Superior Court of California
County of San Benito

Tentative Decisions for August 7, 2024

Courtroom #1: Judge Thomas Breen

CU-24-00099 Sylvia Morgan, M.D. v. Hazel Hawkins Memorial Hospital 8-7-24

On for Defendant's 6-14-24 Demurrer, Defendant's 6-14-24 motion to Strike Punitive Damages

As of 7-25-24, no opposition in file.

Plaintiff: Benjamin J. Fenton

Defendant: David M. Balfour

This case arises from Plaintiff's complaint for damages for violation of Business and Professions Code section 809, et seq. Plaintiff is a physician who has been seeking medical staff privileges at Hazel Hawkins Hospital. (HHH). After an extensive process beginning in 2017, Plaintiff had filed suit on or about 11-12-21 seeking writ of mandate to compel HHH to take action regarding her initial application. Shortly before trial was set in that case, HHH asked Plaintiff to reapply, and submitted her application, and her updated California medical license, DEA, and malpractice insurance information. The process continued to be delayed. Ultimately in January 2023, Plaintiff's application for privileges was denied, advising she had no hearing rights regarding this determination. Despite requesting additional details, none were forthcoming. Plaintiff alleges that she has been denied her hearing rights pursuant to the Business and Professions code regarding the denial of her application, this suit for damages follows. Among the requests for relief are punitive damages.

Pleadings and Arguments

6-14-24 Demurrer: Defendant states Plaintiff's first cause of action for violation of Business and Professions Code §809, is barred as untimely pursuant to Government Code §911.2. Moreover, the first cause of action is subject to demurrer for failing to state facts sufficient to constitute a cause of action. They request the demurrer be granted without leave to amend. A cause of action is subject to demurrer for failure to state a claim when the complaint discloses on its face an

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affirmative defense and the Plaintiff has not pled around that defense. Gov't Code §911.2(a) states that the Plaintiff has the obligation to file a claim within 6 months of the accrual of the claim against a public agency, here, HHH. A claim based on this type of personal injury must be presented to the entity within 6 months. The denial was issued January 2023, at which time her cause of action accrued when she was informed, she had no hearing rights under Bus. & Prof. §809, et seq. No government claim was filed, nor was a late claim application filed. This suit filed April 19, 2024, is thus untimely. (Govt. Code §911.4).

Further, hearing rights pursuant to §809(l) subd (a) exist only where "a licentiate [physician] who is the subject of a final proposed action of a peer review body for which a report is required to be filed under Section 805. . . ." Section 805 clarifies that a peer reviewing body's final action is required to be reported to the Medical Board when the final action is for a "medical disciplinary cause or reason." (Bus. & Prof. §805 subd (b).) Ergo, hearing rights only arise when the peer reviewed body's final action requires reporting under §805 and the action is for a disciplinary cause or reason. That was not the reason here. Here, the application was incomplete as the Plaintiff failed to provide evidence of current medical competence, which does not trigger hearing rights under section 809. This too cannot be pled around.

6-14-24 Motion to Strike Punitive Damages: While Plaintiff has acknowledged in her complaint (¶¶2, 7) that HHH isa public agency hospital in the state, she nonetheless seeks punitive damages. However, pursuant to Government Code §818 "Notwithstanding any other provision of law, a public entity is not liable for damages awarded under section 3294 of the Civil Code or other damages imposed primarily for the sake of example." Thus, punitive damages are not allowed in this action. Authority for the motion to strike is found at CCP §§435, 436. The court may upon motion made pursuant to 435 or at any time in the court's discretion and on terms it deems proper strike irrelevant, false or improper matters in pleadings, or all or any part of a pleading not filed or drawn in conformity with the laws of this state. (CCP§ 436 sub (a), (b).) The motion to strike should be granted.

7-25-24 Plaintiff's opposition recapitulates the factual allegations of her complaint. Further, Plaintiff acknowledges that no claim against a public agency was filed until June 2024, ostensibly because her current counsel believed it had been done previously, but learned in June 2024, that it had not. It is expected that the response to the request to file a late claim will be received in September 2024. Moreover, based on the restatement of the factual allegations, the Plaintiff is, in fact, entitled to hearing rights under section 809 because, in part, she was never notified that her application was incomplete.

