IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

M. KENDALL WRIGHT, ET AL. **PLAINTIFFS**

v. **CASE NO. 60CV-13-2662**

STATE OF ARKANSAS, ET AL. **DEFENDANTS**

REPLY IN SUPPORT OF RENEWED MOTION OF WAGONER LAW FIRM FOR ATTORNEYS' FEES AND COSTS AND RESPONSE TO SEPARATE MOTION FOR ATTORNEYS' FEES FILED BY CHERYL MAPLES

Undersigned counsel filed its Renewed Motion for Attorneys' Fees and Costs on July 2, 2015 and requested an award of $95,747 for attorneys' fees and costs expended by Wagoner Law Firm. Undersigned counsel did not join in the separate Renewed Motion for Attorneys' Fees filed by Cheryl Maples on July 8, 2015 or the Amended Motion of Plaintiffs' Attorney for Attorney Fees and Costs filed by Cheryl Maples on July 13, 2015. Although Wagoner Law Firm and Cheryl Maples acted as co-counsel in this case, Wagoner Law Firm cannot join in Ms. Maples's petition because of insufficient knowledge as to Ms. Maples's attorney time spent on the case. The undersigned is confident that the Court can evaluate the factors relevant to attorney fee awards and make its own judgment as to the reasonableness and compensability of Ms. Maples' fee request. For this reason, Wagoner Law Firm filed a separate fee petition.

A. Wagoner Law Firm Filed a Separate Fee Petition, But Still On Behalf of Plaintiffs

The State Defendants posit in their Response that only parties may file a motion for attorneys' fees because the right to attorneys' fees belongs to the prevailing *party*. The Wagoner Renewed Motion filed on July 2, 2015 is styled and worded as it is so as to

separate it from any fee motions filed by Cheryl Maples. Paragraph two (2) of the Renewed Motion incorporates all "allegations, averments, exhibits, and attachments" to the original attorney fee motion filed on June 27, 2014. The original fee motion was filed on behalf of Plaintiffs. Lest there be any dispute on this, Wagoner Law Firm herein amends said Renewed Motion so as to state that it is being filed on behalf of Plaintiffs represented by Wagoner Law Firm and in connection with services performed for and on behalf of all plaintiffs in this action.

Even if the Renewed Motion had been filed on behalf of Wagoner Law Firm in its own right, it would likely still be proper. The Supreme Court of the United States has held that, in a "motion[] for attorney's fees, 'the real parties in interest are the[] attorneys.'" *Astrue v. Ratliff*, 560 U.S. 586, 600 (2010)(quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n. 6 (2002)). Thus, undersigned counsel's Renewed Motion for Attorneys' Fees is proper even if filed on behalf of Wagoner Law Firm, P.A. rather than Plaintiffs. However, the distinction is irrelevant, as undersigned counsel represented all Plaintiffs in this case at the time that undersigned counsel incurred the legal fees requested and continues to represent Plaintiffs in this action.

Wagoner Law Firm, P.A. performed the vast majority of work related to the litigation on behalf of Plaintiffs in this case. Specifically, Wagoner Law Firm drafted and edited pleadings, responded to motions to dismiss, drafted and responded to motions for summary judgment, and conducted extensive research in connection with said pleadings. Wagoner Law Firm also consulted with lawyers with the National Center for Lesbian Rights. Several National Center for Lesbian Rights lawyers contributed their time and expertise to this case with no expectation of compensation. Wagoner Law Firm does not

seek reimbursement for work performed by the National Center for Lesbian Rights lawyers. Finally, Wagoner Law Firm prepared PowerPoint presentations and presented the legal arguments in this Court. Wagoner Law Firm performed these services with little to no assistance from Ms. Maples. The work performed is set out in the billing attached as Exhibit 1 to Plaintiffs' June 27, 2014 amended motion for attorneys' fees[1] and in the Affidavit of Jack Wagoner, which is attached hereto as **Exhibit 1**. Wagoner Law Firm cannot join in Ms. Maples motion for the reasons stated herein and thus filed a separate fee petition from Cheryl Maples.

