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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

SANDRA DIAZ et al., Plaintiffs and Appellants, v. GRILL CONCEPTS SERVICES, INC., et al., Defendants and Appellants.	B284146 (Los Angeles County Super. Ct. No. BC542720)

APPEAL from an order of the Superior Court of Los Angeles County. John Shepard Wiley, Jr., Judge. Affirmed.

Hadsell Stormer & Renick, Randy R. Renick, Cornelia Dai, and Springsong Cooper for Plaintiffs and Appellants.

Stokes Wagner, Peter B. Maretz, Shirley Banner Gauvin, and Jacqueline A. Godoy for Defendants and Appellants.

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After the trial court entered judgment for a class of former restaurant employees who had been unlawfully paid less than the applicable "living wage," the class's attorneys sought costs and attorney's fees. The trial court ultimately awarded $9,775 in costs for voluntary mediation, $7,497.80 in costs for expert witness fees incurred by the class after the restaurant rejected the class's offer to settle under Code of Civil Procedure section 998,[1] and $333,000 in attorney's fees. The restaurant appeals the two cost awards as improper, and the class appeals the $333,000 attorney's fees award as inadequate. We conclude there was no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts[2]

Since 2010, defendants Grill Concepts Services, Inc. and Grill Concepts, Inc. (collectively, Grill Concepts) have operated a Daily Grill restaurant (the restaurant) inside the LAX Westin hotel. The restaurant was geographically located within the "airport hospitality enhancement zone" created by the City of Los Angeles; as such, Grill Concepts was required to pay its employees a "living wage" that was higher than the state's minimum wage. Between 2010 and 2014, Grill Concepts underpaid its restaurant employees because it used the wrong metric for calculating the living wage.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] We draw many of these facts from our prior opinion in this case. (See *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (*Diaz I*).)

In March 2014, counsel for two of the employees wrote a letter to Grill Concepts's attorney explaining the underpayment and demanding reimbursement for that underpayment.

II. Procedural Background

A. *Filing of lawsuit*

In April 2014, three restaurant employees—plaintiffs Sandra Diaz, Alfredo Mejia, and Madecadel Goytia (collectively, plaintiffs)—sued Grill Concepts on behalf of a class of current and former restaurant employees. As to all class members, they sought reimbursement for underpayment of the living wage; prejudgment interest on that underpayment; and a penalty of three times the underpayment (pursuant to the Los Angeles Municipal Code). As to former employee class members, they also sought "waiting time" penalties pursuant to Labor Code section 203.

B. *Reimbursement of underpayment*

In June 2014, Grill Concepts issued checks to all class members reimbursing them for underpayment of the living wage. The total amount of reimbursement came to $165,995.

C. *Continued litigation regarding interest, treble penalties, and waiting time penalties*

Grill Concepts's payment of the reimbursement only partially resolved the case, as plaintiffs continued to press for the other relief they sought. In July 2015, the trial court certified a class. In March 2016, the court decided cross-motions for summary adjudication; in so doing, the court ruled that plaintiffs were entitled to prejudgment interest on the underpayments and to waiting time penalties but were *not* entitled to treble penalties.

The court set the matter for trial on the amount of prejudgment interest and waiting time penalties.

D. *Section 998 offer*

On October 5, 2016, two months before the date set for trial, plaintiffs sent Grill Concepts an offer to settle the case "for the amount of $499,999.00, *inclusive of attorney's fees and costs*." (Italics added.) The letter stated that it was "made pursuant to Section 998 of the Code of Civil Procedure" (section 998 offer). Grill Concepts did not accept the offer.

E. *Trial*

By the time of trial, the parties agreed and stipulated that Grill Concepts owed $31,992.60 in prejudgment interest and $268,758.71 in waiting time penalties. The sole issue at trial was whether the court had the discretion to waive the waiting time penalties for equitable reasons, and the trial court ruled that it did not. It was a "paper trial" because no witnesses were called. The trial court entered judgment in the amount of $300,751.31, and we affirmed that judgment. (*Diaz I*, *supra*, 23 Cal.App.5th 859.)

