

**DEPARTMENT SEVEN  
JUDGE TIM P. KAM  
707-207-7307  
TENTATIVE RULINGS SCHEDULED FOR  
TUESDAY, MARCH 12, 2024**

***The parties may appear via Zoom with the exception of trials, trial management conferences, order for examinations and mandatory settlement conferences. The information for the Zoom meeting is set forth below.***

The tentative ruling shall become the ruling of the court unless a party desiring to be heard contacts the judicial assistant of the department hearing the matter by 4:30 p.m. on the court day preceding the hearing, and further advises that such party has notified the other side of its intention to request a hearing. A party requesting a hearing must notify all parties of the request to be heard by 4:30 p.m.

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**AMY GALLETTI VS. PULTE HOMES OF CALIFORNIA, ET AL  
Case No. CU23-01814**

Plaintiff's Motion for Leave to File Second Amended Complaint

**TENTATIVE RULING**

Plaintiff Amy Galletti moves for leave to file a second amended complaint significantly adding new allegations supporting a new cause of action for negligent entrustment against Defendant JOHN R. PETERSON ("JOHN").

The trial court may, in its discretion, allow amendments to pleadings "in furtherance of justice." (Code Civ. Proc., § 473, subd. (a)(1).) The court has wide discretion here but repeatedly stated policy encourages liberality in allowing amendment. (See *Frost v. Witter* (1901) 132 Cal. 421, 424; *Cardenas v. Ellston* (1968) 259 Cal.App.2d 232; *Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 412.)

The court finds that leave to amend Plaintiff's complaint is in the interests of justice. Plaintiff's motion is granted. Plaintiff is to serve and file her proposed second amended complaint within thirty days of the date of this ruling.

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**LUCILLE HENDERSON VS. CHEVRON CORPORATION, A DELAWARE  
CORPORATION, ET AL  
Case No. CU23-02364**

Motion to Compel Responses to Special Interrogatories

Motion to Compel Responses to Form Interrogatories  
Motion to Compel Responses to Request for Production of Documents

**TENTATIVE RULING**

Plaintiff Lucille Henderson is ordered to provide verified responses to Request for Production of Documents, Set One, without objections, within 30 days of the date of this Order.

Plaintiff is to pay sanctions to the Defendant in the sum of \$560.00 within 30 days of the date of this Order.

(1) Plaintiff's **UNOPPOSED MOTION FOR ORDER COMPELLING ANSWERS TO FORM INTERROGATORIES, SET ONE** is granted.

Plaintiff Lucille Henderson is ordered to provide verified responses to Form Interrogatories, Set One, without objections, within 30 days of the date of this Order.

Plaintiff is to pay sanctions to the Defendant in the sum of \$560.00 within 30 days of the date of this Order.

(2) Plaintiff's **UNOPPOSED MOTION FOR ORDER COMPELLING RESPONSES TO SPECIAL INTERROGATORIES (SET ONE)** is granted.

Plaintiff Lucille Henderson is ordered to provide verified responses to Special Interrogatories, Set One, without objections, within 30 days of the date of this Order. PLAINTIFF is to pay sanctions to the DEFENDANT in the sum of \$560.00 within 30 days of the date of this Order.

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**JESSICA WHATLEY VS. TRAVIS CREDIT UNION**  
**Case No. FCS056217**

Plaintiff's Motion for Attorney's Fees Pursuant to CCP Section 1021.5

**TENTATIVE RULING**

Plaintiff JESSICA WHATLEY moves for an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 following her success at trial on claims against Defendant TRAVIS CREDIT UNION of wrongful termination in violation of Labor Code section 230.8 and wrongful termination in violation of public policy.

**Requests for Judicial Notice.** Plaintiff requests judicial notice of the following document: the Senate Rules Committee Office of Senate Floor Analyses Unfinished Business SB 579, dated September 1, 2015 (a portion of the legislative history of Labor

Code section 230.8). Defendant requests judicial notice of thirteen items from the record of this case. The court takes judicial notice of all proffered items as records of official acts of the Legislature, records of a court of this state, and/or facts that are not reasonably subject to dispute. (Evid. Code, § 452, subs. (c), (d), (h).)

**Legal Standard.** Code of Civil Procedure section 1021.5, in codifying the “private attorneys general doctrine,” recognizes that private lawsuits are often necessary to effect fundamental private policies and will be practically unfeasible absent some mechanism for authorization of attorneys’ fees. (*McCormick v. Public Employees’ Retirement System* (2023) 90 Cal.App.5th 996, 1003 (*McCormick*).) Section 1021.5 provides that:

“Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with [Section 900](#)) of Division 3.6 of Title 1 of the Government Code.” (Code Civ. Proc., § 1021.5.)