Wagoner Law Firm, P.A. entered an appearance in this case on August 22, 2014, ten (10) days after the defendants were first served in this action. Wagoner Law Firm, along with the lawyers at the National Center for Lesbian Rights, drafted and filed the Third Amended Complaint—the operative Complaint upon which Plaintiffs achieved all success—only one (1) month later, on September 30, 2014. Wagoner Law Firm added its own plaintiffs to the case at that time. Wagoner Law Firm also narrowed the approach taken in the Third Amended Compliant to include only those claims which, based upon similar cases across the nation, Wagoner Law Firm considered most viable. The Court ultimately agreed that most of these claims were cognizable.

B. Wagoner Law Firm Has Not Requested Fees In Connection with the Appeal of this Case

The State Defendants argue that the Court should deny attorneys' fees for the appeal of this case. Ms. Maples filed an Amended Motion for Attorney Fees and Costs on July 13, 2015 wherein she seeks an additional $85,000 in fees—nearly the same amount that Wagoner Law Firm requests total in this Court—that she allegedly incurred working

[1] This motion is incorporated by reference in the Renewed Motion for Attorneys' Fees filed on July 2, 2015.

on just the appeal in this case[2]. Wagoner Law Firm does not seek fees in this Court in connection with the appeal. The State Defendants correctly note that this Court cannot order fees in connection with the appeal in this case. *See Race v. Nat'l Cashflow Sys., Inc.*, 34 Ark. App. 261, 264, 810 S.W.2d 46, *aff'd* 307 Ark. 131, 817 S.W.2d 876 (1991). As the Court stated in *Race*, the appellate court can award attorneys' fees to a prevailing party on appeal and "can direct the trial court upon remand to award an additional amount for the services of the appellant's attorney in the appellate court," but the trial court cannot award attorneys' fees if the appellate court does not so direct. *See id.* at 263–64. Undersigned counsel has found no authority to the contrary. Thus, undersigned counsel agrees that Plaintiffs are not entitled to recover attorneys' fees incurred on appeal in this Court.

C. Wagoner Law Firm's Fees are Reasonable

Plaintiffs are the prevailing party in this case. This Court awarded substantially all relief requested in the Third Amended Complaint—a declaration that Amendment 83 and Arkansas's Marriage Laws are unconstitutional and an injunction prohibiting future enforcement of such laws. In fact, this Court granted Plaintiffs' Motion for Summary Judgment and found that "the Arkansas constitutional and legislative ban on same-sex marriage through Act 144 of 1997 and Amendment 83 is unconstitutional." *See* Judgment, May 9, 2014. The Court then clarified on May 15, 2014, that "it is and was the intent of the Order to grant Plaintiffs' Motion for Summary Judgment without exception and as to all injunctive relief requested therein." *See* Final Order and Rule 54(b) Certification, May

[2] Ms. Maples had very little participation in any of the research, briefing, or editing of the arguments made in the appeal of this case. She came to Wagoner Law Firm to prepare for arguments before the Arkansas Supreme Court and the Federal Court for the Eastern District of Arkansas the day before the arguments. She remained for approximately one hour and could not stay for further preparation.

15, 2014. This Court's Final Order went on to declare that Amendment 83 and Arkansas's Marriage Laws

> violate the Equal Protection and Due Process Clauses of the United States and Arkansas Constitution, and are hereby declared unconstitutional[; and]
>
> Plaintiffs' request for a permanent injunction is GRANTED and the Court does hereby permanently enjoin all Defendants . . . from enforcing Amendment 83 [and Arkansas's Marriage Laws] to the extent they do not recognize same-sex marriages validly contracted outside Arkansas, prohibit qualified same-sex couples from marrying in Arkansas, or deny same-sex married couples the rights, recognition and benefits associated with marriage in the State of Arkansas.

Id.

"Under Arkansas law, the prevailing party for purposes of awarding attorney's fees . . . is determined by looking at the case as a whole and analyzing each cause of action and its subsequent outcome." *Spann v. Lovett & Co.*, 2012 Ark. App. 107, *24–25, 389 S.W.3d 77, 95 (citing *Brackelsberg v. Heflin*, 2011 Ark. App. 678, 386 S.W.3d 636). Notably, "[e]ven though each side may win some of the issues, the party 'who comes out on top' and in whose favor the verdict compels a judgment is the prevailing party." *Id.* at *25. Because Plaintiffs prevailed and ultimately "came out on top," the Court should award all reasonable attorneys' fees requested. *See id.* (awarding all fees requested despite the fact that the prevailing party did not win every cause of action alleged).

