel Rives partner Joel Mullin at \$495 per hour. In that same
5 year, the Multnomah County Circuit Court awarded fees for Mullin’s work in 2009 at \$495
6 per hour, less a 10 percent discount that Stoel Rives gives to public entity clients. *Butler*
7 *Block, LLC v. Tri-County Metropolitan Transportation District of Oregon* (No. 0804-04925)
8 (June 1, 2009).

9 **3. ORS 20.075(2)(d) (Amount Involved and Results Obtained)**

10 No monetary damages were at stake. The two principal issues were whether the
11 requested documents were public records and whether the Court would order their disclosure.
12 Plaintiffs prevailed on these issues in every material respect. Defendants did not successfully
13 assert that any requested document was exempt from disclosure, and this litigation prompted
14 Defendants to comply with the Public Records Law by (1) responding to the requests in
15 writing and (2) disclosing all available records. The only reason records were not disclosed
16 is that they did not exist.

17 In addition, except for one minor deletion from the complaint in response to
18 Defendants’ Motion to Strike, Plaintiffs prevailed on every motion during the litigation phase
19 of the case. Defendants required Plaintiffs to file motions to ensure that records were
20 preserved, and to respond to motions regarding the pleadings and the conduct of the
21 depositions. The latter victory was significant as it ensured that a matter of significant public
22 interest—an elected official invoking the Fifth Amendment and explaining his conduct with
23 respect to public records—could be known to the public.

24 **4. ORS 20.075(2)(f)—Nature and Length of Relationship with Client**

25 Stoel Rives and Hinkle have represented Oregonian Publishing Company with respect
26 to public records requests and other matters for more than 40 years.

1 **5. ORS 20.075(2)(g)—Experience and Background of Attorneys**

2 Daniels is a 2002 graduate of Yale Law School. He joined Stoel Rives LLP in 2004
3 after judicial clerkships in the Southern District of New York and the Oregon Supreme
4 Court, and became a partner in 2011. His practice emphasizes complex business litigation,
5 including class actions, securities cases, consumer and unlawful trade practices actions, and
6 corporate governance disputes. He has appeared in federal and state courts in Oregon,
7 Washington, California, Idaho, and Kansas. He has represented the Oregonian in several
8 disputes involving retraction demands, public access to court proceedings, and most recently
9 a public records dispute involving access to records submitted to the City of Portland.

10 Hinkle served as strategic advisor and specialist on the public records issues involved
11 in this case. He is a 1971 graduate of Yale Law School. He joined the predecessor firm of
12 Stoel Rives LLP in 1971, became a partner in 1977, and retired from the partnership at the
13 end of 2010. For the past several years, most of his practice has been in the areas of media
14 law, public records, constitutional law, and election law. He has represented Oregonian and
15 other clients in many public records cases, including the following cases, in each of which
16 Hinkle’s client was successful: *City of Portland v. Oregonian Pub. Co.*, 200 Or App 120,
17 112 P3d 457 (2005) (investigative records relating to shooting death of Portland resident by
18 Portland police officer); *In the Matter of the Paternity of B.G.S.*, Oregon Supreme Court No.
19 S52283 (access to court ruling in juvenile case); *State of Oregon v. Morris*, Tillamook
20 County Circuit Court No. 02-1283 (letter ruling dated January 2, 2004, releasing medical
21 records in murder prosecution); *Oregonian Publishing v. Portland School Dist. No. 1J*, 329
22 Or 393, 987 P2d 480 (1999) (records of theft investigation at a Portland high school); *City of*
23 *Portland v. Anderson*, 163 Or App 550, 553, 988 P2d 402 (1999) (records of internal
24 investigation of police captain); *State of Oregon v. Kinkel*, Lane County Circuit Court No.
25 20-98-09574 (search warrant materials in murder prosecution; order dated July 24, 1998);
26 *Laine v. City of Rockaway*, 134 Or App 655, 896 P2d 1219 (1995) (records of volunteer fire

1 department); *United States v. State of Oregon*, 19 Media L. Rptr. 1506 (D Or 1991) (court
2 records in Fairview litigation); *Oregonian Pub. Co. v. U.S. Dist. Ct. for Dist. of Oregon*, 920
3 F2d 1462 (9th Cir 1990) (access to plea bargains).

4 Brianne Bridegum is a 2012 graduate of Lewis & Clark Law School, *magna cum*
5 *laude*, and joined Stoel Rives as a litigation associate in 2016 after experience at two major
6 Portland law firms. She served as a judicial clerk to the Honorable Jack Landau of the
7 Oregon Supreme Court. Her practice focuses on complex civil litigation, including civil
8 investigative demands, business torts, civil fraud, and environmental disputes.

9 **VI. ADDITIONAL AUTHORITY SUPPORTING AWARD OF FEES**

10 Plaintiffs anticipate that Defendants will argue that, because the case was mooted by
11 the voluntary disclosure of public records before a judgment was issued, no attorney fees are
12 recoverable under the Public Records Law or any other source of law. Neither law nor logic
13 supports this argument.

