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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CIERRA GWIN, Plaintiff and Respondent, v. NATVAN, INC., et al., Defendants and Appellants.	B292990 (Los Angeles County Super. Ct. No. BC571329)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Law Office of Laura Sullivan, Laura Sullivan; Haber Polk Kabat and Mark Humenik for Plaintiff and Respondent.

Law Offices of Frank N. Lee and Frank N. Lee for Defendants and Appellants.

INTRODUCTION

After her job was terminated, plaintiff Cierra Gwin sued her former employer Natvan, Inc., and its vice president Danny Gi on a slew of labor law related claims. Many of those causes of action permitted the trial court to award reasonable attorneys' fees if Gwin prevailed. Following the first phase of a bifurcated bench trial, the trial court issued tentative verdicts. The court found in Gwin's favor on nine of ten causes of action against Natvan, and on two of eleven claims against Gi. Before the remaining issues were tried, the parties settled. Natvan and Gi agreed to pay $170,000 (an amount in excess of the tentative verdicts), agreed that Gi and his wife (Natvan's owner) would guarantee Natvan's settlement payment, and stipulated that various attorney fee claims were preserved for resolution by later motion practice.

Gwin thereafter requested an attorneys' fee award of $1,214,340. The trial court awarded $821,940 and ordered that Natvan and Gi were jointly and severally liable for that amount. Defendants now appeal. Gi asserts that, given the tentative verdicts exonerating him on most claims, it was error to hold him jointly liable with Natvan for the full fee award. Natvan and Gi additionally argue the trial court erred in not apportioning fees to enforce a statutory cap on attorneys' fees applicable to Gwin's Confidentiality of Medical Information Act (CMIA) claim, Civil Code section 56.10, et seq.

BACKGROUND

A. Allegations Related to Gwin's Employment

Natvan is a clothing wholesaler wholly owned by Gi's wife. Gi is its vice president. Before she was terminated, Gwin was employed by Natvan to assist at trade shows where Natvan's products were displayed to potential purchasers. Gwin's supervisor at Natvan was Sarah Kang. Gwin alleged both she and other Natvan employees were required to work in excess of 8-hour and 12-hour workdays without overtime compensation or required meal and rest breaks. She further alleged she was not paid her vacation time, and that Natvan did not properly document the hours she worked.

In March 2014, Gwin was in Dallas, Texas for a trade show. She developed welts on her body from bug bites. Kang feared Gwin was contagious and ordered Gwin to provide Kang with personal medical test results. Kang also demanded, and Gwin in turn provided, pictures of Gwin's body with the welts, Gwin's medical records, and the names of medications she was taking. Gwin asserts that when her doctor's office affirmed in writing she did not have an infectious disease and was fit to return to work, Kang doubted the information and Gwin was terminated the following day.

B. Trial and Tentative Verdicts

The First Amended Complaint, filed November 20, 2015, was the operative pleading. The complaint asserted 13 separate causes of action against Natvan and Gi:[1] (1) failure to pay

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[1] Kang was also named as a defendant. She was ultimately ordered to pay $1,000 in attorney's fees and raises no claim of

overtime wages, (2) violation of the CMIA, (3) violation of the Fair Employment and Housing Act (FEHA), Government Code section 12900, et seq., (4) violation of the constitutional right to privacy, (5) public disclosure of private facts, (6) false light/invasion of privacy,[2] (7) wrongful termination in violation of public policy, (8) failure to pay accrued vacation, (9) failure to provide accurate wage statements, (10) failure to provide personnel records, (11) failure to provide meal and rest periods, (12) unfair business practices in violation of Business & Professions Code section 17200 et seq.,[3] and (13) a Private Attorneys General Act (PAGA) claim, Labor Code section 2698, et seq.[4]

On July 12, 2017, Gwin waived her right to a jury trial. The court trailed the matter until the following day for the parties to confer on stipulations. The parties thereafter executed a written stipulation. While the parties agreed on certain amounts owed, they did not agree on the underlying conduct that supported the stipulated amounts. They agreed $12,000 was owed for unpaid overtime, $650 for unpaid vacation time, and $2,000 for meal and rest period violations. The parties also stipulated to waiting time penalties under section 203 of $5,000 for the first and eighth causes of action, statutory penalties under

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error concerning that order. Accordingly, we do not summarize the proceedings as against her.

