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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

DOMINGA NAVARRO, Plaintiff and Appellant, v. 4EARTH FARMS, INC. et al., Defendants and Respondents.	B288105 (Los Angeles County Super. Ct. No. BC606666)

APPEAL from judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

Matern Law Group, Matthew J. Matern, Dalia Khalili, Debra J. Tauger; Pine Tillett Pine, Norman Pine, for Plaintiff and Appellant.

Neufeld Marks, Paul S. Marks, Yuriko M. Shikai, for Defendants and Respondents.

Plaintiff and appellant Dominga Navarro appeals from a postjudgment award of attorney fees in her favor, after a judgment was entered against defendants and respondents 4Earth Farms, Inc., MCL Fresh, Inc., and Ricardo Nunez. On appeal, Navarro contends that the trial court abused its discretion by arbitrarily decreasing counsel's hourly rate, refusing to award a multiplier, and failing to consider evidence of past fee awards received by Navarro's counsel. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Navarro worked for 4Earth (previously known as MCL Fresh) from July 2013 through January 2015, at which time she was terminated. On January 8, 2016, Navarro filed a complaint against 4Earth, MCL Fresh, Nunez, Diana Duarte, and Jaime Guttierez, alleging numerous causes of action relating to allegations of sexual harassment, disability discrimination, and wrongful termination pursuant to the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Duarte filed a motion for summary judgment, which the trial court granted.

A jury trial was held. The jury found Guttierez was not liable. Judgment was entered against 4Earth, MCL Fresh, and Nunez on January 19, 2017. The jury awarded Navarro damages of $309,310 as follows: economic damages in the amount of $9,310, non-economic damages in the

amount of $200,000, and punitive damages in the amount of $100,000.

On August 18, 2017, Navarro filed a motion requesting attorney fees and costs in the amount of $1,473,315. She submitted the declarations of her attorneys, Matthew Matern and Dalia Khalili, in support of the motion for attorney fees. Matern listed his qualifications as an experienced employment law attorney and his role in Matern Law Group, PC (MLG). Matern directed the litigation strategy throughout the case. Khalili assisted during trial and supervised attorneys Serena Patel and Monica Butros. Attorneys Debra Tauger and Shayna Dickstein also worked on the case. The six attorneys spent a total of 1,281.50 hours working on this case. Their billing rates ranged from $450 to $850 an hour as follows: Matern billed $850 per hour; Tauger billed $725 per hour; Khalili billed $625 per hour; Boutros and Dickstein billed $475 per hour; and Patel billed $450 per hour. Navarro incurred total attorney fees of $736,657.50. MLG requested a multiplier of 2.0 to compensate for the difficulty of the case, its preclusion of other employment, the contingency nature of the fee award, and the quality of the representation provided. In support of Navarro's fee request, Matern submitted a list of 10 recent fee awards that MLG received, in which other courts approved its rates.

Defendants filed an opposition to the motion for attorney fees. Defendants argued that the rates charged by Navarro's attorneys are significantly higher than the

reasonable market rate for similar services. Further, defendants argued that a multiplier was not warranted, given that this was a standard case, without any exceptional issues.

Navarro filed a reply. She also filed supplemental points and authorities with supporting declarations. Matern declared that he had personal knowledge of the hourly rates charged by other attorneys in the community with similar experience to the MLG attorneys, and the MLG rates were comparable.

Prior to the hearing on Navarro's motion, the trial court issued a tentative ruling. The court accepted the number of hours billed by MLG, but stated: "The rates claimed by the . . . attorneys are, however, excessive. They should be reduced from $850 per hour to $500/hour for Matthew J. Matern; from $675 per hour to $450/hour for Debra J. Tauger and Dalia Khalili; from $475 per hour to $325/hour for Shayna Dickstein; and from $475 or $[4]50 per hour to $300/hour for Serena Patel and Monica Boutros." The trial court also decided not to award a multiplier, because the contingent risk was accounted for in the hourly rate used for the lodestar calculation. In total, the trial court's tentative ruling would have awarded MLG a lodestar of $485,140, plus $54,950.62 in costs, for a total award of $540,090.62.

During the hearing, Navarro's counsel highlighted the information in counsel's prior declaration about "10 or more cases where we have been given fee awards and our hourly

rates have been determined by other L.A. county judges." Counsel argued, "the court didn't explain in his tentative why it's not following the findings of 10 other L.A. county judges and deciding to actually cut our rates approximately 40 percent from those rates." The court replied, "Well, I can tell you I disagree with them and they're not admissible evidence." The court noted that "whether or not the other 10 cases . . . awarded you all those fees at that hourly rate, I really think it's apples and oranges because this case is different. This case is itself on its facts and on the presentations and on the evidence and the work that was done by the attorneys. And I don't know what the facts are in any of these other cases. That is why I don't think it's pertinent for me to look at." In addition, the court stated: "And I may be cheap. Maybe that's my assessment. In my discretion may[be] I am under evaluating [the] lawyers' skill and ability. But myself having been involved in a contingency fee plaintiff's trial practice and seeing other attorneys in cases similar to this one prevail and then ask for awards of fees -- I haven't seen any fees requested in this range." The court noted, however, "what I'm concerned about in your discussion is did I employ the appropriate formula in approaching the multiplier issue." Thus, the court determined that it would "reanalyze" the issue of the multiplier prior to issuing its ruling.

