

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO  Larimer County Justice Center  201 Laporte Avenue, Suite 100  Fort Collins, CO 80521-2761  (970) 498-6100</p> <hr/> <p><b>Plaintiff: STACY LYNNE</b></p> <p><b>v.</b></p> <p><b>Defendants:  NOAH BEALS, CITY OF FORT COLLINS</b></p>	<p>DATE FILED: June 11, 2020 3:34 PM  FILING ID: C1A83ABEE6F35  CASE NUMBER: 2020CV115</p> <p>COURT USE ONLY</p>
<p>Andrew W. Callahan, #52421  WICK &amp; TRAUTWEIN, LLC  P.O. Box 2166  Fort Collins, CO 80522  Phone: (970) 482-4011  Email: <a href="mailto:acallahan@wicklaw.com">acallahan@wicklaw.com</a></p>	<p>Case Number: 2020 CV 115</p> <p>Courtroom: 3B</p>
<p align="center"><b>DEFENDANTS' MOTION TO ASSESS ATTORNEY'S FEES</b></p>	

**COMES NOW**, the Defendants, Noah Beals and City of Fort Collins, by and through their counsel, Wick & Trautwein, LLC, and hereby submits Defendants' Motion to Assess Attorney's Fees. In support hereof, Defendants state as follows:

On May 5, 2020, the Court entered an order granting Defendant Beals' motion to dismiss this action pursuant to C.R.C.P. 12(b)(1), finding that the Court lacks subject matter jurisdiction to hear the claims pursuant to the provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, et seq. The Court subsequently granted Defendant City of Fort Collins' Motion to Dismiss on May 26, 2020 on the same statutory grounds. The Court entered Judgment in favor of Defendants on May 26, 2020.

Defendants are entitled to their reasonable attorney fees in defending this action pursuant to both C.R.S. 13-17-201 and C.R.S. 24-10-110(5)(a), because this matter was adjudicated in their favor.

In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action. This section shall not apply if a motion under rule 12(b) of the Colorado rules of civil procedure is treated as a motion for summary judgment and disposed of as provided in rule 56 of the Colorado rules of civil procedure.

CRS §13-17-201.

Here, all Defendants were dismissed pursuant to C.R.C.P. 12(b)(1) and 12(b)(5). Thus, they are entitled to reasonable attorney fees under the statute.

Defendants are further entitled to reasonable attorney's fees under C.R.S. §24-10-110(5)(c), which states:

In any action against a public employee in which exemplary damages are sought based on allegations that an act or omission of a public employee was willful and wanton, if the plaintiff does not substantially prevail on his claim that such act or omission was willful and wanton, the court shall award attorney fees against the plaintiff or the plaintiff's attorney or both and in favor of the public employee.

C.R.S. §24-10-110(5)(c).

Here, Plaintiff clearly attempted to allege a claim against Defendant Noah Beals for willful and wanton conduct. While she does not specifically include a claim for exemplary damages, she requests monetary damages of \$350,000, waiver of costs previously assessed against her, and for a public apology. She did not identify any economic damages in her Amended Complaint, and so this damage request can reasonably be interpreted to include a claim for exemplary damages. As such, Plaintiff was not reasonably successful on her claim for willful and wanton conduct, and thus an award of attorneys fees is mandated.

Attached hereto as Exhibit 1 is an affidavit from defense counsel Andrew W. Callahan, outlining in detail the professional services performed on behalf of Defendants and attesting to the reasonableness of the fees incurred based upon his experience in handling matters of this nature. As set forth in the Affidavit., she performed work on behalf of Defendants at the hourly rate of \$185.00 per hour, which resulted in total fees incurred by the City of \$4,773.00 and costs in the amount of \$32.44.

Defendants submit that the fees incurred were reasonable and necessary in the defense of this matter. The Plaintiff filed a 21-page Complaint making a number of allegations against Mr. Beals, as an employee of the City of Fort Collins. Defense counsel took reasonable steps to investigate the extensive allegations, communicate with the Plaintiff and other persons involved in this action, research and prepare the motion to dismiss, and draft a reply to Plaintiff's response to the motion.

“An award of attorney fees must be reasonable. A determination of reasonable-ness is a question of fact for the trial court and ‘will not be disturbed on review unless it is patently erroneous and unsupported by the evidence.’” *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990) (citing *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979) and *Williams v. Farmers Insurance Group, Inc.*, 781 P.2d 156 (Colo.App.1989)).

The initial estimate by the court of a reasonable attorney fee is reached by calculation of the “lodestar” amount. This amount represents the number of hours reasonably expended multiplied by a reasonable hourly rate and carries with it a strong presumption of reasonableness. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 587–88 (Colo. App. 2000). In determining a reasonable hourly rate, the trial court should look at the rates charged by attorneys of comparable skill, experience, and reputation in light of community standards in a reasonable community. *Id.* at

386–87 (citations omitted). *Anderson v. Pursell*, 244 P.3d 1188, 1197 (Colo. 2010), *as modified on denial of reh'g* (Jan. 10, 2011). The attached affidavit from defense counsel provides sufficient evidence to establish the reasonable hourly rate, the time expended in defense of this matter, the lodestar amount and the reasonableness of the fees incurred. *See, Ravenstar, LLC v. One Ski Hill Place, LLC*, 405 P.3d 298, 307 (Colo. App. 2016).

Accordingly, as indicated above, Defendants submit that the fees reflected in the detailed Affidavit attached hereto are in fact reasonable and necessary for the resolution of this dispute. Therefore, the Court will be acting properly under the standard enumerated above in awarding the City these fees.

WHEREFORE, Defendants respectfully request the Court to accept the attached Affidavit, find that the fees incurred were both reasonable and necessary and enter a judgment in the amount of \$4,805.44 against the Plaintiff and in favor of Defendants, for the fees incurred in his defense, with statutory interest as allowed by law until satisfied in full.

Respectfully submitted this 11<sup>th</sup> day of June, 2020.

WICK & TRAUTWEIN, LLC

By: s/Andrew W. Callahan  
Andrew W. Callahan, #52421  
Attorneys for Defendants

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' NOTICE OF SUBMISSION OF ATTORNEY FEE AFFIDAVIT**, with attached Affidavit, was filed via the Colorado Courts E-Filing System and served this 11<sup>th</sup> day of June, 2020, 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 signed pleading is on file at Wick & Trautwein, LLC)*