14 **A. Voluntary Disclosure of Public Records Entitles Plaintiffs to Attorney Fees**
15 **Pursuant to ORS 192.490(3) and the Catalyst Theory**

16 At least three cases have concluded that attorney fees are recoverable in a public
17 records case when the litigation results in pre-judgment disclosure of the records at issue. In
18 *Smith v School District No 45, Clackamas Cty*, 63 Or App 685, 666 P2d 1345 (1983), the
19 plaintiff was a probationary teacher who challenged a school district’s decision not to renew
20 her contract. As part of that lawsuit, the plaintiff sought records and minutes of the meeting
21 at which the defendants had made certain determinations regarding her and another
22 probationary teacher. The defendants denied her request, and the denial was upheld by the
23 District Attorney. As the Court of Appeals noted, however, “the District did finally furnish
24 all the records before trial.” *Id.* at 688.

25

26

1 The defendants argued that the voluntary disclosure of the records precluded the
2 plaintiff from recovering an attorney fee pursuant to ORS 192.490. *Id.* at 693. The court
3 rejected that contention:

4 We read ORS 192.490(3) to require the award of a fee so long
5 as a statutory proceeding was brought and the plaintiff prevails
6 with respect to his claim. *Cf. Kotulski v. Mt. Hood Comm. College, supra* (decided on an assumption that a fee is to be
7 awarded in those circumstances). However, the fact that the
8 requested records were turned over before trial should be taken
9 into account in determining the amount of the fee.

8 *Id.*

9 In *McCoy v. Underhill*, Multnomah County Circuit Court, 14CV17633, the plaintiff
10 submitted a public records request for investigatory material in the custody of the defendant.
11 The defendant asserted that the records were exempt, and the plaintiff filed a lawsuit seeking
12 declaratory and injunctive relief that would have required disclosure of the records. After the
13 lawsuit was filed, but before a judgment was issued, the defendant chose to voluntarily
14 produce the majority of the records at issue, but continued to claim that some records were
15 exempt. The court granted the defendant’s motion for summary judgment, upholding the
16 exemption claim for the minority of records at issue. The general judgment was in favor of
17 the defendant.

18 Judge Litzenberger issued a lengthy written opinion in which she explained her
19 decision to grant the plaintiff the full amount of her requested attorney fees and costs.
20 (Daniels Dec., Ex. 17 (the “*McCoy Order*”).) The court first reasoned that the text of ORS
21 192.490(3)—and specifically its approach to “prevail”—governed over the general approach
22 to “prevailing party” in ORS 20.077. Addressing the specific facts of the case, the court
23 explained that the plaintiff had prevailed in part because the majority of records were

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25
26

1 disclosed voluntarily, while two categories of documents remained exempt.³ Thus, the court
2 stated that it was inclined to award attorney fees pursuant to ORS 192.490(3).

3 Significantly, the court also adopted the catalyst theory as an independent basis for an
4 award of attorney fees. The court discussed extensively the status of the catalyst theory in
5 Oregon courts⁴ and explained the rationale and application of the catalyst theory in public
6 records cases generally. (Daniels Dec., Ex. ___ at 6-12.) The court concluded that the
7 catalyst theory was an appropriate basis on which to award the plaintiff her attorney fees.

8 The court reached a similar conclusion in *Cylvia Hayes v. Oregonian Publishing*
9 *Company*, Marion County Circuit Court No. 15CV04530. In that case, the plaintiff filed a
10 complaint for declaratory judgment, in which she alleged that she was not a “public body”
11 subject to the Public Records Law and prayed for a judgment declaring that she was not
12 required to produce her emails in response to the defendant’s public records requests. The
13 defendant counterclaimed and sought an order requiring the plaintiff to disclose her emails
14 related to public business. After the court ruled on summary judgment that the plaintiff was
15 a “public body,” the court engaged in an in camera review of all emails, concluding that
16 nearly all of them were not exempt and ordering them to be released. Although not *all*
17 emails were disclosed in response to the defendant’s requests, the court awarded the
18 defendant the full amount of its attorney fees.

19 The reasoning and result of those cases—particularly the *McCoy* Order—are
20 persuasive and should be followed. A party prevails in an action under the Public Records
21 Law if the lawsuit results in the disclosure of the records at issue. That the disclosure occurs

22

23 ³ Given that the defendant’s exemption claims were upheld on summary judgment,
24 the court concluded that the plaintiff only prevailed in part. No exemption claims were
upheld by this Court, and Plaintiffs prevailed on all claims in their entirety.

25 ⁴ No new cases have been decided discussing the catalyst theory since the *McCoy*
26 Order.

1 prior to judgment or prior to a court ordering disclosure makes no difference with respect to
2 whether the party has in fact obtained the relief requested.