[2] Gwin later withdrew this cause of action.

[3] This claim was resolved by stipulation and is not at issue in this appeal.

[4] All unspecified statutory references are to the Labor Code.

sections 226, subsections (c) and (f) on the tenth cause of action of $750, and statutory penalties under section 1198.5 for the tenth cause of action of $750. With regard to PAGA, the parties stipulated the applicable period for any civil penalties was January 1, 2014 through April 30, 2015, with the understanding Natvan was not stipulating Gwin was in fact entitled to penalties and not waiving any defenses Natvan might have to imposition of any such penalties.

Trial commenced on July 13, 2017. On July 14, 2017, the court bifurcated the PAGA claim to permit additional discovery on that claim.[5] The first phase of trial concluded on July 24, 2017. On September 18, 2017 the court issued tentative verdicts. The court found Natvan liable on the first cause of action for unpaid wages and awarded $21,611.23 consisting of $5,000 in stipulated waiting time penalties, $12,000 in stipulated overtime, and $4,611.23 in interest. On the second cause of action, for violation of the CMIA, the court found Natvan liable and indicated it would award non-economic damages of $3,000 and punitive damages of $3,000. On the seventh cause of action, for wrongful termination in violation of public policy, the court found Natvan violated the CMIA and FEHA in terminating Gwin, and awarded economic damages of $25,996.44 ($21,071.45 plus $4,924.99 in interest). On the eighth cause of action for unpaid vacation, the court found Natvan liable for the $650 stipulated amount plus interest, for a total of $873.16. On the ninth and tenth causes of action, for recordkeeping violations, the court

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[5] The trial court agreed to reopen discovery related to PAGA penalties in light of the Supreme Court's decision in *Williams v. Superior Court* (2017) 3 Cal.5th 531, which was issued on July 13, 2017.

imposed $3,750 in penalties against Natvan (all of which the parties had stipulated to before trial). On the eleventh cause of action for failure to provide meal and rest periods, the court ordered Natvan to pay the $2,000 stipulated amount plus $768.53 in interest. The court also found Natvan liable on the fourth and fifth causes of action for privacy related violations, with damages to be determined in phase two of the trial. The court found no oppression, malice or fraud in Natvan's conduct with regard to the fifth cause of action, and declined to award any punitive damages on it. Finally, the court found Gwin did not carry her burden on the third cause of action, alleging FEHA violations, and found in favor on Natvan on that claim.

With regard to Gi, the court did not find him liable on any cause of action under an alter ego theory. It therefore found in Gi's favor on the first, fifth, and seventh through twelfth causes of action, which asserted liability solely on the basis of alter ego. The court found Gi liable for violating the CMIA, and awarded Gwin $3,000 in non-economic damages and $3,000 in punitive damages on her second cause of action. The court found in Gi's favor on the third cause of action, which alleged FEHA violations. The court found Gi liable on the fourth cause of action for violating Gwin's constitutional privacy rights with damages to be determined at a later date.

C. Settlement

Following the tentative verdicts, and a mandatory settlement conference, the parties reached a settlement agreement in February 2018. The settlement agreement encompassed both Gwin's claims and those of another former Natvan employee named Amber Donnell, who separately had

filed suit.[6] The settlement agreement included a recitation of the matter's procedural history, including the tentative verdicts. Gwin and the defendants agreed to a stipulated money judgment of $110,000 in Gwin's favor (not including PAGA penalties). This included $51,250 in economic damages (comprised of the amounts in the tentative verdict for unpaid overtime and vacation, and slightly larger amount for meal and rest breaks than set forth in the tentative verdicts), $9,500 in non-economic damages and $3,250 in statutory penalties (an amount greater than the tentative verdicts), $6,000 in punitive damages (the same amount in the tentative verdicts, which imposed $3,000 in punitive damages against Natvan and the same amount against Gi), and an unallocated $40,000 "settlement compromise payment."

