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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RENE BOLANOS, Plaintiff and Respondent, v. PRIORITY BUSINESS SERVICES, INC., Defendant and Appellant.	B280139 (Los Angeles County Super. Ct. No. BC589714)

APPEAL from a judgment of the Superior Court of Los Angeles County, Suzanne G. Bruguera and Monica Bachner, Judges. Affirmed.

Rutan & Tucker, Brandon L. Sylvia and Steven J. Goon for Defendant and Appellant.

Law Offices of Ramin R. Younessi, Ramin R. Younessi and Christina M. Coleman for Plaintiff and Respondent.

INTRODUCTION

Rene Bolanos sued his former employer, Priority Business Services, Inc. (Priority), alleging that Priority discriminated against him based on a disability, failed to accommodate him, terminated his employment, and other related claims, all in violation of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).[1] At trial, the jury found in favor of Bolanos on two claims and awarded him over $39,000 in damages.

Priority appeals from the judgment, asserting several errors by the trial court. First, Priority argues the court erred in excluding certain evidence regarding an earlier workers' compensation settlement between the parties. Second, it contends that the jury lacked substantial evidence to find in favor of Bolanos on his causes of action for failure to accommodate and failure to engage in an interactive process. Third, Priority raises a substantial evidence challenge to the jury's finding that Bolanos met his duty to mitigate his damages. In addition, Priority appeals from the award of attorney fees to Bolanos, arguing that the trial court abused its discretion in finding Bolanos was the prevailing party and in awarding an unreasonable amount of fees. We affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *The Complaint*

Bolanos filed his complaint against Priority on July 29, 2015. He asserted the following causes of action: (1) disability discrimination in violation of FEHA; (2) retaliation in violation of FEHA; (3) retaliation in violation of the California Family Rights

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[1] All further statutory references are to the Government Code, unless otherwise indicated.

Act (CFRA) (§ 12945.2 et seq.); (4) failure to prevent discrimination and retaliation in violation of FEHA; (5) failure to provide reasonable accommodation in violation of FEHA; (6) failure to engage in a good faith interactive process in violation of FEHA; (7) declaratory judgment; and (8) wrongful termination in violation of public policy. He sought economic damages, damages for emotional distress, and punitive damages, in total estimated to exceed $1,000,000. Bolanos separately filed a statement of damages seeking $5,000,000 in punitive damages.

Bolanos alleged that he began to work for Priority, a staffing agency, in mid-2013. He suffered an injury in January 2014 while working for one of Priority's customers. He was released to work with restrictions, which Priority initially accommodated by assigning him to the staffing office. However, Bolanos asserted that in February 2014, he was diagnosed with a hernia. Priority refused to place him back in the staffing office, informed him that it could no longer accommodate him with his restrictions, and removed him from work. Bolanos further alleged that he was released to work with no restrictions, in November 2014, but Priority never gave him another job. Moreover, Priority told him in December 2014 that he would have to reapply to be returned to work. Bolanos did so in February 2015, but Priority then told him he "did not qualify to go back to work."

II. *Offers to Compromise*

On October 30, 2015, Priority served Bolanos with an initial offer to compromise pursuant to Code of Civil Procedure section 998 (998 offer). Priority offered Bolanos $15,000 to resolve all of his claims, inclusive of attorney fees and costs. Bolanos rejected that offer. Priority served a second 998 offer on

December 7, 2015, offering $45,000. Bolanos did not respond to that offer.

Bolanos served his own 998 offer on February 11, 2016 for $60,000. Priority did not respond. Shortly before the start of trial, Bolanos offered to settle the case for $55,000, which Priority rejected.[2]

III. *Trial*

The case proceeded to jury trial over seven court days between October 5 and 14, 2016.[3] The parties presented three witnesses: Bolanos and two Priority employees, Daniel Cox and Jeremy Wallig. Both Cox and Wallig were first called by Bolanos as adverse witnesses pursuant to Evidence Code section 776. Priority's counsel also completed his questioning of each witness during the same sitting.

A. *Bolanos's testimony*

Bolanos first applied to work for Priority in October 2012 at the branch office in Commerce. The usual practice for Priority employees is to call or stop by the office to find out if there are any positions available. Bolanos did so, and in approximately May 2013, Priority assigned him to work full time at a warehouse assembling picture frames.[4] That job lasted about a month. Within a few days of the conclusion of that job, Priority assigned

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[2] There is no evidence in the record that this second settlement offer by Bolanos was a formal 998 offer.

[3] Bolanos orally dismissed his third cause of action for retaliation in violation of the CFRA on October 6, 2016, prior to the parties' opening statements.

[4] There was some dispute at trial over whether Bolanos was assigned a job by Priority between October 2012 and May 2013. He testified that he might have been, but his first paycheck in evidence showed a pay period beginning May 6, 2013.

him to another full-time job at a company assembling beds. He continued to work at the bed company through the end of 2013.

Bolanos testified that he was working at the bed company on January 2, 2014 when he suffered an injury. He was pushing a metal cart and felt a "pull" in a muscle in his left groin area. The injury made it difficult to walk or to perform his job duties. Bolanos immediately informed his supervisors and filled out a Priority accident report. He gave the report to someone at his local Priority office in Commerce.

Priority sent Bolanos to a clinic (selected by Priority) to get a medical checkup the next day. The doctor released him to return to work with the following restrictions: no climbing stairs or ladders; no overhead work; no pushing, pulling, or lifting over 10 pounds. Pursuant to these restrictions, Priority offered Bolanos a position in the Commerce office doing paperwork, which he accepted.

Bolanos remained in the modified duty assignment for about a month. He also continued treatment with the same doctor, but did not feel that he was getting better. He was still in pain and having difficulty walking and doing work. Accordingly, he asked the staff at the Priority office for help. Bolanos testified that two Priority employees, a woman named Denise and a man whose name he did not recall, drove him to see a different doctor, again selected by Priority. The doctor examined him for five to ten minutes; the male Priority employee remained in the room during the examination. The doctor then told Bolanos he was not injured and cleared him to return to work without restrictions. Bolanos replied that he did not agree and that "the pain was centered on my groin." Bolanos also testified that he told the doctor he disagreed with the conclusion that he could perform

normal work duties. He made these statements in front of the male employee.

Both attorneys read portions of Bolanos's deposition testimony on this issue into the record at trial. Priority's counsel noted that Bolanos testified at his deposition that he did not tell the doctor or Priority that he did not feel he was able to return to regular work. Conversely, in another part of the deposition, Bolanos testified that he told the doctor "I don't think so" regarding the lifting of work restrictions and stated that he was in "unbearable pain."

Once Bolanos and the employees returned to Priority's office, Denise informed Bolanos that "my work with the restrictions was over; and that in order for me to get another employment, I would need to call the personnel office again" to get on the list for a different job. According to Bolanos, Denise did not ask him about his pain, about what job duties he felt he could do, or about the conflicting diagnoses from the two doctors. She told Bolanos they would put him onto a waiting list until they found a job for him.