3 The contrary result would undermine the legislature’s intent. By forcing parties to
4 risk incurring the costs of vindicating an important public right, it would encourage
5 gamesmanship on the part of public bodies, allowing them to ignore public records requests
6 that they deem burdensome or bothersome in the hopes that most requesters would lack the
7 resources or will to litigate. For members of the public who do file suit, the public body
8 could place roadblocks and delays to disclosure throughout the litigation, wait to disclose
9 records until the last possible moment, and only do so in order to avoid liability for attorney
10 fees and cost. The public body could take these actions all without the risk of liability. This
11 makes a mockery of the legislative goal of a presumption of transparency.

12 Here, the history outlined above indicates that Defendants were simply not willing to
13 comply with their statutory obligations under the Public Records Law by even
14 acknowledging public records requests, and certainly not by producing responsive records.
15 Plaintiffs only filed this lawsuit after repeated communications in which Defendants revealed
16 a strategy of stonewalling and obfuscation, and after it became apparent that the District
17 Attorney was no longer going to act on petitions for orders requiring disclosure. Plaintiffs
18 vindicated the public interest in receiving public records by filing this lawsuit and prompting
19 Defendants to begin responding to Plaintiffs’ requests and disclosing records. *See Jordan v.*
20 *MVD*, 308 Or 433, 438, 781 P2d 1203 (1989) (Oregon Public Records Law reflects “strong
21 and enduring policy that public records and governmental activities be open to the public”);
22 *accord Mail Tribune, Inc. v. Winters*, 236 Or App 91, 95, 237 P3d 831 (2010). There is no
23 evidence that cooperation would have been forthcoming absent the filing of this case. The
24 procedural history conclusively establishes that Plaintiffs prevailed in this action pursuant to
25 ORS 192.490(3), and also that this lawsuit was the catalyst to vindicating an important public
26 interest. The Court should award Plaintiffs their reasonable attorney fees and costs.

1 **B. Clapper Is Not Controlling and Is Distinguishable**

2 As the court explained in *McCoy* Order, one case in the Oregon Court of Appeals has
3 discussed the catalyst theory and recovery of attorney fees when records are voluntarily
4 disclosed in a Public Records Law case. *Clapper v. Oregon State Police*, 228 Or App 172,
5 178 (2009). In *Clapper*, the plaintiff submitted a public records request to the Oregon State
6 Police seeking disclosure of investigatory reports. The OSP initially denied the request
7 because the records were exempt from disclosure. After further investigation and a petition
8 to the Attorney General, however, the plaintiff learned that the denial was an error due to a
9 filing mistake. Although the Attorney General noted that OSP had “agreed to release the
10 records to you,” the plaintiff nevertheless filed an action two days later. Approximately one
11 month later, the plaintiff received the records, which OSP indicated were all the documents
12 in its possession. *Id.* at 174-75 (explaining history). On that record, the court upheld the trial
13 court’s conclusion that the plaintiff was not entitled to attorney fees:

14 Plaintiff finally contends that, despite the fact that defendant
15 was the prevailing party, plaintiff is entitled to attorney fees
16 under the so-called “catalyst” theory, that is that, “[w]here a
17 defendant voluntarily complies with a plaintiff’s requested
18 relief, thereby rendering the plaintiff’s lawsuit moot, the
19 plaintiff is a ‘prevailing party’ * * * if his suit is a catalyst for
20 the defendant’s voluntary compliance.” *Id.* at 244, 56 P3d 423
21 (quoting *Little Rock School Dist. v. Special School Dist. 1*, 17
22 F3d 260, 262-63 (8th Cir. 1994)). Oregon courts have not
23 adopted the catalyst theory, and, even if they had, it would not
24 apply here. That is so because plaintiff has adduced no
25 evidence to support the assertion that defendant complied with
26 his request as a result of the action and not because it was
ordered to do so by the Attorney General.

22 *Id.* at 178-79.

23 This brief discussion does not resolve the issue of fee entitlement in this case. First,
24 the decision makes no mention of ORS 192.490(3) and whether a party may be considered a
25 prevailing party in a Public Records Law case notwithstanding the fact that the trial court has
26 entered judgment based on the mootness of the dispute. As detailed above, both *Smith* and

1 the *McCoy* Order explain why that is the case. Second, at most, in *Clapper* the court
2 indicated that the catalyst theory was an open issue in Oregon courts, one that the court did
3 not need to resolve given the fact that voluntary disclosure was not prompted by the filing of
4 the lawsuit in that case. By contrast, after discussing *Clapper*, the *McCoy* Order explains in
5 detail why the catalyst theory is appropriate and should be adopted in cases where the filing
6 of a lawsuit causes a public body to disclose public records after initially refusing to do so.

7
8 **VII. CONCLUSION**

9 Based on the foregoing factors, Plaintiffs are entitled to an award of reasonable
10 attorney fees in the sum of \$78,157.50, as set forth in Exhibit 1 hereto. Plaintiffs are entitled
11 to an award of costs in the sum of \$337.00, as set forth in Exhibit 2 hereto.

12 Dated: November 17, 2016.

13 /s/ Brad S. Daniels
14 Brad S. Daniels, OSB No. 025178
15 Of Attorneys for Plaintiffs Oregonian
16 Publishing Company, LLC and Les Zaitz

17 I hereby declare that the factual statements in the above statement, including the
18 information contained in the exhibits to this statement, are true to the best of my knowledge
19 and belief, and that I understand they are made for use as evidence in court and are subject to
20 penalty for perjury.

