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5 SUPERIOR COURT OF WASHINGTON  
6 FOR KING COUNTY

7 SPOKEO, INC.,

Plaintiff,

No. 16-2-07970-9 SEA

8 v.

9 WHITEPAGES, INC.,

Defendant.

ORDER GRANTING  
WHITEPAGES, INC.'S MOTION  
FOR AWARD OF ATTORNEYS'  
FEES AND COSTS

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2 This matter has come before the court on Defendant Whitepages, Inc.'s Motion for  
3 Award of Attorneys' Fees and Costs (Dkt. 395) ("**Motion**").  
4

5 **1. Documents Considered**

6 The Court has considered the pleadings and other documents filed by the parties, and  
7 in particular the following items, including their attachments:

<u>Pleadings</u>	<u>Dkt. No.</u>
Whitepages, Inc.'s Motion for Award of Attorneys' Fees and Costs	395
Declaration of Timothy G. Leyh	396
Declaration of Venkat Balasubramani in Support of Whitepages, Inc.'s Motion for Award of Attorneys' Fees	397
Declaration of James P. Savitt in Support of Whitepages, Inc.'s Motion for Award of Attorneys' Fees	398
Declaration of Larry S. Gangnes in Support of Whitepages, Inc.'s Motion for Award of Attorneys' Fees	399
<i>Errata</i> re Declaration of Venkat Balasubramani Filed April 26, 2018	400
Spokeo's Opposition to Whitepages' Motion for Attorneys' Fees and Costs	402
Whitepages' Reply in Support of Motion for Award of Attorneys' Fees and Costs	403

21  
22 **2. Introduction**

23 On January 16, 2018, this case came before this court for a jury trial. Plaintiff  
24 Spokeo, Inc. ("**Spokeo**") sought to recover damages from Defendant Whitepages, Inc.  
25 ("**Whitepages**") totaling more than 27 million dollars, based upon breach-of-contract claims,  
26

1 claims for fraudulent inducement and negligent misrepresentation, and a claim pursuant to  
2 the Consumer Protection Act (“CPA”).

3 On February 13, 2018, after both parties had rested, and prior to closing arguments,  
4 Whitepages filed and served a Motion for Judgment as a Matter of Law Pursuant to CR 50(a)  
5 (Dkt. 344), requesting the court to enter a judgment in favor of Whitepages and dismissing  
6 all of Spokeo’s claims. The court orally denied Whitepages’ motion. On February 15, 2018,  
7 the court filed an order memorializing the ruling (Dkt. 350).

8 On February 22, 2018, the jury returned a verdict in favor of Spokeo for \$72,915 on  
9 the CPA claim, and found for Whitepages on all of Spokeo’s other claims. Dkt. 353A) The  
10 jury also found in favor of Whitepages on its counterclaim. *Ibid.*

11 Following the trial, both parties filed post-trial motions totaling approximately 2,700  
12 pages. In a separate order filed on this date, the court has:

- 13 • granted Whitepages, Inc.’s Renewed Motion for Judgment as a Matter of Law  
14 on Spokeo’s Consumer Protection Act Claim (Dkt. 360);
- 15 • reversed the jury’s \$72,915 verdict (Dkt. 353A);

16 The court now addresses Whitepages’ Motion for Award of Attorneys’ Fees and  
17 Costs (Dkt. 395).

### 18 **3. Applicable Legal Principles**

#### 19 **A. General Principles for Attorney-Fee Motions**

20 Washington adheres to the “American rule,” which holds that absent a contract,  
21 statute, or recognized equitable principle, attorneys’ fees and costs are not available as either  
22 costs or damages. *City of Seattle v. McCreedy*, 131 Wn.2d 266, 273-74, 931 P.2d 156  
23 (1997); *Dave Johnson, Ins., Inc. v. Wright*, 167 Wn.App. 758, 783, 275 P.3d 339 (2012);  
24 *King County v. Vinci Construction Grands Projets/Parsons RCW/Frontier-Kemper, JV*, 188  
25 Wn.2d 618, 625, 398 P.3d 1093 (2017).  
26

1 RCW 4.84.330 provides that in contractual disputes involving attorney-fee clauses,  
2 the prevailing party is entitled to recover its reasonable fees and costs:

3 In any action on a contract or lease ... where such contract or lease  
4 specifically provides that attorneys' fees and costs, which are  
5 incurred to enforce the provisions of such contract or lease, shall  
6 be awarded to one of the parties, **the prevailing party**, whether he  
7 or she is the party specified in the contract or lease or not, shall be  
entitled to reasonable attorneys' fees in addition to costs and  
necessary disbursements. [emphasis added]

8 For purposes of attorney-fee claims asserted pursuant to RCW 4.84.330, the  
9 prevailing party "is usually one who receives judgment in his or her favor." *Crest, Inc. v.*  
10 *Costco Wholesale Corp.*, 128 Wn.App. 760, 772, 115 P.3d 349 (2005); *Herzog Aluminum,*  
11 *Inc. v. Gen. Am. Window Corp.*, 39 Wn. App. 188, 189, 692 P.2d 867 (1984); *Singleton v.*  
12 *Frost*, 108 Wn.2d 723, 729, 742 P.2d 1224 (1987); *see* 14a Tegland, Wash. Prac., Judgments,  
13 Costs, and Attorney Fees § 36.3 Prevailing Party (2d ed. 2017).

14 Where the parties' contract provides for an award of costs to the prevailing party, the  
15 prevailing party's entitlement to costs is not limited to those set forth in RCW 4.84.010 and  
16 4.84.030. *Ernst Home Center, Inc. v. Sato*, 80 Wn. App. 473, 491, 910 P.2d 486 (1996).

17 A party seeking reimbursement for attorneys' fees and costs bears the burden of  
18 demonstrating that they are reasonable. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151, 859  
19 P.2d 1210 (1993). The trial court must take an active role in assessing the reasonableness of  
20 the fees and costs, and may not simply accept fee declarations from counsel unquestioningly.  
21 *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998); *Berryman v.*  
22 *Metcalf*, 177 Wn.App. 644, 657, 312 P.3d 745 (2013). The party requesting the fees and  
23 costs must provide reasonable documentation of the work performed. *224 Westlake, LLC v.*  
24 *Engstrom Props., LLC*, 169 Wn.App. 700, 734, 281 P.3d 693 (2012).

25 To assist the court in determining the hours reasonably expended, attorneys  
26 must provide reasonable documentation of the work performed. This  
documentation need not be exhaustive or in minute detail, but must

1 inform the court, in addition to the number of hours worked, of the  
2 type of work performed and the category of attorney who performed  
the work (i.e., senior partner, associate, etc.).

3 *Miller v. Kenny*, 180 Wn.App. 772, 822, 325 P.3d 278 (2014) (quoting *Bowers v.*  
4 *Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983)).

5 Counsel generally must provide contemporaneous records documenting the hours  
6 worked. *Mahler v. Szucs*, 135 Wn.2d 398, 434, 957 P.2d 632 (1998), overruled on other  
7 grounds by *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643, 658–59, 272 P.3d 802  
8 (2012). If contemporaneous records are not provided, any reconstructed hours “should be  
9 credited only if reasonable under the circumstances and supported by other evidence such as  
10 testimony or secondary documentation.” *Frank Music Corp. v. Metro–Goldwyn–Mayer Inc.*,  
11 886 F.2d 1545, 1557 (9th Cir.1989); accord, *Mahler*, 135 Wn.2d at 434–35, 957 P.2d 632;  
12 *Miller v. Kenny*, 180 Wn.App. 772, 822–823, 325 P.3d 278 (2014) (permitting attorneys to  
13 rely on reconstructed time records).

14 Recovery is allowed for reasonable attorneys’ fees and costs incurred in preparing an  
15 application for an award of attorneys’ fees and costs. *Steele v. Lundgren*, 96 Wn.App. 773,  
16 781–82, 982 P.2d 619 (1999).

17 The court must make findings of fact and conclusions of law in support of any award  
18 of attorneys’ fees. *Mahler*, 135 Wn.2d at 435, 957 P.2d 632. The findings must show how  
19 the court has resolved disputed issues of fact, and the conclusions must explain the court’s  
20 analysis. *Berryman*, 177 Wn.App. at 658, 312 P.3d 745.