7-26-24 Defendant's reply notes that even an application to file a late claim against a public entity has time limits. The application to file a late claim must be filed no later than one year after the accrual of the cause of action. Here, as the Plaintiff's own complaint and opposition state, her claim accrued in January 2023. This means that an application to file a late claim must be filed by January 2024. This suit was not filed until April 2024, and the application to file a late claim was made in June 2024. The action is irretrievably time barred. Moreover, substantially, the Plaintiff adds nothing new to establish that she had a right to a hearing as to what medical disciplinary cause or reason for denying her privileges which would, under §809 entitle her to hearing. Pursuant

to the code itself the entitlement to a hearing arises when the denial is for a medically disciplinary cause or reason which requires a report pursuant to §805 of the Business and Professions Code. Accordingly, she has failed to state sufficient facts to state a claim.

Legal authority:

Demurrer The purpose of a demurrer is to test whether, as a matter of law, the facts alleged by the plaintiff in the complaint state a cause of action under any legal theory. (*New Livable Cal. V. Assoc. of Bay Area Gov't*s. (2020) 49 Cal. App. 5th 709, 714-715; *C.W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal. App. 5th 165,168.) Demurrer does not test the truth or accuracy of the facts alleged in the complaint, rather, the judge must assume the truth of all properly pled factual allegations, (*Sheehan v. San Francisco 49ers, Ltd*. (2009) 45 Cal. 4th 992, 998.), ignoring contrary allegations. (*Childs v. State* (1983) 144 Cal. App. 3rd 155, 159.) The court must accept as true facts which may be inferred from those expressly alleged. (*Cundiff v. GTE Cal. Inc.* (2002) 101 Cal. App. 4th 1395, 1405.) With limited exception, the plaintiff must only plead ultimate facts and need not plead evidentiary facts in support of the allegation of ultimate facts. A complaint is adequate so long as it apprises the Defendant of the factual basis for the claim. (*Birke v. Oakwood Worldwide* (2009) 169 Ca. App. 4th 1540, 1549-1549.) Whether the plaintiff will be able to prove the allegations in the complaint is irrelevant. (*Tindell v. Murphy* (2018) 22 Cal. App. 5th 1239, 1247.) The court may not resolve questions of fact on demurrer unless there is only one legitimate inference to be drawn from the allegations of the complaint. (*TracFone Wireless, Inc. v. County of Los Angeles* (2008) 163 Cal. App. 4th 1359, 1368.) Because demurrer challenges defects on the face of the complaint, it can only refer to matters outside of the pleadings that are subject to judicial notice. Finally, for the purpose of ruling on demurrer the court must treat the demurrer as an admission of all material facts that are properly pleaded in the challenged pleading or that reasonably arise by implication, however improbable those facts may be. (*Collins v. Thurmond* (2019) 41 Cal. App. 5th 879, 894.)

Motion to Strike: Under Code of Civil Procedure ("CCP") section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. This includes requests for damages not supported by the pleading's allegations. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (CCP §437(a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See Turman v. Turning Point of Central California, Inc. (2010) 191 Cal.App.4th 53, 63 ("Turman"), citing Clauson v. Super. Ct. (1998) 67 Cal.App.4th 1253, 1255 ["[J]udges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth."]) As with a demurrer, in considering a motion to strike the Court accepts as true all properly pled allegations of material fact in a pleading, but not contentions, deductions or conclusions of fact or law. As is often the case with form complaints, some of the allegations in Plaintiff's Complaint consist of bare legal conclusions which are not accepted as true for the purposes of this motion. The Court may not consider extrinsic evidence in ruling on a motion to strike.

Analysis:

Demurrer: As noted, demurrer tests the legal sufficiency of the cause of action as stated. It does not test the truth or accuracy of the facts, and the court must presume the truth of all properly pled factual allegations. A demurrer will also be appropriate where the facts as alleged on the face of the complaint present an affirmative defense to the cause of action which the Plaintiff has not pled around. Finally, while the public policy is one of great liberality in granting leave to amend, so much so that unless it is shown that no amount of pleading would correct the defects that give rise to the demurrer, it would be an abuse of discretion to deny leave to amend. Here, the Plaintiff in her underlying complaint argues that she was denied a hearing on why her application for hospital privileges was denied pursuant to Business and Professions Code section 809. While her complaint details an arduous path to this final denial, the issue is not that convoluted journey, but rather whether the stated basis for the denial of her application gives rise to the right to a statutory hearing as a matter of law. The complaint does not state what was the basis for the denial of her application, as the Defendant notes. Under section 809 of the Business and Professions Code statutory hearing rights are triggered by the nature of the determination made by the board. According to Kime *v. Dignity Health* (2024) 101 Cal. App. 5th 709, 716, the "[c]ommon law fair procedure rights do not apply, and a physician has no right to a hearing, if the physician's privileges are denied or curtailed 'as a result of administrative/quasi -legislative decisions by the hospital, rather than adjudicatory/quasi-judicial decisions about a physician's competence.'" (*Citations omitted*.) the distinction is between the hospital implementing its own policies rather than an action on the basis that the physician "has not demonstrated an ability to comply with established standards." (Ibid., internal citations omitted.)