**EXHIBIT 1 TO PLAINTIFFS' STATEMENT FOR
ATTORNEY FEES, COSTS AND DISBURSEMENTS**

Date	Atty or Paralegal	Hours	Fees	Description
3/23/2016	CFH	0.10	45.00	Email from client re status of public records requests to Sheriff Palmer
3/23/2016	CFH	0.40	180.00	Review five public records requests made by client to Sheriff Palmer and his deputy
3/23/2016	CFH	1.20	540.00	Draft demand letter to Sheriff Palmer re his obligations under Public Records Law
3/23/2016	CFH	0.40	180.00	Email exchanges with client re draft letter
3/24/2016	CFH	1.20	540.00	Revise demand letter to Sheriff Palmer
3/24/2016	CFH	0.40	180.00	Email exchanges with client re revisions to letter
4/4/2016	BSD	0.20	85.00	Emails to and from client re status of public records request and sheriff's response to same
4/11/2016	BSD	1.50	637.50	Analyze public records requests, history of responses, and possible litigation strategy
4/25/2016	CFH	0.50	225.00	Review emails and memoranda from client re status of public records requests to Sheriff Palmer and sheriff's office
4/27/2016	BSD	1.40	595.00	Analyze documents and history of public records requests
4/27/2016	BSD	0.40	170.00	Telephone conference with client public records request
4/27/2016	BSD	2.00	850.00	Draft petition to district attorney for public records requests; draft complaint against Sheriff Palmer and Sheriff's Office

4/27/2016	CFH	1.00	450.00	Prepare for and participate in conference call with client re litigation strategy
4/27/2016	CFH	0.30	135.00	Review email from client re status of records requests
4/28/2016	BSD	1.00	425.00	Review and revise complaint re client comments
4/28/2016	BSD	0.60	255.00	Emails to and from client re complaint, petition, and strategy
5/3/2016	BSD	0.50	212.50	Review District Attorney's response; analyze issues re outstanding requests
5/3/2016	CFH	0.20	90.00	Review District Attorney's letter declining to rule on public records petition
5/3/2016	CFH	0.60	270.00	Email exchanges with client re strategy for pursuing court action
5/4/2016	BSD	0.50	212.50	Analyze issues re public records requests and recovery of attorney fees
5/6/2016	BSD	1.00	425.00	Analyze issues re public records requests, responses, and complaint allegations re same
5/6/2016	CFH	1.20	540.00	Review chronology of public records requests to Sheriff's Office and Sheriff's responses
5/6/2016	CFH	0.80	360.00	Evaluate strength of our position re attorney fee claim
5/6/2016	CFH	1.20	540.00	Revise and comment on draft complaint
5/6/2016	CFH	0.40	180.00	Email to client re strategy for pursuing court action and possible revisions to draft complaint
5/9/2016	BSD	0.80	340.00	Analyze issues re revisions to complaint, attorney fee recovery and potential strategy
5/10/2016	BSD	0.30	127.50	Revise complaint

5/10/2016	BSD	0.20	85.00	Emails re strategy for complaint and issues re same
5/10/2016	CFH	1.50	675.00	Review revised complaint and make further revisions to reflect defendant's responses
5/10/2016	CFH	0.40	180.00	Email to client re strategy for pursuing claims
5/17/2016	BSD	0.50	212.50	Telephone conference re case strategy and potential revisions to complaint
5/17/2016	CFH	0.40	180.00	Review draft complaint and prepare for conference call
5/17/2016	CFH	0.80	360.00	Conference call with client re litigation strategy and possible modifications to complaint
5/18/2016	BSD	1.00	425.00	Analyze revised records requests; revise complaint re client's proposed revisions; emails re revisions to complaint and strategy regarding same
5/18/2016	CFH	0.30	135.00	Revise draft complaint
5/18/2016	CFH	0.10	45.00	Email from client re revised complaint
5/19/2016	BSD	0.70	297.50	Finalize complaint and prepare same for filing
5/23/2016	BSD	0.70	297.50	Analyze potential areas of discovery and discovery strategy
5/24/2016	BSD	0.70	297.50	Draft requests for admission and requests for production
5/25/2016	BSD	0.50	212.50	Analyze documents and emails re possible discovery requests; draft discovery requests
5/26/2016	BSD	1.20	510.00	Draft requests for production and requests for admission; review documents re background for same
5/27/2016	BSD	0.70	297.50	Revise discovery requests; emails to and from client re same