F. *Costs and attorney's fees*

1. *Costs*

In a memorandum of costs and subsequently filed motion, plaintiffs sought costs for, among other things, (1) $9,775 in fees for voluntary mediation, and (2) $7,497.80 in expert witness fees (for its two damages experts) incurred *after* the date of its section 998 offer. Grill Concepts opposed plaintiffs' motion.

The trial court awarded plaintiffs both types of costs. The court ruled that the award of the mediation costs was appropriate under section 1033.5, subdivision (c)(4) because it was "an expense the parties should entertain to see if compromise is possible." The court also ruled that the post-section 998 offer expert fees were appropriate because plaintiffs "achieve[d] a more

favorable result than [their] offer to compromise" because they recovered more than $499,999 when, as the section 998 offer proposed, attorney's fees were included. In reaching this conclusion, the court rejected Grill Concepts's argument that the section 998 offer was invalid because the $499,999 was partly comprised of plaintiffs' attorney's fees; in the court's view, this term added no more "uncertainty . . . than in any other [section] 998 situation."

2. *Attorney's fees*

In their subsequently filed motion, plaintiffs also sought $780,845.62 in attorney's fees pursuant to section 1021.5 and Labor Code section 218.5. In support of the motion, plaintiffs submitted their attorneys' billing records that proposed a lodestar amount of $520,563.75 (based on 1,046.25 billed hours at hourly rates varying from $250 to $800 per hour) and proposed a multiplier of 1.5. Plaintiffs also submitted two declarations—one from a former partner at plaintiffs' attorneys' firm and another from a regular cocounsel of that firm—attesting to the reasonableness of the hours billed, the hourly rates, and the multiplier.

Grill Concepts opposed plaintiffs' proposed award of attorney's fees. In support of its opposition, Grill Concepts submitted two declarations—both from local attorneys—attesting that plaintiffs' billed hours and hourly rates were excessive.

After receiving plaintiffs' reply and entertaining oral argument, the trial court ultimately awarded $333,000 in attorney's fees. In reaching this conclusion, the court rejected plaintiffs' proffered billed hours as "unreliable due to duplication [of work by multiple attorneys] and block billing" and rejected the hourly rate as "grossly excessive." The court also found plaintiffs'

declarations from other attorneys not to be "very illuminating" or, for that matter, very persuasive, because to the court it "look[ed] like [plaintiffs' counsel] went to [his] friends in the . . . bar."

Instead, the trial court fixed the lodestar amount at $222,000. To calculate the lodestar, the court identified nine categories of tasks it associated with the litigation as well as the hours it would reasonably take to complete each task as follows: (1) "meeting with the client, investigating the case, and adapting form pleadings to fit the facts," 35 hours; (2) "meeting with class members throughout the duration of the litigation," 15 hours; (3) conducting discovery, 60 hours; (4) preparing for and participating in alternative dispute resolution, 20 hours; (5) litigating the class certification motion, 100 hours; (6) litigating the summary adjudication motions, 200 hours; (7) preparing for the "paper trial" regarding the amount of prejudgment interest and waiting time penalties, 80 hours; (8) litigating a motion to correct the judgment, 10 hours; and (9) litigating attorney's fees and costs, 25 hours. This totaled 555 hours.[3] The court then fixed a "blended" hourly rate of $400 per hour, which it viewed as combining "judicious delegation of work to [a] talented but more

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[3] In its initial tentative ruling, the trial court identified only six categories of tasks (the categories for discovery, class certification, summary adjudication, trial, litigating the motion to correct the judgment, and litigating attorney's fees and costs), which totaled 432 hours. In response to plaintiffs' arguments at the hearing, the court added the additional three categories that appear in the court's final order (and, in that regard, used the number of hours proposed by plaintiffs' counsel for those categories) and increased the number of hours for trial from 37 hours to 80 hours.

economical junior lawyer, [while] reserving the high-priced talent for the truly demanding tasks, such as conceiving overall strategy and oral argument." The product of 555 hours at $400 per hour was $222,000. The court then applied a multiplier of 1.5 to reflect the contingent nature of the litigation, which yielded a total fee award of $333,000. As a "crosscheck" on the reasonableness of this amount, the court noted that the $333,000 fee award was approximately 71 percent of the $466,747 in benefits plaintiffs obtained (that is, the $300,751.31 judgment plus Grill Concepts's litigation-prompted reimbursement of $165,995), which, the court noted, "greatly exceeds the customary and reasonable 1/3 contingency fee."

