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FILED

MAR 16 2016

**CLERK OF THE SUPERIOR COURT
BY: C. WEST, DEPUTY CLERK**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SHASTA

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14 **PEOPLE OF THE STATE OF
15 CALIFORNIA, ex rel. Kamala D. Harris,
16 Attorney General of the State of California,**

17 Plaintiff,

18 v.

19 **DARREN PAUL ROSE, individually, and
20 doing business as BURNING ARROW I and
21 BURNING ARROW II, and Does 1 through
22 20,**

Defendants.

Case No. 176689

**[PROPOSED] ORDER GRANTING
PEOPLE'S MOTION FOR ATTORNEYS'
FEES AND COSTS**

Judge: Honorable Stephen H. Baker
Department: 3
Hearing Date: January 25, 2016
Time: 2:00 p.m.
Action Filed: February 14, 2013

23 The People's Motion for Attorneys' Fees and Costs made by Plaintiff, the People of the
24 State of California, was heard on January 25, 2016 at approximately 2:00 p.m. in Department 3
25 before The Honorable Stephen H. Baker.

26 Attorney Michael A. Robinson from Fredericks Peebles & Morgan LLP appeared on
27 behalf of Defendant Darren Rose via Court Call and Deputy Attorney General Jennifer McClory
28 Hamilton from the California Attorney General's Office appeared on behalf of Plaintiff.

1 After consideration of the papers filed in support of and in opposition to the motion, the
2 parties' oral arguments presented at the hearing, and the pleadings filed in this case, including the
3 August 28, 2015 Statement of Decision and the September 14, 2015 Final Judgment in favor of
4 the Plaintiff:

5 IT IS HEREBY ORDERED for the reasons set forth in the Court's February 22, 2016
6 Ruling on Motion for Attorney's Fees and Costs, a copy of which is attached to this order and
7 incorporated by reference, Plaintiff's Motion for Attorneys' Fees and Costs is granted in part and
8 denied in part, as follows:

9 1. Plaintiff is entitled to its attorneys' fees and costs based upon both statutory and
10 case law authority.

11 2. Plaintiff's moving papers set forth prevailing market hourly rates that are justified
12 in the context of this action.

13 3. Plaintiff shall be awarded its attorneys' fees incurred from August 9, 2012 through
14 April 4, 2014, in the amount of \$407,451.00.

15 4. Plaintiff shall be awarded its attorneys' fees related to Defendant's appeal of the
16 April 4, 2014 Ruling on Motion for Summary Adjudication, as that work addressed issues arising
17 from the April 4, 2014 Ruling, in the amount of \$45,565.00.

18 5. Plaintiff is denied attorneys' fees for its work connected to the trial of this action,
19 which were incurred after April 4, 2014, as the only remaining claim was under the Unfair
20 Competition Law.

21 6. Plaintiff shall be awarded \$26,635.30 in attorneys' fees for work performed in
22 conjunction with the preparation of this motion, which excludes 200 hours of time billed by
23 Deputy McClory Hamilton, equating to a reduction of \$70,000, from the amount of Plaintiff's
24 requested attorneys' fees.

25 7. Plaintiff shall be awarded investigative costs in the amount of \$24,887.50.

26 8. Plaintiff shall be awarded expert witness expenses in the amount of \$6,936.25.

27 9. Plaintiff shall be awarded the costs set forth in the October 5, 2015 Memorandum
28 of Costs in the amount of \$8,087.93.

1 Pursuant to the foregoing, in TOTAL, Plaintiff is hereby awarded \$519,562.98 in
2 reasonable attorneys' fees, expert witness fees, and investigative and other costs.

3 IT IS SO ORDERED.

4
5 Dated: MAR 16 2016

STEPHEN H. BAKER

The Honorable Stephen H. Baker
Shasta County Superior Court

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9 APPROVED AS TO FORM:

10 **FREDERICKS PEEBLES & MORGAN LLP**
11 Michael A. Robinson, Esq.

