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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

YONG PYO HONG, Plaintiff and Respondent, v. LIFE UNIVERSITY et al., Defendants and Appellants.	B226987 (Los Angeles County Super. Ct. No. BC380004)

APPEAL from a judgment of the Superior Court of Los Angeles County, Victor E. Chavez, Judge. Affirmed.

David S. Kim & Associates, David S. Kim and Samuel Yu for Defendants and Appellants.

Henry M. Lee and Jason Chong for Plaintiff and Respondent.

A jury found in favor of Yong Pyo Hong in his action for breach of contract, wrongful termination, and conversion against Hong's former employer, Life University. Life University appeals, arguing that the trial court made errors in evidentiary rulings, in jury instructions, and in awarding attorney fees. Hong argues that the trial court erred in taxing costs and in failing to award the requested amount of attorney fees. We affirm.

BACKGROUND

In a third amended complaint dated April 9, 2009, Hong alleged causes of action for breach of employment contract, fraud, wrongful termination in violation of public policy, conversion, and misappropriation of trade secrets against Life University, its president Ben K. Choi, and his son Steve Choi. The complaint alleged that on September 6, 2006, Hong entered into a five-year employment contract with Life University and Ben Choi to work as a full-time professor, and Life University breached the contract when it terminated him on June 15, 2007. While Hong worked for Life University, he "witnesse[d] activities that are unlawful under the laws of California," as the defendants "were operating an illegal 'degree mill' by granting various diplomas with little or no academic [course work] or proper standards," and Life University fired Hong when he protested. Further, Life University, Ben Choi, and Steve Choi converted Hong's property by retaining his books, published articles, teaching programs, and course materials. The complaint requested compensatory and punitive damages, injunctive relief, and attorney fees and costs.

After trial, a jury found in Hong's favor and against Life University on the breach of contract claim and the claim for wrongful termination in violation of public policy, and in favor of Hong and against Life University, Ben Choi, and Steve Choi on the conversion claim. The jury found in favor of Life University on Hong's fraud claim. The jury awarded Hong compensatory damages of $88,750 against Life University, $11,250 against Ben Choi, and $1,000 against Steve Choi. The jury also found that Ben Choi and Steve Choi acted with malice. After the punitive damages phase of the trial, the jury awarded punitive damages of $50,000 against Ben Choi, and $6,000 against Steve Choi.

The trial court granted Life University's motion to tax costs of $13,541.50 for fees for a discovery referee and Korean interpreters. Hong filed a motion for attorney fees of $260,817.50, plus $14,250 for the preparation and hearing of the motion, with a multiplier of 2.5. After a hearing, the court awarded Hong $60,000 in fees and an additional $4,000 for the preparation and hearing of the motion.

Life University, Ben Choi, and Steve Choi filed a timely appeal from the judgment. Hong filed a timely appeal from the award of attorney fees and the order taxing costs.

DISCUSSION

I. The trial court did not abuse its discretion in its evidentiary rulings.

Life University argues that the trial court abused its discretion in granting Hong's motion in limine to exclude evidence of Hong's immigration status. Life University also argues that the trial court abused its discretion by admitting documents not produced in discovery, allowing references to Life University's illegal activities, and limiting use of evidence of another lawsuit related to the conversion claim.

"'"The usual purpose of motions *in limine* is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party."' [Citation.] . . . As rulings on the admissibility of evidence, they are subject to review on appeal for abuse of discretion. [Citations.]" (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 268–269.) An evidentiary ruling is an abuse of discretion when it is arbitrary, capricious or absurd, resulting in a manifest miscarriage of justice. (*Id.* at p. 271.)

A. Hong's immigration status was properly excluded.

Hong filed a motion in limine to exclude any evidence of his immigration status, arguing that under Labor Code section 1171.5 (section 1171.5) his immigration status was irrelevant to Life University's liability in his employment lawsuit. Hong's attorney filed a declaration stating that if the court found that his immigration documents were relevant, he would introduce into evidence a work visa showing that Hong had the right to work for Life University "'with no terms and conditions.'" Life University's

opposition argued that Hong misrepresented his immigration status during his interview, and Hong's immigration status was relevant to show that he lied on his employment application and during his interviews.[1] Life University did not attach any evidence of the visa or of any work restrictions, and did not contend that Hong had submitted false immigration documents. In reply, Hong argued that introducing evidence of his immigration status for any reason would prejudice him before the jury. After argument, the trial court took the matter under submission. Later the same day, the court granted the motion, finding that under Evidence Code section 352 the prejudice from admitting such evidence outweighed the probative value.

