Tentative Rulings for October 10, 2025
Department 52

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 52

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(03)

Tentative Ruling

Re: ***Cortina v. North American Title Company, et al.***
Case No. 07CECG01169

Hearing Date: October 10, 2025 (Dept. 52)

Motion: Plaintiffs' Motion for Attorney's Fees and Costs

Plaintiffs' Motion to Tax Defendant's Memo of Costs

Defendant's Motion to Tax Plaintiffs' Memo of Costs

Tentative Ruling:

To grant plaintiff's motion for attorney's fees, the amount of $14,515,982.00. To grant plaintiffs' request for non-statutory costs, in full. To grant the plaintiffs' request for an enhancement award of $25,000 as to each named plaintiff who obtained a favorable judgment, but deny the enhancement award to the named plaintiffs who did not obtain a judgment in their favor.

To grant defendant's motion to tax plaintiffs' costs in part and deny in part. See the explanation below for a breakdown of each item of costs.

To grant plaintiffs' motion to tax defendant's costs in part and allow defendant to recover only $57,318.86.

Explanation:

Plaintiffs' Motion for Attorney's Fees

"In the absence of an express agreement or statute, each party to a lawsuit is responsible for its own attorney fees. (Code Civ. Proc., § 1021.)" (*People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal.App.4th 882, 889.) Plaintiffs contend that they may recover their attorney's fees from defendant National pursuant to Code of Civil Procedure sections 1021.5 and 2033.420, Labor Code section 1194.

No Fees Available Under the Labor Code or UCL

On September 21, 2015, during trial, plaintiffs dismissed four of the five causes of action plead in the operative Second Amended Complaint, choosing to go to trial only on the claim alleging violation of the Unfair Competition Law, Business and Professions Code Section 17200, et seq. All plaintiffs' causes of action directly alleging violations the Labor Code were dismissed with prejudice.

Plaintiffs nevertheless contend that attorneys' fees may be recovered under Labor Code section 1194, as that section was cited in their prayer for attorneys' fees. That section authorizes "any employee" receiving less than the full "legal overtime compensation applicable" to "recover in a civil action" the unpaid balance of "overtime

compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Lab. Code, § 1194, subd. (a).) They rely on *Pellegrino v. Robert Half Internat., Inc.* (2010) 182 Cal.App.4th 278. In *Pellegrino*, the plaintiffs alleged wage and hour claims based on violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, subdivision (a), 512, and 1194, as well as unfair competition in violation of Business and Professions Code section 17200 based on the Labor Code claims. The plaintiffs prevailed on the UCL claims, which had been bifurcated and were tried first. The parties later stipulated to judgment on the Labor Code causes of action as there were no triable issues due to the court's rulings in the UCL trial. The trial court deducted 15% from the plaintiff's attorney's fee loadstar to reflect that the time spent on the UCL claim, as the no error in this. (*Id*. at p. 290.) Thus, *Pellegrino* is completely inapposite, as those plaintiffs prevailed and secured a judgment on their alleged Labor Code violations.

It is well established that "[a]ttorney fees are not recoverable under the UCL." (*People ex rel. City of Santa Monica v. Gabriel*, *supra*, 186 Cal.App.4th at p. 889, citations omitted.) Although the UCL borrows violations from other laws, it does not borrow remedies like attorney's fees awards from those laws. "[T]he UCL provides only for equitable remedies. 'Prevailing plaintiffs are generally limited to injunctive relief and restitution.' Damages are not available.'" (*Ibid,* citations omitted.) "The UCL does not authorize an award of attorney fees. No exception exists for UCL actions predicated on a statute that authorizes such an award." (*Id*. at p. 891.)

The fact that restitution is sought as a remedy for unfair competition does not convert the UCL claim into "an action for nonpayment of wages." A "UCL action is independent of a statutory claim for back wages" (*Cortez v. Purolater Air Filtration Products Co*. (2000) 23 Cal.4th 163, 179) and it does not directly enforce a contractual or statutory right to wages. Although wages may be recovered as restitution in the context of a UCL claim, that recovery is only available at the discretion of the court as an equitable remedy for the unfair business practice. Remedies under the UCL "have an independent purpose-deterrence of and restitution for unfair business practices." (*Ibid*.) Therefore, seeking wages as restitutionary relief does not change the fact that a UCL action is fundamentally an action to prevent unfair competition, not one for "nonpayment of wages." (Lab. Code, § 218.5.) Accordingly, UCL claims based on Labor Code violations do not support an award of attorney's fees.