Bolanos resumed his practice of checking in with Priority in person or by phone to ask for work. He estimated that he called in to Priority six to nine times in February 2014. He also went to the office a few times. Each time, Priority told him there was no work available. However, when Bolanos went to the office, he would see other people getting work assignments. During this period, Priority did contact him with one job offer to work at a carburetor company. He initially accepted, but then called and told Priority he could not take the job. Bolanos testified that he had to turn down the job because he was in the hospital for his groin injury. However, he admitted he did not give that

information to Priority at the time; instead, he said he had something personal to do.

Bolanos continued to call in to Priority looking for work approximately six more times.[5] He was not offered any work; he thought this was because of his injury, so he decided to stop calling and try to get healthy in the hope that then Priority would give him a job. He denied asking for time off or a leave of absence. Bolanos did not call for work between March and November 2014 and did not get any calls from Priority for work during that time.[6]

In November 2014, Bolanos testified that he was feeling a little better and thought he could return to work without restrictions. According to a log he kept, he called Priority eight times in December 2014 looking for work. Each time, Bolanos was told that there was no work available and he would be placed on the waiting list. Bolanos made his final call to Priority on December 29, 2014, when he was told that he would have to reapply.

Bolanos went to Priority's office and completed a new application on February 24, 2015. He submitted the application and was interviewed by someone at Priority. After the interview, the Priority employee went into a manager's office for five to 15 minutes. She then came back and told Bolanos he "was not

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[5] During cross-examination, Bolanos admitted that he did not ask about available work the last two times he visited the office in February 2014, because he was frustrated with issues he was having getting his paycheck.

[6] Bolanos also filed a workers' compensation claim at the end of February 2014, which the parties settled in November 2014 by executing a compromise and release. We discuss more details related to this proceeding in Section I, *post*.

eligible" to work at Priority. When he asked why, she said it "was for what happened," which he understood to mean his injury, as that was "the only thing that had happened previously." The copy of the application produced in discovery by Priority and admitted at trial contained a handwritten note stating: "Term. Not eligible for rehre [*sic*]." Bolanos testified that he did not write that notation and it was not on the application when he submitted it.[7]

Bolanos did not make any further calls to Priority, because he believed he would not get another job. He testified that he did not resign at any time. He began working part-time for another staffing agency in December 2014, while still calling in to Priority. He took a full-time position with that agency in March 2015.

B. *Cox's testimony*

Cox has been Priority's chief financial officer since joining the company in May 2015. He testified that Priority provides industrial staffing to hundreds of companies in a variety of industries, including distribution, light manufacturing, food service, maintenance, and clerical positions. Priority has approximately 3,500 employees placed in jobs on any given week, with a database of approximately 360,000 employees.

Cox was designated by Priority as the person most knowledgeable on the reasons for Bolanos's separation from the company. He also verified Priority's written discovery responses on behalf of the company. Bolanos's counsel read several of these responses into the record at trial, including Priority's response regarding why it did not rehire Bolanos after he reapplied in

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[7] Wallig, one of Priority's witnesses, also testified that he did not write the notation and did not know who did.

February 2015: "Defendant . . . believed that plaintiff, as part of the settlement of his workers' compensation in November 2014, had agreed not to work for defendant or to reapply for work going forward. Because defendant believed plaintiff had resigned . . . defendant terminated him in its system. At that time, plaintiff was classified in defendant's system as not eligible for rehire. . . ."

Cox similarly testified at trial that at the time Bolanos's employment with Priority ended, Priority believed Bolanos had resigned. This belief was based on the fact that, in his experience, the "vast majority" of workers' compensation compromise and release agreements included an employee resignation. However, he admitted that he had no knowledge that Bolanos had, in fact, resigned. He also had no knowledge about why Bolanos was not offered employment after he reapplied, and had never checked Priority's system to see how Bolanos was actually classified. Indeed, Cox was not informed that Bolanos resigned until after Priority was served with the lawsuit. Further, he did not review the compromise and release before forming a belief that Bolanos had resigned. He also admitted that Bolanos's compromise and release did not contain any agreement to resign or never to reapply. He did not speak to anyone in the Commerce office to find out whether they told Bolanos he was ineligible for rehire.

As such, Cox admitted that when he verified the discovery in this case, he "made a mistake . . . like eight times." He also acknowledged that if Bolanos was incorrectly identified as ineligible for rehire in Priority's system, it could be "undone with the click of a button." He had not made any such correction.

Cox testified that once Priority received a doctor's note or evidence of an injury, it was the policy to do everything it could to

return the injured worker to work under modified duties. This included looking for positions where the modification is available, and sometimes speaking with the employee about his or her skill set. But he did not know whether these steps were followed with Bolanos.

When asked about the competing diagnoses from the two different doctors, Cox stated, "if I have a medical doctor that signs away restrictions, as far as I'm concerned, the individual is cleared to return to work." According to Priority policy, the company would work with an employee who protested a diagnosis and suggest seeking another opinion. Cox did not know if that happened with Bolanos. He did not see the second doctor's note clearing Bolanos until more than a year after it was received, around the time the lawsuit was filed.

Cox was also asked about a written discovery response by Priority claiming that Bolanos had refused modified duty. He testified that Bolanos never returned to the job he had when he was injured, which "we would have modified." He admitted he did not know whether that position was ever offered to Bolanos, but stated, "our practice is that it would be." He also did not know whether Bolanos was ever offered a modified duty position that he refused.

Bolanos's counsel also asked Cox about Priority's discovery responses stating that Priority engaged in the interactive process with Bolanos, accommodated him, and gave him time off. Cox admitted he did not know if Bolanos requested or was given time off. He also did not know why Priority ended Bolanos's modified duty assignment in the office and did not know if anyone spoke to Bolanos before doing so. Priority claimed that it "was informed on February 12, 2014, that plaintiff had been diagnosed with a

hernia."[8] Other than "wait[ing] to hear from Mr. Bolanos, Cox did not know of anything Priority did to engage in the interactive process once it was advised of the hernia, and did not know of any accommodations made.

C. *Wallig's testimony*

Wallig testified that he joined Priority in October 2013 and assumed the position as director of insurance for Priority in January 2014. He was identified in Priority's written discovery responses as a person with knowledge regarding the facts surrounding Bolanos's purported resignation and agreement not to reapply for employment. However, he testified to having very little knowledge of these topics. For example, he stated that he had an "understanding" that Bolanos had resigned, but no personal knowledge as to why his employment ended. Wallig agreed that it would be "clear from the face" of the compromise and release that Bolanos did not resign as part of the resolution of his workers' compensation claim. He assumed Bolanos had resigned because "[a]round 50 percent of my claims with a C and R [compromise and release] come[] with a resignation."

Wallig also had no knowledge why Priority did not rehire Bolanos in February 2015 when he reapplied. He noted that Priority's system listed Bolanos as "terminated, eligible for rehire," not ineligible as claimed by Priority's interrogatory responses. In addition, he did not know what Priority did to accommodate Bolanos after his injury.

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[8] In his workers' compensation claim, Bolanos alleged his groin injury was a hernia. Other than Cox's testimony and the corresponding discovery responses, no other evidence regarding a purported hernia was offered at trial.

