

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, *et al.*

Plaintiffs

vs.

MICHAEL L. WILLIAMS, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY, *et al.*

Defendants.

§ IN THE DISTRICT COURT
§
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§
§
§
§ 200th JUDICIAL DISTRICT
§
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§
§
§ TRAVIS COUNTY, TEXAS

**NOTICE OF FILING SUPPLEMENTAL AFFIDAVIT
AND MOTION FOR AWARD OF EQUITTABLE AND JUST
ATTORNEY'S FEES AND COSTS**

In accordance with the agreement between the parties, and permission of this Honorable Court, the Efficiency Intervenors herein give notice of the filing of the Supplemental Affidavit of J. Christopher Diamond in relation to attorney's fee and costs in the instant case. This notice is a supplement to the previously filed notice of March 5, 2013, and that notice and motion are incorporated herein by reference as if set out verbatim herein.

Respectfully submitted,



By: _____

J. Christopher Diamond
SBN: 00792459
The Diamond Law Firm, P.C.
17484 Northwest Freeway
Suite 150
Houston, Texas 77040
(713) 983-8990
(832) 201-9262 [FAX]

Unofficial copy Travis Co. District Clerk Velda L. Price

Craig T. Enoch
SBN: 00000026
Melissa A. Lorber
SBN: 24032969
ENOCH KEVER PLLC
600 Congress, Suite 2800
Austin, Texas 78701
(512) 615-1200
(512) 615-1198 [FAX]

ATTORNEYS FOR THE EFFICIENCY
INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of February 2014 a true and correct copy of the above and foregoing has been served via email pursuant to agreement of the parties and in compliance with Texas Rule of Civil Procedure:

Attorneys for Plaintiffs:

Richard E. Gray, III.
Toni Hunter
Gray & Becker, P.C.
900 West Ave.
Austin, Texas 78701

Attorneys for Plaintiffs:

David G. Hinojosa
Marisa Bono
Mexican American Legal Defense
and Education Fund, Inc.
110 Broadway, Suite 300

Attorney for Defendants:

Shelley N. Dahlberg
James "Beau" Eccles
Erika Kane
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Attorneys for Plaintiffs:

J. David Thompson, III
Philip Fraissinet
Thompson & Horton LLP
3200 Phoenix Tower, Suite 2000
Houston, Texas 77027

Attorneys for Plaintiffs:

Mark R. Trachtenberg
Haynes and Boone, LLP
1221 McKinney St., Suite 2100
Houston, Texas 77010
San Antonio, Texas 78205

Attorneys for Plaintiffs:

Robert Schulman
Schulman, Lopez & Hoffer
517 Soledad St.
San Antonio, Texas 78205-1508

/s/

J. Christopher Diamond

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al.

Plaintiffs

vs.

ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY, et al.

Defendants.

§ IN THE DISTRICT COURT
§
§
§
§
§ 200th JUDICIAL DISTRICT
§
§
§
§
§ TRAVIS COUNTY, TEXAS

SUPPLEMENTAL AFFIDAVIT OF J. CHRISTOPHER DIAMOND

Before me, the undersigned notary, on this day personally appeared J. Christopher Diamond, a person whose identity is known to me. After administering an oath upon him, upon his oath he said:

1. My name is J. Christopher Diamond. I am over the age of 18 years, have never been convicted of a felony, and am otherwise competent to be a witness. I have personal knowledge of the facts stated in this Affidavit and they are true and correct.
2. This Affidavit is a supplement to the Affidavit of J. Christopher Diamond filed in this cause on March 5, 2013 which is incorporated herein for all purposes, including all attachments. The purpose of this affidavit is to itemize the time spent on the second phase of the trial in this matter.
3. Attorney's fees were incurred in the prosecution of the second phase of this case.
4. I billed a total of 279.8 hours in the second phase of this case at a billing rate of \$400.00 per hour (\$111,920.00). The work performed by me is detailed on the

invoice attached as *Exhibit A* and includes case strategy, drafting of the amended intervention, court appearances, pre-trial preparation, retention and preparation of expert reports and depositions, written discovery, review of voluminous, technical documents, trial preparation, and attendance at and participation in 3-weeks of trial.