After the hearing, the court issued a written ruling. The court noted, "whether or not courts in other cases awarded a full amount of Plaintiff's claimed hourly charge is

not admissible or binding on this court's independent judgment. [¶] The rates claimed by the attorneys are, in this court's experience in excess of reasonable market value in this community for such services provided even in consideration of the contingency fee arrangement." The Court clarified that the amounts set forth in its tentative ruling represented the reasonable hourly rate for the attorneys "[w]ithout the risk of a contingency fee arrangement taken into consideration, . . ."

Following the finding on reasonable rates, the court increased the hourly rates, as an "enhancement of the hourly sum in consideration of the risk of taking the case on a contingency." Although the court included its discussion of the enhancement in the portion of its opinion discussing the lodestar calculation, the court specifically noted that it did so for clarity (i.e., to keep the discussion of rates in one place), but that the enhancement was logically related to the court's assessment of an appropriate multiplier. The additional amounts the court added to consider the risk of contingency were as follows: $100 per hour for Tauger and Khalili; $50 per hour for Matern, Butros, and Patel; and $25 per hour for Dickstein.

The court's written ruling included an analysis of Navarro's request for a 2.0 multiplier to be applied to the lodestar amount. The court explained its assessment of each of four factors, "(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." The court found: Navarro's case did not present a degree of difficulty different from other cases, and the nature of the issues did not favor a multiplier; Navarro's counsel were very skilled and prepared but there was nothing particularly striking about counsel's presentation of the evidence that would merit enhanced fees, and the success was attributable to the time invested in the case, which was adequately compensated by the court's approval of all hours expended by counsel; Navarro failed to make a showing that counsel had to forgo other matters because of the extent of time devoted to Navarro's case; and the risk of a contingent arrangement merited an enhancement above the market rates for noncontingent fees. Having enhanced the rates for risk as set forth above, the court concluded, "[n]o additional multiplier is granted over the enhancement" in each of the hourly rates.

In total, the trial court awarded MLG $594,070 in attorney fees and $54,950.62 in costs, reflecting an amount based on the court's findings about the market rates for noncontingent fees in single plaintiff employment cases, plus an enhancement for the contingency risk.[1]

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[1] Navarro notes that the trial court's calculation of attorney fees relied on incorrect hourly totals, resulting in an excessive award under the court's methodology. However, 4Earth, MCL Fresh, and Nunez have not appealed this aspect of the order awarding attorney fees.

An amended judgment was entered on January 30, 2018, which incorporated the attorney fees award. Navarro filed a timely notice of appeal on February 8, 2018.

DISCUSSION

Exclusion of Evidence

Navarro contends that the court abused its discretion by excluding the 10 prior court orders approving MLG's hourly rates. We conclude the trial court actually considered the rates when it relied on alternate grounds, finding the unrelated fee awards were not persuasive or binding as applied to the current case. Accordingly, even assuming error, we find no prejudice as a result of the exclusion of evidence.

"'[A] trial court's ruling on the admissibility of evidence generally is reviewed for abuse of discretion.' [Citation.]" (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 32.) "'A trial court's exercise of discretion in admitting or excluding evidence . . . will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.] . . . Claims of evidentiary error under California law are reviewed for prejudice applying the 'miscarriage of justice' or 'reasonably probable' harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818, 836, that is embodied in article VI, section 13 of the

California Constitution. Under the *Watson* harmless error standard, it is the burden of appellants to show that it is reasonably probable that they would have received a more favorable result at trial had the error not occurred." (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 446–447.)

Generally, "[t]he most analogous evidence to fees charged by a private law firm would be fees sought and deemed reasonable by courts in other cases." (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1005, fn. omitted.) Even where such evidence may be admitted, however, a court need not rely on those previously approved rates in making a fee award. (See *id.* at p. 1006.) In *Margolin*, the appellate court affirmed the trial court, which chose not to follow the rates set in other cases, instead "'assign[ing] to each [attorney] an hourly rate which, in the court's mind, is a fair equivalent of those rates charged by comparable law firms for the work of similarly situated partners, associates and lay experts." (*Ibid.*)

In this case, the trial court did not commit reversible error by not relying on the evidence of other fee awards submitted. In support of Navarro's motion, Matern submitted a list of 10 recent fee awards MLG received in which other courts approved its rates, but simply listed the case names, numbers, the amount of fees awarded, and for three of the cases, quoted the court that found the fees to be reasonable and consistent with prevailing rates in the community. There was no information from which to conclude any of the cases were similar to Navarro's

individual employment claims. To the contrary, at the conclusion of the list, Matern acknowledged that all of the listed cases were class actions, unlike the present case which involved a single plaintiff. Even assuming the lack of similarity between the class actions and the current case did not provide a basis for excluding the evidence, any error was harmless. The record reflects that the trial court considered and rejected the evidence of the class action rates because it was not from comparable, single plaintiff cases. Navarro makes no persuasive argument that the court abused its discretion in drawing the distinction between class action and single plaintiff cases. Nor does she make any persuasive argument that she would have obtained a more favorable result if the court had formally admitted the evidence before rejecting its import for this same reason.