D. *Verdict and Judgment*

The jury reached a verdict on October 14, 2016. On the special verdict form, the jury found that Bolanos was employed by Priority, but that Priority had not subjected Bolanos to an adverse employment action. Consequently, the jury found in favor of Priority on Bolanos's first, second, fourth, seventh, and eighth causes of action. The jury found in favor of Bolanos on his fifth cause of action for failure to provide reasonable accommodation and his sixth cause of action for failure to engage in an interactive process. On these claims, the jury awarded Bolanos damages totaling $39,966.84, split evenly between past economic and non-economic loss. The jury also found Priority had not established its defense that Bolanos failed to make reasonable efforts to mitigate his damages. Finally, the jury found Bolanos was not entitled to punitive damages.

The court granted Priority's request to offset the judgment by $8,500, the amount paid to Bolanos in worker's compensation benefits. The court entered judgment on November 18, 2016.

IV. *Attorney Fees*

Bolanos filed a motion for attorney fees on November 18, 2016. He argued that he was the prevailing party and therefore entitled to fees pursuant to section 12965, subdivision (b). He requested $364,390 in fees, consisting of a lodestar of $182,195 plus a 2.0 multiplier. Priority opposed the motion. On February 6, 2017, the court found that Bolanos was the prevailing party and awarded attorney fees in the amount of $231,470.50. This amount included the lodestar of $182,195 requested by Bolanos,

plus $10,697.08 in fees incurred in connection with the fee motion, plus a multiplier of 1.2.[9]

Priority timely appealed the entry of judgment and then separately appealed the award of attorney fees to Bolanos. We granted the parties' stipulation and request to consolidate the appeals for the purposes of briefing, argument, and decision.

DISCUSSION

I. *Ruling on Motion in Limine*

Priority claims the trial court erred in granting Bolanos's motion in limine to exclude evidence regarding the workers' compensation claim and settlement from trial. In addition, Priority asserts that the court unfairly enforced that order during trial, allowing Bolanos to solicit evidence from witnesses regarding workers' compensation, but barring Priority from doing so. We find no abuse of discretion.

A. *Background*

1. *Bolanos's claim*

Bolanos filed a workers' compensation claim in late February 2014, alleging that he had a hernia due to repetitive movement while working for Priority. He was represented by the same law firm as in the civil lawsuit. During the worker's compensation proceedings, Bolanos made multiple visits to Moussa Moshfegh, M.D., who diagnosed him with a left groin sprain. Dr. Moshfegh concluded that Bolanos did not have a hernia, but did note ongoing tenderness in the groin area, which improved over time. The parties settled the workers'

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[9] In addition, the parties each filed a memorandum of costs and cross-motions to tax those costs. However, following the court's ruling on attorney fees, they stipulated to allow costs to Bolanos of $6,720.14 and to withdraw Priority's request for costs.

compensation claim through a compromise and release, which was approved by the Workers' Compensation Appeals Board on November 25, 2014. Under the agreement, Bolanos received $10,000, with $1,500 of that amount paid as attorney fees.

2. *Motion in limine proceedings*

Bolanos filed his motion in limine number five on the morning of October 6, 2016, seeking to preclude "the disclosure of and references to any of the terms of plaintiff's workers' compensation settlement agreement with defendant." Specifically, Bolanos argued that two aspects of the compromise and release should be excluded as irrelevant and misleading. First, in Priority's trial brief, it stated, "The C&R confirmed that Plaintiff was '0% disabled,'" citing to a reference in the compromise and release regarding a permanent disability rating. Bolanos argued that any reference to this disability rating would be irrelevant to whether he suffered a disability within the meaning of FEHA during the relevant time period, and potentially misleading and confusing to the jurors. Second, Bolanos urged the court to exclude any suggestion by Priority that he had released his civil claims or received any compensation for lost wages as part of his workers' compensation settlement.

The parties argued the motion the same morning prior to opening statements.[10] Priority's counsel indicated that the

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[10] Priority takes issue with the late filing of Bolanos's motion. It does not, however, suggest or demonstrate how the trial court abused its discretion in hearing it, particularly where it appears the motion was prompted, at least in part, by statements made in Priority's trial brief, filed three days earlier.

workers' compensation issue was "very much part of the story" and "intrinsic to this case" because it was relevant to the state of mind of Priority employees and therefore necessary to defend against Bolanos's claim for punitive damages. The court responded that the issue was "really not relevant," except possibly "at the end, if there is anything that needs to be offset, I do it." Otherwise, "to bring in workers' compensation, you need to bring in . . . an expert to explain what the differences are in the way that it's calculated and the definitions and all of that." Priority's counsel again argued that he should be allowed to use the compromise and release so that his witness, Wallig, could testify that he interpreted "0% disability" to mean that Bolanos "is not suffering from a disability any longer as of the date of this document." The court reiterated that without an expert to explain terms in the workers' compensation versus civil context, on balance the evidence would "really mislead and misguide the jury. But I will consider it with a hearing if there is a punitive damages finding."

Priority's counsel next asked whether he could mention that Bolanos had filed a workers' compensation claim, in order "to explain exactly what happened here. Otherwise, we have this blank period." Bolanos's counsel also indicated that she planned to mention the resolution of the workers' compensation claim to counter Priority's suggestion that it thought Bolanos had resigned as part of the settlement. She noted, however, that "I'm not introducing the document, and I'm not introducing any numbers." The court responded, "there is no way that you are going to be able to just introduce the document and just have

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Moreover, as discussed herein, Priority's counsel was given multiple opportunities to argue the issue throughout the trial.

what you want to ask about it be admissible. If you are going to bring the document in, or if you are going to be asking questions about the document, it opens the door to – if you are trying to say that there is no way they could have had an oops [regarding belief of resignation], [Priority] has the right to say, yes, there is a way for them to have an oops." Bolanos's counsel reiterated that her "big objection is: don't talk about the money; don't talk about whether or not he received any money; and certainly don't try and explain what the money was for . . ." The court again cautioned, "If you mention the document, I am telling you now that you will have to live with the open door, okay?" The court then noted that it was ruling without prejudice, but that "right now, no one should mention workers' compensation at all."

After a recess, Bolanos's counsel reported that the parties had conferred about the workers' compensation issue, and agreed "that the existence of a resolution is pertinent to both of our sides. There still remains a dispute as to what portions and as to whether the document itself will be admitted, but we both agree that both sides may mention the fact that there was a resolution of the workers' compensation claim in November of 2014."

3. *References during trial*

Consistent with their agreement, counsel for both parties mentioned the existence and resolution of the workers' compensation claim in their opening statements. Bolanos's counsel also noted Priority's claimed belief that Bolanos had resigned following that proceeding.

Bolanos called Wallig as the first witness. Wallig responded to questions about workers' compensation from both parties without objection or comment from the court regarding the motion in limine ruling. For example, he testified that when

he received Bolanos's workers' compensation claim, he "reported it to the insurance carrier," and did nothing further. The resolution of the claim was handled by the defense attorney and the insurance carrier; Wallig was not involved. He also testified about his "understanding" that Bolanos had resigned, based on his experience with workers' compensation claims. Bolanos's counsel asked Wallig a series of questions, without objection, regarding whether words such as "resignation," or "reapply" were in the compromise and release signed by Bolanos, and Wallig agreed they were not. He further agreed that there was nothing in that document that would cause a reasonable person to believe that Bolanos had resigned or agreed not to reapply. Priority's counsel also asked Wallig questions about the workers' compensation issue. Wallig testified that he wrote an email to Cox communicating his belief that Bolanos resigned, but that this belief was not based on the document itself. Wallig also explained generally what a compromise and release is.