A prevailing plaintiff bears the burden of establishing the appropriateness of fees under section 1021.5. (*McCormick* at p. 1004.)

A “successful party” within the meaning of section 1021.5 is one that achieves its objectives; it is in this sense synonymous with “prevailing party.” (*Graham v. DaimlerChrysler Corporation* (2004) 34 Cal.4th 553, 570-571 (*Graham*); *Grossmont Union High School District v. Diego Plus Education Corporation* (2023) 98 Cal.App.5th 552, 571.) *Ventas Finance I, LLC v. Franchise Tax Board* (2009) 165 Cal.App.4th 1207, 1234, does not hold to the contrary as that case only states the truth that a “successful party” within the meaning of Code of Civil Procedure section 1021.5 is not the same as the definition of the “prevailing party” pursuant to Code of Civil Procedure section 1032. In the context of section 1021.5 determinations the terms “successful” and “prevailing” are “synonymous” and given their “usual and ordinary meaning.” (*Graham* at p. 570 - 571.)

There is no concrete test for determining what is an “important right affecting the public interest;” a court must exercise judgment in ascertaining the strength or societal importance of the right involved and realistically assess the significance of the right in

terms of its relationship to achievement of fundamental legislative goals. (*Doe v. Westmont College* (2021) 60 Cal.App.5th 753, 763 (*Westmont College*).)

An “important right affecting the public interest” may be found when the subject matter of an action is simply of sufficient societal importance, but the “significant benefit on the general public or a large class of persons” requirement calls for an examination of whether litigation has in fact had a beneficial impact on the public or a large enough group of persons to warrant a fee award. (*McCormick, supra*, 90 Cal.App.5th at p. 1004.) There is a difference between the two requirements that means that a significant benefit cannot be found simply by the fact that an important right has been enforced, even understanding that the public always benefits to some degree from effective law enforcement. (*Id.* at p. 1006.) Here too a court must realistically assess, in light of all pertinent circumstances, the gains realized in a particular case. (*Westmont College, supra*, 60 Cal.App.5th at p. 764.) On the other hand, how many people will receive what manner of benefit from a legal action is often more a value judgment than an issue of fact. (*McCormick* at p. 1005.) The extent of the benefit conferred need not be great, and the class of persons benefited need not be readily ascertainable. (*Ibid.*) Evidence of the size of the group benefited is not required and the substantial benefit may be conceptual or doctrinal, and need not be actual or concrete, so long as the general public benefits. (*Ibid.*)

The fact that a plaintiff’s suit primarily vindicated his individual economic interest is neither a reason to grant nor deny fees under section 1021.5. (*McCormick, supra*, 90 Cal.App.5th at p. 1006.) Indeed, the plaintiff’s subjective motivations for bringing suit are not relevant. (*Westmont College, supra*, 60 Cal.App.5th at p. 764.) Likewise, a plaintiff’s case need not forge new law in order to receive section 1021.5 fees, yet if it does result in a published appellate opinion that is no guarantee of fees. (*McCormick* at p. 1007.)

Turning to the question of necessity and financial burden of private enforcement, the court first looks to the adequacy of public enforcement, typically simply meaning whether public enforcement is sufficiently available. (*Westmont College, supra*, 60 Cal.App.5th at p.765-766.) The court then weighs the financial burden of the litigation against financial benefits it reasonably could have been expected to yield. (*Id.* at p. 766.) In doing this the court should discount the monetary value of benefits a litigant reasonably expected at the time vital litigation decisions were made by the probability of success at that time and compare this estimated value to costs and fees actually incurred. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 154-155 (*Collins*).) A fee award is appropriate where the cost of the legal victory transcends the litigant’s personal interest; that is, when the necessity of the lawsuit placed a burden on the plaintiff out of proportion to their individual interest in the matter. (*Westmont College* at p. 766.) The comparison of personal interest to burden is a value judgment whether a “bounty” of attorneys’ fees should be offered to encourage public interest actions; a fee award is appropriate in this sense unless the expected benefits exceed actual costs by a substantial margin. (*Collins* at p. 155.)

**Application of Standard: Successful Party.** Plaintiff prevailed at trial in that she obtained a net recovery of damages on her claims for violation of Labor Code section 230.8 and wrongful termination in violation of public policy. Plaintiff's core objective in filing suit was the recovery of damages and she realized that objective. (See, e.g., Complaint at Prayer.) She is a "successful party."