12 By: _____

13 Attorneys for Defendant DARREN PAUL ROSE,
14 BURNING ARROW I and BURNING ARROW II

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

HON. STEPHEN H. BAKER

Dept. 3
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176689

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

DARREN PAUL ROSE, individually
and dba BURNING ARROW I and
BURNING ARROW II,
Defendants.

**NATURE OF PROCEEDINGS: RULING ON MOTION FOR ATTORNEY'S
FEES AND COSTS**

This motion was heard on January 25, 2016. Appearing for Plaintiff and moving party was Deputy Attorney General, Jennifer McClory Hamilton. Appearing for Defendants and responding party was Attorney Michael A. Robinson. After hearing oral argument, the Court took this matter under submission and now renders the following order.

On September 14, 2015, the Court entered final judgment for the Plaintiff in this action. The Defendants were found to be in violation of various statutes including certain provisions of the Business and Professions Code, the Health and Safety Code, and the Revenue and Taxation Code, arising out of the Defendants' illegal sale and distribution of cigarettes. Relief awarded to the Plaintiff included, but was not limited to imposition of an injunction prohibiting the Defendants from selling, offering, possessing for sale, transporting or distributing any cigarettes whose brand family and manufacturer are not listed on the California Tobacco Directory. Defendants were also ordered to pay civil penalties in the amount of \$765,000. As the prevailing party Plaintiff was also awarded costs and fees according to proof. In the instant motion, Plaintiff request attorney's fees in the amount of \$648,391.95, investigative costs in the amount of \$24,877.50 and expert fees in the amount of \$6,936.25 pursuant to R&T § 30165.1(p) and H&S § 14955(f).

The Plaintiff's entitlement to attorney's fees and costs (including costs of investigation and experts witnesses) is based upon both statutory and case law authority. In the instant case, Defendants were found to be liable under provisions of the Directory Law, the Fire-Safe Act and the Unfair Competition Law. As such, Plaintiff is entitled to recover fees and costs pursuant to Revenue and Taxation Code § 30165.1(p) and Health and Safety Code § 14955(f). Both parties agree there is no entitlement to attorney's fees for claims relating to the Unfair Competition Law (UCL). However, Plaintiff claims time spent proving the UCL claims is inextricably intertwined with time dedicated to proving the predicate, underlying violations of the Directory Law and the Fire-Safe Act, and excise

tax violations. As such, Plaintiff claims it is neither possible nor appropriate for the Court to 'segregate' fees associated with the UCL claims. Defendants disagree and essentially argue that no fees should be allowed if incurred during the period after the Court's Ruling on a Motion for Summary Adjudication (April 4, 2014). Defendants contend only UCL claims continued to exist after the Motion for Summary Adjudication. The Court agrees with defendants. The seminal case addressing the rule of law in this situation is *Pellegrino v. Robert Half International, Inc.* (2010) 182 Cal.App.4th 278. In *Pellegrino*, the Court of Appeal stated the rule as follows:

Citing *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130, 158 Cal.Rptr. 1, 599 P.2d 83, the appellate court in *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133, 94 Cal.Rptr.2d 448, stated: "When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action. However, the joinder of causes of action should not dilute the right to attorney fees. Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not. All expenses incurred on the common issues qualify for an award. [Citation.] When the liability issues are so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not, then allocation is not required." The court held, "the trial court acted properly as a matter of law when it did not require [the plaintiff] to formally apportion its hours between claims for which attorney fees were compensable by statute and other hours." (*Akins v. Enterprise Rent-A-Car Co.*, *supra*, at p. 1134, 94 Cal.Rptr.2d 448.) *Pellegrino* at pp. 288, 289.