Bolanos testified second. Neither party asked him any questions regarding workers' compensation and he did not mention it.

Cox was the final witness to testify. During his examination by Bolanos's counsel, he was asked why he believed Bolanos had resigned pursuant to the compromise and release. He responded: "Well, a couple of reasons. No. 1, Mr. Bolanos was hurt while actively working in an assignment, and he did not return to that assignment. He claimed an injury. And at some point after claiming an injury, he sought representation by an attorney. While he was being represented by an attorney, he did not work for us. His work comp claim came to an end with the compromise and release, in which there was no disability on that

C and R." This response drew an objection by Bolanos's counsel as nonresponsive and a request to strike. The court began to tell Priority's counsel to "take Mr. Cox in the hallway and . . . give him the rulings of some of the motions in limine please. You know, let me do it myself. As you know, the workers' comp system is totally different than our system. So because we're dealing with our system and the lawyers have brought up the workers' comp situation, and they have asked you the question, and you are entitled to answer the question you have been asked, it's important that you not talk about the terms because they're two separate systems. So we're only dealing with one term. . . . I want you to try to answer the question as best as you can, but not go into the terms of the compromise and release."

Bolanos's counsel next asked a series of questions similar to those she had asked Wallig, regarding whether any words related to resignation or agreement not to reapply appeared in the compromise and release. Priority's counsel did not object. Cox testified there were no such terms in the document.

The next morning, the court denied Priority's request to admit the compromise and release into evidence. The court found the document inadmissible as hearsay and also as more prejudicial than probative under Evidence Code section 352. However, the court noted it might be "open to testimony that could come out about it." When pressed what testimony he wanted to elicit on this subject, Priority's counsel stated he wanted to ask Cox about the settlement amount paid to Bolanos. The court found such evidence was only relevant "at the end to do offsets if there are offsets." Priority's counsel then argued that the amount paid to Bolanos was relevant to rebut his testimony that he suffered emotional distress based on his financial

condition. The court indicated that if he could establish that the time period of claimed emotional distress lined up with the settlement payment, then Priority's counsel might be allowed to ask Bolanos questions on this issue. Bolanos's counsel argued that his testimony regarding his emotional distress covered only the time period before the worker's compensation settlement, and questions about the payment would therefore be irrelevant and serve only to confuse the jury. The court ruled that Priority's counsel could not ask Cox about the amount Bolanos "was given for any disability because the jurors don't know."[11]

Cox resumed his testimony. After he testified that Priority was informed in February 2014 that Bolanos had been diagnosed with a hernia, Bolanos's counsel asked him what Priority did to resolve the three different diagnoses it had received regarding Bolanos (the January 2014 diagnosis of injury, the early February 2014 diagnosis of no injury, and the mid-February diagnosis of hernia). Cox responded, "Mr. Bolanos had a work comp claim open with my insurance carrier. At that point, by and large, it's out of my hands to the extent that he is going through the work comp process." The court granted Bolanos's motion to strike that testimony as nonresponsive and admonished Cox to "just answer the particular question that is asked of you." Cox responded that Priority "turned that over to a third party." When asked about his knowledge of what Priority did, he responded that he would "have to review the third party notes. I don't know exactly what happened at that point." Cox similarly testified that Priority engaged in the interactive process with Bolanos by turning the matter over to a third party and

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[11] Priority's counsel never provided an offer of proof regarding the timing of Bolanos's emotional distress claim.

giving Bolanos "his right to work with that third party to resolve the issue."

A short time later, Bolanos's counsel asked Cox about one of Priority's discovery responses in which Priority contended it complied with its personnel policies: "Why did you answer this particular question about policies by saying that Mr. Bolanos resigned his position which you also testified you know is incorrect?" Cox responded, "Again, we had a C and R on file. There was a large settlement attached to that. It has been my experience that when a C and R is filed, that the individual has resigned their job and seeks not to be reemployed. It is . . . one of the components that leads to a significant pay-out of cash at the time of the execution." Bolanos's counsel again moved to strike as nonresponsive. The court instructed the jury to "disregard any testimony regarding pay-out, large pay-out. That is not at issue here." The court also admonished Cox to "answer the question and only the questions that are asked, okay?" Cox also testified that he had never seen any documentation reflecting that Bolanos had been diagnosed with a hernia.

B. *Governing Principles*

"Evidence Code section 352 vests the court with broad discretion to weigh the prejudicial effect of proffered evidence against its probative value. [Citation.]" (*People v. Dyer* (1988) 45 Cal.3d 26, 73.) We review the trial court's ruling on the admissibility of evidence for abuse of that discretion, and "will not disturb this determination on appeal unless one factor clearly outweighs the other." (*Akers v. Miller* (1998) 68 Cal.App.4th 1143, 1147; see also *Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 885 (*Austin*).) "This standard

of review applies where, as here, there is a contention that evidence was erroneously excluded under Evidence Code section 352 because it caused undue consumption of time, undue prejudice, confusion of the issues, or misleading of the jury. [Citation.]" (*Austin, supra*, 149 Cal.App.4th at p. 885.)

C. *Analysis*

Priority contends that the trial court abused its discretion by issuing an unnecessarily broad ruling excluding all mention of the workers' compensation proceedings. In addition, Priority argues that the trial court selectively enforced that ruling, by allowing Bolanos to elicit testimony on the subject but "stifl[ing]" all related testimony from Priority. Together, Priority claims these errors prevented it from presenting key evidence to support its defense. We disagree.

In support of its position that the court's ruling was overbroad, Priority relies heavily on the court's initial statement that "right now, no one should mention workers' compensation at all." As Priority points out, such a ruling was beyond the scope of Bolanos's motion in limine, which purportedly sought to exclude the substantive terms of the compromise and release and in actuality focused only on the terms regarding payment, release of claims, and a determination of permanent disability. But Priority's argument ignores the fact that the parties and the court clarified and altered the scope of the ruling as the trial progressed. Even in its initial ruling, the court noted it was making the order without prejudice and cautioned Bolanos's counsel about opening the door regarding workers' compensation testimony. The parties quickly stipulated to allow them to discuss the existence of the workers' compensation matter at trial, a stipulation which the court accepted. And crucially, both

parties proceeded to question both Priority witnesses, eliciting testimony about workers' compensation from Wallig, with no objection to the scope of that testimony, no request by Priority's counsel to revisit the issue once Bolanos's counsel "opened the door," and no admonition from the court regarding the ruling on the motion in limine. With respect to Cox, his testimony drew an objection from Bolanos's counsel and an admonition from the court only on the two occasions where he referred to Bolanos receiving a "significant pay-out" and there being "no disability" – statements that were nonresponsive and related to the exact terms excluded under the motion in limine.