Plaintiffs Did Not Waive All Recovery of Attorney's Fees

Defendant contends that plaintiffs waived their right to seek attorney's fees when they dismissed their Labor Code claims. However, the evidence cites shows only that when plaintiffs dismissed their Labor Code violation claims, they intended to waive their right to seek fees under the Labor Code, not their right to seek fees under any other statute. (See Hyashi Decl., Ex. 10, Trial Transcript of 9/16/2015, at pp. 511:12-23; 523:15-21.) Therefore, the court finds that plaintiffs have not waived their right to seek fees under Code of Civil Procedure section 1021.5.

Fees Under Code of Civil Procedure Section 1021.5

"Section 1021.5 codifies California's version of the private attorney general doctrine, which is an exception to the usual rule that each party bears its own attorney fees. '[T]he private attorney general doctrine "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies

embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." Thus, the fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases.'" (*Vosburg v. County of Fresno* (2020) 54 Cal.App.5th 439, 449, citations omitted.)

Code of Civil Procedure section 1021.5 codifies the private attorney general doctrine, providing an exception to the "American rule" that each party bears its own attorney fees. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147.) The fundamental objective of the private attorney general doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565 (*Graham*).)

Under section 1021.5, the court may award attorney fees to (1) a successful party in any action (2) that has resulted in the enforcement of an important right affecting the public interest (3) if a significant benefit has been conferred on the general public or a large class of persons, and (4) the necessity and financial burden of private enforcement are such as to make the award appropriate. (*Ibid*.) The burden is on the claimant for the award of attorney's fees to establish each prerequisite to an award of attorney's fees under Code of Civil Procedure section 1021.5. (*Ebbetts Pass Forest Watch v. Department of Forestry and Fire Protection* (2010) 187 Cal. App. 4th 376, 381.) When a litigant establishes those elements, the court's discretion to deny fees is quite limited. In that situation, attorney fees must be awarded unless special circumstances render such an award unjust." (*Vosburg v. County of Fresno* (2020) 54 Cal.App.5th 439, 450.)

1. Successful Party

Courts take "a broad, pragmatic view of what constitutes a 'successful party' " for purposes of a section 1021.5 fee award (*Graham*, *supra*, 34 Cal.4th at p. 565) and the court must critically analyze the surrounding circumstances of the litigation and pragmatically assess the gains achieved by the action." (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection*, *supra*, 187 Cal.App.4th at p. 382.)

Defendant argues that plaintiffs were not the prevailing party because one of the two subclasses was decertified, some plaintiffs were dismissed, one of the defendants was dismissed from the case, and plaintiffs did not recover against all of the named defendants. However, the fact remains that the exempt class prevailed on their claims against NATC and obtained a judgment of over $43.5 million against that defendant. Therefore, plaintiffs are clearly the prevailing party and meet the first requirement under section 1021.5.

2. Important Public Right/ Significant Benefit Conferred

Plaintiffs assert that their action enforced an important right affecting the public interest and conferred a significant benefit on the general public or a large class of persons, a class of over 300 employees obtained a substantial money judgment against their employer, NATL, which enforces the public policies underlying wage and hour laws.

Defendant argues that plaintiffs were purely acting in their own interest to obtain payment of wages, and that their action did not benefit a large number of people

because over half of the original class was decertified or otherwise did not obtain any relief. "[S]ection 1021.5 does not authorize an award of fees when the record indicates that the primary effect of a lawsuit was to advance or vindicate the plaintiff's personal economic interest. ' "Section 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest.' 'Instead, its purpose is to provide some incentive for the plaintiff who acts as a true private attorney general, prosecuting a lawsuit that enforces an important public right and confers a significant benefit, despite the fact that his or her own financial stake in the outcome would not by itself constitute an adequate incentive to litigate."'" (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1170, citations omitted (*Weeks*).)

However, *Weeks* and the other authorities cited by defendant are distinguishable. They all involved a small number of plaintiffs seeking to vindicate their own interests. None were class action suits. For example, *Kistler v. Redwoods Community College Dist*. (1993) 15 Cal.App.4th 1326, three college administrators sought their accrued vacation pay. Unsurprisingly, the Court of Appeal held they were not entitled to their fees under 1021.5 because their action did not benefit anyone other than themselves. (*Id*. at p. 1337, citation omitted.) Likewise, *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629 involved a single employee suing their employer for sexual harassment, discrimination, and retaliation. Predictably, the Court of Appeal denied plaintiff her fees under section 1021.5, because the lawsuit only conferred a benefit on her, not the general public, despite the important public policies underlying FEHA. (*Id*. at p. 636.)