As the Defendant notes the right to a hearing under Business and Professions Code section 809 arise only when the physician who is the subject of "final proposed action of a peer review body for which a report is required to be filed under Section 805. . . ." (Id at (l) subd. (a).) Under section 805 a peer review body's final action is required to be reported when the final action is for a medically disciplinary cause or reason. (Bus. & Prof §80 sub. (d); see also *Powell v. Bear Valley Community Hospital* 92018) 22 Cal. App. 5th 263, 275.) This language is further defined as meaning that a medical disciplinary cause or reason is one that is an aspect of the physician's competence or professional conduct which is reasonably likely to be a detriment to patient safety or the delivery of care. (Bus. & Prof §805 subd. (a)(6).) It is unknown whether this was the basis for the denial of privileges at issue or if was for some other, administrative cause. As such, the Plaintiff has not stated sufficient facts to frame the cause of action.

Defendant also argues that the Plaintiff is time barred from being heard based on Government Code section 911.2 sub (a) which provides that Plaintiffs have the obligation to file a claim within six months of when the claim is accrued against the public agency. To be timely, a claim like this based on a cause of action for personal injury, such as this, is required to be presented to the public entity within six months of the date the cause of action accrued. Here, paragraphs 2 and 7 of the Complaint specify that HHH, the Defendant, is a public agency. The action of which the plaintiff complains is the denial of her application for privileges at the hospital, which occurred in January 2023. Plaintiff's position is that because the right to hearing was denied, she was also

denied the right to appeal an adverse action. However, the language of the statute is clear, that the presentation of the claim is mandatory, a plaintiff may even present a "late claim" to the public entity, which must be done by application for leave to do so within one year of the date of accrual of the cause of action. (Govt. Code §911.4.) The complaint makes no reference to this having been done either. Finally, even if the public entity denies the application for permission to file a late claim, the Plaintiff may file a civil petition for relief from the claims presentation requirements of section 945.4 (Gov't Code §946.6.) This petition must show 1) that an application was made to the public entity under section 911.4 and was either denied or deemed denied; 2) the reason for the failure to timely present the claim to the public entity within the time specified in section 911.2; and 3) the information required by section 910 (Gov't Code §946.6(b).)

In such instance the court will grant relief only if it finds that 1) the application to the public entity for leave to file a late claim was made within a reasonable time not to exceed one year after the claim accrued as specified pursuant to section 911.4(b); 2) that it was denied or deemed denied by the public agency pursuant to 911.6; and 3) one or more of the following applies a) the failure to timely present the claim was the result of mistake, inadvertence, surprise, or excusable neglect, unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner of the requirements of section 945.4;) the person sustaining the alleged injury, damage, or loss was a minor during all of the time specified in section 911.2 to present the claim; c) the person who sustained the alleged injury was physically or mentally incapacitated during all of the time specified in section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time, or d) the person sustaining the alleged injury died before the expiration of the time specified in section 911.2. None of these have been pled in the Complaint either. It appears that Plaintiff has failed to submit a timely application for leave to file a late claim, having filed it over one year after the accrual of her cause of action.

Proposed Ruling: The demurrer is sustained without leave to amend.

Analysis: Motion to Strike. As noted in the Defendant's motion to strike, the cause of action presented before the court does not allow for punitive or exemplary damages. (Gov't Code §818.) It is within the court's authority to strike portions of the pleadings that are not supported by law. (CCP §436.) Nor is it possible to create the legal foundation for punitive damages given the nature of the claim presented. The motion is unopposed.

Proposed Ruling: The motion to strike the claim for punitive damages relief is granted without leave to amend.

CU-22-00225 Leo Hernandez v. WGS Group, Inc., et al. 8-7-24

Matter is on for Plaintiff's 7-26-24 Motion for final approval of class action settlement (unopposed)

Proposed ruling: The court will grant preliminary approval of the proposed settlement, preliminary class certification, and will set a hearing for final approval of the settlement agreement.