G. *Appeal*

Following the court's entry of the order, Grill Concepts filed a timely notice of appeal, and plaintiffs filed a timely notice of cross-appeal.

DISCUSSION

I. Costs

Grill Concepts contests the trial court's award of plaintiffs' costs for mediation and for expert fees incurred after plaintiffs' section 998 offer.

A. *Mediation*

A trial court has the discretion to order a losing party to pay to a "prevailing party" any costs not enumerated in section 1033.5, subdivisions (a) or (b), as long as those costs are "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (§§ 1032, 1033.5, subd. (c)(2), (4).) We review a trial court's exercise of its discretion for an abuse of that discretion. (*Gibson v. Bobroff* (1996) 49 Cal.App.4th 1202, 1209 (*Gibson*).)

The trial court did not abuse its discretion in awarding plaintiffs $9,775 in costs for voluntary mediation in this case. An award of costs for court-ordered mediation is within a court's discretion because it is a "reasonably necessary" expense of litigation in light of its function of "provid[ing] a forum for [the] prompt, economical resolution of civil disputes." (*Gibson*, *supra*, 49 Cal.App.4th at p. 1209.) The trial court ruled that the same was true of the voluntary mediation at issue in this case, and this ruling was not an abuse of the court's discretion. Grill Concepts argues that an award of these costs is inappropriate because it was at all times engaged in a good faith dispute over the meaning of the living wage ordinance, but we rejected the factual basis for this argument in *Diaz I*, *supra*, 23 Cal.App.5th at page 874, and this argument does not in any event undermine the reasonable necessity of the voluntary mediation conducted in this case.

B. *Post-section 998 offer expert fees*

If a plaintiff makes an offer to settle a lawsuit, the defendant rejects that offer, and "the defendant fails to obtain a more favorable judgment or award," a trial court has the "discretion" to "require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses . . . ." (§ 998, subd. (d).) In this case, plaintiffs offered to settle this lawsuit for "$499,999, inclusive of attorney's fees and costs," Grill Concepts rejected that offer, and Grill Concepts failed to obtain a more favorable judgment because the total amount of the judgment inclusive of attorney's fees and costs—that is, $300,751.31 plus $333,000 in attorney's fees—well exceeded $499,999. Grill Concepts nevertheless asserts that it does not owe plaintiffs the post-section 998 offer costs for their expert witnesses because the terms of plaintiffs' section 998 offer were

too uncertain to constitute a valid and effective section 998 offer. The question whether a section 998 offer is "sufficiently certain" is a question of law we review de novo. (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 764-765 (*Fassberg*).)

To be valid, the party making the section 998 offer must establish that the terms of its offer are "sufficiently specific to allow the recipient to evaluate the worth of the offer and make a reasoned decision whether to accept the offer." (*Fassberg*, *supra*, 152 Cal.App.4th at p. 764; *Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1053.) A section 998 offer is valid even if its amount is not definitively stated but is nonetheless based on contingencies or information within the offeree's knowledge (*Markow*, at p. 1054 [offer valid where offer is contingent upon the truth of offeree's representation regarding its maximum insurance benefit]; *Heritage Engineering Construction, Inc. v. City of Industry* (1998) 65 Cal.App.4th 1435, 1438-1442 [offer valid where offer includes amount of offeree's costs].) But a section 998 offer is not valid where it requires the offeree to give up rights beyond those at issue in the pending lawsuit because the value of those rights is outside the offeree's knowledge. (*Hurlbut v. Sonora Community Hospital* (1989) 207 Cal.App.3d 388, 409-410 [so holding]; *Fassberg*, at p. 766.)