However, courts have held that section 1021.5 supports an award of attorney's fee to prevailing plaintiffs in class actions for enforcement of statutory prevailing wage laws. (*Monterey/Santa Cruz etc. Trades Council v. Cypress Marina Heights LP* (2011) 191 Cal.App.4th 1500, 1522–1523 [finding that plaintiff's suit to enforce statutory prevailing wage requirements served the public interest in providing well-paying jobs for local contractors and revitalizing the local economy]; see also *Plumbers & Steamfitters, Local 290 v. Duncan* (2007) 157 Cal.App.4th 1083, 1097–1098.)

Here, the substantial money judgment for recovery of unpaid overtime benefitted not only the names plaintiffs, but also *hundreds* of other similarly situated employees. The judgment thus conferred a substantial benefit on the general public or a large class of persons, and vindicated strong public policies in favor of paying fair wages and overtime to employees in California. It will also serve as a deterrent to other employers who might otherwise attempt to violate the law by underpaying their employees. Accordingly, plaintiffs have met the second elements under section 1021.5.

3. Necessity of Private Enforcement

The court notes that despite having written polices classifying [position] as nonexempt since 2004 (Toole Decl., ¶ 38, Ex. "J"), NATL did not pay, and still has not voluntarily paid, the misclassified workers their justly due wages. There is no evidence that any government entity or official was going to enforce the laws regarding payment of overtime and other wages here. Moreover, the court finds it highly improbable that any public entity would have persevered though the 18 years of bitter, hard-fought litigation to get this case to this endpoint. Private enforcement was essential.

4. Financial Burden of Private Enforcement

The "financial burden of private enforcement" element concerns the costs of litigation and any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1215.) As a general proposition, an award of attorney fees is appropriate when the cost of the claimant's legal victory transcends his or her personal interest and places a burden on the claimant out of proportion to his or her individual stake in the matter. (*Ibid*.)

The financial burden of enforcing plaintiffs' rights here is substantial, as evidenced by the hundreds of thousands of dollars in unreimbursed litigation costs incurred to prosecute the case to this point. The named plaintiffs and their attorneys have clearly incurred costs that transcend their personal interest in obtaining their unpaid wages. "'An award on the "private attorney general" theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.'" (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 941, citations omitted.)

5. The Interests of Justice

Finally, the interests of justice strongly support shifting the payment of plaintiffs' counsel fees to NATL here. Plaintiffs' counsel have expended tremendous money, time, and effort to obtain the excellent results for the exempt class, despite defendant having tenaciously litigated the matter at every turn. As the court is well aware, this case has now been pending for nearly 18 years, and there have been countless motions, writ petitions, appeals, a full trial on the merits, years of referee proceedings, and other hearings during that time. Despite having been found liable for failure to pay overtime wages to hundreds of its employees ten years ago, defendant still has yet to pay any money to the plaintiffs. In the meantime, plaintiffs' counsel has incurred hundreds of thousands of dollars in costs, as well as tens of thousands of hours of unpaid attorney time, none of which have been reimbursed at this time. It would be highly unjust to reward defendant for its obstructive conduct and delaying tactics by denying plaintiffs their attorney's fees when defendant's obstruction was the main reason that plaintiffs had to incur so many fees and costs. Therefore, the court finds that plaintiffs have met their burden of showing that they are entitled to an award of fees under section 1021.5.

Amount of Fees

"In so-called "fee shifting" cases, in which the responsibility to pay attorney fees is statutorily or otherwise transferred from the prevailing plaintiff or class to the defendant, the primary method for establishing the amount of 'reasonable' attorney fees is the lodestar method." (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 26 (*Lealao*).) The lodestar figure is based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented. (*Lealao*, *supra*, 82 Cal.App.4th at 26.)

However, the California Supreme Court confirmed that trial courts can grant fee awards based on a percentage or the total recovery in a class actions in *Laffitte v. Robert*

Half Internat. Inc. (2016) 1 Cal.5th 480 (*Laffitte*). "Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting provision or through the common fund doctrine when, as in this case, a class settlement agreement establishes a relief fund from which the attorney fee is to be drawn." The high court discussed the two primary methods of determining a reasonable attorney fee in class actions: the percentage method and the lodestar-multiplier method. (*Id*. at p. 489.) It found that both methods were appropriate.

"[W]e clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. at p. 503, citations omitted.)

Our high court determined that the choice of a fee calculation method is "generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." (*Laffitte*, *supra*, at p. 503.) It affirmed use of the percentage fee award in the case before it. "Before approving the settlement agreement and percentage fee award in this case, the trial court supplemented its own familiarity with the case by obtaining additional information from class counsel on the risks and potential value of the litigation; the court carefully considered that information on contingency, novelty and difficulty together with the skill shown by counsel, the number of hours worked and the asserted hourly rates, which the court found were not overstated. On that basis, the trial court determined the fee request was for a reasonable percentage of the settlement fund." (*Id*. at p. 504, citations omitted.)