5. Costs and expenses were incurred in the prosecution of this case.

6. Texas Civil Practice and Remedies Code § 37.009 allows for the recovery of “. . . costs . . . as are equitable and just.” Reasonable and necessary costs for this second phase of the trial included \$1,072.40 for mileage to and from Houston and Austin to attend trial and hearings, and an estimated \$1,200.00 for chargeable court costs, including the transcript for the second phase of the trial.

7. I am familiar with the work performed in this case and with the hourly fees customarily charged in Texas by attorneys performing legal work similar to the work performed in this case. In my opinion, the fees incurred by me and others in this case were reasonable and necessary for the services performed based upon: (a) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly, particularly given that this case regarding qualitative efficiency is the first of its kind in Texas, and the legal theories and strategy were novel, technical, broad, and opposed by almost all parties in the case; (b) the likelihood that acceptance of this employment prevented me from accepting other employment; (c) the fees customarily charged in this area for the same or similar services for attorneys with similar experience, reputation, and ability; (d) the amount involved and results obtained - this case involved education reform issues that affect every student in the State of Texas; (f) the nature and length of the professional relationship with the

client; (g) the experience, reputation, and ability of the attorneys performing the services; and (h) whether the fee is fixed or contingent on results obtained, or uncertainty of collection before the legal services have been rendered.

8. The Efficiency Intervenors' primary allegation in their most recent Plea in Intervention is that the current system of public free schools in Texas is qualitatively inefficient. All work in this case related to proving and/or defending that singular claim. The Efficiency Intervenors also made allegations regarding the constitutionality of individual statutes. Any evidence obtained or developed in support of those allegations also acted to prove the primary allegation that the current system is qualitatively inefficient. It would be impossible (and unnecessary) to segregate attorney fees and/or expenses as between these allegations as they are intertwined and inter-related. All time and expense billed in this second phase of the case was for the ultimate purpose of proving the system is qualitatively inefficient.

9. The parties agreed to the date on which this supplemental affidavit was due. That date is prior to any post-judgment work on the case until such time as the judgment of the court is final, and the court loses plenary power. The Efficiency Intervenors estimate another \$6,000.00 (15 hours) will be expended during this time frame, and such expected fees are reasonable and necessary.

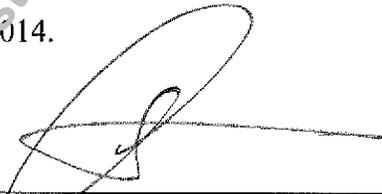
10. The exhibit attached hereto is a document that were recorded or created in the regular course of my business, and for which I am the custodian of records. This exhibit is a record that was made, recorded, and/or noted as part of my regular duties, and I had knowledge of the events or incidents recorded. The recording or creation of this document was made at or near the time of the occurrence of the events or incidents to

which they refer. The attached exhibit is a true and correct copy of the original, or it is an unaltered digital copy of a document initially submitted digitally.

11. It is currently unclear whether this case will be appealed directly to the Texas Supreme Court or first to the Third Court of Appeals and then to the Texas Supreme Court. It is my opinion that, to defend the Efficiency Intervenors' declaratory judgment in an appeal directly to the Texas Supreme Court, I will incur reasonable and necessary legal fees of \$50,000. It is further my opinion that, to defend the Efficiency Intervenors' declaratory judgment in an appeal to the court of appeals, I will incur reasonable and necessary legal fees of \$30,000; if an appeal to the Texas Supreme Court then follows that appeal, I will incur reasonable and necessary legal fees of \$20,000."

Further affiant sayeth not.

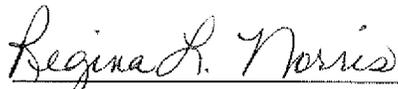
Executed on this 28th day of February 2014.



J. Christopher Diamond

SUBSCRIBED AND SWORN TO BEFORE ME on this the 28th day of February 2014.





