

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

RYAN M. PSZONKA, et. al.,
Plaintiffs,
v.
SNOHOMISH COUNTY, et. al.,
Defendants.

NO. 14-2-18401-8 SEA
FINAL ORDER ON MOTION FOR
SANCTIONS

THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled Court on Plaintiffs' Motion for Sanctions related to discovery violations, and the Court having reviewed the submissions of the parties, and having received two sets of internal emails among lawyers and experts within the attorney general's office, having received a three-page letter from the State's lawyer with the initial submission, having received two supplemental submissions from Plaintiff, and having consulted via telephone with the assigned special master, Judge Paris Kallas (Ret.), for the purpose of discussing the scope and timing of her role in the process (and with the knowledge and consent of the parties), and the Court having reviewed the CR 2A agreement between the State and Plaintiffs, the Court orders as follows

JUDGE ROGER ROGOFF
KING COUNTY SUPERIOR COURT, DEPT. 47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

DISCUSSION

The Court incorporates the facts from its previous sanctions order by reference. The parties agreed that the State would compensate Plaintiffs \$394,332.02 for costs and attorney fees necessary for Plaintiffs to investigate and pursue the question of deleted emails. The Court has previously determined that monetary sanctions beyond the compensatory amount agreed between the parties is appropriate. See Court's Second Supplemental Order on Sanctions. Part of the Court's order noted that the subsequent discovery of the missing emails might inform the Court's decision on sanctions. Because of the agreement between the parties, however, the Court has been asked to make the sanctions decision immediately without the benefit of anything else.

Other than the settlement, the information before the Court today is the same information before the Court when it issued its preliminary order.

The Court has considered many possibilities at this juncture – from a sanction related to the size of the settlement to a sanction that takes into account the fact that the settlement itself may stem from the Court's adverse inference instruction and thus additional sanctions are unnecessary. The Court must issues sanctions consistent with the purposes set forth in the discovery rules – to deter, punish, compensate, and educate. In considering the amount of sanctions today, the Court wrestled with the following questions:

1. Does the State's resolution, which the Court assumes was partially driven by the existence of the inference instruction, ameliorate some of the harm?

- 1 2. Is it important for the Court to follow through with monetary sanctions
2 because, despite the settlement, a violation of discovery rules is separate
3 from issues inherent in the settlement?
4
5 3. Is the measure of prejudice to Plaintiffs any less or greater today than a week
6 ago? Is it impossible to determine?

7
8 The answer to all these questions is yes.

9 The Court takes this opportunity to note that the State's overall response to the
10 Court's sanctions order has been honorable. While the parties can quibble about the
11 completeness of the State's initial response, it is uncontested that the State cooperated
12 with the Court, stayed focused on the important issues, and directly answered the
13 Court's questions during this process. Specifically, Mr. Tomisser, under immense
14 pressure from the Court over the past few weeks, acted honorably and graciously while
15 still aggressively working to protect and defend his client. His behavior since the
16 revelation of these emails, combined with his office's willingness to serve the public
17 under incredibly difficult circumstances, is the primary reason this monetary sanction is
18 not more by an order of magnitude.


19 Having very little information beyond what has previously been presented, the
20 Court will keep its sanctions order simple. In many legal matters, punitive sanctions
21 track compensatory sanctions times two. The court will simply engage that simple math
22 in this case and double the compensatory sanctions. This is a significant sanction. It is
23 also a sanction designed not to overwhelm or take away from the settlement reached by
24 the parties. As such, the Court imposes a monetary penalty against the State of

1 Washington for \$788,664.04. The parties may include this sanction in its CR 2A
2 agreement and thus complete the settlement between the parties.
3

4 **ORDER**

5 **IT IS SO ORDERED.**

6 DONE IN OPEN COURT this 10th day of October, 2016.
7

8 
9 _____
10 Judge Roger Rogoff