The undersigned has presided over this case for more than a decade, including the five-month-long court trial and every subsequent motion and hearing thereafter. The court is intimately familiar with this litigation, the claims, the parties, their attorneys and the work performed. Case law is clear that the "experienced trial judge is the best judge of the value of professional services rendered in his court." (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832.) Based on a consideration of various factors, the trial court may rely on its own expertise and knowledge to calculate reasonable attorney fees. "When the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value." (*In re Marriage of Cueva* (1978) 86 Cal. App. 3d 290, 300; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PCLM Group*) [same].)

The court is convinced that the requested 33 percent is reasonable, appropriate and fair. Plaintiffs' counsel obtained an exceptional result for their clients and hundreds of class members after 18 years of hard-fought litigation in a difficult and complex class action. Plaintiffs' counsel spent *tens of thousands* of hours working on the case, and had

to forego other employment while the case was pending. They advanced *hundreds of thousands* of dollars to pay litigation costs. They served and answered thousands of discovery requests, conducted hundreds of depositions, litigated countless motions, appeals, a five-month trial, and years of reference proceedings. Counsel took the risk that they might never be paid for their efforts, which would have been devastating for their firms. Under these circumstances, an award of fees equal to one-third of the total judgment is appropriate. Thus, under these circumstances, an award of fees equal to one-third of the total judgment is fair and reasonable.

Furthermore, a lodestar cross-check confirms that the requested fee award is reasonable. Again, the "lodestar figure [is] based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano III, supra*, 20 Cal.3d at p. 48.) As our Supreme Court has repeatedly emphasized, the lodestar consists of "the number of hours reasonably expended multiplied by the reasonable hourly rate. . . ." (*PLCM Group*, *supra*, 22 Cal.4th at p. 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Here, plaintiffs' counsel claims to have incurred 24,994.03 hours in litigating the case so far, with dozens of attorneys billing during the course of the 18-year-old case. If the court grants the requested fees of one-third of the total judgment, the average billing rate for the attorneys would be approximately $580 per hour. Given the lengthy, challenging, complex, and hard-fought nature of the case, the amount of hours incurred is fair and reasonable. Furthermore, the requested hourly rates appear to be fair and reasonable as well, especially in light of the skill and experience needed to successfully litigate the case through trial and obtain a substantial judgment of favor of the class. Therefore, the court finds that a lodestar cross-check demonstrates that the request for fees equal to one-third of the total judgment is reasonable.

The relative paucity of NATC's billing challenges tend to support the court's determination that a one-third fee award is reasonable. "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice. Failure to raise specific challenges in the trial court forfeits the claim on appeal." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.)

NATC opposes fees related to: the litigation concerning the Non-Exempt class, which was decertified (575 hours); (2) defendant North American Services, LLC, which prevailed at trial (139 hours); (3) named plaintiffs Cortina, Baker, Doran, and Dominguez who were dismissed with prejudice, or recovered no restitution (360 hours); (4) Plaintiffs' unsuccessful effort to disqualify the Morgan Lewis law firm (40 hours); and (5) defendant Doma, which was dismissed on January 25, 2022 (142 hours). These are negligible compared to the approximately 25,000 hours billed on the case over nearly two decades.

Accordingly, the court grants fees in the requested amount of one-third of the total judgment amount, i.e., $14,515,982.00.

Request for Costs

Plaintiffs also seek an award of their non-statutory costs of approximately $909,000, to be paid by plaintiffs out of the judgment. " 'There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund.' " (*Ontiveros v. Zamora* (E.D. Cal. 2014) 303 F.R.D. 356, 375, citations omitted.) Area attorneys routinely require their clients to reimburse them for these types of fees and expenses in their fee agreements. The court has reviewed the requested costs. They are fair and reasonable, and the court allows the requested costs to be paid out of the judgment awarded to plaintiffs.[1]

Enhancement Award to Named Plaintiffs

Plaintiffs also seek an enhancement award of $25,000 to each named plaintiff.

"While there has been scholarly debate about the propriety of individual awards to named plaintiffs, '[i]ncentive awards are fairly typical in class action cases.' These awards 'are discretionary, and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–1394, citations omitted.)