The parties also agreed to a stipulated money judgment of $60,000 in PAGA penalties "for Labor Code violations committed by Natvan" applicable to both the Gwin and Donnell lawsuits. The agreement included a formula by which Gwin and Donnell would participate in the PAGA penalties. The parties also executed a guaranty whereby Gi and his spouse agreed to guarantee and pay "all amounts included in the judgment" entered in connection with the settlement agreement, and that Gwin would have recourse to both the marital community property as well as the separate property of the guarantors.

Natvan stipulated that Gwin be treated as the prevailing party on her Labor Code and CMIA claims, and Gi similarly stipulated Gwin prevailed on her CMIA claim against him. The

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[6] Defendants have a separate appeal pending regarding the attorney fees awarded to Donnell. (*Donnell v. Natvan, Inc., et al.*, B293317.)

parties otherwise reserved their respective rights to make any arguments in support of or in opposition to a request by the other party for an award of attorneys' fees.

On February 21, 2018, Gwin's counsel filed a motion for approval of the PAGA settlement and entry of judgment. Defendants did not oppose approval of the settlement. The court entered judgment in advance of the hearing on that motion and vacated the hearing on the motion for approval. Defendants filed objections to Gwin's proposed judgment—asserting among other things that it failed to parse liability between the defendants—but not until after that judgment was entered. The court did not make any changes to the judgment in response to those objections, and defendants did not move for relief under Code of Civil Procedure section 473 to correct whatever errors they thought the judgment contained.

D. Attorneys' Fee Award

Following entry of judgment, Gwin moved for an award of attorneys' fees. Gwin sought $821,940 in lodestar attorney fees and multiplier fees of $392,400 for a total award of $1,214,340. Defendants opposed the motion, arguing the fees sought were unreasonable given the complexity of the case and the amount of the settlement. Defendants further argued that Gwin was limited to recovering no more than $1,000 for all attorney time expended on the CMIA claim.[7]

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[7] The CMIA provides that a prevailing party who has sustained economic loss or personal injury from the unauthorized disclosure of medical information "may recover . . . attorneys' fees not to exceed one thousand dollars ($1,000), and the costs of litigation." (Civ. Code, § 56.35.)

The court heard argument on June 18, 2018. It issued a ruling on August 2, 2018, awarding $821,940 in attorney fees—the lodestar amount sought by Gwin without any multiplier—"as reasonable and warranted" without any further explanation. After Gwin prepared a proposed notice of order, defendants objected to the lack of specificity as to which defendant was responsible for the attorneys' fees, and the lack of any explanation for the award amount. Defendants also objected to the proposed amended judgment submitted by Gwin, including that it purported to hold Gi personally liable for the full amount of the fee award.

In response, the trial court issued an order to show cause regarding entry of the proposed amended judgment and set a hearing for September 27, 2018 to resolve defendants' objections. The record does not contain a transcript from the September 27, 2018 hearing. The court's minute order indicates "[c]ourt and counsel meet & confer regarding proposed amended stipulated judgment and this court's previous award of attorneys' fees to be incorporated within the proposed amended stipulated judgment. [¶] Language to include court finding that individual defendant Danny Gi and corporate defendant Natvan, Inc. are jointly and severally liable." Gwin submitted a judgment conforming to the court's directive that same day, and the court entered judgment on September 27, 2018. Natvan and Gi filed a notice of appeal regarding the court's attorney fee order the same day judgment was entered.[8]

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[8] The parties spill considerable ink over whether the notice of appeal or the entry of judgment occurred first on September 27, 2018. We need not resolve this dispute. Regardless of

DISCUSSION

A. Standard of Review

We review the trial court's fee award for abuse of discretion. "An attorney fee dispute is not exempt from generally applicable appellate principles: 'The judgment of the trial court is presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive.' " (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research Institute*).)