Section 1171.5 provides: "(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state. [¶] (b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law." The statute "leave[s] no room for doubt about this state's public policy with regard to the irrelevance of immigration status in enforcement of state labor [and] employment . . . laws. Thus, if an employer hires an undocumented worker, the employer will also bear the burden of complying with this state's wage, hour and workers' compensation laws." (*Hernandez v. Paicius* (2003) 109 Cal.App.4th 452, 460 overruled in part on other grounds in *People v. Freeman* (2010) 47 Cal.4th 993, 1006, fn. 4.)

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[1] Life University argued Hong's visa showed that he was required to work as a full-time pastor at a church, so that he could not have worked as a full-time professor at Life University. Life University did not make an offer of proof. Life University also argues on appeal that Hong conceded this fact at his deposition, but the deposition excerpt quoted by Life University does not appear in the record.

Life University claims that the application of section 1171.5 is precluded by the federal Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. § 1101 et seq.) and *Hoffman Plastic Compounds, Inc. v NLRB* (2002) 535 U.S. 137 [122 S.Ct. 1276, 152 L.Ed.2d 271], which Life University argues preempt the California statute. The Court of Appeal has rejected that argument. (*Farmer Brothers Coffee v. Workers' Comp. Appeals Bd.* (2005) 133 Cal.App.4th 533, 542 [section 1171.5 "is not in conflict with the IRCA and comports with the reasoning of *Hoffman*"]; *Reyes v. Van Elk, Ltd.* (2007) 148 Cal.App.4th 604, 618 ["the prevailing wage law and the post-*Hoffman* statutes are not preempted by the [IRCA]]].")

Further, evidence of Hong's immigration status was not admissible for purposes of impeachment, and would have been "highly inflammatory" and "'prejudicial to the party whose status was in question.'" (*Hernandez v. Paicius, supra,* 109 Cal.App.4th at pp. 460, 461, fn. 5.)

The trial court did not abuse its discretion in granting Hong's motion in limine to exclude evidence of his immigration status.

B. The trial court did not abuse its discretion in admitting documents not produced in discovery.

Hong filed a motion in limine to exclude documents that had not been produced in discovery by Life University. The trial court granted the motion. Life University claims the trial court subsequently committed an abuse of discretion (and violated its ruling on the motion in limine) by admitting two documents that had not previously been produced during discovery.

Life University describes one document as "course material purportedly prepared by [Hong]." One of Hong's students testified that he purchased course materials from Hong, and that he had a sample of the materials with him. Life University's counsel objected to the document because Life University had not seen it. Hong's counsel responded that it was being used for impeachment and that the witness had been subpoenaed with a request for production, and made an offer of proof that the student would testify that he bought the course materials from Hong, the number of pages, and

the price. The trial court allowed the testimony, and the student testified that he paid five to seven dollars for 197 pages. On cross-examination, the student testified that he paid cash and did not receive a receipt.

Life University describes another document as an English translation of a letter in Korean regarding the use of off-campus facilities for students. During the testimony of Ben Choi, Hong's counsel moved the original letter into evidence; Life University's counsel objected that there was no translation, but the court allowed the Korean letter into evidence only for identification purposes, with a translation to be obtained later. Ben Choi testified that his signature was on the letter and to the letter's date, and stated that Hong's signature was also on the letter. Later, Hong's counsel produced the English translation, and Life University's counsel objected that it was not produced earlier. Hong's counsel replied that the document had been produced. The court concluded "Well, it's their own document, I'm not going to keep their own document out," and allowed the translation into evidence.