**Application of Standard: Important Right.** Plaintiff's action resulted in the enforcement of an important right affecting the public interest because Plaintiff's action remedied a violation of Labor Code section 230.8, described by its own legislative history as existing for the purpose of keeping Californians from having to make an unbearable choice between keeping their jobs and being involved in their children's upbringing. (Plaintiff's Request for Judicial Notice, Exhibit J1.) The court finds that this right to direct involvement in one's children's care and education is an important right affecting the public interest because parents must be simultaneously able to maintain employment to provide for their children and ensure the children's quality schooling and care in order for happy, healthy families to develop. The court also finds that the right enumerated is strongly connected to effectuating this important goal because it was purpose-crafted to be such by the Legislature and has a clear connection to its purpose where it allows parents protected time away from work in order to personally address childcare emergencies.

**Application of Standard: Significant Benefit, whether pecuniary or nonpecuniary, conferred on the general public or a large class of persons.** The simple fact that Plaintiff enforced a legal right enumerated in statute is insufficient in and of itself to find that her action conveyed a significant benefit on the general public or a large class of people. Yet enforcement of existing rights can support fee awards; one need not create a "landmark" case to bestow a significant benefit on the public. (*Press v. Lucky Stores* (1983) 34 Cal.3d 311, 318 (*Press*).) It can be enough that the right enforced reflects fundamental constitutional principles and in that simple way there is a benefit to the general public. (*Ibid.*)

Also, however, as noted in *McCormick, supra*, " 'Rather, a 'central function' of the private attorney general statute is "to call public officials to account and to insist that they enforce the law," " and that purpose is furthered when an opinion illuminates or emphasizes the contours of existing law and requires an agency to follow it. [*citing Robles v. Employment Development Dept.* (2019) 38 Cal.App.5th 191, 204]." While Labor Code section 230.8 is an existing statute it lacks controlling precedent interpreting its effects. This increases the significance of Plaintiff's action even though she has not catalyzed new precedential case law. Prior to her action the parties were uncertain about the contours of Defendant's obligations under Labor Code section 230.8. Defendant now has guidance about the application of the statute to its employees in the future, benefiting them and it.

**Application of Standard: Necessity and Burden of Private Enforcement.** The Court finds that a private action was necessary where public enforcement of Plaintiff's Labor Code section 230.8 right was not sufficiently available where her action, even only her

claim for violation of Labor Code section 230.8 without regard to her tailing claim for wrongful termination in violation of public policy, required the extensive discovery options of a civil action to adequately explore the circumstances and motivation behind Defendant's decision to terminate her employment.

The next question is financial burden compared to personal gain. When weighing expected value against actual costs to determine the burden of private enforcement the court must look at "expected" value and not actual recovery. In the circumstances before it the court nonetheless finds that Plaintiff's actual \$69,500 recovery is a relevant consideration. This is because the "expected" value is that which a reasonable litigant could have expected to get at a vital stage of litigation. (*Collins, supra*, 205 Cal.App.4th at pp. 154-155.) Here Plaintiff's actual \$69,500 recovery comes from a technical award of \$161,000 in lost wages reduced substantially for failure to mitigate damages. These numbers should have been predictable, allowing for some variation.

Plaintiff knew at all times what her lost wages figures would look like because they were capable of ready estimation by reference to her pay rate, hours worked, performance evaluations, and other information known to her. Plaintiff should reasonably also have known at all times what effect her efforts to find new employment (or lack thereof) would have on her net recovery. Plaintiff also should have been reasonably aware that she could not recover damages for emotional distress based upon the Court's granting of Defendant's Motion for Summary Adjudication on the IIED cause of action. Similarly, Plaintiff should have been reasonably aware that Labor Code section 230.8 enumerates the remedy for violations at subdivision (d) and does not allow for emotional distress damages. Plaintiff's final 998 demand on 6/23/23 for \$70,000 also sheds light on Plaintiff's expected value at a vital stage of litigation. This is all to say that when Plaintiff made the vital litigation decision to go to trial to vindicate her Labor Code section 230.8 right, incurring all the extensive associated costs, she should reasonably have had a picture in her mind of recovery not far off from the actual result.

Plaintiff's reasonable expected value for her case, in the neighborhood of \$69,500, does not exceed her actual costs of \$53,319.07 (per her memorandum of costs) by a substantial margin. In other words, the burden of litigation here appears disproportionate to Plaintiff's individual stake in the matter.