" 'Generally, the trial court's determination of the prevailing party for purposes of awarding attorney fees is an exercise of discretion, which should not be disturbed on appeal absent a clear showing of abuse of discretion.' " (*Wohlgemuth v. Caterpillar, Inc.* (2012) 207 Cal.App.4th 1252, 1258.) Similarly, with regard to the amount of fees, " '[t]he "experienced trial judge is the best judge of the value of professional services rendered in [her] court, and while [her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong" '—meaning that it abused its discretion." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

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whether defendants' appeal is construed as being from the September 27, 2018 attorney fee order or the September 27, 2018 judgment, the issues presented on appeal regarding the propriety of the court's award of attorneys' fees are properly before us.

The interpretation of the settlement agreement and the statutory bases for the fee award are legal questions we review de novo. (*Shames v. Utility Consumers' Action Network* (2017) 13 Cal.App.5th 29, 38; *Crosby v. HLC Properties, Ltd.* (2014) 223 Cal.App.4th 597, 602.)

B. The Applicable Attorney Fees Statutes

Gwin based her attorneys' fee request on six different statutes: Labor Code sections 218.5, subdivision (a), 226, subdivision (e)(1), 1194, subdivision (a), and 2699, subdivision (g)(1); Government Code section 12965, subdivision (b); and Civil Code section 56.35.[9] The pertinent Labor Code sections require an award of reasonable attorneys' fees to an employee who prevails in establishing a violation covered by those sections. Government Code section 12965, subdivision (b) gives a trial court discretion to award reasonable attorneys' fees to a plaintiff who prevails on a claim "brought under" FEHA. Civil Code

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[9] On appeal, Gwin asserts Code of Civil Procedure section 1021.5 also supports the fees awarded. She did not cite or argue this statute to the trial court when moving for the fee award, and the trial court did not rely on that statute in making its award. We accordingly decline to consider this argument. (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488-489 [attorney fee contentions not raised before trial court are forfeited on appeal].) Gwin further contends the fee award was proper under Code of Civil Procedure section 2033.420, subdivision (a), which provides for an award of reasonable attorneys' fees incurred to prove the truth of a matter denied in a response to a request for admission. While Gwin did raise this argument below, we need not address it as we conclude the trial court did not abuse its discretion awarding fees based on the applicable Labor and Government Code sections.

section 56.35 permits a patient whose medical information was disclosed in violation of the CMIA, and who establishes he or she "sustained economic loss or personal injury therefrom" to recover "attorney's fees not to exceed one thousand dollars ($1,000) . . . ."

None of these attorneys' fees statutes define who is a prevailing party, nor do they expressly discuss the availability of attorneys' fees in the event of a settlement. " ' "In the absence of legislative direction . . . , . . . a rigid definition of prevailing party should not be used." ' " Instead, a court should examine the question based on a pragmatic assessment of which party succeeded on a practical level. (*Olive v. General Nutrition Centers, Inc.* (2018) 30 Cal.App.5th 804, 824.) This evaluation requires consideration "of the extent to which each party has realized its litigation objectives, whether by judgment, settlement or otherwise." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 622.)[10]

C. The Trial Court Did Not Abuse its Discretion in Awarding Fees as against Gi In Excess of $1,000

Gi argues the trial court erred when imposing joint and several liability for the full fee award because Civil Code section 56.35 barred Gwin from recovering more than $1,000 in attorney fees from him. Gi constructs his argument as follows. The only cause of action on which trial court's tentative verdict awarded monetary relief against Gi was under the CMIA, and that was

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[10] Defendants intimate error exists because the attorneys' fee award was approximately five times the damages, but that is not grounds for finding an abuse of discretion here. (See, e.g., *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251 [fee awards in employment cases need not be proportional to the amount of damages recovered].)

also the only cause of action on which Gi was found liable that provided for an attorneys' fees award. Because Civil Code section 56.35 limits prevailing party attorneys' fees to no more than $1,000 for a CMIA claim, the trial court could not as a matter of law award any fees against Gi in excess of $1,000.