We perceive no abuse of discretion in either instance. The sample of course materials was not introduced into evidence. Further, we do not see how the student's testimony that he purchased the material with cash from Hong prejudiced Life University, who describes as a "critical issue . . . whether [Hong] acted improperly in forcing his students to purchase course materials directly from Respondent," as the testimony would seem to favor Life University. As to the English translation of the letter, the Korean letter was apparently introduced during discovery, and we do not see how allowing the translation into evidence would be an abuse of discretion. Life University did not and does not argue that the translation was inaccurate or misleading, so as to prejudice Life University.[2]

[2] Life University also does not provide a record citation to the letter itself or to the English translation.

C. No improper references were made to illegal activities or to "paper mills."

Life University filed a motion in limine to "exclude reference . . . to any purported 'illegal activities' conducted by Defendants." The court granted the motion, stating that Hong could present evidence but not refer to activities as "illegal" ("to say 'illegal' is a conclusion, is it not?"). The court stated that if Hong wished to make reference to such activities, the court would hear argument before any testimony. The trial court made a similar ruling regarding reference to "paper mills" and "degree mills," clarifying that the court would hear argument at sidebar if Hong wished to introduce evidence containing those words.

Life University argues that the trial court nevertheless allowed such references "on multiple occasions," citing two occasions at trial. The first occurred when Hong testified that Life University employees back-dated admission dates of new students. The court sustained Life University's objection when Hong's counsel asked Hong whether he had observed anyone back-date a student transcript. The only use of the words "unlawful activity" was at sidebar. The second occurred when in closing argument Hong's counsel stated (without objection by Life University) that Ben Choi did not write a paper for his degree from Life University, "and that's a perfect reflection of what was going on at Life University." Again, no reference was made to "illegal activities." Further, neither of these occasions involved the use of the words "paper mills" or "degree mills." Life University has not shown any violation of the trial court's ruling on the motion in limine.

D. Life University has waived its argument that evidence was improperly limited.

Life University argues that it was precluded from submitting evidence of another lawsuit filed by Hong. During trial, Life University attempted to offer an exhibit showing that Hong filed a lawsuit against another university. Hong objected. At sidebar, Life University argued that the evidence was relevant to the wrongful termination claim. The court disagreed, and received into evidence only the other lawsuit's third cause of action for conversion as relevant to Hong's conversion claim against Life University.

Life University questioned Hong about the conversion cause of action in the other lawsuit.

In arguing that the court's limitation was an abuse of discretion, Life University makes assertions about the complaint in the other lawsuit with no citation to the record. Life University has therefore forfeited the claim, and we disregard Life University's accompanying arguments. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560–1561.)

II. The jury instructions were not erroneous.

Challenges to jury instructions are reviewed de novo. (*Sander/Moses Productions, Inc. v. NBC Studios, Inc.* (2006) 142 Cal.App.4th 1086, 1094.) In reviewing Life University's claim that its punitive damages instructions were improperly refused, we view the evidence in the light most favorable to Life University. (*Alcala v. Vazmar Corp.* (2008) 167 Cal.App.4th 747, 754.)

A. The breach of contract instructions were correct.

Life University argues that the trial court erred in giving jury instructions placing the burden on Life University to show breach of contract.[3] The complained-of instructions relate to a contract dated April 1, 2007 and signed by Ben Choi and Hong, declaring the September 6, 2006 five-year contract "'invalid.'" The April 1, 2007 contract (among other things) required prior approval before Hong could sell course materials to students and limited the contract term to one year. Ben Choi testified that Hong voluntarily agreed to cancel the five-year contract and replace it with the one-year contract with additional restrictions. Hong testified that Ben Choi threatened to fire him if he did not sign the one-year contract.

The challenged instructions provided that Life University had to show that the parties agreed to the April 1, 2007 contract terms and that if Hong agreed under duress, the jury could not find that a contract was formed. The instructions stated that Life

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[3] Although the transcript does not show that Life University objected to the instructions on this ground, there were unreported sidebar proceedings during the giving of the instructions.