21 A party may recover fees incurred for legal work performed by paralegals/legal  
22 assistants. *Absher Const. Co. v. Kent School Dist. No. 415*, 79 Wn.App. 841, 917 P.2d 1086  
23 (1995). In *Absher*, the Court of Appeals set the following criteria for determining whether  
24 compensation for the time worked by non-lawyer personnel may be included in an attorney-  
25 fee award:

1 (1) the services performed by the non-lawyer personnel must be  
2 legal in nature; (2) the performance of these services must be  
3 supervised by an attorney; (3) the qualifications of the person  
4 performing the services must be specified in the request for fees in  
5 sufficient detail to demonstrate that the person is qualified by  
6 virtue of education, training, or work experience to perform  
7 substantive legal work; (4) the nature of the services performed  
8 must be specified in the request for fees in order to allow the  
9 reviewing court to determine that the services performed were  
10 legal rather than clerical; (5) as with attorney time, the amount of  
11 time expended must be set forth and must be reasonable; and (6)  
12 the amount charged must reflect reasonable community standards  
13 for charges by that category of personnel.

14 *Absher Constr. Co. v. Kent School Distr. No. 415*, 79 Wn.App. at 845, 917 P.2d 1086.

15 In cases involving claims based upon the Consumer Protection Act, Chapter 19.86  
16 RCW (“CPA”), attorneys’ fees generally must be segregated into the time “spent on those  
17 theories essential to the CPA and the time spent on legal theories relating to the other causes  
18 of action. *Travis v. Washington Horse Breeders Ass’n, Inc.* 111 Wn.2d 396, 411, 759 P.2d  
19 418 (1988). However,

20 where “the trial court finds the claims to be so related that no  
21 reasonable segregation of successful and unsuccessful claims can  
22 be made, there need be no segregation of attorney fees.” [*Hume v.*  
23 *American Disposal Co.*, 124 Wn.2d 656], 673, 880 P.2d 988  
24 [1994].

25 *Mayer v. Sto Industries, Inc.* 156 Wn.2d 677, 693, 132 P.3d 115 (2006). *See also Bright v.*  
26 *Frank Russell Investments*, 191 Wn.App. 73, 79-80, 361 P.3d 245 (2015).

#### 21 **B. Lodestar Fee Calculation and Adjustments**

22 A determination of reasonable attorney fees begins with a calculation of the  
23 “lodestar” fee amount,

24 which is the number of hours reasonably expended on the litigation  
25 multiplied by a reasonable hourly rate. *Mahler [v. Szucs]*, 135 Wn.2d  
26 [398] at 433–34, 957 P.2d 632 [1998]. A lodestar fee must comply  
with the ethical rules for attorneys, including the general rule that a  
lawyer shall not charge an unreasonable fee. RPC 1.5; *Fetzer*, 122  
Wn.2d at 149–50, 859 P.2d 1210. This consideration applies whether



1 one's fee is being paid by a client or the opposing party. *Fetzer*, 122  
2 Wn.2d at 156, 859 P.2d 1210.

3 *Berryman*, 177 Wn.App. at 660, 312 P.3d 745.

4 It may be reasonable to adjust the lodestar fee amount upward or downward,  
5 depending on various factors, such as:

- 6 • “the size of the amount in dispute in relation to the fees requested,” *Fetzer*,  
7 122 Wn.2d at 150, 859 P.2d 1210;
- 8 • the novelty and complexity of the disputed factual and legal issues, *Id.*, at  
9 156; the hourly rate of opposing counsel, *Boeing v. Sierracin Corp.*, 108  
10 Wn.2d 38, 66, 738 P.2d 665 (1987);
- 11 • the level of skill required by the litigation, time limitations imposed on the  
12 litigation, the amount of the potential recovery, the attorneys’ reputations, and  
13 the undesirability of the case. *Bowers v. Transamerica Title Ins. Co.*, 100  
14 Wn.2d 581, 598, 676 P.2d 193 (1983).
- 15 • the number of hours devoted to “unsuccessful claims, duplicated effort, or  
16 otherwise unproductive time,” *Miller v. Kenny*, 180 Wn.App. at 823, 325  
17 P.3d 278; *Bowers*, 100 Wn.2d at 597, 675 P.2d 193; *Berryman*, 177 Wn.App.  
18 at 660-665, 312 P.3d 745; *Chuong Van Pham v. City of Seattle*, 159 Wn.2d  
19 527, 538, 151 P.3d 976 (2007); *Collins v. Clark Cty Fire Dist. No. 5*, 155  
20 Wn.App. 48, 99-101, 231 P.3d 1211 (2010);
- 21 • whether some of the work may be useful in ancillary, parallel, or future  
22 litigation. *Absher Constr. Co. v. Kent School Distr. No. 415*, 79 Wn.App. at  
23 847, 917 P.2d 1086;

24 A comparison of hours and rates charged by opposing counsel is probative of the  
25 reasonableness of a request for attorney fees by prevailing counsel. *Fiore v. PPG Indus.,*  
26 *Inc.*, 169 Wn.App. 325, 354, 29 P.3d 972 (2012). “Where a defendant, challenging a



1 plaintiff's attorney fee petition, contends that the request includes unnecessary or excessive  
2 charges, the amount of time expended by the first party's counsel in performing the same  
3 task 'may well be the best measure of what amount of time is reasonable for this task.'" *Ibid.*  
4 (quoting *Davis v. Fid. Techs. Corp.*, 180 F.R.D. 329, 332 (W.D. Tenn. 1998). *See also*  
5 *Boeing v. Sierracin Corp.*, 108 Wn.2d 38, 66, 738 P.2d 665 (1987).

6 The determination of a fee award

7 should not become an unduly burdensome proceeding for the court or  
8 the parties. An explicit hour-by-hour analysis of each lawyer's time  
9 sheets is unnecessary as long as the award is made with a  
10 consideration of the relevant factors and reasons sufficient for review  
11 are given for the amount awarded. ... An award of substantially less  
than the amount requested should indicate at least approximately how  
the court arrived at the final numbers, and explain why discounts were  
applied.

12 *Absher Constr. Co. v. Kent School Distr. No. 415*, 79 Wn.App. at 848, 917 P.2d 1086.

13 Trial courts are encouraged to create a "simple table" to summarize their calculation  
14 of the lodestar figure. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d at 597-598, 676  
15 P.2d 193.

16 In certain rare circumstances, it may be appropriate to adjust the lodestar figure with a  
17 multiplier. *Berryman*, 177 Wn.App. at 665-678, 312 P.3d 745.

18 The burden of justifying any deviation from the lodestar figure rests on the party  
19 proposing the deviation. *Bowers*, 100 Wn.2d at 598, 675 P.2d 193. Here, Whitepages has  
20 not requested a deviation from the lodestar figure.

21 **4. Findings of Fact**

22 Based on the evidence presented by the parties in connection with Whitepages'  
23 Motion, the court makes the following findings of fact. To the extent that any finding of fact  
24 may be a conclusion of law, it should be considered to be such.

1                   **A.     Pretrial Proceedings and Trial**

2           1.       This action came before the Court on Spokeo's Complaint for Damages and  
3 Injunctive Relief (Dkt. 1), and Whitepages' Counterclaim (Dkt. 9). At issue primarily was  
4 Whitepages' decision to stop running advertising campaigns under a Marketplace  
5 Participation Agreement ("MPA") executed by the parties, and Spokeo's failure to pay for  
6 work performed by Whitepages under the MPA.

7           2.       The MPA contains two provisions governing the award of attorneys' fees  
8 and costs. First, the MPA provides, "[t]he prevailing party in any legal action between the  
9 parties related to this Agreement shall be entitled to its reasonable attorneys' fees and legal  
10 costs." Trial Ex. 484 ¶ 14.4 at p. 8. Second, the MPA provides: "CUSTOMER shall  
11 reimburse WHITEPAGES for all of WHITEPAGES' costs arising from collecting  
12 undisputed past due amounts, including its reasonable attorney's fees." Trial Ex. 484 ¶ 6 at  
13 p. 5.