Arkansas courts consider the following "long recognized factors" in determining the reasonableness of an attorneys' fee request:

> (1) the experience and ability of the attorney; (2) the time and labor required to perform the service properly; (3) the amount in controversy and the result obtained in the case; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged for similar services in the local area; (6) whether the fee is fixed or contingent; (7) the time limitations imposed upon the client in the circumstances; and (8) the likelihood, if apparent to the client, that the

> acceptance of the particular employment will preclude other employment by the attorney.

Carter v. Cline, 2013 Ark. 398, *9–10, 430 S.W.3d 22, 28 (citing *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990)). Consideration of these factors support an award of fees to Wagoner Law Firm in the amount requested. Attorney Jack Wagoner has over twenty-five (25) years of litigation experience. He and his associates and staff spent countless hours researching, writing and preparing for court in this matter. The "cost" at stake in this case is immeasurable—deprivation of constitutional rights for a class of Arkansans. This case presented a very controversial subject matter and, although the Supreme Court foreshadowed the outcome in its 2013 *Windsor* decision, the outcome was not a foregone conclusion at any point until the Supreme Court's June 26, 2015 decision in *Obergefell v. Hodges*—a decision rendered by the U.S. Supreme Court nearly two (2) years after this action was filed. Virtually no other court had considered the issues involved in this case at the time this case was filed. Undersigned counsel devoted substantial time and effort researching, writing, preparing, and arguing that this Court should and could find in Plaintiffs' favor. Wagoner Law Firm did all of this work with no expectation that any of the Plaintiffs would pay any attorneys' fees to Wagoner Law Firm at any point. However, the time devoted to this case did take away time that could have been spent working for other paying clients. Wagoner Law Firm, however, pursued this case with full force. Wagoner Law Firm and its attorneys did so because they knew that this case presented issues of monumental importance that the Arkansas courts needed to address and resolve.

The State Defendants incorrectly claim that Wagoner Law Firm's billing contains entries related to unsuccessful claims. But this argument does not hold water in any event.

The Court need not parse out time spent on each claim because "[u]ltimately, the prevailing party is determined by who comes out 'on top' in the end." *Harrill & Sutter, PLLC v. Kosin*, 2012 Ark. 385, *10, 424 S.W.3d 272, 278; *see also*, *Spann*, 2012 Ark. App. 107, *24–25, 389 S.W.3d at 95 (awarding all fees requested although the prevailing party did not win each and every claim asserted). The Court of Appeals in *Spann*, 2012 Ark. App. 107, awarded the full amount of fees requested even though the trial court dismissed at least three (3) claims and, in fact, ruled on directed verdict against the "prevailing party" on at least one (1) other claim. *Id.* at *24. In doing so, the Court reasoned that "[o]ne cannot say that the preparation devoted to the dismissed causes of action was not relevant to the claims that went to trial." *Id.* at *25, 389 S.W.3d at 95. The same is true in this case.

D. Wagoner Law Firm Does Not Join in Cheryl Maples's Request for Attorney Fees

Wagoner Law Firm does not join in Cheryl Maples's Renewed Motion for Attorney Fees or her Amended Renewed Motion for Attorney Fees. The State Defendants spend pages attacking the fee petitions filed by Cheryl Maples. Because of the nature of some of the allegations made by the State with respect to Ms. Maples' claimed charges, undersigned counsel feels compelled to respond to some of its arguments. Undersigned counsel does not have personal knowledge of the vast majority of the attorney time that Ms. Maples claims she devoted to this case. All that Wagoner Law Firm can state with certainty is that Wagoner Law Firm, with assistance from several talented attorneys with the National Center for Lesbian Rights, performed an estimated 95% of the litigation tasks—research, briefing, and argument. Wagoner Law Firm will leave it to the Court to assess the reasonableness of Ms. Maples fee request.