University had to show the following: offer and acceptance by Hong; that the parties agreed to the modification of the original five-year contract; and that Hong voluntarily agreed to be bound by the contract. "If you find Yong Pyo Hong agreed to be bound only on certain conditions, or if he was threatened or was under duress, then there was no acceptance and you may not find that an April 1, 2007 contract was created."

These instructions were correct. As a defense to Hong's claim that Life University breached the September 6, 2006 five-year employment contract, Life University asserted the existence of the April 1, 2007 one-year contract, and therefore Life University had the burden of proof to show that the 2007 contract was properly formed and not (as Hong contended) the product of duress. (Evid. Code, § 500; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291.)[4]

B. Life University's proposed punitive damages instructions were properly refused.

Life University also argues that the trial court erred in refusing to give Life University's proposed instructions on punitive damages. Life University proposed special instructions stating that any award of punitive damages must bear a reasonable relationship to the actual harm inflicted on Hong and must be in proportion to the compensatory damages for conversion. One instruction provided "In some cases a ratio of less than one to one may be appropriate, in other cases, a ratio of one to one," and the other stated: "You may only award punitive damages in a one to one ratio as compared to compensatory damages." The court refused to give the instructions. Life University argues that as a result of the court's failure to give the special instructions, the jury awarded excessive punitive damages against Ben Choi (over a four to one ratio to compensatory damages) and Steve Choi (a six to one ratio).[5]

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[4] The trial court also instructed the jury that Hong had the burden to show the existence and the breach of the original employment contract.

[5] The instructions as given directed the jury to consider whether "there [was] a reasonable relationship between the amount of punitive damages and Yong Pyo Hong's harm."

Life University's instructions would have limited the jury to awarding punitive damages totaling no more than the amount of compensatory damages. This is not the law. "[T]he correct rule is that the punitive damages 'must bear a reasonable relationship to actual damages.' [Citation.] The proposed instruction erroneously suggests that there is a fixed ratio between the punitive damages and the actual damages sustained, regardless of the impact of the other elements which bear upon the matter, including the magnitude and flagrancy of the offense, the importance of the policy violated, and the wealth of the defendant." (*Zhadan v. Downtown L.A. Motors* (1976) 66 Cal.App.3d 481, 501.) "'[W]e have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula' . . . . We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. . . . [¶] There are no rigid benchmarks that a punitive damages award may not surpass, [and] ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.' [Citation.] . . . Single-digit multipliers are more likely to comport with due process." (*State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 424–425 [123 S.Ct. 1512, 155 L.Ed.2d 585]; *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 563.)

Even viewing the evidence in the light most favorable to Life University, the trial court did not err in rejecting Life University's proposed punitive damages instructions.

III. The trial court's award of attorney fees and its decision to tax costs were not abuses of its discretion.

Life University argues that the trial court erred in awarding $64,000 in attorney fees to Hong, because there was no attorney fees provision in the contract. Hong argues that the trial court abused its discretion in failing to award the entire attorney fees amount requested ($260,817.50 plus $14,250 for the fee motion, as well as a multiplier of 2.5) and in taxing costs of $13,541.50.

A. The trial court had authority to award attorney fees.

The trial court did not err in awarding attorney fees. Life University argues that no statute or contract provided for attorney fees. Hong's motion for fees, however, cited

Labor Code section 218.5 and Code of Civil Procedure section 2033.420. Both statutes were argued at the hearing on the motion.

Labor Code section 218.5 states in part: "In any action brought for the nonpayment of wages [or] fringe benefits, . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." Life University argues that the statute does not apply because this is an action in contract rather than an action for the "nonpayment of wages." Hong's complaint, however, alleged that his damages included lost wages. Labor Code section 218.5 expressly applies to "any action" based on the nonpayment of wages or fringe benefits, which plainly includes a breach of contract action. Had the Legislature intended to exclude a breach of contract action from the reach of Labor Code section 218.5, it could have easily done so.