Plaintiff: Daniel Gaines

Defendant: David Lester

The case arises from Plaintiff's representative action complaint for penalties for various violations of the labor code. The Complaint was amended twice. The SAC filed 3-20-23 seeks relief as a class and representative action for 1) Failure to pay all wages due; 2) Failure to provide rest periods or compensation in lieu thereof; 3) Failure to provide meal periods or compensation in lieu thereof; 4) Failure to reimburse all business-related expenses; 5) Knowing and intentional Failure to comply with itemized employee wage statement provisions; 6) failure to pay wages due at separation of employment; 7; Violation of Business and Professions Code §17200; 8) Penalties pursuant to Labor Code §2699(f) for violations of the labor code §§201,202,204, 226(a); 226.7; 510;512;1194;and 2802; and, pursuant to §2699(a) for violations of labor code §§210,226.3, and 558. The Complaint seeks civil penalties under the Private Attorney General's Act (PAGA).

4-5-23 Defendant's filed their answer to the Second Amended Complaint, stating a general denial and posing fifty-one affirmative defenses.

On 6-30-23 the parties stipulated to continue the case management conference to attend a global mediation with the related case (*Okiwelu v. WGS Group, Inc.,* Alameda Superior Court, Case 22CV17766) with Judge Steven R. Denton (Ret.) on 10-24-23 and agreed to informal exchanges of documents and information in an effort to resolve the actions.

In advance of the 1-31-24 Case Management Conference, the parties announced that the case had been settled, and a memorandum of understanding had been executed and was circulating.

3-6-24: The court granted the Preliminary Approval of Class Action Settlement; final fairness and approval hearing calendared on 7-10-24 at 10:30 a.m.; further CMC set at 10:30 a.m. that same date.

4-30-24 Stipulation and order regarding final fairness and approval hearing, case management, and proposed order is filed and signed continuing the matter to 8-7-24

5-16-24 Notice of entry of Judgment filed; Order on preliminary approval of class action settlement filed.

Legal Standards Final settlement approval has specific criteria- that it be fair, adequate, and reasonable. (Kullar *v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-30.) Notably the law favors settlement, particularly as regards complex or class action cases where substantial time, cost and litigation resources can be conserved. But such settlements require the approval of the court. (Cal Rules of Court rule 3.769, see also the rules of Federal Civil Procedure Rule 23 (e).) The criteria to settle class action suits are described in the Manual for Complex Litigation Fourth (4th ed. 2004) section 21.632. The approval procedure therein under rule 23 and echoed in California law, are as follows:

1) Preliminary approval of the proposed settlement at an informal hearing;

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2) Dissemination of mailed and/or published notice of the settlement to all affected Class members; and
3) A 'formal fairness hearing' or a final settlement approval hearing, at which Class members may be heard regarding the settlement and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. (*Id. §21.632-34*)

The Parties have agreed upon the definition of the settlement class, which includes a total of 455 members for the case at bar. The Law grants the court broad discretion to fashion an appropriate notice program in these instances: (Civ Code §1781; *Cartt v. Sup. Ct.* (1975) 50 Cal. App. 3rd 960, 973-4.) AS part of whether the settlement is approved, the parties most provide class members the best notice practicable for the potential class action settlement. This is to protect the rights of absent members of the class. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12.) The best practicable notice is that which is reasonably calculated, under the circumstances, to advise interested parties of the pending action and give them the chance to present their objections. (*Mullane v. Central Hanover Bank & Garretson Co.* (1950) 339 U.S. 306, 314.)

Analysis: In determining whether to grant approval, the court notes that the first two steps of this process have been completed, (See Salinas Decl., generally, and at Ex A) Under CCP§382 the court must inquire if the settlement proposed is "fair, adequate, and reasonable." The analysis presumes the settlement is fair and exists when 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) Counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1802.) In this unopposed motion, the court has set the final approval hearing which would allow the opportunity to hear argument either for or against the proposed settlement. As previously declared, the parties engaged in significant factual investigation and review of the legal claims in the complaint and engaged in substantial discovery as to the merits of the claims. Pursuant to the declarations made herein the parties have engaged in extensive good faith and arm's length negotiation to settle this case. (*Gaines Dec.* ¶¶28-42.) The settlement proposes substantial payments to class members, and the response has been uniformly positive with no objections or requests for exclusion among the over 450 class members. Thus, the value of the settlement, compared to the inherent risks of litigation, the extensive discovery completed, and the likely duration, complexity and expense of litigation should it go forward, the reported experience an expertise of class counsel, and the class members' response to the proposed settlement all favor accepting it. (*Dunk, supra,* at 1801.)