NOTARY PUBLIC, State of Texas

My Commission Expires: 7-26-16

INVOICE

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| | |
|----------------|-------------|
| INVOICE NUMBER | 16 |
| INVOICE DATE | FEB-27-2014 |

| | |
|---------------|----------------|
| PAYMENT TERMS | DUE ON RECEIPT |
| DUE DATE | FEB-27-2014 |

FROM:

James Diamond
17484 Northwest Freeway
Suite 150
Houston, TX 77040

BILL TO:

TREE
5121 Bee Caves Rd.
Suite 210
Austin, TX 78746

| DATE | DESCRIPTION | QTY | AMOUNT |
|-----------|--|--------|------------|
| JUN-04-13 | Exchange emails re court conference. | 0.40 | \$160.00 |
| JUN-05-13 | Travel to Austin; attend hearing; travel to Houston. | 6.30 | \$2,520.00 |
| JUN-05-13 | Roundtrip mileage to Austin for hearing. | 294.00 | \$132.30 |
| JUN-05-13 | Parking at hearing. | 1.00 | \$3.00 |
| JUN-07-13 | Exchange correspondence with counsel regarding trial scheduling spreadsheet. | 0.30 | \$120.00 |
| JUN-10-13 | Review new education legislation. | 6.50 | \$2,600.00 |
| JUN-12-13 | Receive draft of motion to reopen evidence. | 0.40 | \$160.00 |
| JUN-13-13 | Review new education legislation. | 5.90 | \$2,360.00 |
| JUN-14-13 | Receive proposed attorney availability spreadsheet. | 0.40 | \$160.00 |
| JUN-18-13 | Receive final spreadsheet regarding attorney availability and Fort Bend's response to motion to reopen the evidence. | 0.50 | \$200.00 |
| JUN-19-13 | Travel to Austin; attend hearing; travel to Houston. | 6.80 | \$2,720.00 |
| JUN-19-13 | Roundtrip mileage to Austin for hearing. | 294.00 | \$132.30 |
| JUN-19-13 | Parking at hearing. | 1.00 | \$3.00 |
| JUL-02-13 | Review of new education legislation. | 6.20 | \$2,480.00 |
| JUL-03-13 | Receive proposed spreadsheet regarding legislation to be included in phase 2 of trial. | 0.40 | \$160.00 |
| JUL-07-13 | Review new education legislation. | 4.50 | \$1,800.00 |
| JUL-09-13 | Review new education legislation. | 3.30 | \$1,320.00 |
| JUL-12-13 | Prepare for and participate in telephone conference with counsel from all parties regarding scope of new trial. | 1.50 | \$600.00 |
| JUL-17-13 | Receive draft advisory to the court. | 0.40 | \$160.00 |
| JUL-18-13 | Receive final draft of advisory to the court. | 0.50 | \$200.00 |
| AUG-02-13 | Receive confidential findings of fact and conclusions of law from the court. | 2.50 | \$1,000.00 |
| AUG-05-13 | Prepare Third Amended Plea in Intervention. | 1.20 | \$480.00 |
| AUG-20-13 | Travel to Austin; conference with client; attend hearing; travel to Houston. | 7.00 | \$2,800.00 |
| AUG-20-13 | Roundtrip mileage to Austin for hearing. | 294.00 | \$132.30 |
| AUG-20-13 | Parking at hearing. | 1.00 | \$5.00 |
| AUG-26-13 | Prepare fact witness designation. | 1.50 | \$600.00 |