However, enhancement awards are generally only awarded in cases where there has been a settlement of a class action and both parties agree to the payments, not where plaintiffs received a judgment after trial. "In the absence of a common fund and the agreement by the defendant to award an enhancement payment upon settlement, courts generally do not award incentive payments to the class representatives regardless of the extent of their participation in the action." (*In re Taco Bell Wage and Hour Actions* (E.D. Cal. 2016) 222 F.Supp.3d 813, 849, citations omitted.)

However, at least one court has stated that "[incentive] [a]wards are generally sought after a settlement *or verdict* has been achieved." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959, italics added.)

Notably, here plaintiffs are not seeking an enhancement award against defendant, but instead only seek to have the court approve payment of the enhancements from the "common fund" or judgment given to the class. Therefore, defendant has no standing to object to the payments. Also, the requested awards appear to be reasonable under the circumstances, given the extensive efforts of the named plaintiffs in assisting counsel in prosecuting the case, as well as the risk to their reputations and their ability to obtain future work. (Toole decl., ¶¶ 48, 49.) As a result, the court will grant the motion for an incentive award of $25,000 to each of the named plaintiffs who obtained a judgment in their favor. However, the court will deny the request for an incentive award to the named plaintiffs who did not obtain a favorable judgment.

[1] Defendant objects to the request for such costs, noting that they are not permitted under Code of Civil Procedure section 1033.5. However, plaintiffs' counsel is not requesting that the costs be awarded against defendant, but only that they be paid from the amount awarded to plaintiffs under the judgment. As a result, section 1033.5 does not apply to the requested costs, which are not being sought against defendant. In any event, defendant does not have standing to object to the costs, as it is not the party who would have to pay them.

Defendant's Motion to Tax Plaintiff's Costs

Under Code of Civil Procedure section 1032, "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Also, under section 1032, subdivision (a), " 'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

Here, some of the plaintiffs prevailed against defendant NATC and were the "prevailing parties" in the action against that defendant, as they obtained a judgment of $43.5 million against NATC. (Exhibit A to Brewer decl., Statement of Decision dated October 20, 2016.) However, other plaintiffs obtained nothing against NATC, as the class of which they were members was decertified by the court. (*Ibid*.) The decertification of the Non-Exempt Class was effectively a dismissal without prejudice in favor of defendant. (*Id*. at p. 3.) Also, since the members of the decertified class received nothing against NATC, they were not the prevailing parties under section 1032. As a result, defendant is the "prevailing party" with regard to the plaintiffs whose claims were dismissed and who received nothing. Plaintiffs also did not obtain a judgment against defendant NAS. As a result, the plaintiffs whose class was decertified and received nothing are not the "prevailing parties" in the action.

Code of Civil Procedure Section 1033.5 sets forth a list of allowable costs, as well as a number of costs that are not allowed. The court also has discretion to award other costs not specifically listed under section 1033.5 if it determines that they are reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. (Code Civ. Proc. § 1033.5, subd. (c)(2).) "Finally, section 1033.5 requires that the costs awarded, whether expressly allowed under subdivision (a) or awardable in the court's discretion under subdivision (c), must be 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation' (§ 1033.5, subd. (c)(2)) and also be 'reasonable in amount.' (*Rozanova v. Uribe* (2021) 68 Cal.App.5th 392, 399, citations omitted.)

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. However, because the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774, internal citations omitted.) Expenses that are "merely convenient or beneficial" to preparation for litigation are not recoverable. (*Id*. at p. 775.)

"We agree the mere filing of a motion to tax costs may be a 'proper objection' to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, '[i]f the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party].'" (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, citations omitted.)

Filing Fees: Defendants first challenge item 1, filing fees. Defendant contends that, since plaintiffs were not the prevailing parties as to NAS or the Non-Exempt Class, and Cortina, Baker, and Doran were not prevailing parties in three appeals, their filing fees should be taxed. Defendant requests that the court tax a total of $2,375.13 in filing fees. Plaintiffs concede that these filing fees are improper and therefore withdraw them. Therefore, the court will grant the motion to tax $2,375.13 in filing fees. It will only allow $5,891.04 in filing fees.

Deposition Costs: Defendant also moves to tax plaintiffs' Cortina and Baker's deposition costs in the amount of $2,455.51, as they did not prevail on their claims. Plaintiffs contend that these costs are proper, as they prevailed on their claims and they offered testimony that was relevant to the issues of the case. The court intends to deny the motion to tax this cost, as even if plaintiffs were not the prevailing parties, their depositions were still necessary to the litigation, as they offered testimony that was relevant to the issues of the case. (Code Civ. Proc., § 1033.5, subd. (a)(3)(A).)

