THE HONORABLE MICHAEL SCOTT
Department 9
Noted for Hearing: March 4, 2024
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

COLUMBIA DEBT RECOVERY, LLC, a Washington limited liability company,

Plaintiff/
Counterclaim-Defendant,

vs.

JORDAN PIERCE, an individual, and DONTE GARDINER, an individual,

Defendants/
Counterclaim-Plaintiffs,

and

GUSTAVO CORTEZ, TOWANA PELTIER and DARIUS MOSELY,

Third-Party Plaintiffs

vs.

COLUMBIA DEBT RECOVERY, LLC, a Washington limited liability company,

Third-Party Defendant

NO. 20-2-16403-8 SEA

REPLY IN SUPPORT OF DEFENDANTS/COUNTERCLAIM-PLAINTIFFS/THIRD-PARTY PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

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and JORDAN PIERCE, DONTE GARDINER, THOMAS G. HELLER, MARY ASHLEY ANCHETA, BETHANY HANSON, MEGAN SHANHOLTZER, CRYSTAL PAWLOWSKI, AND TALIA LUCKEN, Third-Party Plaintiffs, vs. THRIVE COMMUNITIES MANAGEMENT, LLC, a Washington limited liability company, THRIVE COMMUNITIES, INC., a Washington corporation, and BELKORP HOLDINGS, INC., a Washington Corporation d/b/a THE EDEN, Third-Party Defendants.	

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I. INTRODUCTION

In objecting to Class Counsel's fee request, CDR mischaracterizes the history of the litigation, misapplies the law, and urges the Court to improperly second-guess Class Counsel's staffing decisions.

First, Class Counsel may recover all fees incurred since the inception of the litigation. That plaintiffs were added in May 2023 does not eliminate the value to the Class of Class Counsel's work to that date, all of which contributed to the settlement that will pay Class members more than 80% of their alleged damages.

Second, Class Counsel appropriately segregated time spent litigating the Class's claims against CDR from time litigating claims against the other defendants. Contrary to CDR's assertions, Class Counsel may recover for work on unsuccessful motions since the time was reasonably expended and contributed to the overall success of the litigation.

Third, Class Counsel's hours and rates are reasonable. CDR criticizes the time Class Counsel devoted to certain tasks and their staffing choices, but courts "generally defer to the 'winning lawyer's professional judgment as to how much time he was required to spend on the case.'" *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135–36 (9th Cir. 2012) (citation omitted). CDR is defended by the law firms of Davis Wright Tremaine and Hasson Law. DWT recently claimed more than $1.2 million in fees for defending a class action over three years. Class Counsel's request for $300,000 in attorneys' fees to <u>prosecute</u> a class action over roughly the same time period is eminently reasonable. DWT sought more than $391,000 in fees for the work of a single associate who bills at rates higher than those sought by partners in Class Counsel's firms with more than twice his years of practice.

Class Counsel request the Court approve a fee of $300,000, which is less than their lodestar, the $3,430.50 they seek in litigation costs allowed by RCW 19.86.090, and $1,000 service awards for Class Representatives.

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II. ARGUMENT

A. Class Counsel are entitled to fees they incurred prosecuting Class members' claims throughout the litigation.

CDR asks the Court to lop off fees Class Counsel incurred while Jordan Pierce and Donte Gardiner served as named plaintiffs because they ultimately settled their claims against CDR on an individual basis. But all that work benefited the Class and led to the Class Settlement. Indeed, CDR's lawsuit against Pierce and Gardiner was the catalyst for this litigation. Class Counsel are entitled to compensation for this work on behalf of the Class.

CDR asserts that Pierce and Gardiner are not prevailing parties but that is both irrelevant and incorrect. It is irrelevant because the Class prevailed on the CPA claims and Class Counsel seek fees for work on behalf of the Class under RCW 19.86.090. Adding plaintiffs does not render fees Class Counsel incurred earlier unrecoverable. It is not uncommon for plaintiffs to be added or substituted when the original plaintiff may not be an appropriate representative, as CDR asserted. *See Elter v. USAA*, 17 Wn. App. 2d 643, 646-67, 652-53 (2021) (after initially reversing certification because plaintiffs were not proper representatives, affirming certification of class represented by substituted plaintiff who was typical and adequate).