As the State Defendants point out, the "initial fee motion (filed May 29, 2014) states that 'Cheryl Maples was primarily responsible for the time-intensive tasks related to client contact, developing the plaintiffs that would pursue the lawsuit, and preparing the Initial Complaint, Amended Complaint, Second Amended Complaint, and initial Motion for Preliminary Injunction.'" *See* State Def. Response at 12. This work occurred prior to Wagoner Law Firm's entry into this case. The first pleading served upon the defendants was the Second Amended Complaint served on August 12, 2013. Wagoner Law Firm entered its appearance in the case ten days later. The undersigned has no knowledge of Ms. Maples's work in this case prior to that point. Ms. Maples had little involvement in tasks related to research, writing, editing, or presentation of argument after Wagoner Law Firm entered the case. After Wagoner Law Firm entered the case, the undersigned conservatively estimates that 95% of all tasks related to the litigation were performed by Wagoner Law Firm and the lawyers associated with the National Center for Lesbian Rights. See Affidavit of Jack Wagoner, **Exhibit 1.**

Wagoner Law Firm agrees with the State Defendants that "there was no need to recruit forty adult plaintiffs (twenty couples) to collectively assert the same claims together in this case. There are two types of claims in this case: those who had married in another state and those who had not. The Plaintiffs' claims could have been brought entirely by two couples." *Id.* at 12–13 n. 5.

State Defendants include a bulleted list of specifically egregious billing entries on pages 14 and 15 of their Response. Undersigned counsel takes no position with respect to these issues, but agrees that Ms. Maples's request for fees appears unreasonable and excessive.

E. If the Court Allows Discovery, All Parties Should be Subject to Such Order

The State Defendants ask that the Court allow discovery if the Court does not deny Plaintiffs' attorney fee petitions. Undersigned counsel has no objection to discovery. But, if the Court allows discovery, the Court should allow Plaintiffs the opportunity to conduct discovery into the time entries, fees and expenses incurred by the State Defendants, specifically the Attorney General's Office, for attorneys and others, in connection with this case. If Defendants wish to pick through undersigned counsel's billing records and expenses, undersigned counsel should be allowed the same opportunity. Undersigned counsel has no objection to a hearing with or without discovery.

F. Conclusion

For the reasons stated herein, Wagoner Law Firm respectfully requests that the Court grant the Motion of Wagoner Law Firm for Attorneys' Fees in its entirety because the fees requested represent a reasonable attorneys' fee based on the work performed and the results attained.

Dated: July 30, 2015

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, the undersigned attorney do hereby state that on this 30th day of July, 2015 a true and correct copy of the foregoing document was served by email only upon:

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Jack Wagoner III

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M. KENDALL WRIGHT, ET AL. **PLAINTIFFS**

VS. **CASE NO. 60CV-13-2662**

STATE OF ARKANSAS, ET AL. **DEFENDANTS**

AFFIDAVIT OF JACK WAGONER III

I, Jack Wagoner III, state on oath:

1. In June 2013, I read the United States Supreme Court's decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013). I was excited with the opinion, as I had seen homosexual friends mistreated in the past, and I was familiar with the way they had been treated historically. The case was the first case to my knowledge where the law recognized that gay and lesbian men and women were entitled to any type of legal protection as a class under the United States Constitution. The broad wording of Justice Kennedy's opinion gave me a feeling of patriotism—that the highest court in the land was striking down an injustice perpetuated against an innocent group of people for no valid reason.

2. The night that the *Windsor* opinion came out, I posted on Facebook to my Facebook friends that if you are a gay or lesbian Arkansas couple, and your county clerk will not provide you a wedding license, that you had a free lawyer. I received an overwhelming response to this post. I decided that I would move forward with a case at my own expense and try to obtain a court ruling that gay and lesbian couples have a constitutional right to marry. I had not thought of compensation when I first decided I would do this.

3. The Supreme Court issued the *Windsor* opinion on June 26, 2013. I immediately went to work on preparing to file the lawsuit. I contacted two organizations that had been involved in *Windsor* and other litigation before the Supreme Court, as well as same-sex marriage issues in cases throughout the nation. These organizations were the Williams Institute and the National Center for Lesbian Rights. These organizations agreed to provide background help with briefing, arguments, and other issues related to the case. During the course of my involvement in this case and the companion federal case I filed and served on the defendants nearly a month before service was made in this case, several lawyers from the National Center for Lesbian Rights provided invaluable assistance to me, Angela Mann, and others at my law firm working on the two cases.