14          3.       Spokeo brought claims against Whitepages for breach of contract, implied  
15 duty of good faith and fair dealing, violation of the Consumer Protection Act ("CPA"),  
16 negligent misrepresentation, and fraudulent inducement, based primarily on Whitepages'  
17 decision to stop running advertising campaigns and Spokeo's allegation that Whitepages  
18 breached paragraph 8 of the MPA, entitled "Confidentiality," in building Whitepages  
19 Premium, a product that directly competed with products offered by Spokeo.

20          4.       Whitepages counterclaimed for breach of contract, based on Spokeo's failure  
21 to pay an invoice seeking payment for work undisputedly performed by Whitepages.

22          5.       On September 15, 2016, while this case was pending and days before  
23 Whitepages filed a motion for summary judgment on its counterclaim, Spokeo issued a  
24 check to Whitepages for the principal amount due under the past due invoice, in the amount  
25 of \$200,034.16. Spokeo refused to pay costs, interest, and attorneys' fees Whitepages had  
26 incurred to that point in attempting to collect payment on the invoice.

1           6.       From January 16, 2018, through February 22, 2018, this case was tried to a  
2 12-person jury.

3           7.       Prior to trial, Spokeo sought just under \$25,000,000 on its various claims.  
4 At trial, Spokeo increased its damages demand to \$27,296,509 (*See* Dkt. 357, Tab 1).

5           8.       The jury returned its verdict on February 22, 2018 (Dkt. 353A). The jury  
6 found in favor of Whitepages on Spokeo's two breach of contract claims, the fraudulent  
7 inducement claim, and the negligent misrepresentation claim. The jury also found in  
8 Whitepages' favor on Whitepages' counterclaim for breach of contract, and awarded  
9 Whitepages \$18,003.06 in damages on that claim.

10          9.       The jury found in Spokeo's favor on Spokeo's CPA claim, and awarded  
11 Spokeo \$72,915 in damages on that claim (Dkt. 353A).

12          10.      By separate order, the court has granted Whitepages' Renewed Motion for  
13 Judgment as a Matter of Law on Spokeo's CPA Claim and has reversed the jury's \$72,915  
14 verdict on the CPA claim.

15          11.      Whitepages is the prevailing party on each of Spokeo's claims, and on its  
16 counterclaim.

17                   **B.   Whitepages' Counsel's Hourly Rates**

18          12.      Whitepages was represented by Harrigan Leyh Farmer & Thomsen LLP  
19 ("HLFT") and Focal PLLC ("Focal"). The hourly rates charged by HLFT lawyers and  
20 Focal lawyers were reasonable given the skill, experience, and reputation of the lawyers  
21 involved, and the rates charged by lawyers with comparable skill and experience in Seattle,  
22 Washington. *See* Decl. of James P. Savitt at ¶ 5 (Dkt. 398); Decl. of Larry S. Gangnes at  
23 ¶ 6 (Dkt. 399).

24          13.      The hourly rates charged by HLFT lawyers and Focal lawyers (*See* ¶ \_\_,  
25 below.) are comparable to the hourly rates charged by Spokeo's lawyers at Cozen  
26

O'Connor. For example, the following lawyers at Cozen O'Connor charged Spokeo the following hourly rates during the course of this case:

Timekeeper		Hourly Rate	
Cozen O'Connor		Low	High
William H. Walsh	Partner	\$475	\$510
Karl Neumann	Associate	\$275	\$295
Anusha Jones	Associate	\$275	\$350
Kellyn Green	Paralegal	\$190	\$215

See Amended Decl. of William H. Walsh in support of Plaintiff Spokeo, Inc.'s Motion for Attorneys' Fees, Costs, and Treble Damages, at 2, ¶ 4 (Dkt. 381).

14. Spokeo has not objected to the hourly rates of HLFT lawyers or Focal lawyers.

#### C. Calculation of Lodestar Fee Amount

15. Whitepages has requested a lodestar fee amount consisting of the following hours of work performed by 23 lawyers and paralegals from approximately April 6, 2016 (the date on which Spokeo filed its complaint), through March 30, 2018:

Timekeeper		Hours	Hourly Rate			Fees
HLFT			Average	June-Oct	Oct-Mar	
Timothy Leyh	Partner	1005.7	\$613	\$650	\$595	\$616,602.00
Tyler Farmer	Partner	870.4	\$534	\$550	\$525	\$465,055.00
Kristin Ballinger	Partner	1262.5	\$434	\$450	\$425	\$547,857.50
Shane Cramer	Partner	139.6	\$425	\$450	\$425	\$59,330.00
Jessica Baxter	Associate	195.9	\$425	\$425	\$425	\$83,257.50
Lindsay Calkins	Associate	92.4	\$425	\$425	\$425	\$39,270.00
Kate Nielson	Associate	13.1	\$425	\$425	\$425	\$5,567.50
Xiang Li	Associate	120.3	\$400	\$400	\$400	\$48,120.00
Peter Hawkins	Attorney	555.9	\$348	\$375	\$335	\$193,334.50
Kellie McDonald	Paralegal	566.7	\$225	\$245	\$220	\$127,369.00
Amy Stanton	Paralegal	731.2	\$234	\$245	\$220	\$171,001.50
HLFT subtotal						\$2,356,764.50
FOCAL		Hours	Average Hourly Rate			Fees
Venkat Balasubramani	Partner	299.5	\$350			\$104,825.00

Timekeeper	HLFT	Hours	Hourly Rate			Fees
			Average	June-Oct	Oct-Mar	
Nate Webb	Partner	6.7		\$350		\$2,345.00
Alison Chyan	Associate	1.1		\$275		\$302.50
Patrick Devine	Associate	13.8		\$275		\$3,795.00
Garrett Heilman	Associate	53.7		\$275		\$14,767.50
Stacia Lay	Associate	6.7		\$275		\$1,842.50
Sean McChesney	Associate	178.4		\$275		\$49,060.00
Barb Rhoads-Weaver	Associate	369.7		\$275		\$101,667.50
Margaret Cowan Schmidt	Attorney	47.1		\$275		\$12,952.50
Tonya Gisselberg	Attorney	52.2		\$275		\$14,355.00
Max Sitcov	Attorney	9.2		\$275		\$2,530.00
Misty Elwood	Paralegal	212.1		\$150		\$31,815.00
<b>Focal Subtotal</b>						<b>\$340,257.50</b>
						<b>Total Fees</b>
<b>Lodestar Fee Amount</b>						<b>\$2,697,022.00</b>

16. Whitepages' counsel at HLFT and Focal have submitted detailed contemporaneous records to support Whitepages' fee request. The Court has reviewed the declarations of counsel submitted in support of Whitepages' motion, in light of the lodestar fee method described in *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983), and the other cases cited herein, and the criteria stated in RPC 1.5. The court finds:

- a. The factual and legal issues in this case were complex.
- b. The quality of the legal work performed by Whitepages' counsel in this case was excellent and helpful to the Court.
- c. To the extent shown on the tables attached hereto and incorporated herein as Exhibits 1-A, 1-B, 1-C, 1-D, and 1-E, the hours expended by Whitepages' counsel for which Whitepages seeks reimbursement were reasonable, given the needs of the case, the issues presented, the claims asserted by Spokeo, the positions taken by Spokeo, the stakes in the case, and the results obtained.

1  
2 d. To the extent shown on the tables attached hereto and incorporated herein as  
3 Exhibits 1-A, 1-B, 1-C, and 1-D, and 1-E, Whitepages' counsel efficiently  
4 presented their evidence and legal arguments; the lodestar fee amount  
5 requested by Whitepages for work performed by its attorneys, as adjusted by  
6 the court, is reasonable; the amount of fees and costs requested by  
7 Whitepages, as adjusted by the court, is reasonable in light of the novelty and  
8 complexity of the legal and factual questions involved and the risks that the  
9 lawsuit posed to Whitepages; and the total amount of fees requested by  
10 Whitepages' lawyers, as adjusted by the court, is reasonable and  
11 commensurate with those lawyers' respective levels of experience and  
12 ability.

13 17. Whitepages prevailed in its defense against all of Spokeo's claims, which  
14 totaled approximately \$27,000,000, and also secured recovery of one hundred percent of the  
15 damages that it sought on its counterclaim.

16 18. Whitepages obtained an excellent result in this action. The jury found that  
17 Whitepages did not breach the parties' MPA, did not breach the implied duty of good faith  
18 and fair dealing, did not commit fraud, and did not make negligent misrepresentations.