Using these guideposts, plaintiffs' section 998 offer is valid for two reasons. First and foremost, this is not an offer where the amount of the offer is not definitively stated. On its face, the offer is for $499,999. Grill Concepts points out that a component of plaintiffs' offer (namely, the amount of its opponent's attorney's fees and costs) is beyond its knowledge, but this is equally true of the other component of the offer (namely, the amount of any

future judgment). Indeed, this is the very nature of a section 998 offer: The offeree is required to determine whether the settlement amount proposed in the section 998 offer constitutes an outcome that is better or worse than what the offeree estimates it might achieve at trial. Contrary to what Grill Concepts suggests, uncertainty about the wisdom of an offer that is otherwise specific in amount does render the offer invalid. Second, courts have upheld section 998 offers where the offer itself is for the "amount of reasonable attorneys' fees" without specifying a specific amount. (*Elite Show Services, Inc. v. Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 266-270.) If a section 998 offer in the amount of unspecified reasonable attorney's fees is certain enough to be valid, a section 998 offer for a specific amount that is comprised in part of such fees is by definition also certain enough to be valid.

II. Attorney's Fees

In their cross-appeal, plaintiffs contend that the trial court erred in fixing the amount of attorney's fees at $333,000.

A. *Attorney's fees, generally*

Although, as a general rule, parties in litigation pay their own attorney's fees (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488), our Legislature has by statute created exceptions to this rule. Section 1021.5 and Labor Code section 218.5 are two such exceptions because they empower a trial court to order a losing party to pay the "successful" or "prevailing" party its attorney's fees in, respectively, an action "result[ing] in the enforcement of an important right affecting the public interest" (§ 1021.5; *Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2010) 187 Cal.App.4th 376, 381) and

an action for recovery of waiting time penalties (Lab. Code, § 218.5, subd. (a)).

In fixing the amount of attorney's fees awarded under these provisions, "the ultimate goal is 'to determine a "reasonable" attorney fee.'" (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 985.) Courts must use a two-step approach. First, and as the "starting point," the trial court must calculate a lodestar figure, which is defined as the time spent representing the party on the issues on which it prevailed multiplied by a "reasonable hourly compensation" for that time. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132 (*Ketchum*); *Serrano v. Priest* (1977) 20 Cal.3d 25, 48, fn. 23.) In fixing the lodestar amount, the trial court may not blindly accept as reasonable the attorney-applicant's reported hours or its hourly rates; to the contrary, the court "must carefully review attorney documentation of hours expended" to avoid "'padding'" (*Ketchum*, at p. 1132) as well as the reasonableness of the proposed hourly rates (*Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1286). Second, the court may adjust the lodestar upwards or downwards by a multiplier to account for "'(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.]'" (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.) "The 'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" (*Serrano*, at p. 49.)

B. *Analysis*

The trial court did not abuse its discretion in awarding plaintiffs attorney's fees in the amount of $333,000.[4] The trial court calculated a lodestar by identifying the nine categories of tasks involved in the litigation of this matter and assigning what was in its view a reasonable number of attorney hours to complete each task, yielding 555 hours. In fixing these categories and the number of hours attributable to each, the trial court relied upon its own experience as well as input from plaintiffs' counsel. The court then fixed a "blended" rate of $400 per hour, which in its view combined "judicious delegation of work to [a] talented but more economical junior lawyer, [while] reserving the high-priced talent for the truly demanding tasks, such conceiving overall strategy and oral argument." The court went on to apply a multiplier of 1.5—the same multiplier plaintiffs sought—to the lodestar amount, producing an adjusted attorney's fees award of $333,000. To crosscheck the reasonableness of this figure, the court calculated that it constituted 71 percent of the total amount of benefit to plaintiffs, which the court then noted was well above the usual 33 percent contingency fee rate. While somewhat unconventional, the trial court's approach was careful, thorough, and reasoned; for this reason, it is not "clearly wrong."

Plaintiffs level five categories of challenges to both the trial court's analysis and its result.

First, plaintiffs assert that a trial court must "anchor" any lodestar to the number of hours actually spent on the case by the

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[4] Grill Concepts does not on appeal challenge the legal grounds for the attorney's fees award.

applicant attorneys. To the extent plaintiffs mean that a trial court lacks the power to deviate from the number of hours billed by the applicant attorneys, they are wrong. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1320 ["class counsel 'are not automatically entitled to all hours they claim in their request for fees'"]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 64 (*Netflix*) ["the trial court has wide discretion in making reductions based on its estimate of time spent on activities that are noncompensable in whole or in part"].) To the extent plaintiffs mean that a trial court may only fix a reasonable number of hours by departing downward from the number of hours proffered in the applicant attorney's billing records—but not by extrapolating from those records the tasks reasonably associated with the litigation and the number of hours reasonably necessary to achieve those tasks—we reject that assertion. Where, as here, a court rejects the proffered billing records as unreliable, there is no reason to use them as a benchmark.