Life University also points out that Hong's complaint, which requested "attorneys fees pursuant to contract and/or statute," does not specifically cite Labor Code section 218.5. The statute includes no such requirement. Rather, it provides that attorney fees are available "if any party to the action requests attorney's fees and costs upon the initiation of the action." (Lab. Code, § 218.5.) Labor Code section 218.5 allows the prevailing party to recover fees if any party requested fees at the beginning of the case (*Aleman v. AirTouch Cellular* (2011) 202 Cal.App.4th 117, 138), and Hong's complaint requested "attorneys fees pursuant to contract and/or statute." This was sufficient to put Life University on notice of its potential liability for attorney fees. Attorney fees are allowed as an item of costs where they are authorized by contract, statute, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10)). Here, the attorney fees were authorized by Labor Code section 218.5.

As an award of fees was authorized by Labor Code section 218.5, we do not need to consider whether they were also recoverable under Code of Civil Procedure section 2033.420, which provides, in pertinent part: "If a party fails to admit the . . . truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the . . . truth of that matter, the party requesting the

admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." The trial court must make the order unless one of the following occurred: "[a]n objection to the request was sustained," "[t]he party failing to make the admission had reasonable ground to believe that that party would prevail on the matter," or "[t]here was other good reason for the failure to admit." (Code Civ. Proc., § 2033.420, subd. (b)(2), (3), (4).) We note, however, that Life University's appellate argument that it met each of these subsections is entirely unsupported by any record citations, and thus Life University has forfeited that argument. (See, e.g., *Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 392, fn. 2 [appellate court may disregard factual assertions that are unsupported by citations to the record].)

B. The amount of the award was not an abuse of discretion.

Hong argues that the trial court abused its discretion in failing to award the full amount of attorney fees Hong requested, $260,817.50 plus $14,250 for the fee motion and hearing, and that we should remand to the trial court to reconsider the award and the requested enhancement of 2.5. "The 'experienced trial judge is the best judge of the value of professional services rendered in his court,'" including the hourly rate of the attorney appearing before the court. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) We do not disturb the trial court's determination unless it is a manifest abuse of discretion (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095), for instance, "if the amount awarded is so large or small that it shocks the conscience." (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.)

The trial court is not required to state its reasoning in awarding attorney fees. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.) While the analysis begins with the time records, once the trial court performs the lodestar calculation, it must determine whether the total award so calculated is more than a reasonable amount and, if so, reduce the award to a reasonable figure. (*PLCM Group, Inc. v. Drexler*, *supra*, 22 Cal.4th at pp. 1095–1096.) The trial court may exercise its discretion to award less than requested. (*Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816.)

As the record contains no calculations, we presume the trial court, using its sound discretion, found the lodestar to be more than a reasonable amount, and thus reduced the award to a reasonable figure. (*Levy v. Toyota Motor Sales, U.S.A., Inc.*, *supra*, 4 Cal.App.4th at p. 816.) Stated another way, based upon the trial court's determination, we presume the trial court concluded that Hong's fee request was inflated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324–1326.) When the trial court reduces the award, it is not required to specifically state which services it found to be duplicative or unreasonable. (See *Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1140.) A court does not abuse its discretion merely because it substantially reduces the amount of attorney fees and/or costs requested by a prevailing defendant. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249–1253 [affirming award of $23,000 as attorney fees and costs despite documented request for $112,288.63].)

We find nothing in the record to support a conclusion that the trial court's award of $60,000 in fees shocks the conscience. At the hearing, the court expressed considerable skepticism about the amount of fees requested ("I think I'll go back into practice if you're making that kind of money. [¶] . . . [¶] [T]ell me why you think it's worth that kind of money"). Hong had requested $14,250 for the preparation and the hearing on the fee motion, which the court described as "a little extreme." Hong's counsel admitted that his estimate of the time necessary to prepare for the hearing was overblown, but argued that Life University's denial of requests for admissions required counsel to take depositions, review documents, and file discovery motions, creating "extra work and extra expense." The amount eventually awarded by the trial court reduced the fee amount for the motion and hearing from the requested $14,250 to $4,000, and for the case from the requested $260,817.50 to $60,000.