The court, in reviewing the underlying settlement agreement, notes that generally courts will presume the absence of fraud or collusion in settlement negotiations, absent contrary evidence. Here no such evidence is offered, and the declaration of counsel notes that there was extensive investigation and a lengthy mediation session after the exchange of extensive evidence. Counsel describes the negotiations as conducted at arm's length, with each side's counsel operating to serve their client's interests. (*Szilagyi ¶¶8-12; 25)* Notably, the Plaintiff's service awards were negotiated after the agreement to the gross settlement amount. The bona fides of counsel involved are provided-noting the breadth of individual counsel's experience in similar litigation. In assessing the settlement, the court notes how Plaintiff's counsel weighed the strengths of their

cases against the risks and expenses of class certification and litigation. The settlement need not provide all the damages sought to be deemed fair and reasonable, with compromise to be expected as part of this process. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250.) Assuming, arguendo, that the Plaintiff's assertion that Defendant's potential exposure, if proved would be considerable, it is also fair to state that there are legitimate and serious risks of pursuing this path which compelled serious and adversarial settlement negotiations as attested to in this motion.

In light of the foregoing, final approval of the class action settlement is granted.

CU-21-00060 Rebecca Gutierrez v. G.M., LLC, et al 8-7-24

Plaintiff: Kevin. Y. Jacobson

Defendant: Stacey S. Jew, Christopher C. McMahan, Troy D. Sentenac, Mark A. Davis

On Calendar For: Plaintiff's Motion for Attorney's Fees and Costs.

This case arises from Plaintiff's Claims under the Song-Beverly Warranty Act. Plaintiff and Defendant settled the matter after two years and extensive litigation and trial preparation, in favor of Plaintiff by way of a sum above and beyond the price of Plaintiff's vehicle. Plaintiff then filed her motion for attorney's fees and costs pursuant to statute on 4-11-24. In opposition, the Defendant argues that the Plaintiff's counsel has artificially inflated their fees, which are in no way reasonable given the settlement entered by the parties, that the pleadings have been recycled, and that no multiplier is appropriate under the circumstances. The Plaintiff has failed to show that the time claimed and amounts charged are reasonable under the circumstances and thus a lower award, if any , is warranted. The defendant provides an extensive list of questionable bills and hourly charges made by the Plaintiff's attorneys, noting extensive use of templates and redundant billing practices.

Legal Authority: Pursuant to Civil Code §1794(d), if a buyer prevails in an action under the Song-Beverly Warranty Act, they may recover the aggregate amount of costs and expenses, including attorney's fees based upon the actual time expended, as determined by the court to have been reasonably incurred by the buyer in the commencement and prosecution of the action. (*See also Wohlegemuth v. Caterpillar, Inc.* (2012) 207 Cal. App. 4th 1252, 1262.) Mandatory recoverable fees and costs include fees and costs that are needed to establish and defend the fee claim. (Serrano v. Unruh (1982) 32 Cal. 3rd 621,639.) Under the Song Beverly Act, an award of fees and costs to the prevailing party is *mandatory.* (Cal. Civ Code §1794 (d).) Such a fee award need not be proportionate to the amount of damages recovered. (*Niederer v. Ferreira* (1987) 189 Cal. App. 3rd 1485, 1508; *Drouin v. Fleetwood Enterprises* (1985) 163 Cal. App. 3rd 486, 493.) Since Plaintiff sues under consumer protection statutes involving mandatory fee-shifting provisions, the policy of the legislature favors recovery of attorney's fees reasonably expended, without limiting the fees to a proportion of actual recovery. (*Reynolds v. Ford Motor Co.* (2020) 47 Cal. App. 5th 1105.)

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However, generally, fee requests which appear to be unreasonably inflated are special circumstances warranting the trial court's reduction of the award or denial of the same. (*Serrano v. Unruh* (1982) 32 Cal. 3rd 621, 635 (*Serrano IV.*) The firm seeking fees must satisfy its burden showing that the time claimed and amounts charged are reasonable under the circumstances, which the court must consider in awarding fees, whether in a lesser amount, or in deciding to deny the request. (*Mikhaeilpoor v. BMW of N. Amer., LLC* (2020) 48 Cal. App. 5th 240, 247.) The trial court has broad discretion to adjust the fees downward or to deny unreasonable requests in their entirety. (*Ketchum v. Moses*(2001) 24 Cal. 4th 1122, 1138.) The proponent must show that their fees were allowable and reasonably necessary for the litigation,, and are reasonable in their amount. In other words, to satisfy this burden the proponent must show that the time expended or amounts charged are reasonable under the circumstances.