As such, the court ultimately excluded only the following regarding the workers' compensation proceeding: (1) the compromise and release itself; (2) discussion of the settlement amount Bolanos received under the compromise and release; and (3) the reference to "0% disability" in the compromise and release. We find it was well within the court's discretion to conclude that the limited probative value of this evidence was outweighed by the potential for prejudice and for confusion of the jury, particularly where neither party offered an expert to testify about the meaning of these terms in the workers' compensation context. Priority asserts that the term "0% disability" was relevant to show that Priority perceived Bolanos to be completely recovered as of November 2014, when that claim was settled. However, Priority does not address the concerns raised by Bolanos or the court with respect to the potential for undue consumption of time or for misleading the jury as to the meaning of that term in the context of a workers' compensation compromise and release. Nor does Priority suggest who would present this evidence, since both Cox and Wallig professed limited knowledge of, or involvement

with, Bolanos's workers' compensation claim. Bolanos's counsel also pointed out to the trial court that Bolanos was not claiming he was disabled as of November 2014; indeed, during that time period he testified he started calling Priority again to try to get work without restrictions. As such, the trial court was well within its discretion to exclude evidence of this term from the compromise and release.

Moreover, we reject as unsupported by the record Priority's assertion that the court unfairly gave Bolanos leeway to question witnesses regarding workers' compensation, while intervening and "stifl[ing]" Priority's questioning "any time that Priority's witnesses touched on the C&R, or workers' compensation in general." As detailed herein, the trial court gave both parties considerable leeway to question witnesses regarding workers' compensation and the compromise and release, only stepping in when Cox gave several nonresponsive answers that were clearly prohibited. Further, while Priority notes several times that it should have been allowed further questioning once Bolanos "opened the door," it never raised this objection to the trial court, nor did it seek to recall any witnesses (or call any others) despite the court's expressed willingness to consider that option if needed. Nor did Priority's counsel even attempt to question Bolanos regarding the workers' compensation claim or his alleged hernia diagnosis, even though both parties had already broached the subject with Wallig, the prior witness.

We also conclude that Priority has failed to show any prejudice as a result of the court's evidentiary rulings. Priority suggests that it was prevented from introducing evidence of the workers' compensation process, including doctors' records, to show that it engaged in the interactive process and reasonably

accommodated Bolanos during that period by way of the workers' compensation proceeding. But Priority never sought introduction of these records, nor does it suggest how they would have been admissible. Moreover, as previously noted, both of Priority's witnesses testified to their limited involvement with the workers' compensation process. Wallig testified that he reported the claim to the insurance carrier and was otherwise not involved. Cox was not even working at Priority at the time, and also testified that Priority would have turned the claim over to a third party and he did not know further information. Thus, the jury heard testimony about the limited knowledge of these witnesses as to Priority's purported interaction and accommodation through the workers' compensation process; Priority does not suggest how it could have offered any additional evidence on these points even absent the trial court's ruling. The witness with the most knowledge on the purported hernia diagnosis and the workers' compensation proceeding was Bolanos. Priority made no attempt to question him on these subjects and no attempt to recall him once it became clear that evidence of the workers' compensation claim would be allowed.[12]

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[12] At oral argument, Priority's counsel asserted that Bolanos had waived his FEHA claims under the compromise and release, citing *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143. Priority did not raise this argument in its briefs or during the multiple discussions with the trial court on the workers' compensation issue (although Bolanos did argue the claims were not barred in his motion in limine, in response to Priority's trial brief). Thus, Priority has failed to properly raise this issue and we need not consider it. (See, e.g., *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

II. *Jury's Finding on Reasonable Accommodation and Interactive Process*

Priority also contends that the jury lacked substantial evidence to find in favor of Bolanos on his claims for failure to provide reasonable accommodation and failure to engage in the interactive process. Specifically, Priority claims there was no evidence that Bolanos requested any accommodation for a disability after receiving the second doctor's diagnosis of no injury on February 6, 2014. As such, Priority did not have a duty to accommodate Bolanos or to engage in an interactive process regarding potential accommodation. We are not persuaded.

We review the trial court's findings of fact for substantial evidence. (See *SFPP, L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.) "'Where findings of fact are challenged . . . we are bound by the "elementary . . . principle of law . . . that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.'" (*Id.* at p. 462.) """We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.]""" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102; see also *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 ["We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by

substantial evidence which is reasonable, credible and of solid value. [Citations.]"].)

Under FEHA "it is an unlawful employment practice for an employer 'to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee' (Gov. Code, § 12940, subd. (k))." (*Spitzer v. The Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1383.) In addition, the interactive process required under FEHA "is an informal process with the employee or the employee's representative, to attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively. [Citation.]" (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1195.) "'Although it is the employee's burden to initiate the process, no magic words are necessary, and the obligation arises once the employer becomes aware of the need to consider an accommodation.' [Citation.]" (*Scotch v. Art Institute of California-Orange County, Inc.* (2009) 173 Cal.App.4th 986, 1013.) "Once the interactive process is initiated, the employer's obligation to engage in the process in good faith is continuous. '[T]he employer's obligation to engage in the interactive process extends beyond the first attempt at accommodation and continues when the employee asks for a different accommodation or where the employer is aware that the initial accommodation is failing and further accommodation is needed.' [Citation.]" (*Ibid.*)

Here, it is undisputed that Priority initially provided accommodation to Bolanos by assigning him a job in the office upon learning of his original injury. However, Priority contends it did not have a continuing obligation to attempt to accommodate Bolanos's injury as of February 6, 2014 because at that point it believed he was no longer injured. We conclude there was

substantial evidence from which the jury could find that Priority was aware as of February 6, 2014 that Bolanos was still injured and therefore needed additional accommodation and that Priority failed to comply with this obligation. In particular, after acknowledging Bolanos's disability and accommodating him for a month, Priority further acknowledged his complaint of ongoing pain by sending him to a second doctor. Bolanos testified that when that doctor opined that Bolanos was not injured and did not need modified duty, he protested and complained of unbearable pain, and did so in front of at least one Priority employee. Further, Priority admitted that it was advised on February 12, 2014 that Bolanos was diagnosed with a hernia.[13]

Although Priority argued that it did not know Bolanos was still injured, it offered no evidence to rebut Bolanos's version of these events. Instead, both Priority witnesses testified as to their limited knowledge. Neither Cox nor Wallig was involved in any decision-making by Priority to terminate Bolanos's modified duty assignment and simply place him back onto the wait list for work. Bolanos's counsel highlighted this issue in her closing, pointing out that Priority failed to call "one single person" from the Commerce office to which Bolanos reported.

Priority offered no evidence that it took any action to reconcile the competing diagnoses received regarding Bolanos's injury, coupled with his continued complaint of pain. Nor did it

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[13] Priority points out that it never received paperwork confirming this diagnosis and that Bolanos's subsequent examinations by Dr. Moshfegh determined there was no hernia. These facts have no bearing on what Priority knew in February 2014, when the purported duty to engage in the interactive process and to accommodate arose.

offer any witnesses who could explain its inaction. Moreover, despite interrogatory responses to the contrary, Priority did not dispute at trial that it did not offer any further accommodation to Bolanos, such as another modified position. Instead, Priority argued that it was not obligated to do so because it believed Bolanos was no longer disabled. However, the jury was entitled to conclude otherwise based on Bolanos's testimony.