Plaintiffs cite *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359 in support of their position. To be sure, *Horsford* held that the trial court in that case had erred in "rejecting wholesale counsels' verified time records," even though those records "'were not a hundred percent reliable,'" because "the verified time statements . . . are entitled to credence in the absence of a clear indication the records are erroneous." (*Id.* at p. 396.) *Horsford* also pointed to the trial court's statement that it did not view its role in fixing the lodestar as assuring "adequate compensation" to the attorneys. (*Id.* at p. 395.) Here, by contrast, the trial court explained why plaintiffs' attorneys' billing records were not reliable in general

(rather than only slightly unreliable) and then undertook to calculate a number of hours that *would* provide plaintiffs' counsel with adequate compensation. In short, the trial court here did not commit the chief sin condemned in *Horsford*. While it may be possible to read *Horsford* to require courts to always use counsels' billing records as the jumping off point for fixing attorney's fees, even if those records are grossly inflated, we decline to adhere to such a reading for the reasons set forth above.

Second, plaintiffs contend that the trial court did not adequately justify or explain why it departed from the number of hours proffered by plaintiffs' attorneys' billing records because the court: (1) never said that the billed number of hours was excessive; (2) never tried to reconcile the number of hours it fixed with the number of hours in plaintiffs' attorneys' billing records; and (3) in effect used factors relevant to applying a multiplier to fix the number of hours, which is impermissible.

These arguments lack merit. The trial court's finding that the billing records were "unreliable due to duplication" and block billing is functionally indistinguishable from a finding that the hours reported in those records were excessive. Further, the trial court's explanation was sufficient. Although a court may be required to provide a "'"concise but clear" explanation of its reasons for choosing a given percentage reduction'" in requested attorney's fees (*Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88, 102; accord, *Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 280-281 [invalidating an across-the-board 70 percent reduction in fees based on invalidity of 70 percent of billing entries]), the general rule is a "trial court has no sua sponte duty to make specific factual findings explaining its calculation of the fee award and the appellate courts will infer all

findings exist to support the trial court's determination" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 754-755). More to the point, the trial court here explained how and why it fixed the number of hours it did; it was not required to match up its analysis with the hours set forth in the billing records it rejected as "unreliable." (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 625 [noting that "the trial court . . . is not bound by the itemization claimed in the attorney's affidavit"].) The court also did not inappropriately apply the factors relevant to the application of a multiplier to fix the reasonable number of hours attributable to this litigation. To be sure, the first such multiplier factor—the "novelty and difficulty of the questions involved"—undoubtedly played some role in determining how long a particular litigation task should take, but this was not impermissible; this multiplier factor also plays a role when a trial court assesses whether hours are "padded" when fixing a lodestar, yet our Supreme Court *requires* trial courts to engage in such an assessment (*Ketchum*, *supra*, 24 Cal.4th at p. 1132).

Third, plaintiffs contend that the number of hours the trial court fixed—that is, 555 hours—is too low because (1) it ignored five other categories of litigation tasks, (2) it did not account for Grill Concepts's last minute attempt to convert the paper trial back into a contested evidentiary hearing, and (3) it ignored that Grill Concepts's attorneys spent 863.9 hours litigating this case (plus another 286.1 hours of paralegal time).

Plaintiffs identify five other categories of litigation tasks that the trial court should have accounted for that would add another 38.8 hours to its total—namely, (1) time to prepare a case management conference statement and to attend the case management conference, (2) time to prepare joint status reports

and to attend status conferences, (3) time to meet and confer with opposing counsel regarding stipulations, (4) time to attend case conferences among counsel, and (5) time to draft class notices and to work with third party administrators to ensure that class notices were sent. To begin, plaintiffs' failure to present these categories to the trial court at the hearing—particularly when the trial court added every new category plaintiffs proposed at that hearing—ostensibly forfeited their right to present new categories for the first time on appeal. Further, plaintiffs' factual basis for these new categories are the billing records that the trial court rejected as unreliable. Plaintiffs have also not explained why the additional hours sought for these tasks were not already accounted for in the trial court's categories for "meeting with clients," "adapting form pleadings," and "meeting with class members"; nor have they explained why the absence of additional time results in an unreasonable lodestar.