CDR is also incorrect because CDR is releasing its claim against Pierce and Gardiner of an alleged $17,700 debt. Dkt.1 Ex.G; Dkt.345 Ex.A §§2.21, 6.03. CDR's attempts to collect this debt were the basis of Pierce and Gardiner's CPA claim against CDR. Pierce and Gardiner *are* prevailing parties.

B. Class Counsel request fees only for litigating the Class's claims against CDR.

CDR asserts that Class Counsel did not properly segregate fees incurred to litigate the Class's CPA claims against CDR from other work on the case. Not so. Class Counsel omitted time litigating against the landlord defendants. Motion 9-10; Chandler Decl. ¶17; Leonard Decl. ¶¶4, 6; Grace Decl. ¶8. CDR points to 7.9 hours related to Thrive's discovery responses, but Mr. Leonard explained that Thrive's records were relevant to the Class's claims against CDR.

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1 Leonard Decl. ¶4. The only other claim the Tenants asserted against CDR was an FDCPA claim
2 based on the same facts. Dkt.1 Ex.A; Motion 6 n.2. "[S]egregation of attorney fees is not
3 required if the trial court determines that the claims are so related that no reasonable
4 segregation can be made." *Ewing v. Glogowski*, 198 Wn. App. 515, 523 (2017).

5 CDR's argument that Class Counsel should not recover fees for unsuccessful motions
6 and amending the Class's claims against CDR is contrary to Washington law. The test is not
7 whether the motions succeeded but whether the time was reasonably expended*. Miller v.*
8 *Kenny*, 180 Wn. App. 772, 824-25 (2014) (court need not cut time spent litigating unsuccessful
9 motions unless unproductive or unrelated to overall success); *see also McEuen v. Riverview*
10 *Bancorp*, 2014 WL 2197851, at *5 (W.D. Wash. May 27, 2014) ("Drafting motion pleadings that
11 may not achieve the desired result is an ordinary part litigation and time spent in this pursuit is
12 recoverable pursuant to fee shifting statutes."). The class certification ruling informed Class
13 Counsel's approach in responding to—and defeating—CDR's motion to deny certification.
14 Vacating CDR's judgment against Pierce and Gardiner kickstarted the litigation and identified
15 alleged wrongdoing. Refining claims through amended pleadings is a common and productive
16 part of litigation. The ultimate success is the key factor in the reasonableness of the fee
17 request. *State v. Mandatory Poster Agency,* 199 Wn. App. 506, 530 (2017) ("Where the [party's]
18 claims involve a common core of facts and related legal theories, a [party] who has won
19 substantial relief should not have his attorney's fee reduced simply because the trial court did
20 not adopt each contention raised." (cleaned up)); *see also Indep. Sch. Dist. v. Digre*, 893 F.2d
21 987, 992 (8th Cir. 1990) (declining to second-guess "with the benefit of hindsight" "judgment
22 calls" made in litigation; plaintiffs are required "to be prudent and not incur unnecessary
23 attorneys' fees" but not "prescient").

24 CDR relies on inapposite cases. *See Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*,
25 158 Wn. App. 203, 234 (2010) (addressing segregation in context of contractual provision
26 allowing fees to "substantially prevailing party" where each party prevailed on some claims);
27

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Loeffelholz v. C.L.E.A.N., 119 Wn. App. 665, 689-93 (2004) (court "twice demanded information from which it would be able to segregate" but defendants' attorney refused).

C. Class Counsel's hours and rates are reasonable.

This case was litigated by three firms over more than three years. This type of co-counsel arrangement is commonplace for contingent class cases, particularly against multiple defendants with separate counsel, since sole practitioners and small-firm attorneys juggle cases and advance fees and costs. Three attorneys, one from each firm, did over 72% of the work. Seven TMLG attorneys spent far fewer hours on specific tasks. Chandler Decl. ¶18.