6/7/2016	BSD	0.20	85.00	Emails re client contact with defendant and response to public records requests
6/8/2016	BSD	0.20	85.00	Emails re Palmer's response to complaint and representation
6/9/2016	BSD	0.20	85.00	Emails re Palmer and County's representation
6/20/2016	BSD	0.30	127.50	Emails to and from client and opposing counsel re response to complaint
6/23/2016	BSD	0.20	85.00	Review letter from opposing counsel re records requests
6/24/2016	BSD	2.00	850.00	Analyze issues for potential response to Palmer letter; draft response to Plaintiffs' counsel's letter re position on complaint and public records requests; emails to and from client re response to letter
6/24/2016	CFH	0.10	45.00	Review letter from Benjamin Boyd re representation of Sheriff Palmer
6/24/2016	CFH	0.30	135.00	Office conference re strategy for responding to Boyd letter
6/27/2016	BSD	0.70	297.50	Emails to and from opposing counsel re letter demand, response to same, and summary of document requests
6/27/2016	BSD	0.50	212.50	Prepare for and attend telephone conference with opposing counsel
6/27/2016	BSD	0.20	85.00	Office conferences re potential case strategy and document demand
6/27/2016	CFH	0.30	135.00	Telephone conference with Benjamin Boyd and Zachary Hostetter re litigation schedule and their response to public records requests

6/30/2016	BSD	0.70	297.50	Analyze responses and documents provided by Defendants to public records requests
6/30/2016	BSD	0.50	212.50	Draft letter responding to June 29 correspondence from opposing counsel
6/30/2016	BSD	0.50	212.50	Email to client re June 29 responses and letter re same
6/30/2016	CFH	0.60	270.00	Review correspondence from Ben Boyd re responses to records requests
6/30/2016	CFH	0.40	180.00	Office conference re reply to Ben Boyd and objections to his responses
6/30/2016	CFH	0.20	90.00	Email exchanges with client re opposing counsel assertions
7/9/2016	CFH	0.30	135.00	Review emails from Ben Boyd re responses to document requests
7/9/2016	CFH	0.20	90.00	Email to client transmitting messages from Ben Boyd
7/11/2016	BSD	0.30	127.50	Analyze responses, documents, and correspondence from opposing counsel re public records requests
7/11/2016	BSD	0.30	127.50	Emails to and from client re status of public records requests
7/11/2016	BSD	1.00	425.00	Draft summary of outstanding requests and status of responses for client
7/12/2016	BSD	0.60	255.00	Draft letter to opposing counsel re public records responses and deficiencies in same
7/12/2016	BSD	1.00	425.00	Analyze public records responses and documents
7/15/2016	BSD	0.40	170.00	Telephone conference with defendants' counsel re status of requests and lawsuit

7/15/2016	BSD	0.50	212.50	Email to client re responses and case status
7/15/2016	BSD	0.40	170.00	Analyze responses to public records requests, policy manual, and administrative rules
7/15/2016	CFH	0.60	270.00	Telephone conference with Ben Boyd and Zachary Hostetter re Sheriff Palmer's disclosures and failure to disclose
7/18/2016	BSD	1.20	510.00	Review analysis of responses received to date, responses to requests for admission and requests for production;
7/18/2016	BSD	2.00	850.00	Draft motion for temporary restraining order
7/18/2016	BSD	0.70	297.50	Draft declaration in support of motion for TRO
7/18/2016	BSD	0.60	255.00	Telephone conferences with State Archivist re document retention policies
7/18/2016	BSD	1.00	425.00	Draft motion for temporary restraining order
7/18/2016	CFH	0.20	90.00	Review memorandum from client re analysis of defendants' responses
7/18/2016	CFH	0.50	225.00	Telephone conference with client re strategy for responding to defendants' incomplete responses
7/19/2016	BSD	2.20	935.00	Legal research re TRO standards, public records retention requirements, and Public Records Law
7/19/2016	BSD	2.00	850.00	Draft motion for TRO and supporting declarations
7/19/2016	CFH	0.50	225.00	Review and revise motion for temporary restraining order

7/19/2016	CFH	0.40	180.00	Email exchanges with client re motion for temporary restraining order
7/20/2016	BSD	0.30	127.50	Emails to and from client and State Archivist re status of litigation
7/21/2016	BSD	0.20	85.00	Emails to and from DOJ and client re Herkert declaration
7/22/2016	BSD	0.80	340.00	Finalize motion for TRO and declaration supporting same
7/22/2016	CFH	0.20	90.00	Email exchanges with Les Zaitz re motion for temporary restraining order
7/25/2016	BSD	0.60	255.00	Analyze claims in complaint that remain outstanding
7/25/2016	BSD	0.70	297.50	Draft comprehensive response to opposing counsel re status of claims and unresolved issues related to litigation
7/25/2016	BSD	0.20	85.00	Telephone conferences with opposing counsel re TRO motion and stipulation
7/25/2016	BSD	0.30	127.50	Emails to client re stipulated order
7/25/2016	BSD	0.20	85.00	Telephone calls to and from court re hearing on TRO motion
7/26/2016	BSD	0.40	170.00	Prepare for and attend hearing on TRO and stipulation
7/26/2016	BSD	0.40	170.00	Draft stipulated order
7/26/2016	BSD	0.30	127.50	Emails and correspondence to and from opposing counsel re status of claims and requests
7/26/2016	CFH	0.30	135.00	Review draft of stipulated temporary restraining order and suggest changes
7/26/2016	CFH	0.40	180.00	Office conference re response to defendant's attorney's comments on temporary restraining order and newly published article