Gi's argument fails because it focuses on a snapshot in time—the tentative verdict after phase one—without accounting for what happened later. To paraphrase Yogi Berra, a trial ain't over till it's over. Wherever Gi had things positioned earlier in the litigation, the case did not end after phase one of the trial. Following the tentative verdicts, and with a further phase still to be tried, the parties negotiated a settlement. To pragmatically assess whether Gwin achieved her litigation objectives against Gi, we look at that ultimate settlement, and not the earlier tentative verdict against him. (See *Denney v. Universal City Studios, Inc.* (1992) 10 Cal.App.4th 1226, 1237, fn. 5 [request for attorney fee premature where party partly prevailed on interlocutory appeal, because it was unclear who would "finally prevail in the action."], abrogated on other grounds by *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1148.)

In the settlement, Natvan *and* Gi both "agree[d] to a stipulated judgment in Gwin's favor individually (not including PAGA penalties)" on multiple causes of action in addition to the CMIA, and in an amount ($110,000) in excess of the award against Gi in the tentative verdict. The "Parties," meaning Natvan and Gi, further "agree[d] to a stipulated money judgment of $60,000 in total PAGA penalties" to resolve those claims in both the Gwin and Donnell lawsuits. When a settlement agreement calls for payment of settlement proceeds by the defendants as a group without allocation or severance of their

liabilities, as the agreement did here, each of the defendants is jointly and severally liable to pay the entire settlement amount. (*Vons Companies, Inc. v. United States Fire Insurance Co*. (2000) 78 Cal.App.4th 52, 64.)

Gi insists such a result ignores that the settlement agreement incorporated by reference the tentative verdict against him in reciting the matter's procedural history. But the parties' recital of the procedural history was just that—a recital of the procedural history, and not an operative term of the settlement agreement. Similarly, the tentative verdict was just that—a tentative verdict that the court never finalized. Mentioning the tentative verdict in a "whereas" clause in the settlement agreement did not vary or alter the actual terms of the agreement, particularly given that the agreement was for Natvan and Gi both to pay amounts different from and in addition to the tentative verdict.[11]

Given that the monetary relief Gwin ultimately obtained against Gi was co-extensive with that imposed against Natvan, and included Gi agreeing to pay money based on claims other

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[11] Gi also suggests it would have been superfluous to have a guaranty be part of the settlement if he was individually liable under that agreement. We disagree, as reasons existed for the guaranty regardless of Gi's joint and several liability. First, the guaranty covered the entire settlement amount, which included the Donnell case which went to trial as to Natvan only. Second, Gi's spouse was not a party to either the Gwin or Donnell lawsuits, and the guaranty ensured that Gi's personal liability (as well as that of Natvan) could be satisfied either with his separate property, or with community property belonging to both Gi and his spouse.

than the CMIA cause of action, imposing joint and several liability on Gi for the attorneys' fee award was not an abuse of discretion.

D. The Trial Court Did Not Err in Declining to Apportion Fees Related to the CMIA Claim

Natvan and Gi further contend the trial court was required to apportion fees as between Gwin's causes of action. Defendants first argue the trial court erred in failing to apportion between Gwin's claims because there were no common issues of fact or law between claims for which fees were statutorily authorized, and those claims for which fees were not authorized. Defendants secondarily contend that the trial court erred in failing to apportion fees to enforce the CMIA's $1,000 limitation on recoverable attorneys' fees.