Priority's citation of evidence supporting the opposite inference–that Bolanos had not adequately notified Priority of his continuing need for an accommodation following the second doctor visit–does not compel a different conclusion. We also note that Priority made numerous substantive claims in discovery, verified by Cox, that Cox admitted during trial were untrue or unsupported, including that Bolanos requested time off, that he turned down an offer of a modified position, that he resigned and agreed not to reapply to Priority, and that he was marked in Priority's system as ineligible for rehire. The jury was entitled to consider these admissions when evaluating the credibility of Priority's witnesses. As such, there was substantial evidence from which the jury could conclude that Bolanos had notified Priority of his need for further accommodation and that Priority failed to meet its ongoing duty to engage in an interactive process with Bolanos to determine what accommodation he needed and provide one if available.

III. *Jury's Findings Regarding Mitigation*

Priority next contends that the jury lacked substantial evidence to find that Bolanos met his duty to mitigate his economic damages. Bolanos counters that the jury did not find he mitigated his damages. Instead, he argues that the evidence established that his failure to mitigate was not unreasonable and

that the jury found accordingly. We find no basis to overturn the jury's findings on this issue.

"The general rule is that the measure of recovery by a wrongfully discharged employee is the amount of salary agreed upon for the period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment. [Citations.]" (*Parker v. Twentieth Century-Fox Film Corp*. (1970) 3 Cal.3d 176, 181–182.) "However, before projected earnings from other employment opportunities not sought or accepted by the discharged employee can be applied in mitigation, the employer must show that the other employment was comparable, or substantially similar, to that of which the employee has been deprived; the employee's rejection of or failure to seek other available employment of a different or inferior kind may not be resorted to in order to mitigate damages. [Citations.]" (*Id*. at p. 182; see also *Hope v. California Youth Auth*. (2005) 134 Cal.App.4th 577, 595.)

Consistent with these requirements, the jury was asked to determine: (1) whether Priority met its burden to establish that there was substantially similar employment available to Bolanos; and, if so, then (2) whether Priority established that "Bolanos failed to make reasonable efforts to seek and retain this employment." The jury found that Priority met its burden as to the first element, but failed to establish the second element. Priority contends that the latter finding was not supported by substantial evidence.

Bolanos asserts that the only evidence at trial of potentially similar employment available to him between February and November 2014 was the carburetor job offered by Priority. We

agree. Apart from this position, Priority offered no evidence of substantially similar (or any) employment available to Bolanos during this time period, either with Priority or elsewhere.[14] Thus, as to the second element, the question for the jury became whether Bolanos failed to make reasonable efforts to seek and retain this position. There was ample evidence to support the jury's finding in favor of Bolanos on this point. It was undisputed at trial that Bolanos checked in with Priority numerous times during February 2014 in an attempt to obtain an assignment. It was also undisputed that Bolanos initially accepted, but ultimately had to turn down the carburetor job because he was at the hospital seeking treatment for his groin injury. Thus the jury could have found, based on this evidence, that Bolanos made reasonable efforts to seek a position from Priority and that his failure to report for the carburetor assignment was not unreasonable.

Priority also contends that Bolanos is not entitled to damages starting at the end of February 2014 because at that time, Bolanos "unilaterally decided not to work." Thus, because Bolanos purportedly decided to remove himself from the labor market, Priority suggests that he was not "ready, willing, and able" to work and cannot recover lost wages for this period. (*Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1386 ["An employee may not recover lost wages and benefits for any period in which he or she was not ready, willing and able to perform the duties of his or her position."].) However, Priority's characterization of Bolanos's decision to stop calling Priority as a

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[14] Bolanos asked for lost wages from February 2014 to February 2015, but subtracted what he was able to earn at the other staffing agency starting in November 2014.

voluntary decision to stop looking for work ignores the evidence to the contrary. Bolanos testified that he wanted to work and believed he would be able to work for Priority with some accommodations. He disputed Priority's claim that he asked for time off. Bolanos further testified that, after many unsuccessful attempts to receive job offers, he stopped calling Priority because he concluded it would not give him a job as long as he was injured. Priority did not call him with any job offers after the carburetor offer in February, nor did he turn any down. Once he felt better in November 2014, he resumed his calls asking for work. Based on this evidence, the jury could have concluded that Bolanos was not unwilling or unable to work, but rather reasonably responded to Priority's failure to offer him any jobs and, as such, that Priority did not meet its burden to show that Bolanos unreasonably failed to mitigate his damages.

IV. *Attorney Fees Award*

Finally, Priority challenges the trial court's award of attorney fees to Bolanos. We find no abuse of discretion.

A. *Background*

Bolanos filed a motion for statutory attorney fees pursuant to section 12965, subdivision (b), requesting $364,390 in fees, consisting of a lodestar of $182,195 plus a 2.0 multiplier. In support of the motion, Bolanos's counsel (the Younessi firm) filed attorney declarations from four attorneys who worked on the case, setting forth their experience, hourly billing rates, and listing other cases in which courts had approved those rates as reasonable. These rates included: $700 to $750 per hour for Ramin Younessi, a name partner at the firm and attorney since 1994; $600 to $650 per hour for Christina Coleman, the principal attorney litigating the case and attorney since 1997; $450 per

hour for Jace Kim, attorney since 2012; and $600 per hour for Debra Tauger, attorney since 1988. Younessi's declaration also set forth the rates of the other attorneys who had billed time on the case, as well as a blended rate of $125 per hour for work performed by certified paralegals, case managers, legal assistants, and law clerks (identified by the initials PAR in the billing records). Bolanos also filed declarations from three attorneys from other small, plaintiffs'-side litigation law firms, detailing their rates, which ranged from $650 to $975 per hour, experience with the local employment litigation market, and offering opinions that the rates requested were reasonable.

Bolanos additionally submitted itemized billing records supporting his fee request. In her declaration, Coleman stated that she personally reviewed all of the billing entries and deleted those that were clerical or administrative, reduced time where she believed the entries were excessive, and deleted all entries that appeared to be duplicative or unnecessary. She also reviewed the entries together with Younessi. Through this process, she represented that she eliminated at least 60 hours of time from the bill, leaving a total of 383.9 hours requested from the pre-lawsuit investigation through the reply on the motion for attorney fees.

Priority opposed the motion. It argued that the billing rates proposed by the Younessi firm were well above market and that the lodestar should be reduced by fifty percent to reflect Bolanos's limited success in the case. In support of this argument, Priority filed the declaration of its counsel, who stated that the average billing rate for attorneys in his firm was $501. Priority also submitted a 2016 "survey of the billing rates

charged by law firms in Southern California," purportedly purchased from an independent source.

In reply, Bolanos requested an additional $10,697.08 in fees incurred in connection with the fee motion, supported by an attorney declaration and itemized billing record.

The court[15] held a hearing on the attorney fee motion on February 6, 2017. At the conclusion of the hearing, the court adopted its tentative ruling, granting attorney fees to Bolanos in the amount of $231,470.50. In its 15-page ruling, the court found the billing rates and time entries submitted by the Younessi firm to be reasonable and awarded the full amount requested, including the lodestar of $182,195, plus $10,697.08 in fees incurred in connection with the fee motion. The court sustained Bolanos's evidentiary objections to the survey on billing rates proffered by Priority, finding that the document was hearsay and was not properly authenticated.