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 Austin, TX 78746

| DATE | DESCRIPTION | QTY | AMOUNT |
|-----------|--|--------|------------|
| SEP-04-13 | Travel to Austin; attend meeting with counsel; travel to Houston. | 8.00 | \$3,200.00 |
| SEP-04-13 | Roundtrip mileage to Austin for lunch with C Enoch, M Lorber. | 294.00 | \$132.30 |
| SEP-04-13 | Parking for lunch. | 1.00 | \$3.00 |
| OCT-03-13 | Receive response to plea to jurisdiction. | 0.40 | \$160.00 |
| OCT-07-13 | Receive and discuss expert report. | 2.50 | \$1,000.00 |
| OCT-14-13 | Prepare Efficiency Intervenors' expert designation; receive and review expert designations from other parties. | 3.50 | \$1,400.00 |
| OCT-15-13 | Continued review of expert designations and reports from other parties. | 2.50 | \$1,000.00 |
| OCT-21-13 | Receive and review expert reports on equity issue. | 2.00 | \$800.00 |
| NOV-06-13 | Attend Frost deposition by telephone. | 3.00 | \$1,200.00 |
| NOV-11-13 | Receive and review response to motion for temporary relief. | 0.50 | \$200.00 |
| NOV-19-13 | Travel to Austin; conferences regarding Hammond deposition; prepare for Hammond deposition. | 8.50 | \$3,400.00 |
| NOV-20-13 | Attend Hammond deposition; post-deposition conference with client; travel to Houston. | 6.70 | \$2,680.00 |
| NOV-20-13 | Roundtrip mileage to Austin for Hammond depo. | 294.00 | \$132.30 |
| DEC-06-13 | Attend Wisnoski deposition by telephone. | 3.00 | \$1,200.00 |
| DEC-18-13 | Travel to Austin. | 2.70 | \$1,080.00 |
| DEC-19-13 | Attend Dawn Fisher deposition; post-deposition conference; travel to Houston. | 8.90 | \$3,560.00 |
| JAN-06-14 | Prepare pre-trial filing, including exhibit list and trial scheduling per scheduling order. | 2.00 | \$800.00 |
| JAN-07-14 | Trial preparation, including review of voluminous exhibit lists. | 2.10 | \$840.00 |
| JAN-08-14 | Trial preparation, including review of expert reports, and deposition transcripts. | 8.00 | \$3,200.00 |
| JAN-09-14 | Trial preparation. | 2.00 | \$800.00 |
| JAN-15-14 | Trial preparation; travel to Austin. | 8.00 | \$3,200.00 |
| JAN-16-14 | Attend pre-trial conference; trial preparation; travel to Houston. | 8.00 | \$3,200.00 |
| JAN-16-14 | Roundtrip Mileage Houston to Austin. | 294.00 | \$132.30 |
| JAN-20-14 | Travel to Austin; trial preparation, including review of Lynn Moak power point presentation. | 10.00 | \$4,000.00 |

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| DATE | DESCRIPTION | QTY | AMOUNT |
|-----------|---|--------|--------------|
| JAN-20-14 | Mileage to Houston to Austin. | 147.00 | \$66.15 |
| JAN-21-14 | Attend trial, including Moak testimony; prepare for next day of trial, including review of Cavazos power point presentation. | 11.00 | \$4,400.00 |
| JAN-22-14 | Attend trial, including Moak testimony; prepare for following day, including Zamora testimony. | 9.00 | \$3,600.00 |
| JAN-23-14 | Attend trial, including Zamora testimony; travel to Houston. | 9.50 | \$3,800.00 |
| JAN-23-14 | Mileage Austin to Houston. | 147.00 | \$66.15 |
| JAN-26-14 | Travel to Austin; prepare for trial, including review Wisnoski and Casey power point presentations. | 5.50 | \$2,200.00 |
| JAN-26-14 | Mileage Houston to Austin. | 147.00 | \$66.15 |
| JAN-27-14 | Attend trial, including Cortez testimony; prepare for trial, including Clark power point presentation. | 10.00 | \$4,000.00 |
| JAN-28-14 | Prepare for trial (snow day). | 6.00 | \$2,400.00 |
| JAN-29-14 | Attend trial, including Clark and Pierce testimony; prepare for trial, including review of Sconzo deposition proffer. | 9.00 | \$3,600.00 |
| JAN-30-14 | Attend trial, including Pierce testimony; travel to Houston. | 10.00 | \$4,000.00 |
| JAN-30-14 | Mileage Austin to Houston. | 147.00 | \$66.15 |
| FEB-02-14 | Travel to Austin; prepare for trial, including presentation of intervenors' case. | 6.00 | \$2,400.00 |
| FEB-03-14 | Attend trial, including Pierce testimony and Pfeiffer deposition proffer; prepare for trial, including charter case; Templeton and Dunn; and argument over intervenors' exhibits and deposition excerpts. | 10.00 | \$4,000.00 |
| FEB-04-14 | Attend trial, including charter case; prepare for trial. | 10.00 | \$4,000.00 |
| FEB-05-14 | Attend trial, including Dawn-Fisher testimony; prepare for trial. | 11.00 | \$4,400.00 |
| FEB-06-14 | Attend trial, including Dawn-Fisher and Martinez testimony; prepare for trial. | 10.00 | \$4,000.00 |
| FEB-07-14 | Prepare for trial, including closing arguments, and review of exhibit lists; attend trial, including closing arguments; travel to Houston. | 10.00 | \$4,000.00 |
| FEB-20-14 | Prepare attorney's fees supplemental affidavit. | 4.00 | \$1,600.00 |
| | | TOTAL | \$112,992.40 |