Plaintiffs also argue that the trial court undervalued the number of hours necessary to prepare for trial. It is undisputed that, right before trial, Grill Concepts asked the trial court to reconsider its summary adjudication ruling and asked to present two live witnesses, both of which necessitated more work by plaintiffs' counsel even though both requests were ultimately denied. Plaintiffs raised this issue with the trial court at the hearing, arguing that the court's allocation of 37 hours for trial was too low and that 90 hours was a more reasonable estimate. The trial court considered this point and raised the hours allocated to trial from 37 hours to 80 hours. This was not an abuse of discretion.

Plaintiffs also point to the 863.9 hours reflected in Grill Concepts's billing records for attorney time devoted to this

litigation as evidence that the trial court's 555-hour figure for plaintiffs' attorney time was unreasonable. As a general matter, looking to the other side's "respective litigation costs may be a useful check on the reasonableness of any fee request." (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272.) However, because the trial court never examined whether Grill Concepts's bills—like plaintiffs'—were unreliable in their statement of hours, the parallel plaintiffs ask us to draw between the two figures is of little persuasive value here. This is particularly so when we consider that the unverified number of hours reported by each side—plaintiffs billed 1,046.25 hours (comprised of 962.55 attorney hours), while Grill Concepts billed 1150 hours (comprised of 863.9 attorney hours)—are nearly identical.[5] The possibility that both sides may have over reported hours does not make the trial court's figure any less reasonable.

Fourth, plaintiffs argue that the trial court erred in adopting the $400 "blended rate" because (1) doing so effectively tells law firms how to staff their cases; and (2) the trial court had no basis to reject the declarations attesting to the reasonableness of plaintiffs' attorneys' hourly rates or not to follow the prior fee awards based upon those rates. While it may be impermissible for a trial court to fix of a reasonable fee "based on speculation as to how other firms would have staffed the case" (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1114), the use of a blended rate does not transgress this rule and is not per se

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[5] We also note that Grill Concepts's attorneys billed at significantly lower rates, such that the total billed amount for their 1,046.2 hours came to $194,446.50 (as compared with plaintiffs' attorneys' total of $520,563.75).

impermissible (see, e.g., *Netflix*, *supra*, 162 Cal.App.4th at p. 64). Further, the trial court had ample basis to reject plaintiffs' proffered fee declarations; they were submitted by persons with past and potentially present financial connections to plaintiffs' attorneys' firm, and "[t]he existence or nonexistence of a bias, interest, or other motive" bears on the credibility of a witness. (Evid. Code, § 780, subd. (f).) What is more, these declarations were contradicted by declarations submitted by Grill Concepts, and the trial court was entrusted with deciding whose testimony to credit. And while prior fee awards are relevant, they are not conclusive or binding; they do not in this case call into question the reasonableness of the trial court's approach to setting the hourly rate.

Lastly, plaintiffs argue that the trial court was wrong to crosscheck its total award of $333,000 against a reasonable contingency fee. As a legal matter, comparing a fee award to a reasonable contingency fee award is a permissible yardstick for evaluating the reasonableness of that award. (*Netflix*, *supra*, 162 Cal.App.4th at pp. 64-66 [so holding]; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 46-47, 49-50 [same].) Plaintiffs go on to complain that the trial court did its contingency fee calculation incorrectly because it assessed the $333,000 fee award as a percentage of the amount obtained for plaintiffs (that is, $466,747) rather than as a percentage of the amount obtained for plaintiffs *and* the attorney's fee award (that is, $466,747 plus $333,000, or $799,747), which is the method used for common fund awards. We doubt whether the selection of one method of the crosscheck over another matters because "[i]t is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using

percentage figures that accurately reflect the marketplace." (*Netflix*, at pp. 65-66.) But even if we use plaintiffs' proffered method, the $333,000 fee award in this case still comes to 41 percent of the total award, which is *still* far in excess of the standard one-third fee the trial court looked to as a benchmark.

DISPOSITION

The order is affirmed. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