4. I also discussed funding for the federal case with representatives from the Arkansas Public Law Center ("APLC"). APLC is a non-profit organization dedicated to public justice and civil rights in Arkansas. Some of the Board Members of this charitable organization knew of my plans to move forward with litigation on the issue and wanted to help. After a board meeting where the local ACLU prevailed upon them not to help with the case, they agreed to pay the expenses of my filing of a federal court action (filing fees and the like) and $100 an hour towards attorney time. My normal hourly rate is $295. The normal hourly rate of my law partner, Angela Mann, is $185. APLC did not pay me anything for costs or attorney fees in this case. I paid my costs of several thousand dollars out of my own pocket. I received no compensation for attorney time devoted to this case. I did receive one $10,000 check from an acquaintance who

wanted to contribute to the effort. This donation was not earmarked so as to distinguish whether it was for this case or the federal case.

5. I spoke with many same-sex couples who were willing to serve as plaintiffs in the case. I knew that the case needed couples that presented well, had sterling reputations, and were active in their communities. I knew that how the public perceived these plaintiffs would be important. I ended up with one gay couple and two lesbian couples who were exemplary. My belief was that the issues relating to the case were legal issues, not factual issues. This turned out to be correct. In reality, the case needed only two nominal plaintiff couples. I needed one couple who had sought to marry in Arkansas and had been denied a license. I needed another couple who had been married in another state that recognized same-sex marriage, and whose marriage was denied recognition by the State of Arkansas.

6. On the third business day after the *Windsor* decision (July 1, 2013), Cheryl Maples filed this lawsuit. I reviewed her initial complaint, which appeared to be a "placeholder" complaint—putting her case as the first to file after *Windsor*—as the legal arguments were not well pled or developed. This was correct, as Ms. Maples did not ever serve this complaint on the Defendants. I filed the federal lawsuit on July 15, 2013. Ms. Maples filed an Amended Complaint on July 21, 2013, but she did not serve the defendants with the Amended Complaint either. She filed a Second Amended Complaint on August 5, 2013 and served it on the defendants on August 12, 2013.

7. I was concerned about Ms. Maples filing her lawsuit so quickly after I had publicly announced that I would be filing a case the night that the *Windsor* opinion came out. I was most concerned that the original pleadings filed by Ms. Maples were deficient

and might not withstand dismissal. I was very concerned that unfavorable rulings in Ms. Maples' case could create problems in the federal case. I was concerned about her ability to steer the case to a successful conclusion in the face of the aggressive defense that I expected the State of Arkansas to mount.

8. On July 5, 2013, I met with Ms. Maples about joining the state lawsuit as counsel. I talked to her on the phone prior to that. Ms. Maples readily agreed to have me join in the case.

9. I entered my appearance in the case on August 22, 2013—ten days after the defendants were first served. I promptly dove in and began working to correct the deficiencies in the Second Amended Complaint. I filed the Third Amended Complaint on September 30, 2013. This Third Amended Complaint was never amended and served as the operative complaint upon which the Court ultimately granted summary judgment.

10. In preparing the Third Amended Complaint, I felt that it was entirely unnecessary and complicating to have the approximately forty (40) plaintiffs that Ms. Maples had named in the original filing. If a trial were necessary, it would have made the litigation unmanageable. I wanted to pare the number of plaintiffs down to two or three couples. Ms. Maples told me at that time that she could not "afford to do this for free like you," and that she needed all the plaintiffs in the case so that they could share the expense of paying her for her work. I do not know to what extent, if any, that Ms. Maples received compensation from these plaintiffs. I do know that I brought this discussion up way down the road and Ms. Maples said "well, that never happened." So she at least indicated to me that she did not receive payment from the approximately forty (40) plaintiffs she initially signed up and named as plaintiffs in the case.