**CONCLUSION:** A fee award pursuant to Code of Civil Procedure 1021.5 is appropriate.

**Determination of Fee Award Amount: Lodestar.** A court usually calculates reasonable fees by employing the lodestar method, meant to be fully compensatory and including all hours reasonably spent by counsel. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.) The computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate fee award. (*PLCM Group, Inc. v. Dexler* (2000) 22 Cal.4th 1084, 1095.) "Reasonable attorney's fees shall be fixed by the court" and "the experienced trial judge is the best of the value of professional services rendered in [the] court." (*Id.* at pp. 1094-1095; Civ. Code, § 1717, subd. (a).)

The court finds that \$450 an hour is a reasonable rate for Plaintiff's counsel's services. (Exhibit H, Declaration of Cassandra M. Ferrannini, ELM Solutions 2023 Real Rate Report, Wolters Kluwer).

The Court finds as follows as to whether Plaintiff's billable hours should be deducted.

- (1) **14.9 hours on Discovery.** The Court will reduce the billable hours by 7 hours where the responses were faulty leading to sanctions.
- (2) **11.4 hours for Writ Opposition that was never filed.** The Court will deduct these hours.
- (3) **32.2 hours on expert discovery related to emotional distress after IIED claims were summarily adjudicated against Plaintiff.** The Court will deduct these hours.
- (4) **4 hours of excessive voir dire.** The Court declines to deduct these four hours where the trial court allowed the voir dire.
- (5) **22.3 hours opposing Defendant's Motion for Judgment on the Business and Professions Code section 17200 claim.** The Court will deduct these hours where after the verdict, Plaintiff conceded that she was not seeking injunctive relief or restitution for harm prior to her termination.
- (6) **24.9 hours for additional hours incurred after filing Plaintiff's Motion for Attorney Fees, (First raised in Plaintiff's reply brief.)** The Court will deduct these hours where they were not addressed in Plaintiff's initial motion.

The Court applies a multiplier of 1.1 recognizing that the case involved a novel application of Labor Code Section 230.8 to wrongful termination during the covid pandemic. That being said, the issue did not appear to be overly complex. Similarly, where the trial involved a single plaintiff vs. a single defendant, there is no indication that the trial itself was overly complex.

The court finds that counsel reasonably incurred 571.2 hours of billable time on this matter, deducting from the claimed 644.1 hours the 72.9 hours outlined above.

571.2 hours at \$450 an hour generates a base fee award of \$257,040.

**Determination of Fee Award Amount: Multiplier.** The court may apply a multiplier to increase or decrease the initial "hours times rate" lodestar figure depending on the novelty or difficulty of questions the case presented, the skill displayed in presenting the case, the extent to which the case precluded other employment for the attorneys, and the contingent nature of the fee award. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

The Court applies a multiplier of 1.1 recognizing that the case involved a novel application of Labor Code Section 230.8 to wrongful termination during the covid pandemic. That being said, the issue did not appear to be overly complex. Similarly, where the trial involved a single plaintiff vs. a single defendant, there is no indication that the trial itself was overly complex.

**Conclusion.** Plaintiff's motion for attorneys' fees is granted. Plaintiff is awarded \$282,744 in attorneys' fees, reflecting a lodestar figure of \$257,040 x 1.1 multiplier.

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**JESSICA WHATLEY VS. TRAVIS CREDIT UNION**  
**Case No. FCS056217**

**Defendant's Motion to Strike or Tax Costs**

Defendant TRAVIS CREDIT UNION moves to strike and/or tax the costs Plaintiff JESSICA WHATLEY claims in her memorandum of costs following prevailing at trial.

**Requests for Judicial Notice.** Defendant requests judicial notice of twelve items from the record of this case. The court takes judicial notice of all proffered items as records of a court of this state. (Evid. Code, § 452, subd. (d).)

**Legal Standard.** Code of Civil Procedure section 1032 authorizes recovery of costs for a prevailing party. Plaintiff is a prevailing party entitled to recover costs per the court's order following trial. (Defendant's Request For Judicial Notice K.)

Section 1033.5 delineates the categories of recoverable costs under section 1032 and also expressly disallows some sorts of costs. If an item of costs is not expressly allowed or disallowed it may be allowed in the court's discretion. (Code Civ. Proc., §1033.5, subd. (c)(4).) All allowed costs are only allowed to the extent they are reasonable in amount and were reasonably necessary to the conduct of litigation rather than merely convenient or beneficial. (Code Civ. Proc., § 1033.5, subds. (c)(2), (c)(3).)