Lodestar Calculation and Multiplier

Navarro contends that the trial court abused its discretion by arbitrarily decreasing counsel's hourly rate and refusing to award, or correctly apply, a multiplier. We find no abuse of discretion.

We review the trial court's award of attorney fees for abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–1096). "The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is

convinced that it is clearly wrong.' [Citations.]" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

"'The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown. [Citation.]' [Citations.]" (*Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355.) "An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence." (*Jones v. Union Bank of California* (2005) 127 Cal.App. 4th 542, 549–550.)

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (*PLCM Group, Inc. v. Drexler*, *supra*, 22 Cal.4th at p. 1095.)

"[T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (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, (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*).)

"It has long been recognized, however, that the contingent and deferred nature of the fee award in a civil rights or other case with statutory attorney fees requires that the fee be adjusted in some manner to reflect the fact that the fair market value of legal services provided on that basis is greater than the equivalent noncontingent hourly rate. [Citation.] '"A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases."' [Citations.] The contingency adjustment may be made at the lodestar phase of the court's calculation or by applying a multiplier to the noncontingency lodestar calculation (but not both).

[Citation.]" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394–395 (*Horsford*).)

Here, the trial court properly exercised its discretion in calculating the award of attorney fees. The trial court did not arbitrarily reduce counsel's hourly rates. The court's tentative ruling, discussion during the hearing, and final ruling, reflected a reasoned exercise of the court's broad discretion in determining market rates to include in the lodestar analysis. As an initial matter, the trial court expressly relied upon its own experience of the reasonable market rates in the community for these kinds of attorney services, noting that it had seen other attorneys who prevailed in similar cases. Second, the evidence submitted by Matern supported the court's determination of noncontingent market rates less than the standard rates claimed by MLG. The record includes evidence supporting the trial court's rejection of the claimed rates as not applicable to a simple FEHA case brought on behalf of a single plaintiff. Although the court had the list of prior fee awards that MLG received in 10 class action cases, MLG notably did not provide, from the over 700 employment discrimination or sexual harassment cases counsel had litigated, even a single example of rates approved for an individual (non-class action) case. Moreover, with respect to individual cases, Matern' s own declaration discussed, "attorneys who handle individual employment discrimination and sexual harassment cases such as this

one," and explained, "[t]he current prevailing billing or 'market' rates in the Los Angeles and Orange County areas range from $285 to $900 per hour." Here, the trial court found applicable market rates that are squarely within the middle of this range. Finally, the court also had the billing statements of defendants' attorneys charged in this case, which reflected noncontingent rates that were significantly less than those sought by Navarro's counsel. Accordingly, the court had a substantial basis to conclude that the rates requested by Navarro's attorneys were in excess of the noncontingent market rates that attorneys normally sought for similar cases.

The court also did not abuse its discretion in its assessment of an appropriate multiplier. The court considered each of the factors that need to be considered in determining whether and to what extent to provide a multiplier. Navarro makes no showing that the trial court's specific conclusions about the novelty and difficulty of the case, the skill of counsel, and the extent to which Navarro's lawyers were prevented from handling other matters were an abuse of discretion.

Rather, Navarro focuses on the fact that the Court chose to add a specific dollar amount to the market rate determined for each attorney to compensate for the contingent risk; Navarro insists that the court should have applied a percentage multiplier to total lodestar fees calculated on noncontingent rates. While we acknowledge the trial court's methodology departs from the more

standard approach suggested by Navarro, accounting for risk by calculating a lodestar amount based on contingent fees, using a higher hourly rate than for noncontingent fees, rather than by applying a percentage multiplier to a lodestar based on noncontingent fees, is specifically allowed under the law. (See *Horsford*, *supra*, 132 Cal.App.4th at p. 395.) We cannot say that such method is an abuse of discretion.

Further, Navarro is simply incorrect to assert that the trial court applied no multiplier at all, thereby failing in its obligation to compensate Navarro's attorneys for the contingency nature of the case. The court titled the relevant section of its ruling: "Enhancement/Use of Multiplier," and noted, "No additional multiplier is granted over the enhancement . . . ." The court's election to carefully and deliberately increase each attorneys' rate, as opposed to applying a blanket multiplier to the total lodestar, fulfilled the underlying purpose of "compensat[ing] for the risk of loss generally in contingency cases" by enhancing the hourly rate. (*Ketchum*, *supra*, 24 Cal.4th at p. 1133.)

Overall, the trial court was in the best position to evaluate the reasonableness of Navarro's request for attorney fees, and our review of the record reveals no abuse of discretion.

DISPOSITION

The judgment is affirmed. Respondents 4Earth Farms, Inc., MCL Fresh, Inc., and Ricardo Nunez are awarded their costs on appeal.

MOOR, J.

We concur:

RUBIN, P. J.

KIM, J.