Reasonable fees are determined using the Lodestar method. (Moreno *v. City of* Sacramento (9th Circ. 2008) 534 F. 3rd 1106, 1111; *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1135.) Lodestar values for fees are commonly determined by multiplying the time reasonably spent by counsel on the case by a reasonable hourly rate. The court may then adjust or enhance the lodestar by applying a multiplier which takes into consideration the contingent nature and risks associated with the action, as well as factors such as the degree of skill required, results achieved, among others. (*In re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 556-57; *Ketchum v. Moses, supra,* 24 Cal. 4th at 1137.)

Analysis: In this instance, where the case, though resolved through settlement, resulted in a more favorable outcome for the Plaintiff in that she received, according to the argument presented, a sum exceeding the price of the subject vehicle, she is by any objective measure the prevailing party. As a result, language of Civil Code §1794 (d) is triggered, and a fee award pursuant to statute is warranted. The argument presented by the Plaintiff parallels the legal authorities presented above, and the court therefore must first review the proposed fee award in terms of the reasonableness of the time expended by counsel multiplied by a reasonable hourly rate. Utilizing the lodestar method as referenced in *Moreno*, above, , a moving party's showing of rates that have been upheld "compel[] a finding that the requested hourly rates were within the reasonable rates for purposes of setting the base lodestar amount. (*Graciano v. Robinson FCA Sales, Inc.* (2006) 144 Cal. App. 4th 140, 156.) The hourly rates for counsel are recited in the declaration filed concurrently with the Plaintiff's memorandum of points and authorities (Jacobson *Declaration ¶¶5-24, ex 1-6*)

The concern here is that this was a case where there appear to be some appropriate concerns regarding what opposing counsel avers is the use of recycled pleadings for which Plaintiff's counsel is billing at a rate consistent with an initial drafting of those pleadings. The Defendant has provided over one thousand pages of exhibits. The crux of their argument is that after September 2022, there was only a dispute about the scope of actual damages under the Song Beverly Act, as the parties had reached agreement regarding liability, and yet extensive discovery continued. Notable in this for the 9-27-22 discovery requests and motions referenced in Defendant's objection, at Exhibits D through K, which support the assertion that the Plaintiff's counsel has recycled discovery requests, discovery motions, and motions in limine between clients. The

Plaintiff's position is that in tailoring these exemplar pleadings they did more than merely change names and due dates. While the Plaintiff is correct, that this case did require additional work to pursue the full scope of the recovery in this matter, given the Defendant's and Plaintiff's opposing positions regarding the scope of recovery after the intervening insurance recovery to the Plaintiff after the subject vehicle was declared a total loss after an accident.

The court does not find that the hourly rates charged by the Plaintiffs to be unreasonable, however, the practice of recycling prior pleadings with minor alteration is noted. The court therefore must question whether the drafting time charged for discovery requests which do not differ markedly from those used for other clients warrant the amount of time charged by the Plaintiff's counsel. However, the court also notes that in summation, the discovery requests in this case were actually narrowed down from those referenced in other matters. The court also notes a fair number of entries which appear to be for purely administrative work, such as calling the court to confirm a court date, or are duplicative in nature. However, these entries constitute only a small fraction of the billing table totaling $2,047.50. More to the court's analysis is whether a 1.5 lodestar multiplier is appropriate to apply in a case where a substantial number of the pleadings, including extensive motions in limine are based on templated documents redacted by counsel, albeit applying the attorneys' acumen and training in determining which of the templated motions to utilize, or discovery inquiries to make, and for these items the court determines that both the amount of time billed and hourly rate appear to be reasonable. No argument was presented with regard to the costs and expenses requested, and from review of these items, they appear appropriate.

Proposed Ruling.

The court awards the Plaintiff their attorney's fees as requested, less $2074.50 , and without a multiplier for a total fee award of $92, 335.50. The court orders the award of $5,691.57 in costs to Plaintiff's counsel. The court denies an additional $6000.00 for the drafting of the reply declaration and appearances at the fee hearing. The Plaintiff's counsel is awarded $98027.07 as fees and costs.

END OF TENTATIVE RULINGS

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