

DISTRICT COURT, LARIMER COUNTY, COLORADO

Larimer County Justice Center
201 Laporte Avenue, Suite 100
Fort Collins, CO 80521-2761
(970) 498-6100

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CASE NUMBER: 2018CV220

Plaintiff: STACY LYNNE

v.

Defendants: NOAH BEALS, Senior Planner, City of Fort Collins, in his individual and official capacity, and JEREMY CALL, Senior Associates – Logan Simpson Design, Contractor for the City of Fort Collins, in his individual and official capacity

COURT USE ONLY

Kimberly B. Schutt, #25947
WICK & TRAUTWEIN, LLC
P.O. Box 2166
Fort Collins, CO 80522
Phone: (970) 482-4011
Email: kschutt@wicklaw.com

Case Number: 2018 CV 220

Courtroom: 3C

**DEFENDANT BEALS' NOTICE OF SUBMISSION OF
SECOND SUPPLEMENTAL ATTORNEY FEE AFFIDAVIT**

COMES NOW, the Defendant, Noah Beals, by and through his counsel, Wick & Trautwein, LLC, and hereby submits his attorney's second supplemental affidavit of fees incurred in the further defense of this action. Said affidavit is submitted for purposes of the hearing on the amount of attorney's fees to be awarded to the Defendant, which is now set for September 17, 2019. In support hereof, the Defendant states as follows:

1. This matter is set for an attorney fee hearing on September 17, 2019, following the Court's dismissal of this action for lack of subject matter jurisdiction. The Court is required to award the Defendant reasonable attorney fees incurred in defense of this properly dismissed action under both C.R.S. § 24-10-110(5)(a)(c) and C.R.S. §13-17-201; the award is mandatory. *Crandall v. City of Denver*, 238 P.3d, 659, 663 (Colo. 2010) (discussing mandatory nature of award).

2. Further, as noted by Defendant previously in his response to the Plaintiff's objections to the last supplemental affidavit, the statutory language of C.R.S. §13-17-201 expressly refers to an award of fees incurred in defense of the action, not just incurred in filing of a motion to dismiss. In fact, when the dismissal is successfully defended on appeal, the

defendant is entitled to an award of any additional fees incurred in defense of the appeal. *Id.*, at 665. The Defendant is also entitled to an award of the fees incurred in establishing the amount of the fee award at a hearing. *Schmidt Const. Co. v. Becker-Johnson Corp.*, 817 P.2d 625 (Colo. App. 1991) (upholding attorney fee award which included fees incurred by defendant in fee award hearing). Thus, both the statutory language and the case law make clear that the Defendant is entitled to an award of all reasonable and necessary fees incurred on an ongoing basis in defense of the action, including through any appeal.

3. Mr. Beals submits that the additional fees reflected in the detailed Second Supplemental Affidavit attached hereto are in fact reasonable and necessary for the further defense of this action since the submission of the first supplemental affidavit. This defense work and the related fees have occurred because of Plaintiffs' filing of her objection to the last supplemental affidavit and two other motions. Defendant would note that the latest motion, the motion for sanctions, was denied with a finding that it had "absolutely no basis in law, or fact," for the relief requested. While such fees are already properly awarded in defense of this action as noted above, an award of these further fees is also justified pursuant to C.R.S. §13-17-201.

4 Again, the detailed affidavits submitted by the Defendant, including this second supplemental affidavit, meet the Defendant's initial burden of establishing the amount of fees to be awarded at the hearing on September 17, 2019, as they attest to the lodestar amount, a detailed description of the work performed in defense of this action and the other factors to be considered for the Court's determination as to reasonableness. Under well-established Colorado legal authority, these affidavit submissions meet the Defendant's initial burden of proof, and creates a strong presumption of reasonableness. *See, Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 147-48 (Colo. App. 1996). It will be the Plaintiff's burden at the hearing, pursuant to her general objection, to prove through proper evidence that these fees are somehow not reasonable or necessary in defense of this action. To date, she has still not identified the issues which she wants to address in that regard at the hearing, as she is required to do pursuant to Rule 121 §1-22(c).

WHEREFORE, Defendant Beals respectfully requests the Court to accept the attached Second Supplemental Affidavit, find that the fees incurred were both reasonable and necessary in defense of this ongoing litigation, and enter a judgment against the Plaintiff and in favor of Defendant Beals, for the total fees incurred in his defense, with statutory interest as allowed by law, until satisfied in full.

Respectfully submitted this 6th day of September, 2019.

WICK & TRAUTWEIN, LLC

By: s/ Kimberly B. Schutt
Kimberly B. Schutt, #25947
Attorneys for Defendant Beals

[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC and the Fort Collins City Attorney's Office]

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEAL'S NOTICE OF SUBMISSION OF SECOND SUPPLEMENTAL ATTORNEY FEE AFFIDAVIT**, with attached Affidavit, was filed via the Colorado Courts E-Filing System and served this 6th day of September, 2019, on the following:

Stacy Lynne
305 W. Magnolia Street #282
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at *stacy_lynne@comcast.net*

s/ Jody L. Minch

[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC)