

Hon. **Redacted** D. Eadie
Plaintiff's Motion for
Partial Summary Judgment
Noted for Hearing: Friday, November 16, 2012
With Oral Argument at 1:30 p.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon profes-
sional corporation,

Plaintiff,

v.

MARK DeCOURSEY and CAROL De-
COURSEY, individually and the marital
community composed thereof,

Defendants.

No. 11-2-34596-3SEA

PLAINTIFF LANE POWELL'S MO-
TION FOR PARTIAL SUMMARY
JUDGMENT

PLAINTIFF LANE POWELL'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Lane Powell PC (“Lane Powell”) respectfully moves the Court to end this long and expensive litigation—which has been, thanks to Defendants Mark and Carol DeCoursey (the “DeCourseys”), productive of nothing—and enter summary judgment in favor of Lane Powell on its breach of contract claim.

Throughout this case, the DeCourseys have abused our judicial system. They have used it not as a means to resolve a legitimate dispute with Lane Powell (there is none), but rather as a soapbox to advance their outlandish agenda and disparage any person who even remotely stands in their way, including the Court. The DeCourseys’ entire defense has been to file frivolous motion after frivolous motion, churning judicial resources, advancing unfounded and unfair accusations, and disregarding unambiguous Court orders to avoid addressing the issues. They have consistently taken outrageous positions on discovery that are neither grounded in the law nor in reality. They feign misunderstanding of this Court’s orders and the Civil Rules so as to avoid complying with the ones they don’t like. They demand that Lane Powell produce documents, but then oppose Lane Powell’s counsel reviewing them and refuse to waive their baseless privilege claim over the same documents. They will not produce key documents they claim (without merit and despite numerous orders to the contrary) are privileged—the DeCourseys cannot withhold these documents while at the same time claiming that factual issues remain for trial.

Fortunately, Lane Powell’s case is straightforward and clearly subject to summary resolution based on the discovery already exchanged. In short, (1) the DeCourseys entered into a fee agreement with Lane Powell in which they agreed to pay Lane Powell for its representation; (2) the agreement was valid and binding; (3) Lane Powell provided legal services and sent regular invoices to the DeCourseys; but (4) the DeCourseys refuse to pay. The DeCourseys concede these facts. They also concede—with the aid of counsel on appeal—that they can no longer dispute the fees because *all* of their defenses to this

1 lawsuit fall within their counterclaims and affirmative defenses, which were stricken as a
2 sanction for their willful and deliberate disregard for this Court's orders. **Ex. A** at 4; *see*
3 *also Ex. B* at 6.¹ According to the DeCourseys themselves, they no longer have any de-
4 fenses to this lawsuit. Further, judicial estoppel precludes them from arguing that Lane
5 Powell's fees are unreasonable because they previously argued in connection with the
6 Windermere litigation that those very same fees and costs (at the very same hourly rates)
7 were reasonable. Even if they could make that argument, the amounts charged by Lane
8 Powell are reasonable as a matter of law.

9 In short, the DeCourseys refuse without reason to pay Lane Powell the attorneys'
10 fees and costs they owe, even though the DeCourseys won over \$1 million—including
11 nearly \$600,000 in attorneys fees—thanks to Lane Powell's representation of them over
12 the course of four years. The DeCourseys have received the benefit of Lane Powell's ex-
13 ceptional legal services. Now they must pay.

14 II. STATEMENT OF FACTS

15 A. Lane Powell Enters Into a Contract with the DeCourseys for Legal Services

16 On or about September 19, 2007, Lane Powell entered into a written fee agreement
17 ("Fee Agreement") with the DeCourseys in which Lane Powell agreed to represent the
18 DeCourseys in *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et ux., et al*
19 ("Windermere lawsuit"). **Ex. C.** The Fee Agreement required the DeCourseys to pay
20 costs and attorneys' fees to Lane Powell in consideration for Lane Powell's representation
21 of the DeCourseys in the Windermere Lawsuit and in consideration for Lane Powell
22 providing legal services to the DeCourseys. *Id.* Pursuant to the Fee Agreement, the De-
23

24
25 ¹ Exhibits A–MM referenced herein are attached to the Declaration of Hayley A. Mont-
26 gomery in Support of Plaintiff Lane Powell's Motion for Partial Summary Judgment ("Montgom-
ery Decl."), with the exception of Exhibit M, all documents attached thereto have either been pro-
duced in discovery or are part of the court record in this case or the *Windermere* litigation. Mont-
gomery Decl. ¶ 3.

1 Courseys agreed to hourly representation. *Id.* at 4 (“Fees are determined by multiplying
2 the number of hours worked by the hourly rate of the person performing the work.”). The
3 DeCourseys also agreed the hourly rates could be changed without advance notice. **Ex. C.**
4 (“The rates charged will be those in effect that the time the work is performed Our
5 rates are reviewed annually and may be adjusted without notice.”).

6 The Fee Agreement required the DeCourseys to pay Lane Powell’s invoices
7 promptly. *Id.* at 5 (“Payment is due upon receipt of our invoice”). The Fee Agree-
8 ment likewise required the DeCourseys promptly to raise any problems with the invoices.
9 *Id.* (“If we do not receive questions about the invoice within 30 days from the date of the
10 invoice, we will assume that you have reviewed the invoice and found it in order.”). The
11 DeCourseys also agreed that interest would be charged on any invoices that remained un-
12 paid. *Id.* (“Unless otherwise agreed, bills not paid within 30 days shall accrue interest at
13 an annual rate of 9% (or 0.75% per month).”). The obligation to pay did not end upon
14 termination of the attorney-client relationship. *Id.* (“Your termination of our representa-
15 tion does not eliminate your responsibility to pay for work performed prior to termina-
16 tion.”).

17 **B. Lane Powell Successfully Represents the DeCourseys in the Underlying Case**

18 Lane Powell’s representation of the DeCourseys resulted in, among other things,
19 the DeCourseys prevailing at trial in the Windermere Lawsuit and obtaining a judgment
20 against Paul H. Stickney, Paul H. Stickney Real Estate Services, Inc., and Windermere
21 Real Estate/SCA, Inc. (“Windermere”), jointly and severally, for damages in the amount
22 of \$522,200.00, with an award of Lane Powell’s legal fees in the amount of \$463,427.00
23 and taxable costs of \$45,000.00, including a 30 percent multiplier. **Exs. D–F.**

24 The case was appealed, and Lane Powell successfully defended the DeCourseys’
25 judgment in proceedings before both the Washington Court of Appeals and the Washing-
26 ton Supreme Court. **Exs. H, MM.** The Court of Appeals affirmed the trial court’s award

1 of attorneys' fees and costs to the DeCourseys, including the 30 percent multiplier. **Ex. H**
2 at 33–36. The Court also awarded \$47,600.61 in attorneys' fees and costs incurred in de-
3 fending against the appeal. **Ex. G.** The Supreme Court awarded the \$11,978.89 in attor-
4 ney's fees and expenses incurred in answering Windermere's petition for review.² **Ex. I.**

5 **C. DeCourseys Refuse to Honor Their Obligations to Pay Lane Powell**

6 Consistent with its contractual obligations, Lane Powell began providing regular
7 invoices to the DeCourseys on October 24, 2007. **Ex. J;** *see* Decl. of Grant S. Degginger
8 in Supp. of Lane Powell's Mot. for Summ. J. ("Degginger Decl."), **Ex. 1** at 1–4. The De-
9 Courseys made six payments in the early months of the representation, with the sixth and
10 final being made on May 28, 2008. **Ex. J.**

11 On December 30, 2008, Lane Powell and the DeCourseys entered into an addi-
12 tional agreement ("Amendment"), wherein Lane Powell agreed to "forbear for a reasona-
13 ble time on collecting the balance" of its attorneys' fees and costs from the DeCourseys.
14 **Ex. K** at 1. The DeCourseys, in turn, agreed to disburse to Lane Powell the \$200,000 that
15 was being held in Lane Powell's trust account. *Id.* They further agreed that "they remain
16 responsible for paying the remaining balance" on the invoices and that Lane Powell "will
17 be paid first out of any settlement proceeds or payment of any judgment." *Id.* at 2.

18 Over the next two and a half years, Lane Powell continued to provide legal ser-
19 vices to the DeCourseys; the DeCourseys continued to receive invoices and the benefit of
20 Lane Powell's work. **Ex. J.** Despite the work performed and excellent result achieved,
21 the DeCourseys did not honor their obligation to pay Lane Powell. After the Washington
22 Supreme Court denied the judgment debtors' petition for review and before issuing its
23 mandate to the Superior Court, the insurer for Windermere (one of the judgment debtors)
24 approached Lane Powell about making a partial payment of the judgment to cut off inter-

25
26 ² The Court modestly reduced the DeCourseys' fee request, awarding \$11,978.89 of the
\$16,718.46 the DeCourseys sought. **Ex I** at 4.

1 est accruals on the amount paid. **Ex. L.** The DeCourseys immediately terminated Lane
2 Powell's representation of the DeCourseys by letter dated August 3, 2011. **Ex. M.**

3 Lane Powell sent its latest invoice on December 10, 2011; the amount owing on
4 that statement was \$396,355.92. Degginger Decl., **Ex. 1** at 264–66.

5 **D. Lane Powell Files a Lien and Sues the DeCourseys for its Fees; the De-**
6 **Courseys' Affirmative Defenses and Counterclaims for Malpractice are**
7 **Stricken**

8 To protect its rights, Lane Powell filed and served an attorneys' lien in the Win-
9 dermere lawsuit on August 3, 2011—the same day the DeCourseys terminated its repre-
10 sentation. **Ex. N.** The lien was filed in accordance with RCW 60.40.010 and applicable
11 law for the value of services rendered and costs advanced on behalf of the DeCourseys in
12 an amount not less than \$384,881.66 plus interest after August 3, 2011. **Ex. O.** In this
13 regard, Lane Powell's lien stated:

14 NOTICE IS HEREBY GIVEN that the undersigned attorneys, Lane Powell
15 PC, claim a lien pursuant to RCW 60.40.010, for services rendered to De-
16 fendants and Third-Party Plaintiffs Mark and Carol DeCoursey and ex-
17 penses incurred on their behalf in the amount of not less than \$384,881.66.
18 The lien is for amounts due to Lane Powell, together with interest, for ser-
19 vices performed in conjunction with an action before the trial and appellate
20 courts.

21 *Id.* When no payment was forthcoming over the next two months, Lane Powell filed the
22 instant complaint against the DeCourseys in early October 2011 for breach of contract,
23 quantum meruit, and foreclosure of attorney's lien. Dkt. 1.

24 The DeCourseys filed an amended answer on November 14, 2011. **Ex. P.** The
25 DeCourseys admitted that they entered into a contract with Lane Powell for its representa-
26 tion of them in connection with the Windermere Lawsuit. *Id.* ¶ 5. They admitted that
Lane Powell's representation resulted in the DeCourseys obtaining a judgment for damag-
es in the amount of \$522,200.00, and receiving an award of Lane Powell's legal fees in
the amount of \$463,427.00 and taxable costs of \$45,000.00. *Id.* ¶¶ 7, 23 & 24. They ad-
mitted that Lane Powell sent regular invoices to the DeCourseys and that the balance

1 shown as of September 2011 was \$389,042.68. **Ex. P** ¶ 15. They admitted they have not
2 paid Lane Powell since December 2008, and that the lien amount remains unpaid. *Id.*
3 ¶¶ 14 & 28.

4 In addition, the DeCourseys counterclaimed for legal malpractice, breach of fidu-
5 ciary duty, breach of contract, “Undisclosed Conflict of Interest,” Consumer Protection
6 Act violations, malicious prosecution, unjust enrichment, and extortion. *See generally id.*
7 Their claims are far-ranging, including 207 paragraphs containing a litany of complaints
8 regarding Lane Powell’s work. *Id.*

9 The DeCourseys likewise asserted numerous affirmative defenses, many of which
10 overlap their counterclaims. *Id.* ¶¶ 31–42. These include: that their termination of Lane
11 Powell was permitted by the parties’ agreement (¶ 32); “failure of consideration,” “prior
12 breach,” and “breach of contract” (¶ 33); “legal fee creep” (¶¶ 34–35); “estoppel” as to
13 Lane Powell’s quantum meruit claim (¶ 36); “unclean hands” (¶ 37); “malice” (¶ 38);
14 “fraud” (¶ 39); “illegality” (¶ 40); “duress and/or coercion” (¶ 41); and failure to state a
15 claim upon which relief can be granted (¶ 42).

16 Due to the DeCourseys’ continued refusal to comply with virtually all of this
17 Court’s orders, Lane Powell was forced to move—three times—for contempt and discov-
18 ery sanctions. Dkt. 77, 101, 148. The Court granted all three motions. The Court found
19 the DeCourseys’ continued refusal to comply to be “*without reasonable cause or justifi-*
20 *cation* and therefore [] *willful and deliberate*” (emphasis added) and “has prejudiced
21 Plaintiff’s preparation of this case.” **Ex. Q.** After both the Court of Appeals and this
22 Court had denied the DeCourseys’ request for a stay, and after the DeCourseys not only
23 refused to comply with the Court’s orders but even refused to respond to inquiries regard-
24 ing their intentions for compliance, this Court ultimately exercised its discretion and or-
25 dered the DeCourseys’ counterclaims and affirmative defenses stricken. **Ex. R;** *see also*
26 **Ex. S.** The DeCourseys’ motion to reconsider the Court’s dismissal of their affirmative

1 defenses and counterclaims was likewise denied as was their attempt to seek interlocutory
2 review from the Court of Appeals. **Exs. T–U.** Thus, with respect to this motion, the De-
3 Courseys may not rely on either their counterclaims or their affirmative defenses. **Ex. R.**

4 **E. Without Notice to Lane Powell, the DeCourseys Arrange for Payment of the**
5 **Windermere Judgment That Fails to Adequately Provide for Lane Powell’s**
6 **Lien**

7 On November 3, 2011, without notice to Lane Powell, and to convince the judg-
8 ment debtor to satisfy the judgment despite Lane Powell’s lien, the DeCourseys arranged
9 for the judgment debtor to deposit \$384,881.66—the amount due under the lien without
10 interest—into the Court Registry. Dkt. 46 at 4; **Ex. V.** Indeed, the DeCourseys’ counsel
11 in the underlying action specifically requested that Lane Powell not be provided with any
12 notice whatsoever of the parties’ motion relating to Lane Powell’s lien. Dkt. 46 at 5 (cit-
13 ing Okano Decl. ¶¶ 3–4). The Court Commissioner ordered that only \$384,881.66 of the
14 total judgment amount be paid into the Court Registry, with the remaining \$815,118.34
15 paid directly to the DeCourseys. **Ex. W.**

16 Once Lane Powell discovered that Defendants had compromised its lien, obtaining
17 a full satisfaction of judgment from Windermere (including payment of significant
18 amounts designated as attorneys’ fees), Lane Powell moved this Court for an order requir-
19 ing Defendants to deposit an additional amount into the Court Registry that would account
20 for accruing interest as provided in the lien. *See generally* Dkt. 46. On December 21,
21 2011, the Court granted Lane Powell’s motion, thereby directing the DeCourseys to de-
22 posit \$57,036.30 into the Registry of the Court “immediately and in no event later than ten
23 (10) days from the entry of this Order.” **Ex. X** at 2. The DeCourseys have yet to comply
24 with this Order, although they posted a bond in connection with their failed attempt to ap-
25 peal (discussed further below). **Ex. Y.**

1 **F. The DeCourseys Concede, in Connection with their Appeal Attempts, that**
2 **Nothing Remains for Resolution, and the Court of Appeals Rejects their At-**
3 **tempt to Appeal**

4 Consistent with their pattern of refusing to comply with this Court's orders, the
5 DeCourseys filed a notice of discretionary review, and then amended it twice—on May 7,
6 and July 11, 2011—sweeping in virtually every order this Court had entered. **Exs. Z,**
7 **AA–BB.** Then, on July 27, 2012, the DeCourseys filed a Notice of Appeal and alternative
8 Notice of Discretionary Review, in which they claim that this Court's order striking all the
9 DeCourseys' counterclaims and affirmative defenses is appealable as a matter of right un-
10 der Rule of Appellate Procedure (RAP) 2.2(a)(3). **Ex. CC.** The DeCourseys' Notice of
11 Appeal indicates that they intend to seek review of virtually every order this Court has en-
12 tered over the course of this case: that is, twenty-two orders. *Id.* The DeCourseys also
13 indicated that they would pursue discretionary review of the same orders in the alterna-
14 tive. *Id.*

15 Lane Powell moved for entry of judgment because the DeCourseys' answer, the
16 lien itself, and the striking of the DeCourseys' counterclaims and affirmative defenses
17 foreclosed any issues remaining for trial. Dkt. 192. The DeCourseys opposed, but only to
18 the extent that they believe that the Court should recuse itself and vacate all previous or-
19 ders and thus should not rule on the motion to enter judgment. Dkt. 202. The Court sub-
20 sequently denied Lane Powell's motion for judgment, clarifying that only the De-
21 Courseys' counterclaims and affirmative defenses were stricken, but any defenses still
22 remained.³ **Ex. DD.**

23 Lane Powell notified the Court of Appeals of the Court's decision denying the mo-
24 tion for judgment. **Ex. EE.** On August 24, 2012, the Court of Appeals denied review,
25

26 ³ Bizarrely, the DeCourseys sought reconsideration of the Order *denying* Lane Powell's
motion for judgment, which was denied. Dkt. 231, 241.

1 including their attempt to appeal the order striking their counterclaims and affirmative de-
2 fenses. Ex. U.

3 The DeCourseys concede that “all of their defenses to the [] lawsuit are contained
4 within their counterclaim[s] and affirmative defenses,” Ex. A, “the case for [the] De-
5 Courseys is over for all practical purposes,” Ex. CC. What remains for resolution is, in
6 essence, a simple breach of contract claim for Lane Powell’s unpaid invoices in which all
7 material facts are admitted or undisputed.

8 III. STATEMENT OF THE ISSUE

9 Is Lane Powell entitled to summary judgment with respect to the attorney’s fees
10 and costs due and owing to them by the DeCourseys?

11 IV. EVIDENCE RELIED UPON

12 Plaintiff Lane Powell relies upon the Declaration of Hayley A. Montgomery in
13 Support of Plaintiff Lane Powell’s Motion for Partial Summary Judgment and Exhibits A-
14 MM attached thereto, the Declaration of Grant S. Degginer in Support of Plaintiff Lane
15 Powell’s Motion for Partial Summary Judgment and Exhibits 1-2 attached thereto, and the
16 records and files herein.

17 V. LEGAL ARGUMENT

18 A. Summary Judgment Standard

19 An important function of summary judgment procedure is to avoid “long and ex-
20 pensive litigation productive of nothing.” *Padron v. Goodyear Tire & Rubber Co.*, 34
21 Wn. App. 473, 475, 662 P.2d 67 (1983). Summary judgment is proper when there are no
22 genuine issues of material fact and reasonable minds can reach only one conclusion from
23 the record. CR 56(c); *Neil v. NWCC Invs. V, LLC*, 155 Wn. App. 119, 125, 229 P.3d 837
24 (2010). “A material fact is one upon which the outcome of the litigation depends.” *Smith*
25 *v. Preston Gates Ellis, LLP*, 135 Wn. App. 859, 863, 147 P.3d 600 (2006) (citations omit-
26 ted). The nonmoving party “may not rely on speculation, argumentative assertions that

1 unresolved factual issues remain, or having her affidavits considered at face value.”
2 *Strong v. Terrell*, 147 Wn. App. 376, 384, 195 P.3d 977 (2008), *rev. denied*, 165 Wn.2d
3 1051 (2009). Rather, “the nonmoving party must present evidence that demonstrates that
4 material facts are in dispute.” *Atherton Condo. Apartment–Owners Ass’n Bd. v. Blume*
5 *Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). If the nonmoving party fails to do
6 so, then summary judgment is proper. *Id.*

7 **B. Lane Powell is Entitled to Summary Judgment for the DeCourseys’ Breach of**
8 **Contract**

9 Summary judgment is proper because no issues of fact remain for trial and Lane
10 Powell is entitled to judgment as a matter of law. Each of the elements for breach of con-
11 tract are easily met based on the DeCourseys’ admissions and discovery already ex-
12 changed: (1) the DeCourseys entered into a fee agreement with Lane Powell in which they
13 agreed to pay Lane Powell for its representation; (2) the DeCourseys did not pay Lane
14 Powell for the exceptional legal services it provided; and (3) the DeCourseys’ failure to
15 pay has injured Lane Powell. These facts are undisputed.

16 Further, the DeCourseys cannot—as they must—present *evidence* (as opposed to
17 mere argumentative assertions) that any material facts are in dispute. The DeCourseys
18 concede that they no longer have any defenses to this lawsuit: according to the De-
19 Courseys and their appellate counsel, their defenses (including the defense that Lane Pow-
20 ell’s fees were unreasonable) fall within their counterclaims and affirmative defenses,
21 which were stricken. **Ex. A** at 4; **Ex. B** at 6. Further, because they previously argued in
22 connection with the Windermere litigation that Lane Powell’s fees were reasonable, they
23 cannot now claim that they are unreasonable. Indeed, they are judicially estopped from
24 doing so. And even if they could make this argument, the record clearly demonstrates that
25 Lane Powell’s fees are reasonable as a matter of law.

26 Because (with the exception of Ex. M) all of the documents upon which Lane
Powell relies either have been produced in discovery months ago, or are part of the court

1 record in this case or the Windermere litigation (Montgomery Decl. ¶ 3), no additional
2 discovery needs to be exchanged.⁴ The DeCourseys cannot claim that they are unaware of
3 documents relied upon by Lane Powell, nor can they withhold key documents (as they
4 continue to do) while at the same time claiming that factual issues remain for trial. In
5 short, this case is clearly subject to summary resolution in favor of Lane Powell at this
6 time.

7 **1. The DeCourseys breached the fee agreement**

8 In Washington, in order to prove breach of contract, a party must show that “the
9 contract imposes a duty, the duty is breached, and the breach proximately causes damag-
10 es.” *Nw. Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 78 Wn. App. 707, 712, 899 P.2d
11 6 (1995). Here, each of those elements is met based on the undisputed facts.

12 **a. The parties do not dispute that the fee agreement and amend-
13 ment imposed duties on the DeCourseys**

14 The DeCourseys admit they entered into a binding contract—the Fee Agreement
15 and Amendment (collectively “Agreement”)—with Lane Powell for its representation of
16 them in connection with the Windermere lawsuit. **Ex. P ¶ 5.** It is beyond dispute that this
17 Agreement imposes duties upon the DeCourseys. At the beginning of the representation,
18 the DeCourseys agreed to pay Lane Powell all amounts in the invoices sent to them within
19 30 days. **Ex. C.** When they did not (or could not) timely pay, the DeCourseys affirmed
20 that they were responsible for paying all remaining amounts in the invoices and agreed to
21 pay Lane Powell *first* out of any settlement or judgment.⁵ **Ex. K.** Over the course of the
22 parties’ four-year relationship, the DeCourseys’ duty to pay Lane Powell did not change.

23
24 ⁴ In any event, Lane Powell has already produced to the DeCourseys a 739-page produc-
25 tion log, wherein Lane Powell describes each of the responsive, non-privileged documents it in-
26 tends to produce to the DeCourseys, as required by the Court’s October 2, 2012 Order on Defend-
ants’ Motion to Compel 11,000 Responsive Documents, Dkt. 248. Montgomery Decl. ¶ 5.

⁵ The DeCourseys deny that this “Amendment” “is predicated to any degree on ‘any pay-
ment of judgment.’” **Ex. P ¶ 8.** However, summary judgment is proper if “a contract’s written

1 **b. The parties do not dispute that the DeCourseys breached their**
2 **Fee Agreement with Lane Powell**

3 The parties likewise either do not or cannot dispute that the DeCourseys breached
4 their obligations to pay Lane Powell. The DeCourseys admit that Lane Powell sent them
5 invoices and that the last balance shown when they filed their answer was \$389,042.68.
6 **Ex. P ¶ 15.** They further admit they have not paid Lane Powell since December 2008, and
7 that at least \$384,881.66 remains unpaid. *Id.* ¶¶ 14 & 28. It is likewise undisputed that
8 the DeCourseys have obtained a full satisfaction of judgment from Windermere, including
9 payment of well over \$800,000 to them (far more than the damages awarded to the De-
10 Courseys in the Windermere Lawsuit). *See supra* Section II.E.

11 As described above, the DeCourseys advanced several affirmative defenses against
12 Lane Powell's claims and an astounding amount of counterclaims, *id.* ¶¶ 31–277, all of
13 which were stricken when the Court exercised its discretion to hold them in contempt and
14 impose sanctions for their perpetual refusal to comply with Court orders. **Ex. Q.** This
15 Order removed the DeCourseys' ability to further pursue their (baseless) affirmative de-
16 fenses and counterclaims conjured up to delay and postpone the inevitable: their payment
17 of the attorneys fees and costs to which Lane Powell is entitled. In sum, it is undisputed
18 that the DeCourseys entered into a binding written contract with Lane Powell to pay for
19 legal services performed in connection with the Windermere lawsuit and that they have
20 failed to pay the amounts due and owing.

21 words have but one reasonable meaning when read in context." *BNC Mortg., Inc. v. Tax Pros*
22 *Inc.*, 111 Wn. App. 238, 250, 46 P.3d 812 (2002), *overruled on other grounds by, Columbia Cmty.*
23 *Park v. Newman Park LLC*, 166 Wn. App. 634, 645, 279 P.3d 869 (2012). The DeCourseys can-
24 not seriously dispute that the Agreement required them to pay Lane Powell's fees first out of any
25 settlement or judgment. **Ex. K** ("[Lane Powell] will be paid first out of any settlement proceeds or
26 payment of any judgment."). It is likewise undisputed that the DeCourseys obtained a full satis-
 faction of judgment from Windermere last year, including a direct payment to them of
 \$815,118.34, and have yet to pay Lane Powell. **Exs. W, FF; P ¶ 14.** For these reasons, to the ex-
 tent the DeCourseys claim that they had any right to withhold payment because of Lane Powell's
 agreement to forbear from collecting fees for a reasonable period of time (*id.* ¶ 8), such a claim is
 immaterial here.