7/26/2016	CFH	0.40	180.00	Email exchanges with client re defendant's latest document production and strategy for pursuing case
7/26/2016	CFH	0.30	135.00	Review defendants' objection to TRO motion
7/27/2016	BSD	2.30	977.50	Analyze issues re status of TRO motion, stipulation, case and discovery strategy, response to Plaintiffs' counsel, and proposed article
7/27/2016	CFH	0.70	315.00	Email exchanges with client re strategy for pursuing TRO application and advisability of publishing further articles regarding litigation development
7/28/2016	BSD	1.20	510.00	Telephone conference and emails with client re status of litigation, response to same, and status of order
7/28/2016	BSD	0.30	127.50	Investigate issues re electronic preservation and recovery of emails
7/28/2016	BSD	0.30	127.50	Review records requests re fee waivers
7/28/2016	BSD	0.30	127.50	Emails and letter to and from opposing counsel re additional records and stipulated order
7/28/2016	BSD	0.40	170.00	Draft proposed stipulated order
7/28/2016	CFH	1.20	540.00	Prepare for and participate in telephone conference with client re litigation strategy
7/28/2016	CFH	0.60	270.00	Email exchanges with client re discovery issues
8/1/2016	BSD	1.10	467.50	Analyze status of claims and defenses re possible amendments to complaint

8/1/2016	BSD	0.40	170.00	Review and revise request for entry on land and inspection of computer
8/1/2016	BSD	0.10	42.50	Telephone call to Todd McKinley re records management
8/2/2016	BSD	0.70	297.50	Analyze changes to stipulated order re emails
8/2/2016	BSD	0.80	340.00	Revise stipulated order;
8/2/2016	BSD	0.30	127.50	Emails to and from client and opposing counsel re stipulated order
8/3/2016	BSD	0.50	212.50	Analyze draft stipulated order and revisions to same
8/3/2016	BSD	4.50	1,912.50	Prepare for and present argument on temporary restraining order and draft proposed order granting TRO
8/3/2016	BSD	0.40	170.00	Emails and telephone conference with opposing counsel re stipulated order and hearing
8/3/2016	BSD	0.30	127.50	Emails to and from client re stipulated order
8/3/2016	CFH	0.40	180.00	Review email exchanges with defendants' attorneys re negotiations on terms of temporary restraining order
8/3/2016	CFH	0.30	135.00	Email exchanges with client re same
8/3/2016	CFH	0.20	90.00	Review proposed article reporting on judge's decision on TRO application
8/3/2016	CFH	0.40	180.00	Email exchanges with client re same
8/4/2016	BSD	1.50	637.50	Revise stipulated order, deposition notices and draft requests for production

8/4/2016	BSD	1.00	425.00	Investigate forensic recovery firms and potential forensic recovery options
8/4/2016	CFH	0.80	360.00	Email exchanges with client re Palmer articles and proposed form of TRO
8/4/2016	CFH	0.30	135.00	Review email from Palmer's lawyer re changes to TRO
8/4/2016	CFH	0.30	135.00	Office conference re response to defendant's lawyer
8/4/2016	CFH	0.40	180.00	Email to client re additional discovery requests and litigation strategy
8/5/2016	BSD	0.40	170.00	Emails to and from opposing counsel and court re hearing
8/5/2016	BSD	0.40	170.00	Review proposed editorial and public records requests
8/5/2016	BSD	0.20	85.00	Telephone conference with forensic firm re imaging of devices
8/5/2016	BSD	0.60	255.00	Analyze issues re status of litigation and potential forensic recovery of emails
8/5/2016	BSD	1.00	425.00	Draft and revise notices of deposition and discovery requests
8/5/2016	CFH	0.90	405.00	Draft proposed revisions to new records request
8/5/2016	CFH	0.80	360.00	Email exchanges with client re new document requests
8/5/2016	CFH	0.20	90.00	Review response from Sheriff Palmer
8/5/2016	CFH	0.50	225.00	Review statute re requirements for form of records request
8/5/2016	CFH	0.30	135.00	Email to client re statutory requirements for form of records request

8/9/2016	BSD	0.60	255.00	Review status of public records requests and questions for Sheriff Palmer
8/10/2016	BSD	0.40	170.00	Emails to and from opposing counsel re documents and status of production
8/10/2016	BSD	0.40	170.00	Emails to and from client re status of document production and depositions
8/11/2016	BSD	0.60	255.00	Draft letter to opposing counsel re discovery and document production
8/11/2016	BSD	0.20	85.00	Review status of discovery and deposition schedule
8/11/2016	BSD	0.30	127.50	Emails to and from opposing counsel and client re same
8/12/2016	BSD	0.30	127.50	Emails to and from opposing counsel re depositions and discovery
8/16/2016	BSD	0.20	85.00	Emails to opposing counsel re depositions and discovery
8/17/2016	BSD	0.30	127.50	Emails to and from opposing counsel re status of deposition scheduling and document production
8/17/2016	BSD	0.50	212.50	Emails to and from client re case status, depositions, and possible amendments to complaint
8/18/2016	BSD	0.20	85.00	Email to client re status of depositions and case
8/18/2016	BSD	0.30	127.50	Telephone conference with opposing counsel re motion to dismiss
8/18/2016	BSD	0.20	85.00	Emails to and from opposing counsel re depositions, inspection of documents, and status of case
8/21/2016	BSD	0.40	170.00	Emails to and from client re status of depositions, pleadings, and motion practice