19 19. Whitepages faced the prospect that, had Spokeo prevailed on these claims,  
20 other Whitepages marketplace participants might file follow-on lawsuits against  
21 Whitepages.

22 20. Whitepages has not requested, and the court therefore finds that it is not  
23 necessary to consider whether to adjust the lodestar figure by a multiplier based on the nature  
24 of the work performed or the quality of the work performed. *Berryman v. Metcalf*, 177  
25 Wn.App. 644, 665-678, 312 P.3d 745 (2013).  
26



1                   **D.     Adjustments to Lodestar Fee Amount**

2                   **1.     Reduction for Fees and Costs That Whitepages Incurred in**  
3                   **Unsuccessfully Defending Against Spokeo's Discovery Motion**

4                   21.     By order dated December 19, 2016 (Dkt. 81), the court granted a discovery  
5 motion (Dkt. 70) filed by Spokeo, and the court ordered Whitepages to answer certain  
6 interrogatories and requests for production.

7                   22.     Although Spokeo did not seek, and the court did not enter an order pursuant  
8 to CR 37 requiring Whitepages to reimburse Spokeo for the reasonable attorneys' fees and  
9 costs that Spokeo incurred in pursuing its discovery motion, it would be inappropriate for  
10 Whitepages to be allowed to recover from Spokeo the attorneys' fees that Whitepages  
11 incurred in unsuccessfully opposing Spokeo's discovery motion. *Miller v. Kenny*, 180  
12 Wn.App. at 823, 325 P.3d 278; *Bowers*, 100 Wn.2d at 597, 675 P.2d 193; *Berryman*, 177  
13 Wn.App. at 660-665, 312 P.3d 745; *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527,  
14 538, 151 P.3d 976 (2007); *Collins v. Clark Cty Fire Dist. No. 5*, 155 Wn.App. 48, 99-101,  
15 231 P.3d 1211 (2010).

16                  23.     Whitepages has not attempted to segregate and exclude from its request the  
17 attorneys' fees and costs that it incurred in its unsuccessful defense against Spokeo's  
18 discovery motion.

19                  24.     Based upon a review of Whitepages' billing records attached to the  
20 Declaration of Timothy Leyh (Dkt. 396), the court determines that Whitepages' counsel  
21 charged Whitepages fees totaling approximately \$15,842.50 in opposing Spokeo's  
22 discovery motion. See Ex. 1-A and Ex. 1-B, attached.

23                  25.     It is appropriate to segregate and exclude from Whitepages' fee award the  
24 sum of \$15,842.50, which is the approximate amount of fees that Whitepages incurred in its  
25 unsuccessful defense against Spokeo's discovery motion. See Ex. 1-A and Ex. 1-B,  
26 attached.



1           26. The court will reduce Whitepages' fee award by the sum of \$15,842.50,  
2 which reflects the approximate amount of fees that Whitepages incurred in its unsuccessful  
3 defense against Spokeo's discovery motion.  
4

5                   **2. No Reduction or Increase for Fees and Costs That Whitepages**  
6                   **Already Has Recovered from Spokeo for Spokeo's CR 37 Violation**

7           27. By order dated January 17, 2017 (Dkt. 93), the court granted Whitepages'  
8 motion to compel (Dkt. 88) and ordered Spokeo to produce certain documents in response  
9 to Whitepages' requests for production of documents.

10          28. By order dated February 8, 2017 (Dkt. 103), the court granted Whitepages'  
11 motion for attorneys' fees incurred with respect to Whitepages motion to compel, and  
12 ordered Spokeo to pay \$5,427.50 to reimburse Whitepages for its fees incurred with respect  
13 to the motion. Spokeo paid that sum to Whitepages.

14          29. Whitepages asserts that it has segregated and excluded from its fee request  
15 the \$5,427.50 that Whitepages already recovered in February 2017 as sanctions imposed by  
16 the Court against Spokeo for Spokeo's discovery violations. *See* Motion at 7, ll. 1-2 (Dkt.  
17 395).

18          30. Thus, it is not necessary for the court to adjust Whitepages' fee award by any  
19 amount relating to Whitepages discovery motion. *See* Ex. 1-A, attached.

20                   **3. Spokeo's Credit for Its Fees Incurred in**  
21                   **Pursuing Spokeo's Spoliation Motion**

22          31. On February 12, 2018, the court issued an order (Dkt. 343) granting Spokeo's  
23 Motion *in Limine* Regarding Spoliation and Prejudicial Disclosure (Dkt. 253 and Dkt. 296).

24          The order states, in part:

25                   the Plaintiff may file a motion for an order reimbursing it for its  
26                   reasonable costs, including its reasonable attorneys' fees and costs,  
                    incurred in litigating Plaintiff's CR 37(b) discovery violation, and  
                    including its reasonable fees and costs incurred in litigating the  
                    spoliation issue.

1 Order Granting Spokeo's Motion *in Limine* Regarding Spoliation and Prejudicial Disclosure  
2 at 16 (Dkt. 343).

3 32. In a declaration, Spokeo's lead counsel states:

4 As of March 15, 2018, the total amount of fees [relating to Spokeo's  
5 spoliation motion] is \$53,795 based on 155.3 hours of work . . . . The  
6 work performed and hours expended were reasonable and necessary  
7 ...

8 Amended Declaration of William H. Walsh in Support of Plaintiff Spokeo, Inc.'s Motion for  
9 Attorneys' Fees, Costs, and Treble Damages at 3, ¶ 8 (Dkt. 381). That sum is supported by  
10 the detailed billing records contained in Ex. C to Mr. Walsh's declaration.

11 33. In a separate supporting declaration, Esther Garcia states that her company,  
12 Advanced Discovery, has billed Spokeo a total of \$10,221.97 "relating to the spoliation  
13 issues." Declaration of Esther Garcia in Support of Plaintiff Spokeo, Inc.'s Motion for  
14 Attorneys' Fees and Costs at 2, ¶ 4 (Dkt. 380).

15 34. Spokeo's attorneys' fees (\$53,795) and Spokeo's costs (\$10,221.97) relating  
16 to the spoliation motion total \$64,016.97.

17 35. Although Whitepages disagrees with the court's ruling on Spokeo's  
18 spoliation motion, Whitepages has not objected or otherwise responded specifically with  
19 respect to the \$64,015.97 sum of attorneys' fees and costs that Spokeo is seeking with  
20 respect to Spokeo's spoliation motion.

21 36. Spokeo's fees (\$53,795) and Spokeo's costs (\$10,221.97) relating to the  
22 spoliation motion (totaling \$64,016.97) are reasonable and necessary.

23 37. Spokeo is entitled to a credit in the amount of \$64,016.97, which shall be  
24 deducted from the total amount of fees and costs awarded to Whitepages. *See* Ex. 1-A,  
25 attached.  
26

1                                   **4.     Reduction for Nonrecoverable Fees**  
2                                   **That Whitepages Incurred Relating to**  
3                                   **Spokeo's Spoliation Motion**

4           38.     Whitepages has not segregated and excluded from its request the attorneys'  
5 fees and costs that it incurred in opposing Spokeo's January 2018 spoliation motion (See  
6 Dkt. 296D).

7           39.     Based upon a review of Whitepages' billing records attached to the  
8 Declaration of Timothy Leyh (Dkt. 396), the court determines that Whitepages' counsel  
9 charged Whitepages fees totaling approximately \$156,769 in unsuccessfully opposing  
10 Spokeo's spoliation motion. See Ex. 1-A and Ex. 1-D, attached.

11           40.     It is appropriate to segregate and exclude from Whitepages' fee award the  
12 sum of \$156,769, which is the approximate amount of fees that Whitepages incurred in its  
13 unsuccessful defense against Spokeo's spoliation motion. See Ex. 1-A and Ex. 1-D,  
14 attached.

15           41.     The court will reduce Whitepages' fee award by the sum of \$156,769 which  
16 reflects the approximate amount of fees that Whitepages incurred in its unsuccessful defense  
17 against Spokeo's spoliation motion. See Ex. 1-A and Ex. 1-D, attached. *Miller v. Kenny*,  
18 180 Wn.App. at 823, 325 P.3d 278; *Bowers*, 100 Wn.2d at 597, 675 P.2d 193; *Berryman*,  
19 177 Wn.App. at 660-665, 312 P.3d 745; *Chuong Van Pham v. City of Seattle*, 159 Wn.2d  
20 527, 538, 151 P.3d 976 (2007); *Collins v. Clark Cty Fire Dist. No. 5*, 155 Wn.App. 48, 99-  
21 101, 231 P.3d 1211 (2010).

22                                   **5.     Reduction For Nonrecoverable Fees for Duplicative Work by**  
23                                   **Whitepages' Second Law Firm**

24           42.     On June 14, 2016, the lawyers of Harrigan Leyh Farmer & Thomsen LLP  
25 filed a Notice of Association of Counsel (Dkt. 168). By that date, this case had been ongoing  
26 for more than 14 months.

1           43. The court must “exclude from the requested hours any wasteful or  
2           duplicative hours.” *Mahler v. Szucs*, 135 Wn.2d 398, 434, 957 p.2d 632 (1998).

3           44. Although the court does not question the skill and experience of any of  
4           Whitepages’ counsel, and although it was Whitepages’ prerogative to hire as many lawyers  
5           to represent it as it wished, it would not be fair to require Spokeo to pay for the substantial  
6           extra work that the lawyers and paralegals of HLFT were required to exert in orienting  
7           themselves to the case. *See Absher Constr. Co. v. Kent School Distr. No. 415*, 79 Wn.App.  
8           841, 848, 917 P.2d 1086 (1995); *Berryman v. Metcalf*, 177 Wn.App. 644, 662, 312 P.3d 745  
9           (2013).

10          45. Whitepages has not segregated or excluded from its request the attorneys’  
11          fees and costs that HLFT lawyers charged for their work to orient themselves to the case  
12          and perform tasks that Focal lawyers were performing or already had performed.

13          46. During the one-month period following Whitepages’ engagement of HLFT,  
14          Whitepages was paying two law firms to represent it, and HLFT lawyers were performing  
15          a substantial amount of duplicative work. Spokeo should not be required to pay for HLFT’s  
16          unnecessary duplicative work.

17          47. Based upon a review of Whitepages’ billing records attached to the  
18          Declaration of Timothy Leyh (Dkt. 396), the court determines that HLFT charged  
19          Whitepages fees totaling approximately \$171,873 during the first month after Whitepages  
20          engaged HLFT. *See* Ex. 1-A and Ex. 1-C, attached.

21          48. It is appropriate to segregate and exclude from Whitepages’ fee award the  
22          sum of \$171,873, which reflects the approximate amount of fees that HLFT charged  
23          Whitepages during the first month after Whitepages engaged HLFT. *See* Ex. 1-A and Ex.  
24          1-C, attached.

1           49. The court will reduce Whitepages' attorney-fee award by the sum of  
2 \$171,873, to account for unnecessary duplicative work that the lawyers of HLFT performed  
3 in orienting themselves to the case. See Ex. 1-A and Ex. 1-C, attached.

4                   **6. Reduction For Nonrecoverable Fees for Defending**  
5                   **Against Spokeo's Non-Contract Claims**

6           50. To the extent reasonably possible, Whitepages' counsel has appropriately  
7 attempted to segregate the fees that Whitepages incurred in this litigation so as to quantify  
8 and distinguish between the recoverable fees that were incurred (1) in defending against  
9 Spokeo's unsuccessful breach contract claims and in prosecuting its own successful breach  
10 of contract counterclaim, versus (2) the non-recoverable fees Whitepages incurred in  
11 defending against Spokeo's tort and CPA claims.

12           51. Whitepages has segregated and excluded from its fee request the sum of  
13 \$212,604.50, which it incurred in defending against Spokeo's CPA, tort, and potential unjust  
14 enrichment claims. Decl. of T. Leyh at 3, and Ex. 3 (Dkt. 396).

15           52. Except to the extent that Whitepages already has segregated its legal work  
16 relating to Spokeo's non-contract claims, the court finds that Spokeo's claims otherwise are  
17 so related that it is not reasonably possible to further segregate and relate any of counsel's  
18 fees or costs to any particular claim, because Spokeo's claims are based on a common core  
19 of facts; and the court thus finds that it is unnecessary for Whitepages to attempt to segregate  
20 its legal work further. *Mayer v. Sto. Indus.*, 156 Wn.2d 677, 693, 132 P.3d 115 (2006)  
21 (citing *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 673, 880 P.2d 988 (1994); *Bright v.*  
22 *Frank Russell Investments*, 191 Wn.App. 73, 80, 361 P.3d 245 (2015); *Gosney v. Fireman's*  
23 *Fund Insurance Company*, 419 P.3d 447, 479-480 (Wn.App. Div. I (2018)). Consistent with  
24 this, the court notes that Spokeo has urged the court to find that all of Spokeo's claims,  
25 including its CPA claim, fraud claim, and negligent representation claim, are based on a  
26 common core of facts. See Plaintiff Spokeo, Inc.'s Motion for Attorneys' Fees, Costs and

1 Treble Damages at 8-12 (Dkt. 373E); and Amended Declaration of William H. Walsh in  
2 support of Plaintiff Spokeo, Inc.'s Motion for Attorneys' Fees, Costs, and Treble Damages  
3 at 4, ¶ 11 (Dkt. 381).

4 53. The court finds that Whitepages' voluntary exclusion of \$212,604.50 relating  
5 to its defense against Spokeo's tort and CPA claims is reasonable. Thus, the court declines  
6 to make a further reduction with respect to Whitepages' defense against Spokeo's non-  
7 contract claims, beyond the \$212,604.50 that Whitepages already has excluded. *See* Ex.  
8 1-A, attached.

9  
10 **7. *Additional Reductions to Mitigate Effect of Overstaffing and***  
***Duplicative Work by Whitepages' Law Firms***

11 54. The court has applied a further 15% reduction to HLFT's fees to account for  
12 the redundancy that occurred when, only weeks before the then-scheduled trial date, HLFT  
13 assigned four partners and five associates to become familiar with this case, complete  
14 discovery, and complete preparations for trial on relatively short notice. As noted above, it  
15 was Whitepages' prerogative to engage HLFT to take over defense of the case, but Spokeo  
16 should not be held responsible for the overstaffing and redundancy that necessarily occurred  
17 as a result of Whitepages' decision.

18 55. The court has applied a further 10% reduction to Focal's fees to account for  
19 the redundancy that necessarily occurred by reason of Focal's assigning eleven lawyers -  
20 two partners and nine associates - to work on this case.

21 **8. *Spokeo's Objection Regarding Work by Legal Assistants***

22 56. Spokeo objects that "much of [Whitepages'] paralegal work appears to be  
23 non-legal in nature and is therefore not recoverable." Opposition at 11 (Dkt. 402).  
24 Elsewhere in its Opposition, however, Spokeo states:

25 *Spokeo does not expect the court to make a ruling on individual time*  
26 *entries but simply requests that the Court make a just determination in*  
*light of the appropriate principles. [Emphasis added]*



1 Opposition at 7 (Dkt. 402).

2  
3 57. In accordance with Spokeo's request, the court has reviewed generally the  
4 time entries by Whitepages' paralegals, and the amounts charged for the legal services  
5 performed by Whitepages' paralegals. The court finds that the paralegals' hourly rates are  
6 reasonable, that the paralegals' charges are reasonable, and that the paralegals' charges  
7 reflect reasonable community standards for services by paralegals engaged in commercial  
8 litigation in King County. *Absher Const. Co. v. Kent School Dist. No. 415*, 79 Wn.App.  
9 841, 917 P.2d 1086 (1995).

10 **9. Spokeo's Other Objections to Whitepages' Fee Request**

11 58. Spokeo asserts a number of other general objections to Whitepages' Motion  
12 (*See, for example*, Spokeo's arguments with headings, "Whitepages' Lodestar Analysis Is  
13 Overreaching," (Opposition at 6); "Whitepages Fails to Provide Sufficient Support for a Fee  
14 Award," (Opposition at 8); "Whitepages' Scorched Earth Tactics Are Not Recoverable,"  
15 (Opposition at 9); "Whitepages' Reasonableness Arguments Are Unpersuasive,"  
16 (Opposition at 11)). The court has considered these general objections and, to the extent  
17 that the court agrees that such objections have merit, the court has reduced Whitepages fee  
18 award. *See* Exhibit 1, attached.

19 **E. Whitepages' Costs**

20 59. In defending against Spokeo's contract claims, and in prosecuting its own  
21 counterclaim for the collection of the past due invoice amount, Whitepages requests  
22 statutory and non-statutory costs of \$278,109. Dec. of T. Leyh, Ex. 6 and Ex. 7 (Dkt. 396).  
23 The Court has reviewed detailed descriptions of those costs and finds them to have been  
24 reasonably incurred, to the extent shown on Ex. 1-A, attached.

25 60. Spokeo objects that Whitepages should not recover the cost of the mediator  
26 whom the parties engaged because "the parties previously agreed to pay their own expenses



1 for mediating the case. Opposition at 12 (Dkt. 402). Whitepages has not disputed this  
2 assertion. The court will reduce the cost award to adjust for this. *See* Exhibit 1-A.

3 61. Spokeo objects that Whitepages should not recover its share of the costs of  
4 the court reporters who provided daily trial transcripts because “the parties ... previously  
5 agreed to divide the costs of daily trial transcripts.” Opposition at 12 (Dkt. 402).  
6 Whitepages has not disputed this assertion. The court will reduce the cost award to adjust  
7 for this. *See* Exhibit 1-A.

8 62. Spokeo objects that Whitepages should not recover approximately \$14,000  
9 that it paid to Tsongas Litigation Consulting because “Whitepages fails to cite to any  
10 authority that permit recovery for its election to retain third-party ‘litigation consulting.’”  
11 Opposition at 12 (Dkt. 402). It is not clear why Spokeo raises this objection, inasmuch as  
12 Spokeo itself seeks to recover what appears to be basically the same type of expense from  
13 Whitepages. *See, for example*, the declaration submitted by Noah Wick, who is the National  
14 Director of Litigation Consulting for Trial Exhibits, Inc., “a full-service litigation support  
15 and trial presentation company,” and whose company charged over \$49,000 to Spokeo for  
16 litigation consulting work. Decl. of Noah Wick (Dkt. 379). By requesting reimbursement  
17 for “litigation consulting,” Spokeo has waived any objection to Whitepages’ request for the  
18 same type of expense. The court therefore will not eliminate the Tsongas Litigation  
19 Consulting line items from Whitepages’ cost request.

20 63. Spokeo objects that Whitepages is attempting to recover administrative costs  
21 that are “not recoverable because they are considered ‘overhead’ and are built into the  
22 attorneys’ hourly rates.” Spokeo’s Opposition at 12. In particular, Spokeo objects that  
23 “HLFT charged [Whitepages] approximately \$50,000 to simply photocopy documents and  
24 inappropriately requests that this Court require Spokeo to cover those charges.” Opposition  
25 at 12 (Dkt. 402). Spokeo cites to *Estep v. Hamilton*, 148 Wn.App. 246, 263, 201 P.3d 331  
26 (2008), in which the court held that photocopying expenses are not recoverable pursuant to

1 RCW 4.84.010. That holding is inapposite here, because Whitepages' request for costs is  
2 based not on RCW 4.84.010, but rather on the more broadly worded attorney-fee clauses in  
3 the parties' contract. See Trial Ex. 484 ¶ 14.4 at p. 8; and ¶ 6 at p. 5. Where the parties'  
4 contract provides for an award of costs to the prevailing party, the prevailing party's  
5 entitlement to costs is not limited to those set forth in RCW 4.84.010 and 4.84.030. *Ernst*  
6 *Home Center, Inc. v. Sato*, 80 Wn. App. 473, 491, 910 P.2d 486 (1996). Spokeo also cites  
7 to *Collins v. Clark County Fire Dist. No. 5*, 155 Wn.App. 48, 231 P.3d 1211 (2010); but the  
8 appellate court in *Collins* merely affirmed that that trial court "did not abuse its discretion"  
9 in disallowing photocopying costs "other than response to discovery." 155 Wn.App. at 104,  
10 231 P.3d 1211. In this case, the court agrees that incidental photocopying is properly part  
11 of overhead expenses; but large-scale photocopying jobs, such as photocopies of documents  
12 produced in "response to discovery" or large batches of photocopies to be used for court  
13 hearings or trial, properly are included as recoverable costs pursuant to the parties' contract  
14 in this case.

15 64. Spokeo objects that Whitepages "is not permitted to recover its experts'  
16 fees." But the broadly-worded attorney-fee clauses in the parties' contract allow  
17 Whitepages to recover such costs. See Trial Ex. 484 ¶ 14.4 at p. 8; and ¶ 6 at p. 5. *Ernst*  
18 *Home Center, Inc. v. Sato*, 80 Wn. App. 473, 491, 910 P.2d 486 (1996).

19 65. Spokeo objects that Whitepages' expert costs are "excessive." Opposition at  
20 12. Spokeo provides no further explanation. The court is unable to find that Whitepages'  
21 experts' fees are unreasonable in a case whose stakes exceeded \$27,000,000, especially  
22 based merely on Spokeo's one-sentence objection. As noted above, Spokeo itself seeks  
23 reimbursement of more than \$49,000 of fees that it paid to Trial Exhibits, Inc. for expert  
24 consulting services. The court will not disallow Whitepages' request for reimbursement of  
25 its expert costs.  
26

**F. Total of Fees Awarded to Whitepages Is Comparable to Total of Fees Requested by Spokeo**

66. A comparison of hours and rates charged by opposing counsel is probative of the reasonableness of a request for attorney fees by prevailing counsel. *Fiore v. PPG Indus., Inc.*, 169 Wn.App. 325, 354, 29 P.3d 972 (2012). The net award of reasonable attorneys' fees and costs to Whitepages is comparable to the amount of attorneys' fees and costs that Spokeo has requested in its Motion for Attorneys' Fees, Costs and Treble Damages (Dkt. 373E):

<b>Spokeo</b>		<b>Whitepages</b>
Attorneys' Fees	\$1,777,930	\$1,884,688
Costs		\$251,343
Statutory Costs	\$22,027	
Discovery Support	\$213,988	
Trial Support	<u>\$49,354.51</u>	
Subtotal		\$2,063,299
Spoliation Fees	\$53,795	
Spoliation Motion-Support	<u>\$10,222</u>	
Subtotal		\$64,017
Total		\$2,127,316
		\$2,136,031

**5. Conclusions of Law**

Based on the evidence presented by the parties in connection with Whitepages' motion, the court makes the following conclusions of law. To the extent that any conclusion of law may be a finding of fact, it should be considered to be such.

1. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties.

2. RCW 4.84.010 and 4.84.030 provide for a mandatory award of certain costs to the prevailing party in a civil action.

3. Additionally, where the parties' contract provides for an award of costs to the prevailing party, the prevailing party's entitlement to costs is not limited to those set

1 forth in RCW 4.84.010 and 4.84.030. *Ernst Home Center, Inc. v. Sato*, 80 Wn. App. 473,  
2 491, 910 P.2d 486 (1996); *Herzog Aluminum, Inc. v. Gen. Am. Window Corp.*, 39 Wn. App.  
3 188, 189, 692 P.2d 867 (1984). The MPA contains two fee-shifting provisions. Trial Ex.  
4 484, ¶ 8, and ¶14.4.

5 4. Whitepages is the prevailing party on all of Spokeo's claims under the MPA.  
6 Whitepages therefore is entitled to an award of its reasonable attorneys' fees and costs  
7 incurred in defending against Spokeo's breach-of-contract claims under RCW 4.84.010,  
8 RCW 4.84.330, and the MPA.

9 5. Whitepages is not entitled to recover its attorneys' fees and costs for  
10 successfully defending a CPA claim (RCW 19.86.090; *Sato v. Century 21 Ocean Shores*  
11 *Real Estate*, 101 Wn.2d 599, 603, 681 P.2d 242 (1984)). Whitepages has sufficiently  
12 segregated and excluded the attorneys' fees and costs that Whitepages incurred in defending  
13 against Spokeo's CPA claim from the attorneys' fees and costs that Whitepages incurred in  
14 defending against Spokeo's other claims.

15 6. It is not necessary for Whitepages to further segregate its work relating to  
16 defending against Spokeo's non-contract claims other than Spokeo's CPA claims because  
17 the same common core of facts was the basis for all of Spokeo's contract claims and  
18 noncontract claims. *Bright v. Frank Russell Investments*, 191 Wn.App. 73, 80, 361 P.3d  
19 245 (2015).

20 7. The MPA provides that Whitepages is entitled to "all of [its] costs arising  
21 from collecting" the past due invoice amounts, and that the prevailing party is entitled to its  
22 "legal costs" in any "legal action between the parties related to" the MPA. Trial Ex. 484 ¶¶  
23 8, 14.4. Whitepages is entitled to its statutory and reasonable non-statutory costs incurred  
24 in prosecuting its breach of contract counterclaim, and in defending against Spokeo's breach  
25 of contract claims.  
26

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby makes the following order.

## 6. Order

1. The court grants Whitepages, Inc.'s Motion for Award of Attorneys' Fees and Costs (Dkt. 395) as and to the extent reflected in the Findings of Fact and the Conclusions of Law stated above, and in Exhibits 1-A to 1-E, which are attached hereto and incorporated herein by this reference.

2. Whitepages, Inc. is entitled to an award of reasonable attorneys' fees and costs that it has incurred in defending against Spokeo, Inc.'s breach-of-contract claims and in pursuing Whitepages, Inc.'s breach of contract claim.

3. **Whitepages, Inc. is entitled to a judgment in its favor and against Spokeo, Inc., in the amount of \$1,884,687.60 as reasonable attorneys' fees incurred in defending against Spokeo, Inc.'s breach-of-contract claims, and in pursuing Whitepages, Inc.'s breach of contract claim.**

4. Whitepages, Inc. is entitled to a judgment in its favor and against Spokeo, Inc., in the amount of **\$251,343.35** as reasonable costs incurred in defending against Spokeo, Inc.'s breach-of-contract claims and in pursuing Whitepages, Inc.'s breach of contract claim.

5. The above-stated amounts, totaling **\$2,136,030.95**, shall be included in the judgment to be entered in this action, and shall bear interest from the date of judgment at the statutory interest rate of 12 percent *per annum*, until paid in full.

Date: August 1, 2018.

s/ John R. Ruhl  
John R. Ruhl, Judge

Attorneys' Fees			Hours	Avg Rate	Fees	
HLTF	Timothy Leyh	Partner	1005.7	\$613.00	\$616,494.10	
	Tyler Farmer	Partner	870.4	\$534.00	\$464,793.60	
	Kristin Ballinger	Partner	1262.5	\$434.00	\$547,925.00	
	Shane Cramer	Partner	139.6	\$425.00	\$59,330.00	
	Jessica Baxter	Associate	195.9	\$425.00	\$83,257.50	
	Lindsay Calkins	Associate	92.4	\$425.00	\$39,270.00	
	Kate Nielson	Associate	13.1	\$425.00	\$5,567.50	
	Xiang Li	Associate	120.3	\$400.00	\$48,120.00	
	Peter Hawkins	Associate	555.9	\$348.00	\$193,453.20	
	Kellie McDonald	Paralegal	566.7	\$225.00	\$127,507.50	
	Amy Stanton	Paralegal	731.2	\$234.00	\$171,100.80	
	HLTF Subtotal				2,356,819.20	
Focal	Venkat Balasubramani	Partner	299.5	\$350.00	\$104,825.00	
	Nate Webb	Partner	6.7	\$350.00	\$2,345.00	
	Allison Chyan	Associate	1.1	\$275.00	\$302.50	
	Patrick Devine	Associate	13.8	\$275.00	\$3,795.00	
	Garrett Hellman	Associate	53.7	\$275.00	\$14,767.50	
	Stacia Lay	Associate	6.7	\$275.00	\$1,842.50	
	Sean McChesney	Associate	178.4	\$275.00	\$49,060.00	
	Barb Rhoads-Weaver	Associate	369.7	\$275.00	\$101,667.50	
	Margaret Cowan Schmidt	Attorney	47.1	\$275.00	\$12,952.50	
	Tonya Gisselberg	Attorney	52.2	\$275.00	\$14,355.00	
	Max Sitcov	Attorney	9.2	\$275.00	\$2,530.00	
	Misty Elwood	Paralegal	212.1	\$150.00	\$31,815.00	
	Focal Law Subtotal				340,257.50	
Total Lodestar Fee Amount					\$2,697,076.70	

<b>Reductions</b>		
Less: Nonrecoverable Fees Whitepages Incurred Defending Against Spokeo's CR 37 Motion (Ex. 1-B, attached)	(15,842.50)	
Less: Fees Whitepages Collected for Spokeo's CR 37 Violation	0.00	
N/A: Whitepages has allowed a \$5,427.50 credit; see WP's Fee Motion at 12 (4/26/2018)(Dkt. 395) and Order Granting \$5,427.50 Fees (2/8/2017) (Dkt. 103)		
Less: Nonrecoverable Fees Whitepages Incurred Defending Against Spokeo's Spoliation Motion (Ex. 1-E, attached)	(156,769.00)	
Less: Fees Spokeo Incurred in Pursuing Spokeo's Spoliation Motion		
See Spokeo's Fee Motion at 13 (Dkt. 377E); and Decl. of W. Walsh at Par. 8 and Ex. C (Dkt. 381)	(64,015.97)	
Less: Nonrecoverable Fees for HLFY Ramp-Up Work (Duplicative of Focal Work) (Ex. 1-C, attached)	(171,873.00)	
Less: Nonrecoverable Fees for Focal's Work (Duplicative of HLFY Work) (Ex. 1-D, attached)	(16,340.00)	
Less: Nonrecoverable Fees Whitepages Incurred Defending Against Non-Contract Claims		
N/A: Whitepages has segregated and excluded \$212,604.50 from its fee request; see Decl. of T. Leyh at 3 (Dkt. 396)	0.00	
Less: Additional 15% Reduction of Harrigan Leyh Farmer & Thomsen LLP's Fees to Mitigate Duplicative Work 9 attorneys and 2 paralegals worked on this case.	(353,522.88)	
Less: Additional 10% Reduction of Focal PLLC's Fees to Mitigate Duplicative Work 11 attorneys and 1 paralegal worked on this case.	(34,025.75)	
<b>Total Reductions:</b>	<b>(\$812,389.10)</b>	
<b>Total Net Attorneys' Fees Awarded to Whitepages, Inc.</b>		<b>\$1,884,687.60</b>



<b>Costs</b>					
<b>Whitepages' Costs (Incurred by Focal PLLC)</b>					
See Decl. of T. Leyh, Ex. 7 (Dkt. 396)				\$214,617.51	
<b>Whitepages' Costs (Incurred by Harrigan Leyh Farmer &amp; Thomsen LLP)</b>					
See Decl. of T. Leyh, Ex. 6 (Dkt. 396)				\$63,492.34	
<b>Total Costs</b>				<b>278,109.85</b>	
<b>Reductions</b>					
<b>Date</b>	<b>Item</b>				
05/2017	Whitepages' 1/2 share of mediation fee	(Leyh Dec., Ex. 7 (Dkt. 396))		(\$1,650.00)	
06/2017	Whitepages' 1/2 share of mediation fee	(Leyh Dec., Ex. 7 (Dkt. 396))		(\$220.00)	
11/2017	Whitepages' 1/2 share of mediation fee	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$550.00)	
01/2018	Court Fees re spoliation hearing	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$25.00)	
01/2018	Court Fees re spoliation hearing	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$25.00)	
07/2017	Hearing transcripts,	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$824.50)	
01/2018	Hearing transcripts, 1/8/18 and 1/10/18	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$1,107.50)	
01/2018	Hearing transcripts, 1/15 - 1/19/18	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$3,284.50)	
01/2018	Hearing transcripts, 1/22 - 1/24/18	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$2,190.00)	
02/2018	Hearing transcripts, 1/29 - 2/1/18 (Leotiota)	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$3,660.00)	
02/2018	Hearing transcripts, 1/29 - 2/1/18 (Moll)	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$3,367.50)	
02/2018	Hearing transcripts, 2/5 - 2/8 (Moll)	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$3,585.00)	
02/2018	Hearing transcripts, 2/12/18 (Leotiota)	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$3,112.50)	
02/2018	Hearing transcripts, 2/12 - 2/14/18 (Moll)	(Leyh Dec., Ex. 6 (Dkt. 396))		(\$592.50)	
	<b>Total Reductions</b>			<b>(\$26,766.50)</b>	
<b>Net Costs Awarded to Whitepages, Inc.</b>				<b>\$251,343.35</b>	
<b>Total: Reasonable Attorneys' Fees and Costs Awarded to Whitepages, Inc.</b>				<b>\$2,136,030.95</b>	
<b>Total of Attorneys' Fees and Costs Requested by Whitepages, Inc.</b>				<b>\$2,975,131.85</b>	
<b>Percentage of Requested Attorneys' Fees and Costs Awarded</b>				<b>71.80%</b>	

<b>Compare: Attorneys' Fees and Costs Requested by Spokeo, Inc.</b>			
See Spokeo's Motion for Attorneys' Fees, Costs and Treble Damages, at 15 (Dkt. 373E)			
Spokeo's Attorneys' Fees (With 1.5 Multiplier)	\$1,777,929.75	Spokeo	Whitepages
Spokeo's Statutory Costs	\$22,027.00		
Spokeo's Discovery Support	\$213,987.99		
Spokeo's Trial support	\$49,354.51		
Treble Damages	\$25,000.00		
Subtotal	\$2,063,299.25		
Spokeo's Spoliation Fees	\$53,795.00		
Spokeo's Discovery Support re Spoliation Motion	\$10,221.97		
Subtotal	\$64,016.97		
<b>Total of Attorneys' Fees and Costs Requested by Spokeo, Inc.</b>		<b>\$2,127,316.22</b>	<b>\$2,136,030.95</b>

See Decl. of T. Leyh, Ex. 4 (Dkt. 396)							
Date	Balasubramani	McChesney	Weaver	Schmidt	Sitcov	Elwood	
12/7/2016				3.2			
12/8/2016		2.9	0.3	4.0		1.3	
12/9/2016		3.9		1.0		0.6	
12/10/2016		3.6				2.2	
12/11/2016	1.6	2.4		3.3		0.4	
12/12/2016	2.1	5.7	0.5	3.1		1.2	
12/13/2016		2.9				0.6	
12/14/2016	2.4	3.3				0.3	
12/15/2016		1.4					
12/16/2016	0.7	2.4					
12/20/2016					0.8	1.2	
<b>Total Hours:</b>	6.8	28.5	0.8	14.6	0.8	7.8	
<b>Rates:</b>	\$350	\$275	\$275	\$275	\$275	\$150	
<b>Fees:</b>	\$2,380.00	\$7,837.50	\$220.00	\$4,015.00	\$220.00	\$1,170.00	
<b>Total Fees:</b>	<b>\$15,842.50</b>						

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See Decl. of T. Leyh, Ex. 2 (Dkt. 396)	Leyh	Farmer	Ballinger	Li	Hawkins	McDonald	Stanton
Date							
6/12/2017	1.2	2.2					
6/13/2017	3.5	2.2					
6/14/2017	3.5	2.2					
6/15/2017	0.8	1.7					
6/16/2017	0.9	1.4					7.5
6/17/2017							
6/18/2017							
6/19/2017	5.4	2.4		0.6			6.5
6/20/2017	6.0	3.8	4.6				0.8
6/21/2017	6.2	0.4	5.2			1.1	5.0
6/22/2017	5.4	1.6	6.2	4.5			3.0
6/23/2017	4.4	1.4	5.5	6.0			7.5
6/24/2017							1.2
6/25/2017							
6/26/2017	4.4	1.3	4.8	5.5	6.8	4.1	
6/27/2017	6.2	3.0	6.8				2.5
6/28/2017	6.1	3.5	6.2	5.7		6.0	7.5
6/29/2017	6.5	6.6	9.4	7.0		5.1	7.5
6/30/2017	0.7	3.4	6.5	3.8		5.5	7.5
7/1/2017		2.2					
7/5/2017	1.1	4.1	8.0	2.0			7.5
7/6/2017	0.8	4.8	7.2	0.5	5.7	0.3	6.5
7/7/2017	0.5	3.5			5.5		6.5
7/8/2017			2.8				
7/9/2017		2.3	7.7				
7/10/2017	1.5	5.5	8.6	2.7			2.5
7/11/2017	5.9	4.8	0.8	5.8		1.8	
<b>Total Hours:</b>	71.0	64.3	90.3	44.1	18.0	23.9	79.5
<b>Rates:</b>	\$650	\$550	\$450	\$400	\$375	\$245	\$245
<b>Fees:</b>	\$46,150.00	\$35,365.00	\$40,635.00	\$17,640.00	\$6,750.00	\$5,855.50	\$19,477.50
<b>Total Fees:</b>	<b>\$171,873.00</b>						

No. 16-2-07970-9

See Decl. of T. Leyh, Ex. 4 (Dkt. 396)							
Date	Balasubramani	Chyan	Heilman	Rhoads-Weaver	Elwood		
7/14/2017					1.5		
7/17/2017				0.1			
7/18/2017	0.4						
7/19/2017					0.8		
7/20/2017					1.6		
7/21/2017					0.2		
7/23/2017				0.8			
7/25/2017					0.8		
7/26/2017	0.6				0.6		
7/28/2017	0.3				0.5		
7/31/2017					0.6		
8/2/2017					0.6		
8/3/2018					1.2		
8/7/2017	0.7			0.3	2.8		
8/11/2017					0.8		
8/14/2017					0.8		
8/15/2017	0.3				3.3		
8/16/2017					0.8		
8/18/2017					4.1		
8/22/2017	0.4						
8/29/2017					0.5		
9/6/2017	5.2	1.1					
9/7/2017	4.3						
9/29/2017					1		
1/14/2018	0.5						
1/15/2018				0.3			
1/31/2018	0.2		0.9				
2/6/2018					0.5		
2/8/2018	0.5						
2/9/2018	8.4				1.3		
2/9/2018			12.3				
2/10/2018	0.8		1.2				
2/12/2018			0.4				
<b>Total Hours:</b>	22.6	1.1	14.8	1.5	24.3		
<b>Rates:</b>	\$350	\$275	\$275	\$275	\$150		
<b>Subtotals:</b>	\$7,910.00	\$302.50	\$4,070.00	\$412.50	\$3,645.00		
<b>Total Fees:</b>	<b>\$16,340.00</b>						

**Exhibit 1-E**

Reduction: Whitepages's Fees Incurred in  
 Unsuccessfully Defending Against Spokeo's Spoliation Motion

See Decl. of T. Leyh, Ex. 4 (Dkt. 396)									
Date	Leyh	Farmer	Ballinger	Cramer	Baxter	Hawkins	McDonald	Stanton	
1/10/2018	8.8	8.4	9.8				4.4		
1/11/2018	6.7	7.2	8.1	5.9					
1/12/2018	9.2	13.4	13.9	3.8		6.7			
1/13/2018	6.0	6.8	13.3		6.7		5.4	7.5	
1/14/2018	6.2	8.2	13.8		6.8	2.6	1.4	2.0	
1/15/2018	11.3	9.8	12.5				11.8		
1/16/2018	12.5	9.7	13.1	1.4	3.3	8.7	12.4		
1/17/2018	13.0	10.3	11.0		1.1	5.6	9.8	6.0	
<b>Total Hours:</b>	73.7	73.8	95.5	11.1	17.9	23.6	45.2	15.5	
<b>Rates:</b>	595.0	525.0	425.0	425.0	425.0	335.0	220.0	220.0	
<b>Subtotals:</b>	\$43,851.50	\$38,745.00	\$40,587.50	\$4,717.50	\$7,607.50	\$7,906.00	\$9,944.00	\$3,410.00	
<b>Total Fees:</b>	<b>\$156,769.00</b>								

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 16-2-07970-9  
Case Title: SPOKEO INC VS WHITEPAGES INC

Document Title: ORDER GRTG D'S FEE MOTION

Signed by: John Ruhl  
Date: 8/2/2018 9:00:00 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to read "John R Ruhl" in a cursive, stylized script.

Judge/Commissioner: John Ruhl

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 935BEE50439EAED14D7E164B302050F344EAA480

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O=KCDJA, CN="John Ruhl:  
bAJ9MXn44hGkPOM2YYhwmw=="