Defendant also moves to tax deposition costs for the Non-Exempt Class members, as they failed to obtain any relief and their class was de-certified. Defendant seeks to tax $26,836.35 in costs related to these depositions. However, the court should deny the motion to tax this cost, as the Non-Exempt Class members were percipient witnesses and still needed to be deposed, regardless of whether they prevailed on their claims.

Defendant next moves to tax the costs for deposing the unidentified deponents listed in Exhibit C, Attachment 4e, in the amount of $18,227.74. Plaintiffs have now submitted additional information to identify the deponents. They have also withdrawn $4,508.90 in costs from this item. Therefore, since plaintiffs have identified the deponents, the court will tax $4,508.90 and allow the remaining costs in the amount of $13,718.84.

Next, defendant moves to tax $658.80 in duplicate deposition costs for the deposition of Laurel Johnstone. Plaintiffs concede that this cost is improper and have withdrawn it. Therefore, the court will tax this item in the amount of $658.80.

In summary, the allowable deposition cost are $43,501.74.

Service of Process: Defendant moves to tax service of process on Non-Exempt Class members, arguing that these class members did not prevail and should not be allowed to recover their costs. Plaintiffs contend that they are allowed to recover costs for service of process, and that it was necessary to serve subpoenas on the class members to ensure that they appeared in court. (Code Civ. Proc., § 1033.5, subd. (a)((4).) Registered process servers served the subpoenas, so they argue that they are entitled to recover their costs. The court finds that this cost is recoverable, as plaintiffs

needed to serve the class members with subpoenas in order to ensure their appearance for the trial or reference hearings. The Non-Exempt employees were necessary witnesses, regardless of whether they ultimately prevailed on their claims, so plaintiffs properly ensured that they appeared. Therefore, the court will allow this cost and deny the motion to tax this item.

Witness Fees for Non-Exempt Class Members: Defendant seeks to tax the costs for witness fees for several Non-Exempt Class Members in the total amount of $595.60, plus witness fees of $35 for Ms. Cortina because she did not prevail on her claims. Plaintiffs contend that they are entitled to witness fees under section 1033.5(a)(7) and their requested fees are reasonable, especially since many of the witnesses had to travel from out of town to appear.

Section 1033.5(a)(7) allows recovery of "Ordinary witness fees pursuant to Section 68093 of the Government Code." Under Government Code section 68903, "Except as otherwise provided by law, witness' fees for each day's actual attendance, when legally required to attend a civil action or proceeding in the superior courts, are thirty-five dollars ($35) a day and mileage actually traveled, both ways, twenty cents ($0.20) a mile."

Here, the court will allow the ordinary witness fees for the class members, but not Ms. Cortina. Ms. Cortina was a named plaintiff and an active party to the case, so she was not an "ordinary witness." The other class members were more like "ordinary witnesses" as they were not active parties in the case in the same way that the named plaintiffs were. Therefore, the court will only tax $35 from this item and allow the rest of the claimed witness fees.

Court-Ordered Transcripts: Defendants move to tax this item in the amount of $31,163.41, as the court did not order any transcripts. Plaintiffs have withdrawn their claim for transcripts in the amount of $23,503.46, so the court will grant the motion to tax the request for transcripts in this amount.

However, plaintiffs do seek $7,660 in costs for court reporters' fees, which they contend were necessary due to the lengthy 37-day trial. Plaintiffs paid $200 per day for the court reporters.

The court will allow plaintiffs to recover the cost of the court reporters, as they were reasonably necessary to the conduct of the litigation. (Code Civ. Proc., § 1033.5(a)(11).) Therefore, the court will allow the court reporters' fees in the amount of $2,660, but tax the court transcripts item in the amount of $23,503.46.

Exhibits: Defendant moves to tax the cost of photocopies of exhibits in the amount of $16,449.41, as it claims that plaintiff only introduced 189 out of 883 exhibits d at trial, and that it should not be allowed to recover for exhibits that were not introduced at trial. However, plaintiffs claim that the court ordered them to prepare and submit all of their trial exhibits at the outset of the trial, so they should be allowed to recover this cost even though they did not actually introduce all of the exhibits.

Under Code of Civil Procedure, section 1033.5, subdivision (a)(13), "Models, the enlargements of exhibits and photocopies of exhibits, and the electronic presentation of

exhibits, including costs of rental equipment and electronic formatting, may be allowed if they were reasonably helpful to aid the trier of fact."

Here, the court was the trier of fact, and at a pretrial conference it ordered the parties to provide triplicate binders of exhibits to be provided on the first day of trial. Plaintiffs' counsel complied with the court's order and copied all of the exhibits. (Cornwell decl., ¶ 10.) Thus, while the exhibits were not introduced, they were "reasonably helpful to aid the trier of fact" as the court expressly ordered the plaintiffs to prepare them for its convenience. As a result, the court will allow all of the cost of copying the exhibits.