8/23/2016	BSD	0.30	127.50	Emails to and from client re status of litigation and strategy for same
8/24/2016	BSD	0.20	85.00	Email to opposing counsel re status of records and depositions
8/25/2016	BSD	0.20	85.00	Emails to and from client re status of document requests
8/29/2016	BSD	0.30	127.50	Telephone call from state officials re status of litigation
8/29/2016	BSD	0.30	127.50	Emails to and from client re depositions
8/30/2016	BSD	0.20	85.00	Email from opposing counsel re ORCP 21 E motion to strike
8/30/2016	BSD	0.10	42.50	Email to client re motion to strike
8/31/2016	BSD	0.20	85.00	Emails re deposition preparation, location, and motion to strike
9/1/2016	BSD	0.20	85.00	Emails to and from client re motion to strike
9/1/2016	BSD	0.10	42.50	Telephone conference with local attorney re depositions
9/2/2016	BSD	0.10	42.50	Office conference re strategy for response to motion to strike
9/2/2016	BLB	0.30	82.50	Review motion to strike and begin preparing response
9/6/2016	BSD	0.30	127.50	Email to opposing counsel re depositions
9/7/2016	BSD	0.20	85.00	Review responses to requests for production
9/7/2016	BSD	0.10	42.50	Emails to and from client re discovery responses
9/8/2016	BSD	0.20	85.00	Emails to and from opposing counsel and client re protective order
9/9/2016	BSD	0.30	127.50	Analyze motion for protective order
9/9/2016	BSD	0.20	85.00	Emails and voice mails to and from opposing counsel re

				same
9/11/2016	BSD	1.50	637.50	Analyze authorities for response to motion for protective order
9/11/2016	BSD	1.20	510.00	Draft response to motion for protective order
9/12/2016	BSD	1.80	765.00	Draft response to motion for protective order (1.0); analyze record for response to motion for protective order (.8)
9/12/2016	BSD	1.00	425.00	Legal research re limitations on depositions under state and federal law
9/12/2016	BSD	1.30	552.50	Draft declaration and compile exhibits for response to motion for protective order
9/12/2016	BSD	0.40	170.00	Emails to and from client re response to motion for protective order
9/12/2016	BSD	0.70	297.50	Email to opposing counsel re motion to compel and forensic image
9/12/2016	BLB	0.40	110.00	Draft declaration of Brad Daniels in support of motion to compel
9/12/2016	BLB	1.00	275.00	Research and draft response to Defendants' motion to strike paragraph 8 of the complaint
9/13/2016	BSD	2.00	850.00	Office conference with client re deposition preparation
9/13/2016	BSD	1.30	552.50	Revise response to motion for protective order
9/13/2016	BSD	1.20	510.00	Draft declaration in support of response to motion for protective order
9/13/2016	BLB	0.70	192.50	Discuss case strategy and revise response to motion to strike
9/14/2016	BSD	1.30	552.50	Review and revise response to motion to strike

9/14/2016	BSD	3.70	1,572.50	Review documents for deposition exhibits and prepare outlines
9/15/2016	BSD	1.40	595.00	Analyze reply in support of motion for protective order and authorities cited in same
9/15/2016	BSD	2.40	1,020.00	Prepare for and present argument on motion for protective order
9/15/2016	BSD	1.20	510.00	Review record, requests, and materials in preparation for deposition
9/15/2016	BSD	1.60	680.00	Outline deposition questions and prepare for depositions
9/15/2016	BSD	0.30	127.50	Email to and from client re protective order hearing
9/16/2016	BSD	7.00	2,975.00	Analyze documents, pleadings, and related issues for Palmer, DeFord, and Grant County Sheriff's Office depositions
9/16/2016	BSD	0.50	212.50	Emails to and from client re same
9/19/2016	BSD	4.00	1,700.00	Prepare for depositions of Glenn Palmer, Sally DeFord, and Grant County Sheriff's Office
9/19/2016	BSD	4.00	1,700.00	Travel from Portland to John Day for depositions
9/19/2016	BSD	0.50	212.50	Review court opinion re deposition record and protective order
9/19/2016	BSD	0.20	85.00	Emails to and from client re court opinion
9/19/2016	CFH	0.30	135.00	Email exchanges with client re judge's ruling on defendant's protective order motion and paper's desire to report events at depositions
9/20/2016	BSD	8.50	3,612.50	Prepare for and take deposition of Glenn Palmer