1. Defendants Fail to Demonstrate a Lack of Common Issues of Fact or Law

Defendants assert Gwin alleged two distinct groups of claims with minimal legal or factual overlap—one related to wage and hour violations, and another related to invasion of privacy, discrimination, and wrongful discharge claims. Again pointing to the tentative verdicts, defendants contend the only cause of action in the second group of claims that permitted an award of attorney fees, and on which Gwin prevailed, was the CMIA claim. Thus, Defendants argue, the trial court erred in not apportioning fees between the two sets of claims and awarded fees in excess of what was authorized by the applicable statutes.

Gwin disputes defendants' purported separation of her claims into two distinct buckets. Gwin argues all her claims were interrelated—she suffered retaliation for her failure to provide

confidential medical information, and that retaliation included nonpayment of accrued wages. Thus, Gwin insists, the fees she incurred on causes of action for which attorneys' fees were not authorized (or in the case of the CMIA, limited) directly overlapped with causes of action for which fees were recoverable.

An award of attorneys' fees is permitted only when authorized by contract, statute or law. (E.g., Code Civ. Proc., §§ 1021, 1033.5, subd. (a)(10).) Where causes of actions for which attorneys' fees are available are joined with other causes of action for which they are not, the prevailing party may recover attorneys' fees only as they relate to the cause(s) of action for which a fee award is permitted. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.) However, "plaintiff's joinder of causes of action should not dilute its rights to attorney's fees. Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." (*Id*. at pp. 129–130.) In other words, "[a]ll expenses incurred" on issues common to a cause of action for which fees are proper "qualify for award." (*Id*. at p. 130.)

Employment and employment discrimination cases, by their very nature, often involve several causes of action arising from the same set of facts. (*Taylor v. Nabors Drilling USA, LP*, *supra*, 222 Cal.App.4th at p. 1251.) Where a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court does not adopt each contention raised. (*Ibid*.) "Once a trial court determines entitlement to an award of attorney fees, apportionment of that award rests within

the court's sound discretion." (*Carver v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 505 (*Carver*).)

The court's fee award order is presumed correct. (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1322.) "[E]very presumption is in favor of the validity of the judgment and all facts consistent with its validity will be presumed to have existed. . . . The trial court's findings of fact and conclusions of law are presumed to be supported by substantial evidence and are binding on the appellate court, unless reversible error appears on the record." (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924 (*Bond*).)

Beyond the parties' contentions about the overlap or lack thereof in Gwin's causes of action, we have only Gwin's first amended complaint and the settlement agreement. We have no information about how these claims were presented to the trial court, as the record does not contain the reporter's transcripts from the trial.[12] The first amended complaint is consistent with Gwin's position that her theories were based on a common set of facts. Indulging in all intendments and presumptions to support

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[12] Defendants initially designated the reporter's transcripts for the trial, but later requested permission (which we granted) to exclude those transcripts from the record. While trial transcripts are not necessarily a predicate to challenging a fee award, without them defendants here lack any record support for their challenges to the factual overlap, or lack thereof, between Gwin's claims. (*Bond*, *supra*, 50 Cal.App.4th at p. 924.; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 448 ["The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court abused its discretion."].)

the judgment, we must therefore conclude all of Gwin's fees were incurred for representation on one set of facts common to all causes of action. "Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units." (*Bell v. Vista Unified School Dist*. (2000) 82 Cal.App.4th 672, 687.)