1 c. **The DeCourseys' breach has damaged Lane Powell**

2 It is likewise undisputed that the DeCourseys' refusal to pay the amounts due and
3 owing has deprived Lane Powell of the benefit of its contract with the DeCourseys. In
4 Washington, "[c]ontract damages are ordinarily based on the injured party's expectation
5 interest and are intended to give that party the benefit of the bargain by awarding him or
6 her a sum of money that will, to the extent possible, put the injured party in as good a po-
7 sition as that party would have been had the contract been performed." *Mason v. Mort-*
8 *gage Am., Inc.*, 114 Wn.2d 842, 849, 792 P.2d 142 (1990).

9 In this case, the calculation of contract damages is straightforward. In order to put
10 Lane Powell in as good a position as it would have been had the DeCourseys honored
11 their agreement to pay Lane Powell for its representation of them in the Windermere Law-
12 suit, Lane Powell is entitled to a judgment in the amount of the attorneys fees and costs
13 that remain unpaid plus the interest the parties agreed would apply to any outstanding bal-
14 ance. **Ex. C.**

15 The amount owing to Lane Powell and reflected on the statement sent to the De-
16 Courseys on September 10, 2011 was \$389,042.68. *See* Degginger Decl., **Ex. 1** at 260-
17 61; **Ex. P** ¶ 15. The additional interest provided for in the parties' Agreement is
18 \$44,699.00 through the anticipated date of hearing on this motion.⁶

19 Accordingly, Lane Powell respectfully requests that the Court grant partial sum-
20 mary judgment on Lane Powell's breach of contract claim and award it the amounts in-
21 voiced to the DeCourseys that they failed to pay even after receiving a full satisfaction of
22 judgment from Windermere nearly a year ago. Further, because the parties' Agreement
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25 ⁶ This amount is calculated as follows: adding nine percent interest as provided in the par-
26 ties' Agreement to \$384,881.66 from August 3, 2011 (the date of the lien), through the anticipated
 date of hearing on this motion. The calculations are shown in **Ex. GG**.

1 provides for interest on unpaid amounts, Lane Powell respectfully requests that the Court
2 include prejudgment interest at the contract rate included in the parties' Agreement.⁷

3 **2. The contract is binding and enforceable because the fees and costs**
4 **charged were reasonable**

5 Despite the fact that they were awarded roughly \$560,000 in attorneys' fees and
6 costs in the Windermere lawsuit, the DeCourseys try to avoid their clear obligation to pay
7 Lane Powell by arguing that Lane Powell's fees are somehow unreasonable. They have
8 also argued, however, that they can no longer challenge the Fee Agreement on this basis
9 because "all of their defenses to the [] lawsuit are contained within their counterclaim[s]
10 and affirmative defenses," which were stricken. **Ex. A** at 4 (emphasis in original); *see al-*
11 *so Ex. B* at 6. According to the DeCourseys themselves, they can no longer argue that the
12 fees charged were unreasonable.

13 But even if the Court's order striking their counterclaims and affirmative defenses
14 did not sweep in their defenses, this argument nevertheless fails because (1) they are judi-
15 cially estopped from arguing that Lane Powell's fees are unreasonable (a position that is
16 wholly inconsistent from the one they took in the Windermere lawsuit); and (2) the fees
17 the DeCourseys are contractually bound to pay Lane Powell are reasonable as a matter of
18 law.

19 **a. The DeCourseys are estopped from arguing that Lane Powell's**
20 **fees are unreasonable**

21 Judicial estoppel precludes the DeCourseys from arguing that the attorneys' fees
22 and costs charged by Lane Powell are unreasonable, when they argued that those very

23 ⁷ Lane Powell has asserted an alternative claim for quantum meruit. Dkt. 1 ¶¶ 5.1–5.4. It
24 is not necessary for the Court to reach that claim because the parties have a written contract. *See*
25 *Young v. Young*, 164 Wn.2d 477, 485, 191 P.3d 1258 (2008) (stating that quantum meruit "is the
26 method of recovering the reasonable value of services provided under a contract implied in fact").
The same undisputed facts described here would, however, support judgment on a quantum meruit
claim as well. Finally, Lane Powell reserves the right to seek judgment on its lien foreclosure
claim but it is likewise unnecessary to address that claim at this time either as Lane Powell in all
likelihood can be made whole by its breach of contract claim.

1 same fees and costs (at the very same hourly rates) were reasonable in connection with the
2 Windermere litigation. “The equitable doctrine of judicial estoppel prevents a party from
3 asserting one position in a court proceeding and later seeking an advantage by taking a
4 clearly inconsistent position in another court proceeding.” *Mavis v. King Cnty. Pub.*
5 *Hosp. No. 2*, 159 Wn. App. 639, 650, 248 P.3d 558 (2011). In determining whether this
6 doctrine applies, courts consider whether: (1) the party’s former and latter positions are
7 clearly inconsistent; (2) judicial acceptance of an inconsistent position would create the
8 perception that the court was misled; and (3) whether the party asserting an inconsistent
9 position would derive an unfair advantage (or impose an unfair detriment on the opposing
10 party) if not estopped. *Id.* at 650.

11 Each of these considerations is easily met here. First, the DeCourseys now take a
12 position that is clearly inconsistent with the one taken in the Windermere litigation. When
13 asking Windermere to pay the attorneys’ fees and costs they incurred throughout the Win-
14 dermere litigation, the DeCourseys argued that Lane Powell’s hourly rates and time spent
15 were reasonable. **Exs. II–KK**. Indeed, as described in detail below, the Superior Court,
16 Court of Appeals, and Supreme Court all entered fee awards. **Exs. E, G–I**. Now, when
17 its time for the DeCourseys to pay Lane Powell, the DeCourseys do a complete about face
18 and argue that the very same fees they incurred in the Windermere litigation—at the very
19 same rates they previously claimed were reasonable—are *unreasonable*.