CDR second guesses Class Counsel's staffing decisions, but a court "may not attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if different staffing decisions might have led to different fee requests." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008). Instead, the "court's inquiry must be limited to determining whether the fees requested by this particular legal team are justified for the particular work performed and the results achieved in this particular case." *Id.* CDR complains that Class Counsel's staffing required attorneys to communicate with one another, but "collaborating with others and jointly formulating legal theories is an intrinsic part of litigation success." *McEuen v. Riverview Bancorp*, 2014 WL 2197851, at *5 (W.D. Wash. May 27, 2014).

The reasonableness of Class Counsel's request for $300,000 for over 670 hours of work is underscored by the request DWT, one of CDR's two firms, made in another class case for over $1.2 million for 2,381 hours of work over three years of litigation. Chandler Decl. Ex.5 ¶17. DWT staffed the case with three primary attorneys (like Class Counsel here) but nine additional attorneys "performed additional work on discrete projects as staffing needs required." *Id.* ¶¶2, 6. DWT spent over 400 hours opposing class certification and moving to decertify, while here Class Counsel devoted 247 hours to briefing class certification and discretionary review and opposing CDR's motion to deny certification. *Id.*¶18; Dkt.372 Ex.I.

Class Counsel demonstrated the reasonableness of their hourly rates, Motion 8, which DWT's rates exceed. A DWT partner who graduated in 2010 billed $495-$635, while 2010

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graduate Blythe Chandler billed $495. A DWT associate who graduated in 2017 billed $420-$535, while TMLG partner and 1997 graduate Amanda Steiner billed $550 and 2013 graduate Mr. Leonard billed $495. And a DWT partner and 1996 graduate billed $745-$855 while Paul Arons and 1995 graduate Beth Terrell billed $550. This Court confirmed the reasonableness of Terrell Marshall's rates earlier this week. Chandler Decl. Ex.6.

CDR's contention that the fee award must be proportionate to the Class's recovery is also contrary to law. *Dennings v. Clearwire Corp.*, 2013 WL 1858797, at *6 (W.D. Wash. May 3, 2013) ("Under the Washington [CPA], there is no requirement of any particular proportion between monetary recovery and reasonable fees calculated under the lodestar method."); *Keyes v. Bollinger,* 31 Wn. App. 286, 297 (1982) ("an award is not unreasonable merely because it exceeds the damages awarded under the" CPA). A proportionality test is particularly inappropriate in collection abuse cases where the amount in controversy is often far less than the fees. *Target Nat'l Bank v. Higgins*, 180 Wn. App. 165, 193 (2014) ("Higgins' attorney should be applauded for performing a service to that portion of the community that often lacks legal assistance. He should be recompensed for his services."). CDR cites non-CPA cases where courts recognized that "a court will not overturn a large attorney fee award in civil litigation merely because the amount at stake in the case is small" but found the fee awards warranted further consideration. *Berryman v. Metcalf*, 177 Wn. App. 644, 660 (2013) (reversing 2.0 multiplier because proportionality is relevant to "a mandatory arbitration case"); *ADA Motors v. Butler*, 7 Wn. App. 2d 53, 68 (2018) (fees "nearly 50 times" recovery).

D. Class Counsel are entitled to reimbursement for costs.

Class Counsel seek reimbursement of costs allowed under RCW 4.84.010: (1) filing fees and (2) reporter and transcript costs for depositions used in motions that contributed to the successful resolution of the litigation. *See Payne v. Paugh*, 190 Wn. App. 383, 414 (2015); *Warner v. Regent Assisted Living*, 132 Wn. App. 1008, 2006 WL 689162, at *2 (2006) (unpublished).

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III. CONCLUSION

Class Counsel respectfully request the Court grant their motion.

RESPECTFULLY SUBMITTED AND DATED this 16th day of February, 2024.

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I certify that this memorandum contains 1,750 words, in compliance with the Local Civil Rules.

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DECLARATION OF SERVICE

I, Blythe H. Chandler, hereby certify that on February 16, 2024, I caused true and correct copies of the foregoing to be served via the means indicated below:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 16th day of February, 2024.

By: /s/ Blythe H. Chandler, WSBA #43387
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