11. All defendants filed motions to dismiss the Third Amended Complaint. A hearing was scheduled for December 12, 2013 on these Motions and on Plaintiffs' Motion for Preliminary Injunction. In preparation for this hearing, Angela Mann, myself, other attorneys at my office, and the attorneys with the National Center for Lesbian Rights spent weeks researching and drafting pleadings. We filed our Brief in Opposition to Motions to Dismiss Third Amended Complaint and a separate Reply Brief in Support of Motion for Preliminary Injunction on November 19, 2013. These two pleadings combined were essentially treatises on the current law that in that each contained approximately 40 pages of argument and legal authority. Ms. Maples was not involved in the research, drafting, or editing of these pleadings. Any research she conducted was research that she claims to have conducted, it was not made known to us and was not made known to us or made a part of these pleadings. Mrs. Maples was copied on emails and correspondence. She would sometimes respond with a suggestion or comment. I estimate that I, along with Angela Mann and the other lawyers at my firm and the National Center for Lesbian Rights, did at least ninety-five percent (95%) of the work done in connection with briefing the motions for the first hearing. Angela Mann did the majority of it.

12. I, along with Keith Pike and Angela Mann, spent a substantial amount of time preparing for the December 12, 2013 hearing. We prepared a lengthy PowerPoint presentation to take the Court through all the legal authority pertinent to the issues before the Court. Ms. Maples did not participate in our preparation for this hearing. We were not sure if Ms. Maples would even show up at the hearing because she had been

in the hospital and had some additional health problems. She did appear at the hearing, in wheelchair or on a walker I believe.

13. At the December 12, 2013 hearing, I spent probably an hour taking the Court through the PowerPoint presentation. After I finished the PowerPoint presentation, Ms. Maples addressed the Court—stating first that the Court would have to excuse her because she was on pain pills. She made a few comments of her own. As I recall, I then spoke again in rebuttal to points the defendants made in their arguments.

14. On December 19, 2013, the Court entered its Order Denying Defendants' Motions to Dismiss and Plaintiffs' Motion for Preliminary Injunction.

15. In February and March 2014, defendants filed motions for summary judgment. Plaintiffs also filed a motion for summary judgment. A hearing was set on the competing motions for summary judgment for April 17, 2014. The parties agreed that there were no factual issues in dispute. So no witnesses would testify at the hearing. The case would be decided on the briefs and arguments of counsel. The research, briefing, and preparation for argument for this hearing occurred exactly as it had for the prior hearing. The two briefs contained an additional 77 pages of research and argument. Again, I can estimate that my firm, including myself and Angela Mann, along with the lawyers at the National Center for Lesbian Rights, contributed at least ninety-five percent (95%) of the attorney time and effort involved in this research, writing, and editing.

16. Ms. Maples met with me prior to the April 17, 2014 summary judgment hearing. We agreed that I would take the Court through the applicable law with another PowerPoint presentation that I had prepared with the help of other lawyers at my office.

Ms. Maples would then attempt to personalize some of the plaintiffs by having them stand and introducing them to the Court. At the hearing, I spent probably an hour going through the PowerPoint and all the legal arguments just as I had done at the first hearing. After that, Ms. Maples stood and essentially read from the brief that my firm had prepared along with the assistance of the lawyers from the National Center for Lesbian Rights. Then she introduced some of the plaintiffs.

17. On May 9, 2014, the Court entered its order granting summary judgment in favor of the plaintiffs.

18. At some point during the case, Ms. Maples told me that we could ask for attorneys' fees in the case. I do not remember when we had this discussion, but it was fairly early on in the case. I had not thought about the possibility of recovering attorneys' fees—at least not at that point. I certainly did not have a problem with the idea of seeking to recover fees and costs for my time and expense in the case.

19. After the Court granted summary judgment, we had fourteen (14) days to file a motion for attorneys' fees. This time period excluded intervening weekends and holidays. Although I think it was safe to say that this time began to run from the time of the Court's May 15 Final Order and Rule 54B Certification, I wanted to be safe and file the motion within fourteen days of the Court's initial May 9, 2014 Order. This did not happen. I had the total fees and costs for my firm estimated quickly as required by Rule 54 because my firm kept most of our time contemporaneously. I kept pressing Ms. Maples to get me her time estimate and she kept delaying—saying that she was still working on her billing. I became pretty anxious as she still did not have me her billing estimate when the fourteenth day after the Court's May 9, 2014 ruling arrived. The

Motion was filed on May 29, 2014, which was fifteen (15) business days after the Court's May 9 initial order. The Motion was filed then because I did not get Ms. Maples' estimated billing until that time.