The court also awarded a multiplier of 1.2, to reflect "the contingent nature of the risk assumed by Plaintiff's counsel." The court agreed with Priority that Bolanos's success was limited, as he prevailed on two of eight causes of action and did not receive any of the $5,000,000 in punitive damages he sought. However, the court concluded it was not appropriate to reduce the attorney fees requested. Finally, the court found that Bolanos had obtained a more favorable judgment than the amount of Priority's 998 offer, and he was therefore entitled to post-offer recovery.

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[15] This motion was heard and decided by a different judge; the judge who had presided over the trial had since retired.

B. *Governing Principles*

In actions filed pursuant to the FEHA, "the court, in its discretion, may award to the prevailing party, . . . reasonable attorney's fees and costs." (§12965, subd. (b); *Williams v. Chino Valley Independent Fire Dist*. (2015) 61 Cal.4th 97, 101.) The prevailing party is the party with a net monetary recovery. (Code Civ. Proc. § 1032(4).)

We review a trial court's order concerning a request for costs and fees on a FEHA claim for an abuse of discretion. (See *Cummings v. Benco Building Services* (1992) 11 Cal.App.4th 1383, 1387.) As our Supreme Court has explained, "'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong. . . ."' [Citations]." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*); see also *Fed–Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 228 [an appellate court will interfere with a determination of reasonable attorney fees "only where there has been a manifest abuse of discretion"].)

C. *No abuse of discretion in amount of fees awarded*

1. *Lodestar*

"[A] court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.' [Citation.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132 (*Ketchum*).) "In referring to 'reasonable' compensation, . . . trial courts must carefully review attorney documentation of hours expended;

'padding' in the form of inefficient or duplicative efforts is not subject to compensation." (*Id*. at p. 1132.)

Thus, the lodestar is calculated as "the number of hours reasonably expended multiplied by the reasonable hourly rate. . . ." (*PLCM, supra,* 22 Cal.4th at p. 1095.) Here, Priority challenges the reasonableness of both aspects of the lodestar proposed by the Younessi firm and accepted by the trial court. With respect to the hours expended, Priority's challenge on appeal is confined to particular tasks billed prior to its 998 offer. We therefore discuss those arguments in section IV.D., *infra*.

Priority also contends that the trial court erred in approving the billing rates claimed by the Younessi firm, because those rates were "significantly above-market." "The reasonable hourly rate is that prevailing in the community for similar work. [Citations.]" (*PLCM, supra*, 22 Cal.4th at p. 1095.) Priority argues, without authority, that the trial court should not have considered the declarations submitted by Bolanos as evidence "of the going market rates for employment lawyers in Los Angeles County," because of the "national profiles" of the declarants and "variance in practice areas." We find this objection unavailing. In addition to the declarations from the Younessi firm detailing the experience and rates of its attorneys, Bolanos submitted declarations from three other attorneys experienced in employment law in Los Angeles, who detailed their own rates as well as their observations regarding the local market. The trial court was entitled to consider this evidence in concluding that the billing rates charged by the Younessi firm were justified.

Conversely, Priority claims that the court should not have excluded the survey of billing rates it submitted. Contrary to the court's ruling, Priority contends the survey was properly

authenticated and was admissible under exceptions to the hearsay rule. We disagree. The evidence Priority cites for this proposition is a single paragraph in the declaration of Priority's counsel, stating that his law firm purchased the survey from an accounting firm and that he has "access to the survey and have [*sic*] reviewed it." Priority does not explain how this statement could sufficiently authenticate the document or establish the elements of exceptions to the hearsay rule under Evidence Code sections 1340 or 1341. (See Evidence Code §§ 1340 [applicable to "published compilation[s]" where "the compilation is generally used and relied upon as accurate in the course of a business as defined in [Evidence Code] Section 1270"], 1341 [applicable to "[h]istorical works, books of science or art, and published maps or charts, made by persons indifferent between the parties"].)

2. *Limited success*

Priority also contends that the trial court should have reduced the fee award significantly to account for Bolanos's limited success. While the trial court certainly could have done so, we find it was well within its discretion to determine that no reduction was warranted in this case.

A trial court "may consider the 'success or failure' of the litigation as one factor in assessing" an award of statutory fees. (*Beaty v. BET Holdings, Inc.* (9th Cir. 2000) (*Beaty*).) However, there is a "high threshold" for a reduction: "To say that California *permits* such reduction based on results obtained in an FEHA case is not, however, to say that state law *favors* decreasing lodestar fees based on the amount of damages received as compared to that sought. Rather, under the FEHA fees are not 'limit[ed] to a percentage of the plaintiff's recovery,' and ordinarily, 'the attorney who takes [a FEHA] case can

anticipate receiving full compensation for every hour spent litigating a claim. . . .' [Citation.]" (*Ibid.*) "Only in the unusual case in which there are 'special circumstances [which] render such an award'—that is, an award of the full lodestar 'for all hours reasonably spent'—'unjust' does California FEHA law permit a lodestar reduction for results obtained. [Citations.]" (*Ibid.*) The *Beaty* court further recognized that "[t]his high threshold for triggering decreases due to limited success reflects the values underlying the award of attorneys' fees in FEHA and other civil rights cases. Such cases vindicate important public interests whose value transcends the dollar amounts that attach to many civil rights claims." (*Ibid.*)

In addition, courts have declined to reduce attorney fees where a plaintiff prevails on only some of its claims, but the claims were factually related and closely intertwined. (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 431 ["[w]here a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised"].)

Here, the court recognized its duty to "consider the degree of success achieved by [Bolanos] in determining the appropriate amount of attorney's fees to award." Accordingly, because Bolanos prevailed on only two out of eight claims and recovered a small amount of damages compared to the amount sought, the court concluded that his success was limited. The court also recognized its discretion to determine whether that limited success "warrants a reduction in the attorney's fees requested." After a detailed review of the applicable case law, the court concluded that it was appropriate to award the full amount of

attorney fees to Bolanos, finding that the causes of action on which Bolanos succeeded were related to his other causes of action "as they stem from the same core set of facts." In addition, the court relied on the reasoning set forth in *Beaty, supra*, 222 F.3d 607, 612, to conclude that an "award of the full amount of attorney's fees will best effectuate the purpose of the FEHA."

Priority has not established that these findings were an abuse of discretion. First, the trial court's determination that all of Bolanos's claims were based on the same core set of facts is supported by the record. The six FEHA claims on which Bolanos proceeded to trial were all based on Bolanos's claim that he suffered a disability, which Priority failed to accommodate from February 2014 through February 2015, resulting in discrimination, retaliation, and ultimately, wrongful termination. There is no indication how Bolanos could have parsed his requested attorney fees to separately account for the unsuccessful claims. Indeed, Priority's suggestion that claims for failure to accommodate and failure to engage in the interactive process "involved only the month of February 2014" relies entirely on Priority's theory of the case (that Bolanos was not disabled after that time) and ignores the fact that Bolanos requested and received damages for February 2014 to February 2015 on those claims.