Other Costs - Mediation Fees and Related Travel Costs: Defendant contends that the mediation fees and related travel costs are not expressly allowed by statute, and that the court should not exercise its discretion to allow them. It requests that the mediation fees of $2,500 be taxed, as well as the travel fees associated with mediation in the amount of $1,007.84. Plaintiffs contend that mediation costs are not expressly allowed or forbidden under section 1033.5, and that the court should allow the costs in its discretion as mediation is required under the Fresno County Local Rules, and several cases have allowed mediation costs. However, they offer to reduce their claim for travel costs to $553.11.

The court will allow the mediation costs in the amount of $2,500, but not the travel costs. Mediation costs are not expressly allowed or forbidden under section 1033.5. However, courts have allowed mediation costs may recovered as discretionary costs based on the circumstances of the case, since mediation can be helpful to resolve the litigation. (*Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal.App.5th 1133, 1143; *Gibson v. Bobroff* (1996) 49 Cal.App.4th 1202, 1209-1210.) Here, the mediation was required by local rule and reasonably necessary and helpful to the litigation, since it gave the parties a venue to potentially resolve their dispute out of court and avoid going to trial.

However, the travel costs to attend mediation will be not allowed, since the parties could have attended telephonically or by other means. Therefore, the court will tax the mediation travel costs in the amount of $1,007.84.

Travel Costs: Defendant moves to tax the non-deposition travel costs to attend trials and other hearings, contending that only deposition travel costs are allowed by section 1033.5(a)(3). Other travel costs are not recoverable. Therefore, defendant moves to tax the travel and lodging costs in the amount of $35,066.66.

Since travel costs other than for attending depositions are not listed as allowable costs under section 1033.5, the court will tax the travel costs in the amount of $35,066.66. "Section 1033.5, subdivision (a)(3) clearly contemplates recovery of travel costs incurred by counsel to attend depositions. By negative implication, this statute does not provide for recovery of local travel expenses by attorneys and other firm employees unrelated to attending depositions, nor does it allow recovery for 'meals eaten while attending local depositions.'" (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 72, citations omitted.) Therefore, the court will tax the non-deposition travel costs from the memo of costs, in the amount of $35,066.66.

Witness Travel Costs: Defendant also moves to tax the plaintiffs' request for witness travel costs, contending that here the "witnesses" are actually parties to the case and thus not allowed to recover their travel costs. Some of the costs were incurred by named plaintiffs and others by members of the class. Therefore, defendant moves to tax the witness travel costs in the total amount of $16,034.25.

The court intends to tax the witness travel fees in part. As defendant notes, witness fees for parties to appear at trial or hearing are not recoverable. (*Trussell v. City of San Diego* (1959) 172 Cal.App.2d 593, 617.) Thus, the travel costs for the named plaintiffs are not recoverable here. However, the travel costs for the other class members who were not named plaintiffs are more akin to ordinary witness fees, in the sense that the class members are not active members of the case and simply offered testimony relevant to the class action claims. Therefore, the court will allow the travel costs for the class members, but not the named plaintiffs. As a result, the court intends to grant the motion to tax witness travel costs, in the amount of $3,956.93.

Plaintiff's Motion to Tax Defendant's Costs

Plaintiffs argue that the defendant filed its memo of costs late, so the entire memo of costs should be taxed (or more accurately, stricken). Plaintiffs also contend that defendant was not the "prevailing party" in the litigation, and therefore its request for costs is improper and should be stricken.

"A memorandum of costs must be filed 'within 15 days after the date of service of the notice of entry of judgment ... or within 180 days after entry of judgment, whichever is first.' (Cal. Rules of Court, rule 3.1700(a)(1).)" (*Lowry v. Port San Luis Harbor Dist.* (2020) 56 Cal.App.5th 211, 221.)

"[I]f the claimant fails to present a cost bill, a waiver of the right to costs results. The time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory." (*Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 929, citation omitted.) The trial court has discretion to excuse the untimely filing of a memo of costs under section 473, but the party seeking costs must offer an explanation for the untimely filing. (*Jones v. John Crane, Inc.* (2005) 132 Cal.App.4th 990, 1012.)

In the present case, the court issued its judgment on August 31, 2022, and the clerk mailed out the judgment the same day. The judgment states that "Plaintiffs shall promptly prepare a Notice of Entry of this Judgment, to which they shall attach a filed copy of this Judgment and cause it to be sent by United States mail to the last known address of each member of the Exempt Class." Plaintiffs' counsel mailed out the notice of entry on September 8, 2022. Defendant filed the memo of costs on September 28, 2022.