20 Second, if the Court finds anything but a very small portion of Lane Powell’s fees
21 to be unreasonable, it will have created a perception that the courts awarding fees in the
22 Windermere litigation were misled. Of course, as set forth in *supra* Section V.B.2.b be-
23 low, they were not misled. In total, the DeCourseys were awarded roughly \$560,000 in
24 *reasonable* attorneys’ fees and costs incurred in the Windermere lawsuit. *Id.* Only
25 \$4739.57—a minimal amount compared to the total fees awarded—was disallowed by the
26 Supreme Court in connection with Lane Powell’s answer to Windermere’s petition for

1 review as “excessive.” Ex. I at 4. Thus, if the Court finds any amount exceeding
2 \$4739.57 to be unreasonable, it wrongly suggests that the three courts awarding fees in
3 connection with the Windermere litigation were misled.

4 Third, if allowed to take this inconsistent position, the DeCourseys would be un-
5 justly enriched. When Windermere was paying the bills, the DeCourseys argued Lane
6 Powell’s hourly rates and time spent was reasonable and happily received the benefit of
7 Windermere’s payment. Now that its time for the DeCourseys to reimburse Lane Powell
8 for the legal services rendered on their behalf, the DeCourseys claim that Lane Powell’s
9 hourly rates and time spent are unreasonable. The DeCourseys simply cannot have it both
10 ways. The DeCourseys are judicially estopped from arguing that any amount of fees ex-
11 ceeding \$4739.57 is unreasonable.

12 **b. The fees charged are reasonable as a matter of law**

13 Even if the DeCourseys are not estopped from arguing that the fees incurred are
14 unreasonable, the DeCourseys would have to demonstrate that the parties’ Agreement is
15 unenforceable under the Rules of Professional Conduct (RPC) to avoid their contrac-
16 tual obligations. *Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Oshan*, 97 Wn. App. 901,
17 909, 988 P.2d 467 (1999) (recognizing “that attorney fee agreements that violate the
18 [RPCs] are against public policy and are unenforceable”). This they cannot do—the
19 fees the DeCourseys are contractually bound to pay Lane Powell are reasonable as a mat-
20 ter of law.

21 Unlike a standard fee award, the reasonableness of fees promised by a fee agree-
22 ment are not determined by the lodestar amount (a reasonable number of hours multiplied
23 by a reasonable hourly rate), but rather by a consideration of nine factors under RPC
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1 1.5(a). *Compare Mahler v. Szucs*, 135 Wn.2d 398, 434, 433 n.20, 957 P.2d 305 (1998),
2 with *Cotton v. Kronenberg*, 111 Wn. App. 258, 269–70, 44 P.3d 878 (2002).⁸ These are:

3 (1) the time and labor required, the novelty and difficulty of the questions
4 involved, and the skill requisite to perform the legal service properly;

5 (2) the likelihood, if apparent to the client, that the acceptance of the par-
6 ticular employment will preclude other employment by the lawyer;

7 (3) the fee customarily charged in the locality for similar legal services;

8 (4) the amount involved and the results obtained;

9 (5) the time limitations imposed by the client or by the circumstances;

10 (6) the nature and length of the professional relationship with the client;

11 (7) the experience, reputation, and ability of the lawyer or lawyers per-
12 forming the services;

13 (8) whether the fee is fixed or contingent; and

14 (9) the terms of the fee agreement between the lawyer and the client, in-
15 cluding whether the fee agreement or confirming writing demonstrates that
16 the client had received a reasonable and fair disclosure of material elements
17 of the fee agreement and of the lawyer's billing practices.

18 RPC 1.5(a).

19 “The question of whether an attorney’s conduct violates the relevant [RPC] is a
20 question of law.” *Eriks v. Denver*, 118 Wn.2d 451, 458, 824 P.2d 1207 (1992). The
21 Court is an expert on the value of legal services; it may consider its own knowledge, expe-
22 rience, and expertise in determining the reasonableness of fees without the aid of expert
23 testimony. *See Brown v. State Farm Fire & Cas. Co.*, 66 Wn. App. 273, 283, 831 P.2d
24 1122 (affirming reasonableness determination based upon the Court’s own familiarity
25 with the attorneys seeking fees, knowledge of their general reputation in the legal com-
26 munity, and a comparison with the fees charged by other lawyers).

⁸ When determining a reasonable hourly rate of compensation in a fee award, courts regu-
larly supplement the lodestar analysis with the same factors considered here: the fee customarily
charged in the locale for similar legal services (RPC 1.5(a)(3)), *Crest Inc. v. Costco Wholesale
Corp.*, 128 Wn. App. 760, 774, 115 P.3d 349 (2005), the difficulty of the problem (RPC
1.5(a)(1)), and each lawyer’s skill, experience and reputation (RPC 1.5(a)(7)), *Brown v. State
Farm Fire & Cas. Co.*, 66 Wn. App. 273, 283, 831 P.2d 1122 (1992). *See also Mahler*, 135
Wn.2d at 434 n.20 (“The [lodestar] methodology can be supplemented by an analysis of the fac-
tors set forth in RPC 1.5(a) which guides members of the Bar as to the reasonableness of a fee.”).

1 The total amount of unpaid fees and expenses that the DeCourseys incurred is
2 \$389,042.68, plus additional interest provided for in the parties' Agreement. Degginger
3 Decl., Ex. 1 at 260–61; Ex. P ¶ 15; Ex. GG. As set forth below, this total is reasonable as
4 a matter of law, reflects Lane Powell's time representing the DeCourseys, and was
5 charged after a reasonable and fair disclosure of the material elements of the parties'
6 Agreement.

7 **(1) The time spent by Lane Powell is reasonable given time**
8 **and labor required, novelty of questions involved, and**
9 **skill requisite to properly represent the DeCourseys**

10 The time spent by Lane Powell's timekeepers has been reasonable in light of the
11 tasks involved. The DeCourseys cannot dispute this. *Cf.* Ex. K (in 2008, the DeCourseys
12 agreed that Lane Powell's fees "were honestly derived, and were necessarily incurred in
13 this litigation given our opponent's strategy.").

14 As shown on the invoices, Lane Powell's trial team investigated the DeCourseys'
15 claims, prepared and responded to discovery, conducted depositions, responded to numer-
16 ous motions and pleadings from opposing parties, prepared for trial, tried the case, and
17 prepared and responded to post-trial motions. Ex. II ¶ 6. This was no simple task. The
18 claims in the Windermere lawsuit contained technical and novel issues: there were no re-
19 ported cases in Washington addressing the causation issues that became the focal point of
20 the case. *Id.* ¶ 8. Indeed, the trial court found that the case was vigorously litigated and,
21 based on Lane Powell's detailed invoices and viewing of the trial, the hours expended by
22 Lane Powell attorneys "were reasonable." Ex. HH at 11; Ex. E at 2. This reasonableness
23 determination was affirmed on appeal. Ex. H at 33–35.