Second, Priority argues that the trial court erred in relying on *Beaty* while ignoring the competing public interest underlying Code of Civil Procedure section 998. However, the cases cited by Priority do not undermine the important policy considerations set forth in *Beaty, supra,* 222 F.3d at p. 612, and reiterated by the trial court, namely, that FEHA cases vindicate important public interests. Rather, Priority's cited cases simply affirm that the

trial court has broad discretion to either reduce or approve a requested attorney fee amount, which we are bound to disturb only on a showing of abuse. (See, e.g., *Beaty, supra,* 222 F.3d at p. 610 [noting, on FEHA claim, that "if the district court was aware of its discretion to reduce Beaty's fee award based on the results she obtained and chose not to, then the lodestar fee award was reasonable and should not be disturbed on appeal"]; *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 176 [affirming trial court's exercise of discretion in reducing award]; *Greene v. Dillingham Constr. N.A.* (2002) 101 Cal.App. 4th 418, 423-424 [affirming trial court's order granting fee request, where plaintiff proactively reduced billed time]; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 445 [trial court does not abuse its discretion by awarding fees in an amount much higher than the damages awarded, where successful litigation causes "conduct which the FEHA was enacted to deter [to be] exposed and corrected"].) Moreover, there is no suggestion in the record that the trial court ignored the public policy underlying 998 offers.

3. *Multiplier*

The lodestar "may be adjusted by the court based on factors including, . . . (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate

the fair market rate for such services. [Citation.]" (*Ketchum*, *supra*, 24 Cal.4th at p. 1132.)

Here, the trial court found Bolanos had not raised any novel, complex, or unique issues and had not demonstrated that the litigation significantly precluded other employment for his counsel. As such, the court rejected Bolanos's request for a 2.0 multiplier. Instead, the court concluded that a 1.2 multiplier was "appropriate due to the contingent nature of the risk assumed by Plaintiff's counsel." Priority contends that the court abused its discretion and should have declined to apply any multiplier at all. We disagree.

In large part, Priority's objection echoes its contention that the Younessi firm billed at unreasonably high rates; as such, it claims that the multiplier served to exacerbate this problem. We have rejected this contention herein. Additionally, Priority suggests that the contingent risk of this case did not support a multiplier.

"'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' [Citation.] 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'" (*Ketchum, supra*, 24 Cal.4th at pp. 1132-1133; see also *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1399 ["An

enhancement of the lodestar amount to reflect the contingency risk is '[o]ne of the most common fee enhancers. . . .'"].) As such, "[i]t has long been recognized . . . that the contingent and deferred nature of the fee award in a civil rights or other case with statutory attorney fees requires that the fee be adjusted in some manner to reflect the fact that the fair market value of legal services provided on that basis is greater than the equivalent noncontingent hourly rate. [Citation.]" (*Horsford v. Board Of Trustees Of California State University* (2005) 132 Cal.App.4th 359, 394-395.)

The trial court's determination to account for the contingency risk of the litigation by awarding a reduced multiplier of 1.2 was well within its discretion. Priority's contention that the contingent risk was minimal does not establish an abuse of that discretion.

D. *No abuse of discretion regarding 998 offer*

Priority also argues that Bolanos did not obtain a more favorable judgment than its 998 offer and is thus not entitled to recover any attorney fees incurred after the date of that offer. The trial court disagreed and we find no abuse of discretion.

"Code of Civil Procedure section 998 is a cost-shifting statute which encourages the settlement of actions, by penalizing parties who fail to accept reasonable pretrial settlement offers." (*Heritage Engineering Const., Inc. v. City of Industry* (1998) 65 Cal.App.4th 1435, 1439.) Thus, "[i]f an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer." (Code Civ. Proc., § 998, subd. (c)(1).) In determining whether the plaintiff obtains a more favorable judgment, the

court must exclude all postoffer costs but include preoffer costs, including attorney fees. (*Heritage, supra*, 65 Cal.App.4th at p. 1441.)

To analyze whether Bolanos obtained a more favorable judgment than Priority's 998 offer, the trial court properly compared Priority's offer of $45,000 with Bolanos's judgment of $31,466.84 ($39,966.84 minus the $8,500 offset), plus the reasonable amount of attorney fees incurred by the Younessi firm up to the date of the offer on December 7, 2015. The court found the requested fees of $18,705 were reasonable. Thus, the court added Bolanos's recovery of $31,466.84, plus $18,705 in pre-offer fees, plus $631.52 in uncontested pre-offer costs, to reach a total of $50,803.36. The court therefore concluded that Bolanos obtained a more favorable recovery than the $45,000 998 offer and was entitled to his post-offer costs.

Priority again argues that the lodestar should be reduced to reflect Bolanos's limited success in this litigation. We find the trial court did not abuse its discretion in refusing to do so for the same reasons discussed above.

Priority also contends, as it has with the entirety of the fee request, that Bolanos's pre-offer fees are inflated, due to unreasonably high billing rates proposed by the Younessi firm coupled with unreasonable time estimates to complete pre-offer tasks. In particular, it highlights 6.3 hours of time logged by attorneys and paralegals for pre-lawsuit investigation between December 2014 and February 2015, given that the Younessi firm had been handling Bolanos's workers' compensation claim since early 2014. Priority also complains that the 2.2 hours billed to exhaust Bolanos's administrative remedies was too high, because the task was designed to be "user-friendly." Similarly, it argues

that billing 6.7 hours to draft the complaint was unreasonable, given the boilerplate nature of the filing. The trial court thoroughly analyzed these claims, along with the rest of the billing entries, and concluded that the hours billed prior to and including the filing of the complaint were reasonable. We find no abuse of discretion in this conclusion. As the trial court pointed out, the time spent on pre-lawsuit investigation reflected the fact that Coleman, the primary attorney handling the civil litigation, was not involved in the workers' compensation case. In addition, we agree with the trial court that Priority's complaint concerning exhaustion of administrative remedies was completely unsupported. Similarly, the court did not abuse its discretion in concluding that using an attorney to draft the complaint was "unquestionably appropriate" and that 6.7 hours for a novice attorney (billed at a lower rate reflecting lack of experience) to complete that task was reasonable, even if the attorney used the template of a complaint from another case. Although Priority characterizes the complaint as "boilerplate," it undisputedly had to be tailored to the particular circumstances of the case and included allegations specific to Bolanos.

Finally, Priority argues that the time billed to PAR—17.4 hours prior to the 998 offer at $125 per hour—was improper because the billing records did not identify the individuals or their qualifications. The court relied on Younessi's declaration identifying the blended rate and listing the types of employees who were included in the PAR entries, concluding that it was not necessary to "identify every individual." The court also rejected Priority's contention that the majority of the work billed was "purely clerical," finding that the billing entries properly reflected tasks performed by paralegals, law clerks, and similar employees

that "lies somewhere between clerical tasks and legal tasks." We find no error in this conclusion.

In short, we conclude that the trial court appropriately exercised its discretion in carefully examining the record and awarding attorney fees to Bolanos.[16]

DISPOSITION

Affirmed. Bolanos is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.

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[16] We reject Priority's suggestion that the trial court "overlooked" or ignored its various arguments regarding attorney fees. To the contrary, the trial court's order reveals that it thoroughly considered and addressed Priority's claims and evaluated the evidence in the record. Of course, the court's disagreement with certain points made by Priority does not mean the court failed to consider them.