Based on this authority, a key issue is therefore whether the liability issues are so interrelated that it is impossible to separate them into claims for which attorney's fees are properly awarded and claims for which they are not. Having reviewed the pleadings in this case, including the Statement of Decision, and having considered the parties oral argument related to this motion, the Court finds that a relatively bright line can indeed be discerned where it is fair, reasonable and legally mandated by the above authorities to cut off attorney's fees. That bright line is April 4, 2014, the date when the Court issued its ruling partially granting the Plaintiff's Motion for Summary Adjudication. The appropriateness of using this particular date as the cut off is made especially clear by the following observation made in the trial court Judge's Statement of Decision:

On April 4, 2014, the Court granted summary adjudication on Plaintiff's Tobacco Directory Law and Fire-Safe Act claims, but denied the remainder of the People's motion for summary adjudication and the parties' cross-motions for summary judgment based upon factual disputes in the record. The Court found that Plaintiff established their entitlement to summary adjudication of their claims that would support the issuance of a permanent injunction on the Directory Law and Fire Safe Act claims but did not grant permanent injunctive relief. Accordingly, the primary issues for trial were:

(1) whether Defendant violated the UCL; (2) the number of UCL violations committed by Defendant and the amount of civil penalties imposed based upon the predicate violations of Tobacco Directory Law and state cigarette excise tax laws; (3) the scope and issuance of a permanent injunction under the UCL prohibiting Defendant from violating the Directory Law, Fire Safe Act, or state cigarette excise tax laws.

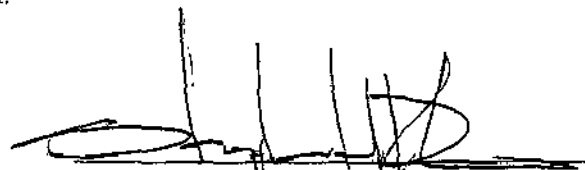
The only work *after* the April 4, 2014 date which the Court feels should also be included in the calculation of attorney's fees is work performed in conjunction with preparation of the instant motion for attorney's fees and costs.

In determining reasonable attorney's fees, the Court considers the following: (1) the nature of the litigation; (2) the difficulty of the litigation; (3) the amount at stake in the litigation; (4) the skill required in handling the litigation; (5) the skill employed in handling the litigation; (6) the attention given to the litigation; (7) the success or failure of attorney's efforts; and (8) the attorney's skill and experience in this particular type of work. The Court also considers the reasonable hours spent multiplied by the hourly prevailing rate for private attorneys in the local community conducting noncontingent litigation of the same type. [*Ketchum v. Moses* (2001) 24 Cal.4th 1122; *Serrano v. Priest* (1977) 20 Cal.3d 25 (*Serrano III*).] Legally justifiable circumstances must be stated when departing from the lodestar figure. *Rogel v. Lynwood Redevelopment Agency* (2011) 194 Cal.App.4th 1319.

The Court has reviewed the briefings, and (very extensive) declarations and related exhibits submitted by each party and finds that both the amount of attorney's fees and the rates charged are justified in the context of the foregoing authority and findings, with the following exceptions: The Court finds that the amount of hours expended on the present motion for attorney's fees was excessive and reduces the hours expended by attorney McClory Hamilton by 200 hours. In making this finding, the Court notes that the quality of the work performed by attorney McClory Hamilton was excellent. However, comparing the large number of hours spent on this motion with the number of hours spent upon more complex motions in this case, the Court finds this reduction more consistent with what might be reasonably expected (notwithstanding reductions already applied by the Plaintiff.) This amounts to a reduction of \$70,000 from the amount of requested attorney's fees. The Court finds that the hourly rates and number of hours billed are otherwise allowable and were at the prevailing market rate. The Court will also award the claimed investigative costs of \$24,877.50 and expert fees in the amount of \$6,936.25.

The motion is **GRANTED** subject to the above noted findings. Counsel for Plaintiff is to meet and confer with counsel for Defendants and prepare the final order hereon, and obtain Defendants' approval as to form.

Dated: February 22, 2015



STEPHEN H. BAKER
Judge of the Superior Court

CERTIFICATE OF MAILING

State of California, County of Shasta

I, the undersigned, certify under penalty of perjury under the laws of the State of California that I am a Deputy Court Clerk of the above-entitled court and not a party to the within action; that I mailed a true and correct copy of the above to each person listed below, by depositing same in the United States Post Office in Redding, California, enclosed in sealed envelopes with postage prepaid.

Dated: February 22, 2016


Deputy Clerk

Jennifer McClory Hamilton, Esq.
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