We are not convinced that the amount awarded was "patently absurd." (See *Rey v. Madera Unified School Dist.* (Feb. 28, 2012, F061532 __ Cal.App.4th __) [2012 WL 615668 p. *11].) Whether under Labor Code section 218.5 or Civil Code section

2033.420, Hong has not shown that the amount of fees awarded was an abuse of discretion.[6]

C. The trial court did not abuse its discretion in taxing costs.

Life University filed a motion to tax $20,544.10 in costs, including $13,541.50 for fees for a discovery referee and Korean interpreters. Life University argued that those costs were not recoverable as a matter of right, and that Hong provided insufficient documentation and inflated the fee amount. In response, Hong argued that the interpreter fees were justified and that Life University had requested the discovery referee and therefore should be held liable for the costs. In reply, Life University pointed out that the minute order appointing the referee stated, "All costs to be shared equally by the parties."

We review a costs award for abuse of discretion. (*El Dorado Meat Co. v. Yosemite Meat & Locker Service, Inc.* (2007) 150 Cal.App.4th 612, 617.) "The trial court's exercise of discretion in granting or denying a motion to tax costs will not be disturbed if substantial evidence supports its decision. [Citation.]" (*Jewell v. Bank of America* (1990) 220 Cal.App.3d 934, 941.) "[W]e are bound by the principle that '[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" (*Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266.)

Life University's motion to tax costs argued that it had requested the referee because Hong refused to cooperate during discovery, and the interpreters' fees varied widely and were unsupported by invoices or receipts. Hong responded that Life University should pay for the referee because Life University requested the appointment and the referee was unnecessary, and the interpreter fees were higher for one interpreter who interpreted more often in the case. Life University replied that Hong had not

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[6] Hong cites cases discussing attorney fees in cases involving unlawful job discrimination, but there was no allegation of such discrimination in this lawsuit.

provided invoices or documents to explain the interpreter's fees and Life University was forced to request a referee because Hong had not cooperated in discovery. At the hearing on the motion to tax costs, the parties repeated these arguments and Hong stated that his offices had located the invoices and he could submit them to the court. The court took the motion under submission and stated that it did not want Hong to submit the invoices.

Substantial evidence supports the trial court's order taxing costs, and we see no abuse of discretion. Hong failed to submit invoices for the interpreters' fees before the hearing and order on the motion. The order appointing the referee held Hong responsible for half of the cost of the referee, and without abusing discretion, the trial court reasonably could have ruled that the entire referee cost was incurred unnecessarily by reason of Hong's discovery intransigence. (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2003) ¶ 17:112.1, p. 17-42 (rev.# 1, 2007).)

IV. We award no sanctions for a frivolous appeal.

Hong requests sanctions for a frivolous appeal in his respondent's brief. We deny this request without reaching the merits, because Hong has not filed a noticed motion for sanctions. (Cal. Rules of Court, rule 8.276(b)(1); *Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919.) While we have the authority to impose sanctions on our own motion, we decline to do so in this case. An appeal is frivolous if prosecuted for an improper motive or indisputably without merit and sanctions are appropriate "to deter only the most egregious conduct." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650–651.) While Life University's appeal is without merit and its brief is in some respects deficient, we are reluctant to characterize its conduct as egregious.[7]

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[7] Life University filed as additional authority the United States Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012) 565 U.S. __ [132 S.Ct. 694, 181 L.Ed.2d 650]. The Supreme Court held that under the Establishment and Free Exercise Clauses of the First Amendment, a "ministerial exception" barred a lawsuit by a minister against a religious group alleging termination in violation of employment discrimination laws. (*Id.* at p. 710.) This is not relevant authority. Even if Hong qualified as a "minister" and Life University as a "religious

DISPOSITION

The judgment, the order taxing costs, and the order awarding attorney fees are affirmed. Respondent shall recover costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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group," Hong's lawsuit did not allege violation of an employment discrimination statute. The Supreme Court expressly refused to consider whether the ministerial exception barred "actions by employees alleging breach of contract or tortious conduct by their religious employers." (*Ibid.*)

Hong filed an objection to Life University's lodging of the trial exhibit book. The objection is not well taken, as the trial court ordered all exhibits returned to counsel for Life University after the jury rendered a verdict, with an order re: release of civil exhibits signed and filed the same day. In any event, our review of the exhibits does not affect our decision to affirm.