24 Lane Powell attorney Ryan McBride had primary responsibility for handling all
25 aspects of Windermere's appeal, including drafting all briefs and motions, and oral argu-
26 ment. Ex. JJ ¶ 1. Other Lane Powell attorneys did contribute some time (less than five
percent of the overall fees on appeal) assisting Mr. McBride. *Id.* ¶ 6. These attorneys'

1 involvement on appeal was primarily related to helping Mr. McBride master the trial court
2 record, which was massive: the Clerk's Papers were 1567 pages long, and the verbatim
3 report of proceedings was comprised of more than 900 pages of testimony and hearings.
4 *Id.* ¶ 8(a)–(c). Adding to the complexity were the novel and labor-intensive questions on
5 appeal. In awarding the DeCourseys fees, the appellate court recognized: “[t]he appeal
6 was complex, a significant amount was at stake, the record was lengthy, both sides filed
7 over length briefs, and there were four statements of additional authority.” **Ex. G** at 3.
8 Yet again, the appellate court found Lane Powell’s time spent to be reasonable. *Id.*

9 Mr. McBride likewise handled all aspects of Windermere’s appeal to the Supreme
10 Court, including drafting of all briefs and motions, oral argument, and responding to Win-
11 dermere’s petition for review. **Ex. KK** ¶ 1. He studied Windermere’s brief and argu-
12 ments, researched additional case law, drafted the opposition to Windermere’s petition for
13 review, reviewed the submissions by amici, prepared an affidavit of the expenses and
14 costs incurred on appeal and communicated extensively with the DeCourseys regarding all
15 the foregoing. *Id.* ¶¶ 7, 9. The Supreme Court found the number of hours spent on these
16 activities to be “generally reasonable.”⁹ **Ex. I** at 4.

17 In short, Lane Powell’s time spent on the DeCourseys’ behalf has been found to be
18 reasonable in all levels of the Washington courts. Indeed, all of the fees and expenses in-
19 voiced have been incurred in the performance of tasks necessary for the efficient and
20 proper representation of the DeCourseys. Degginger Decl. ¶¶ 4(a)–(c); *see also* RPC
21 1.5(a)(1).

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⁹ Despite this finding, the Supreme Court “disallowed some of the claimed hours” because they were “slightly on the strong side” and “somewhat atypical.” **Ex. I** at 4. The Court did not, however, explain how many hours it disallowed.

1 (2) Lane Powell's hourly rates are reasonable for Lane
2 Powell's experience, ability, and reputation, and are cus-
3 tomarily charged

4 The hourly rates for the persons performing work in the Windermere litigation are
5 reasonable for the nature and complexity of the case and the experience of the attorneys
6 and paralegals performing the services. The vast majority of hourly rates charged by Lane
7 Powell timekeepers have already been held as reasonable by the trial and appellate courts
8 when awarding fees.

9 The trial court awarded the DeCourseys \$500,000 in attorneys' fees and costs—the
10 DeCourseys' entire fee request—to cover their legal expenses through trial. **Ex. F.** Rely-
11 ing on "roughly three inches of paper" briefing and the "experience in viewing the trial,"
12 **Ex. HH** at 11, the trial court expressly found that Lane Powell's standard hourly rates to
13 be reasonable. **Ex. E.** The trial court granted a 30 percent multiplier *on top of* the lode-
14 star amount due in part to the "vigor" with which the case was litigated. **Ex. HH** at 4.
15 Windermere did not challenge the reasonableness determination on appeal, and the Court
16 of Appeals affirmed the trial court's fees award and its "specific findings" that Lane Pow-
17 ell's 2007–2008 billing rates were reasonable. **Ex. H** at 35–36; **Ex. II** at ¶¶ 6.

18 The Court of Appeals also awarded fees, applying the lodestar analysis and explic-
19 itly finding again that Lane Powell's 2009–2010 standard hourly rates were reasonable:

20 The materials submitted reflect the skill and experience of the attorney
21 McBride. He has several years of experience as an attorney before moving
22 to Washington. Based on his thirteen years of experience and his ability I
23 conclude that the requested \$385 (2009) and \$400 (2010) hourly rates are
24 reasonable. The hourly rates for other attorneys who played a minor role in
25 this appeal are also reasonable.

26 **Ex. G** at 2. Like the trial court, the Court of Appeals awarded Lane Powell all the attor-
neys' fees they sought and were entitled to receive.¹⁰ In short, both the trial court and the

¹⁰ The Court excluded a small amount of fees for non-attorney time for a paralegal and li-
brarians. *Id.*

1 Court of Appeals having reviewed Lane Powell's hourly rates, experience, and quality of
2 work, both courts found that the attorney's fees submitted for the time period of 2007–
3 2010 were reasonable.

4 To the extent there is a dispute about Lane Powell's hourly rates, it is limited only
5 to the \$4739.57 in fees that were not awarded by the Supreme Court in connection with
6 Lane Powell's answer to Windermere's petition for review. Despite the fact that it found
7 Mr. McBride's time to be "generally reasonable," the Court Commissioner "disallowed
8 some of the claimed hours" because they were "slightly on the strong side" and modestly
9 reduced Mr. McBride's 2011 hourly rate by an unknown hourly amount because he found
10 it to be "excessive" when compared with that of Windermere's counsel. **Ex. I** at 4.

11 The fact that the Supreme Court's Commissioner disallowed a small fraction of the
12 total fees incurred by Lane Powell in this matter does not affect the reasonableness of
13 Lane Powell's rates throughout the four years of representation and, indeed, notwithstand-
14 ing the Commissioner's ruling, Mr. McBride's \$440 rate was reasonable as a matter of
15 law. As an initial matter, the Supreme Court found Mr. McBride's 2011 hourly rate
16 (\$440) to be excessive *when compared to that of Windermere's counsel*, which was ex-
17 ceedingly (and inexplicably) low (\$175). **Ex. I** at 4. Even if Mr. McBride's 2011 rate
18 were excessive (it is not), it would result in a set-off of \$4739.57—the same amount disal-
19 lowed by the Supreme Court's Commissioner.