If an item of costs in a proper memorandum of costs appears on its face to be proper the opposing party bears the initial burden of challenging the item's reasonableness or necessity; once that objection is made, the burden shifts to the cost-claiming party to demonstrate reasonableness and necessity. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1266.) The ultimate determination of whether an item was reasonable and necessary a question of fact for the trial court. (*Ibid.*)

**Analysis.** Plaintiff claims \$6,091.25 for filing fees. Defendant properly challenges this sum by arguing that Plaintiff should only have ever had to pay \$435 to file her complaint and nothing else. Indeed it appears that is the only direct filing fee Plaintiff ever paid and the remainder of what is claimed in this category was all convenience fees for the use of a filing assistance service. (Declaration of Arash S. Khosrowshahi in Support of



Opposition to Motion to Strike or Tax Costs at ¶ , Exhibit G.) This category of costs is taxed down to a total of \$435.

Plaintiff claims \$26,243.97 in deposition costs. Defendant properly challenges this sum as excessive and in places clearly unnecessary given that Plaintiff deposed experts on the subject of emotional distress after Plaintiff knew she had no viable intentional infliction of emotional distress claim. The court concurs that costs incurred with regard to potential emotional distress damages were not reasonably and necessarily incurred.

As to Plaintiff's remaining deposition costs, Defendant properly points out Plaintiff has failed to provide any supporting documentation for these depositions except for the deposition of Ms. Whatley in the sum of \$1545.95. The amount of \$26,243.97 less \$1545.95 = \$24,698.02 is taxed.

Plaintiff claims \$5,214 in service costs. Defendant properly challenges this sum by arguing Plaintiff had no process to serve other than her complaint, given there were no deposition or trial subpoenas. It appears that as with the filing costs claimed most of these were simply convenient. This category of costs is taxed down to a total of \$80 for service of the complaint.

Plaintiff claims \$701.94 as a court reporter's fee for trial transcripts purchased. Section 1033.5, subdivision (b)(5) expressly disallows costs for trial transcripts that were not court-ordered. This item is struck.

Plaintiff claims \$4,000 for expert witness fees. These fees were all incurred for Dr. Carvajal, whose retention was not reasonably necessary for the above-stated reason that Plaintiff had no emotional distress damages claim to pursue. This item is struck.

Plaintiff finally claims \$8,612.17 in other costs. Then entire amount of \$8612.17 in other costs is taxed. The Court recognizes that whether to award these other costs is discretionary. Defendant challenges this sum as being unexplained and thus without basis for allowance. Plaintiff explains that this catch-all category includes her expenses on filing services, office supplies and copies of juror questionnaires for trial management, flights from Georgia to attend vital events and trial with related hotel stays and meals, and general mileage.

- The \$3614.23 in travel and airfare costs is taxed. Plaintiff has not shown good cause to shift these costs to Defendant TCU.
- The \$1,082.48 on filing services is taxed as merely convenient and not reasonably necessary.
- The \$194.48 for office supplies is taxed. These are matters of convenience and simply overhead costs of operating any business.

- The \$106.42 for photocopies is expressly disallowed under section 1033.5, subdivision (b)(3).
- The \$681.48 for mileage is taxed as merely convenient.

Subtracting from \$8612.17, \$1,082.48 for filing services, \$194.48 for office supplies, \$3614.23 for plane tickets, \$2,315.50 for hotel costs, \$617.58 for meals, \$106.42 for photocopies, and \$681.48 for mileage leaves the sum of reasonably necessary "other" costs at \$1581.57.

**Conclusion.** Defendant's motion to strike or tax costs is granted in part. Plaintiff is awarded \$435 for filing costs, \$1545.95 for deposition costs, \$80 for service costs, and \$1581.57 for reasonably necessary other costs for a total reasonably necessary costs award sum of \$3642.52.

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**ROBERTO LORENZO CRUZ VS. PROSET, INC.**  
**Case No. FCS059306**

Motion for Final Approval of Settlement

**TENTATIVE RULING**

Parties and any interested persons are to appear for hearing as scheduled.

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Department 7 is inviting you to a scheduled ZoomGov meeting.

Join ZoomGov Meeting

<https://solano-courts-ca-gov.zoomgov.com/j/1611554664?pwd=T3U4QlBGWWNWaGlhXJTcGxIVHRXZz09>

**Meeting ID: 161 155 4664**

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