9/20/2016	BSD	0.50	212.50	Emails and conferences with client re Palmer deposition
9/20/2016	BSD	0.50	212.50	Email to client summarizing deposition strategy
9/21/2016	BSD	5.00	2,125.00	Prepare for, attend, and take depositions of Sally DeFord and Grant County Sheriff's Office
9/21/2016	BSD	4.50	1,912.50	Travel from John Day to Portland for purposes of depositions
9/22/2016	BSD	0.30	127.50	Emails re computer recovery and emails
9/22/2016	BSD	0.30	127.50	Draft summary of depositions and strategy for next steps
9/22/2016	BSD	0.30	127.50	Emails to and from DOJ re public records requests
9/22/2016	BSD	0.80	340.00	Prepare for and present argument re motion to strike
9/22/2016	BSD	0.50	212.50	Draft order on protective order motion
9/26/2016	BSD	0.70	297.50	Draft second amended complaint
9/26/2016	CFH	0.20	90.00	Review draft article by client re sheriff's deposition testimony
9/26/2016	CFH	0.50	225.00	Email exchanges with client re concerns about draft article re sheriff's deposition
10/5/2016	BSD	0.30	127.50	Analyze article re Palmer email policy
10/10/2016	BSD	0.30	127.50	Analyze issue re potential follow up questions and strategy for resolution
10/11/2016	BSD	0.20	85.00	Analyze status of claims and potential remedies
10/11/2016	BSD	0.20	85.00	Emails to and from client re strategy and potential resolutions

10/11/2016	BSD	0.20	85.00	Telephone conference with forensic recovery expert re email recovery
10/12/2016	BSD	0.30	127.50	Emails to and from opposing counsel re court hearing and outstanding issues
10/13/2016	BSD	0.50	212.50	Telephone conference with opposing counsel re status of production
10/13/2016	BSD	0.40	170.00	Telephone conference with court re case status and potential resolution
10/13/2016	CFH	0.20	90.00	Telephone conference with client re strategy for bringing litigation to close
10/17/2016	BSD	0.10	42.50	Email to opposing counsel re status of litigation
10/20/2016	BSD	1.40	595.00	Draft motion for entry of judgment, judgment, and supporting affidavit
10/21/2016	BSD	0.60	255.00	Draft affidavit in support of judgment
10/24/2016	BSD	0.70	297.50	Revise proposed judgment
10/24/2016	CFH	0.40	180.00	Review and revise proposed General Judgment
10/24/2016	CFH	0.20	90.00	Email exchanges with client re form of judgment
11/1/2016	BSD	0.30	127.50	Analyze objections to proposed judgment and motion for entry of judgment
11/2/2016	BSD	0.10	42.50	Email to client re proposed judgment
11/7/2016	BSD	0.20	85.00	Review signed judgment; email to client re same
11/10/2016	BSD	0.40	170.00	Draft statement of attorney fees
11/11/2016	BSD	0.50	212.50	Review record and authorities re attorney fee statement
11/11/2016	BSD	2.00	850.00	Draft attorney fee statement

11/14/2016	BSD	2.20	935.00	Analyze record and legal authorities re statement for attorney fees
11/14/2016	BSD	4.00	1,700.00	Draft statement of attorney fees
11/15/2016	BSD	5.00	2,125.00	Draft statement of attorney fees
	Totals:	183.00	\$78,157.50	

EXHIBIT 2 TO PLAINTIFFS' STATEMENT OF ATTORNEY FEES, COSTS AND DISBURSEMENTS

Pursuant to ORCP 68(A)(2), Plaintiffs claim the following costs and disbursements:

First appearance fee (ORS 21.135(1)):	\$252.00
Prevailing party fee (ORS 20.190(1)(b)(A)):	85.00
TOTAL:	\$337.00

The foregoing costs were reasonably and necessarily incurred by Plaintiffs, and the recovery of those costs is authorized by the designated statutes.

CERTIFICATE OF SERVICE

1 I hereby certify that I served the foregoing **PLAINTIFFS' STATEMENT FOR**
2 **ATTORNEY FEES, COSTS AND DISBURSEMENTS** on the following named person(s)
3 on the date indicated below by:

- 4 mailing with postage prepaid
- 5 hand delivery
- 6 facsimile transmission
- 7 overnight delivery
- 8 email
- 9 notice of electronic filing via the Odyssey File and
- 10 Serve system

11 to said person(s) a true copy thereof, contained in a sealed envelope, if by mail, addressed to
12 said person(s) at his or her last-known address(es) indicated below.

13
14 D. Zachary Hostetter
15 Benjamin Boyd
16 Hostetter Law Group, LLP
17 203 E. Main Street, Suite 2
18 Enterprise, OR 97201
19 office@hostetterlawgroup.com
20 ben@hostetterlawgroup.com

21 DATED: November 17, 2016.

22 STOEL RIVES LLP

23 /s/ Brad S. Daniels
24 BRAD S, DANIELS, OSB NO. 025178
25 brad.daniels@stoel.com
26 Telephone: (503)-224-3380

STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205
Main (503) 224-3380 Fax (503) 220-2480