Plaintiffs argue that the memo was untimely, since the time to file ran from when the court clerk mailed out the judgment, not when plaintiffs sent out the notice of entry. Defendant disagrees, arguing that the memo was timely because the time ran from when plaintiffs mailed the notice of entry, not when the court clerk mailed the judgment.

Defendant cites to *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc*. (1997) 15 Cal.4th 51, which held that "when the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on the motion for a new trial only when the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment." (*Id*. at p. 64.) Here, defendant points out that the court's minute order does not say that the clerk is directed to mail notice of entry of judgment, so defendant contends that the mailing of the minute order did not trigger the clock to file the memo of costs. However, plaintiffs contend that *Van Beurden* only addresses the issue of when the time to file a new trial motion and an appeal run, not when a memo of costs must be filed.

In *Van Beurden*, the Supreme Court held that the time to file new trial motionl starts to run from the date when the clerk mails the notice of entry of judgment, but only if the court's order directed to mail the notice of entry of judgment, or the clerk indicates that the file-stamped copy of the judgment constituted a "notice of entry" of judgment "pursuant to section 664.5", or "upon order of the court." (*Id*. at p. 65.) If the clerk's mailing did not contain such language, then the mailing of the judgment did not shorten the time for the party to file a motion for new trial. (*Ibid*.)

The Supreme Court relied on Code of Civil Procedure section 664.5, which provides that, "In any contested action or special proceeding other than a small claims action or an action or proceeding in which a prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and serve, a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service." (Code Civ. Proc., § 664.5, subd. (a).)

Also, under section 664.5, subdivision (b), "Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall serve notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of service and place it in the court's file in the cause." (Code Civ. Proc., § 664.5, subd. (b).) In addition, "Upon order of the court in any action or special proceeding, the clerk shall serve notice of entry of any judgment or ruling, whether or not appealable." (Code Civ. Proc., § 664.5, subd. (d).)

In the present case, the court's minute order did not contain any language directing the clerk to mail a notice of entry of judgment, nor did the clerk's proof of service indicate that the judgment constituted a notice of entry of judgment under section 664.5, or that the court had directed mailing of the notice of entry of judgment. In fact, The judgment indicates that the *plaintiffs* were to prepare and mail a notice of judgment "promptly." (Judgment dated August 31, 2022.) Thus, the clerks' mailing of the judgment on August 31, 2022, did not start the clock running to file the memo of costs. Instead, the time to file the memo began to run when plaintiffs served the notice of entry on September 8, 2022. As a result, defendant had until September 28, 2022 to file their memo of costs. Since they filed the memo on September 28, 2022, the memo was timely.

Plaintiffs have also argued that defendant was not the "prevailing party" in the action, as plaintiffs obtained a judgment against defendant of $43.5 million, and thus

defendant is not entitled to an award of its costs. On the other hand, defendant argues that it is the prevailing party with regard to those plaintiffs who were members of the Non-Exempt Class that was decertified by the court and who obtained nothing, and thus it is entitled to tax those plaintiffs' costs.

Under Code of Civil Procedure section 1032, "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Also, under section 1032, subdivision (a), " 'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

Here, some of the plaintiffs prevailed against defendant and were the "prevailing parties" in the action, as they obtained a judgment of $43.5 million against NATC. (Exhibit A to Brewer decl., Statement of Decision dated October 20, 2016.) However, other plaintiffs obtained nothing against NATC, as the class of which they were members was decertified by the court. (*Ibid*.) The decertification of the Non-Exempt Class was effectively a dismissal without prejudice in favor of defendant. (*Id*. at p. 3.) Also, since the members of the decertified class received nothing against NATC, they were not the prevailing parties under section 1032. As a result, defendant is the "prevailing party" with regard to the plaintiffs whose claims were dismissed and who received nothing, and defendant is entitled to seek its costs as to those plaintiffs. Therefore, the court intends to deny plaintiffs' motion to tax (or more accurately, to strike) the memo of costs filed by defendant.

However, defendant has conceded that some of the costs listed on its memo are non-recoverable, as some plaintiffs who were members of the decertified class received restitution. Specifically, Ms. Bell and Ms. Texeira received restitution. Therefore, the court will tax the memo of costs to the extent that it seeks to recover costs for the plaintiffs who prevailed received restitution against defendant, and allow defendant to recover only $57,318.86.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 10/9/2025.
(Judge's initials) (Date)