2. The CMIA Did Not Limit Gwin's Recovery of Fees to Which She Would Otherwise Be Entitled

Defendants lastly contend that even if Gwin's claims arose from one common set of facts, apportionment to enforce the CMIA's statutory limit of $1,000 in attorneys' fees was nevertheless required under the reasoning of *Carver*, *supra*, 119 Cal.App.4th 498 and *Dane-Elec Corp., USA v. Bodokh* (2019) 35 Cal.App.5th 761 (*Dane-Elec*). In *Carver*, the defendant in an antitrust lawsuit sought attorneys' fees under a contractual prevailing party provision after successfully defending both Cartwright Act and contract claims. (119 Cal.App.4th at pp. 502-503.) Because the Cartwright Act allows an award of attorney fees to a prevailing plaintiff but not a prevailing defendant, the *Carver* court concluded that allowing the defendant "to recover fees for work on Cartwright Act issues simply because the statutory claims have some arguable benefit to other aspects of the case would superimpose a judicially declared principle of reciprocity on the statute's fee provision, a result unintended by the Legislature, and would thereby frustrate the legislative intent" to encourage private antitrust enforcement. (*Id*. at p. 504.) Accordingly, the trial court was required to apportion and disallow fees for the Cartwright Act claims even though they

overlapped with contract claims on which fees were recoverable. (*Id*. at p. 506.)

In *Dane-Elec*, the court addressed "whether an employer may recover attorney fees incurred in successfully defending a wage claim, found not to have been brought in bad faith, when the wage claim was inextricably intertwined with a contract claim for which the employer would otherwise be contractually entitled to recover attorney fees." (35 Cal.App.5th at p. 764.) Following the logic of *Carver*, the court held "that to permit a prevailing defendant (here, Dane Corp.) to recover attorney fees incurred in defending a wage claim, which the trial court has determined not to have been brought in bad faith, would frustrate the Legislature's intent by turning a unilateral fee-shifting statute into a reciprocal one." (*Id*. at p. 774.) Accordingly, the defendant employer could "not recover attorney fees in defending [plaintiff]'s wage claim even if that claim overlaps or is inextricably intertwined with fees [on] the breach of contract claim." (*Ibid*.)

Defendants argue these cases required the trial court to segregate the fees for time spent in connection with the CMIA claim, and limit the fees for that time to $1,000, even if the fees were incurred on a matter that was intertwined with another claim for which fees were recoverable. We disagree, as the facts here are distinguishable from *Carver* and *Dane-Elec*. This case does not involve a privately negotiated contractual fee provision, where enforcement of the contractual terms would frustrate a legislative determination of who may be awarded fees on related statutory claims. It instead involves harmonizing competing statutory provisions in which the Legislature has provided for an

award of attorneys' fees regardless of any private agreement between the parties.

Carver and *Dane-Elec* both caution against interpreting arguably conflicting fee award provisions in a way that would burden a plaintiff's assertion of statutory rights—antitrust enforcement in *Carver*, and Labor Code provisions in *Dane-Elec*. We agree with that interpretative point of view, namely that in harmonizing fee-shifting statutes we must consider which reading best vindicates an express public policy. (*Dane-Elec*, *supra*, 35 Cal.App.5th at p. 775.) Gwin is the sole party here seeking to enforce statutory rights; it is Natvan and Gi who are defending against the assertion of such rights. Applying the CMIA to limit fees on work inextricably intertwined with other claims on which Gwin prevailed and would otherwise be entitled to recover attorney's fees would burden, not encourage, the enforcement of statutory rights. Defendants' argument, if accepted, would effectively penalize a plaintiff for asserting a CMIA claim along with other overlapping claims for which prevailing party attorneys' fees are available, by potentially limiting fees that would otherwise be recoverable. "[T]he joinder of causes of action should not dilute the right to attorney fees." (*Akins v. Enterprise Rent–A–Car Co.* (2000) 79 Cal.App.4th 1127, 1133.) *Carver* and *Dane-Elec* make clear we should not frustrate the Legislature's intent to promote enforcement of the statutes at issue in this case by adopting the interpretation urged by defendants.[13]

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[13] Even if Civil Code section 56.35 did require apportionment, Natvan and Gi fail to demonstrate the ultimate award would have differed. Defendants identify no work solely dedicated to

DISPOSITION

The judgment is affirmed. Gwin is to recover her costs on appeal from Natvan and Gi.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

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the CMIA claim and given the overlap between Gwin's various causes of action limiting any CMIA fees to $1,000 would not have led to a reduction in the overall award.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.