20 Further, the Commissioner's ruling appears to have been grounded on the modest
21 \$40 increase in Mr. McBride's rates between 2010 and 2011. Lane Powell increased its
22 hourly rates by approximately 10 percent for the 2011 calendar year. Degginger Decl. ¶
23 4(c). The rates charged by Lane Powell for the few timekeepers billing time in 2011 (and
24 throughout this case) are commensurate with the experience and skill level of each time-
25 keeper. *Id.*, **Ex. 2**. These hourly rates were customarily charged for this type of litigation
26 in the Seattle area during this time period. Degginger Decl. ¶ 4. Indeed, it is typical for

1 law firms like Lane Powell to review and raise their rates at the beginning of each calen-
2 dar year. *Id.* The DeCourseys' Fee Agreement explicitly states that Lane Powell's hourly
3 rates may change. **Ex. C** at Statement of Terms of Engagement ("Our rates are reviewed
4 annually and may be adjusted without notice."). These increased rates were reflected on
5 the monthly invoices sent to the DeCourseys through the entire 2011 calendar year. *See*
6 Degginger Decl., **Ex. 1** at 218–66. The DeCourseys cannot now complain that they did
7 not know of or agree to Lane Powell's 2011 hourly rates—there can be no question that
8 the hourly rates of the Lane Powell's timekeepers are reasonable. RPC 1.5(a)(3), (7).

9 **(3) Despite challenges, Lane Powell obtained an exceptional**
10 **result for the DeCourseys**

11 From beginning (September 2007) to end (August 2011), Lane Powell's represen-
12 tation of the DeCourseys was uniquely challenging. RPC 1.5(a)(6). The 30 percent mul-
13 tiplier on Lane Powell's attorneys' fees speaks for itself—Lane Powell took this case even
14 though it was financially risky so that the DeCourseys, who were of limited means, could
15 have their day in court. **Ex. HH** at 5; **Ex. II ¶¶** 7–8, 11; **Ex. H** at 35. Lodestar amounts
16 are adjusted only in "rare instances" considering "the quality of work performed" and the
17 possibility that "no fee would be obtained." *Morgan v. Kingen*, 166 Wn.2d 526, 539, 210
18 P.3d 995 (2009). As the Court of Appeals recognized, "although they had an hourly fee
19 agreement," "the DeCourseys had limited finances and there was a significant risk that
20 [Lane Powell] would never recover their fees if the DeCourseys did not prevail in the law-
21 suit."¹¹ **Ex. H** at 34, 35. In addition, the trial court recognized other unique challenges in
22 representing the DeCourseys. **Ex. HH** at 4 ("To say that the DeCourseys made this a cru-
23 sade is an understatement."); *id.* at 5 ("I also don't see any evidence that there was any
24 sincere effort made to settle this case.").

25 ¹¹ As evidenced by the instant lawsuit, the risk that Lane Powell would not be paid for its
26 representation did not end once the fees were awarded—indeed, the DeCourseys still refuse to pay
the attorneys fees owed.

1 Despite these challenges, Lane Powell achieved an exceptional result for the De-
2 Courseys. RPC 1.5(a)(4). Lane Powell attorneys prevailed at trial, obtaining a judgment
3 of over \$1 million, including an award of attorney's fees and costs of \$500,000. Exs. E-
4 F. Lane Powell successfully defended the result on appeal through the Court of Appeals
5 and the Washington Supreme Court, obtaining two more fees and costs awards. Exs. G at
6 2; H at 36-37; I at 4-5; LL. The DeCourseys' case was an unmitigated success.

7 **(4) The DeCourseys received a reasonable and fair disclosure of the material elements of their fixed fee agreement**

8 It is beyond dispute the DeCourseys received a full and fair disclosure of Lane
9 Powell's billing practices and the DeCourseys' duty to pay at the outset of the attorney-
10 client relationship. See RPC 1.5(a)(8)-(9). The Fee Agreement describes in detail the
11 fixed fee arrangement agreed to by the parties. Ex. C at Statement of Terms of Engage-
12 ment ("Fees are determined by multiplying the number of hours worked by the hourly rate
13 of the person performing the work."). In no uncertain terms, it requires the DeCourseys
14 to pay the fees "upon receipt of invoice[s]," and allows the DeCourseys to raise any
15 "questions about the invoice within 30 days" *Id.* It further describes Lane Powell's
16 manner of billing and the general range of hourly rates for timekeepers likely to be work-
17 ing on the case, and advises that these rates may be adjusted at the beginning of each year.
18 *Id.*

19 These material terms did not change in any significant way over the four-year at-
20 torney-client relationship.¹² While terms of the Fee Agreement were modified by the
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23 ¹² When a contract for attorney's fees that has been entered into (1) after the attorney-
24 client relationship was established and (2) on terms more favorable to the lawyer than originally
25 agreed upon, the modification is enforceable as long as it is "fair and reasonable, free from undue
26 influence, and made after a fair and full disclosure of the facts upon which it is predicated." *Val-
ley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d 736, 743-44, 153 P.3d 186 (2007). Here, on the face
of the Amendment, it is clear that the Fee Agreement was modified to be *less* favorable to Lane
Powell than originally agreed upon. Ex. K (stating that Lane Powell will forbear upon collection
of the fees owing for a reasonable time, as long as it would be paid first out of any settlement or
judgment). *Id.* Even still, as set forth herein, the Amendment was fair and reasonable as a matter

1 2008 Amendment, they were modified to be *more* favorable to the DeCourseys: Lane
2 Powell agreed to forebear for a reasonable time in collecting the fees owed to it, on the
3 condition that “Lane Powell will be paid first out of any settlement proceeds or payment
4 of any judgment.” Ex. K at 2. Indeed, the Amendment did not affect the DeCourseys’
5 duty to pay; rather, the DeCourseys specifically agreed they remained “responsible for
6 paying the remaining balance” and future fees. *Id.* In short, the DeCourseys received a
7 full and fair disclosure all material terms at the outset of the representation, and then again
8 in 2008 when the Fee Agreement was amended.

9 In sum, the outstanding balance of fees and costs owed to Lane Powell are reason-
10 able and Lane Powell is entitled to that amount—an amount the DeCourseys promised but
11 unfairly refuse to pay.

12 VI. CONCLUSION

13 For the reasons set forth herein, Lane Powell respectfully requests the Court grant
14 partial summary judgment to Lane Powell on its breach of contract claim, enter an order
15 directing disbursement of the balance of the \$384,881.66 in the Court Registry to Lane
16 Powell, and order the DeCourseys to release a sufficient amount from the amounts held in
17 the form of a supersedeas bond to Lane Powell to cover interest accrued pursuant to the
18 parties’ Fee Agreement (\$44,699.00). A proposed form of order is lodged herewith.

19 DATED this 19th day of October, 2012.

20 McNAUL EBEL NAWROT & HELGREN PLLC

21 By: 

22 Robert M. Sulkin, WSBA No. 15425
23 Malaka M. Eaton, WSBA No. 32837
24 Hayley A. Montgomery, WSBA No. 43339

25 Attorneys for Plaintiff Lane Powell PC

26 of law. Furthermore, the record is bereft of any evidence that the Amendment was either made
under duress or without complete disclosure of the facts. *See, e.g. id.* Reasonable minds cannot
disagree on those points.

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