20. I was uncomfortable when Ms. Maples told me that her fee request was going to be $256,060.00. I was unable to understand how she could have billed that amount of time on the case. I suggested that we file separate fee petitions. She did not want to do that. I am pretty sure I had not seen her actual bill at that time. I just had the number. If I did have the actual billing at that point then I definitely had not had time to look at it yet. In any event, the initial fee petition was filed jointly by me and Ms. Maples, but the amounts sought by her firm and my firm were stated separately.

21. After receiving Ms. Maples' actual billing, I filed Plaintiffs' Amended Motion for Attorneys' Fees. The billings from Ms. Maples and from my firm were attached. I made sure to include the following language in the Amended Motion:

> The two respective law firms, independently, have personal knowledge of the services performed and costs incurred for which they seek reimbursement in connection with the attached Exhibits. However, neither law firm claims complete personal knowledge of all time and expense details of the other law firm or lawyers associated with that firm.

22. On July 2, 2014, the Court entered an Amended Order denying the motion for attorneys' fees without prejudice. The Court allowed Plaintiffs thirty days from the resolution of this case on appeal to re-file motions for attorneys' fees. I filed my separate renewed motion for attorneys' fees and costs three days after the appeal of this case was resolved. I elected to file separately rather than join Ms. Maples in her fee petition because I could not attest to the reasonableness of the fees she was requesting. I regret having joined in the fee petition filed in May 2014, despite the "disclaimer"

language I asserted in paragraph four (4) of the June 27, 2014 motion for attorneys' fees.

23. I could provide more details in connection with Ms. Maples's request for fees for the appellate portion of this case. I am not doing so here because I believe that the trial court cannot award fees for attorney time and expenses related to time spent and costs incurred in an appeal of a case unless the appellate court directs the trial court to do so.

24. I do not like filing this affidavit or filing a separate fee petition from my co-counsel. But I want to be clear that I cannot attest that her fee request is reasonable and therefore I do not join in it or support it.

25. My standard hourly rate for all clients is $295 per hour and has been for several years. I have been licensed since 1989. I have a full client load and typically work at least 40 hours and bill 30 hours per week. I have all the work that I can do and do not lack for work. The majority of my practice is family law. I have taught Family Law at the Bowen School of Law in the past. I was in the top 5% of my class in law school and made top paper in Family Law. I have been listed as one of only several lawyers in central Arkansas in Best Lawyers in America, the Arkansas Times, and other publications for at least ten years in the Divorce category. I have been "AV" rated in the Martindale-Hubbell law directory for at least ten years. The "AV" rating signifies an attorney that is considered "pre-eminent" in his area of law. Every hour that I spent on this case was an hour of billable time that I gave up that will not be able to be used to support my wife, two daughters, three dogs, and three cats. It literally cost me $295 for each hour I spent on this case. Further, I paid the lawyers with my law firm by the hour

for their work on the case. If not reimbursed for my fees and expenses, I will suffer a substantial out of pocket loss from devoting my time and effort to this case for this reason.

26. My time records in this case are attached to Plaintiffs' Amended Motion for Attorneys' Fees filed June 27, 2014, which is incorporated by reference in the renewed motion for fees I filed on July 2, 2015. The time shown on the billing records from my firm was kept contemporaneously except where noted with an asterisk. Only 21% of the hours are estimated, and I believe the estimates are reasonable and conservative.

27. I believe that my request for a multiplier of 1.5 on my fee request is reasonable. It is typical for attorneys to receive a higher attorney fee in cases where payment is contingent upon the outcome of the case. Typically, the lawyer expects a fee of at least two to three times his normal hourly rate if successful in a contingent fee case. I believe that the 1.5 multiplier times the total billing by my law firm is reasonable in view of the compensation normally received by attorneys who successfully litigate contingent fees in this area.

FURTHER AFFIANT SAYETH NOT.

Jack Wagoner III

VERIFICATION

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

I, Jack Wagoner III, swear that the matters set forth above are true and correct to the best of my knowledge, information, and belief.

Sworn to and subscribed before me this 30th day of July, 2015

Notary Public

My Commission Expires:

2-2-22

NOTARY PUBLIC ARKANSAS
OFFICIAL SEAL
NIKI HEFFINGTON
No. 12386328
PULASKI COUNTY
My Commission Expires 2-2-2022