

EXPEDITE
 Hearing is set:
Date: September 6, 2024
Time: 9:00 a.m.
Judge/Calendar: Hon Anne Egeler

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

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

DEBBIE SULLIVAN, in her capacity of Mayor
of Tumwater,

Defendant.

NO. 24-2-01895-34

**DEFENDANT’S REPLY IN SUPPORT
OF MOTION FOR ATTORNEY’S FEES**

Defendant Mayor Debbie Sullivan submits this reply to Plaintiff’s overlength Response Brief, which exceeds the page limitation of LCR 10(d)(2). The Court should reject this brief and grant the Defendant’s Motion for Attorney’s Fees.

I. REPLY ARGUMENTS

A. THE TRO OBTAINED BY PLAINTIFFS WITHOUT PRIOR NOTICE WITHOUT THE PROVISIONS REQUIRED BY CR 65 IS VOID.

Plaintiff’s Brief spends much of its energy at rearguing issues that were already decided and which are irrelevant to the attorney’s fees issues raised by the Defendant’s Motion. What is not factually disputed, and cannot be, is that the Court held a hearing on May 31, 2024 to consider the Defendant’s motion to dissolve the TRO issued on May 24, 2024. The May 31 hearing considered briefing and

1 argument from both sides, unlike the May 24 proceedings which were conducted ex parte and for which
2 the City received no notice of the date, time and place of the hearing.

3 It is also undisputed that the Court granted the City’s motion to dissolve the May 24 TRO. One
4 might miss that salient point in the misdirected response filed by plaintiff. The Court did so because the
5 plaintiff did not have a clear legal or equitable right and was not entitled to any injunctive relief, whether
6 a TRO, the indefinite extension of the TRO that plaintiff sought, or a preliminary injunction. Plaintiff
7 failed to show that it was entitled to relief under the well-established standard established by *Tyler Pipe*
8 *Indus., Inc. v. State, Dep’t of Revenue*, 96 Wn. 2d 785, 792, 638 P.2d 1213 (1982).

9
10 **B. THE TRO OBTAINED BY PLAINTIFF IS WRONGFUL.**

11 Plaintiff’s TRO is also considered “wrongful” on five distinct bases as set forth below. Any of
12 these bases renders plaintiff liable for payment of attorney’s fees under

13
14 **1. Violation of Procedural Due Process:**

15 A TRO is considered wrongful if issued in violation of procedural due process requirements, which
16 would render it void. *Department of Labor and Industries v. Fowler*, 23 Wn.App.2d 509 (2022). Here,
17 the plaintiff obtained the TRO without notifying the City of where it would be seeking the TRO, when the
18 hearing would be conducted, and without providing any notice of the grounds for the TRO. As such, the
19 City was deprived of procedural due process.

20 The Defendant’s motion to dissolve showed that the issuance of the TRO without notice and
21 without the findings and provisions required by CR 65 and RCW 7.40.050 is void. A TRO that violates
22 the minimum dictates of due process and is without notice to the City, and without certifying the reasons
23 why such notice should not be required is void. *In re Estates of Smaldino*, 151 Wn. App. 356, 367–68,
24 212 P.3d 579, 584–85 (2009); *Dep’t of Labor & Indus. v. Fowler*, 23 Wn. App. 2d 509, 532, 516 P.3d 831,
25
26

