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11 *Attorneys for Plaintiff*
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13 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN MATEO
15

16 CHRISTOPHER GONZALES, on behalf of himself
and all those similarly situated,

17 Plaintiff,
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19 v.

20 PRIME COMMUNICATIONS, L.P. and
PRIME COMMS RETAIL, LLC.,

21 Defendants.
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Case No. 23-CIV-03441

**DECLARATION OF MICHELE R.
FISHER**

Dept.:28

Judge: Hon. Nicole S. Healy

Action Filed: July 26, 2023

Hearing Date: May 5, 2027
Time: 2:00 PM

1 1. I am a partner at Nichols Kaster, PLLP.

2 2. Nichols Kaster, PLLP is a reputable firm that has been in existence since 1974 and is
3 devoted to employee, consumer, and civil rights litigation. The firm has offices in Minneapolis and
4 San Francisco. It is nationally recognized and well known for being a powerful and effective advocate
5 for its clients.

6 3. I am a managing partner at Nichols Kaster, PLLP with over 25 years of civil litigation
7 experience and a national practice concentrated in complex litigation and class and collective actions.
8 I have been a licensed attorney since 2000 and my hourly rate is \$725. I have handled a substantial
9 number of cases in the employment and civil rights law area, including both individual matters and
10 complex class and collective actions (with a focus on litigating nationwide wage and hour class and
11 collective actions and arbitrations). Over the past 25 years, I have been involved in numerous class
12 and collective action settlements that have been approved by courts as fair and reasonable. In addition
13 to litigation and law firm management, I devote time to giving back to the legal community through
14 numerous leadership roles and speaking engagements. For example, this year I just ended serving for
15 nearly two decades as cochair and faculty member of the Practicing Law Institute's Wage & Hour
16 Litigation and Compliance conference, and for four years as an ABA Labor and Employment Law
17 Section Council Member, Council Liaison to the Trial Institute Administrative Committee, Council
18 Liaison to the Wage and Hour Subcommittee, and Council Liaison to the Social Media Administrative
19 Committee. I was inducted as a Fellow in the College of Labor and Employment Lawyers, and I served
20 as a mentor for the ABA Labor and Employment Law Section's Leadership Development Program. I
21 have served in many other leadership roles at various organizations and have been a regular speaker
22 at national conferences. I am named to the Best Lawyers in America, Top 100 Super Lawyers, Top
23 50 Minnesota Woman Super Lawyers, and to other top attorney lists. I volunteer as an attorney for
24 foster children through the Children's Law Center. I also administer arbitratorrater.com, a free
25 resource I developed exclusively for employee and consumer rights advocates that is used by
26 thousands of attorneys across the country.

27 4. Matthew Helland is the managing partner of Nichols Kaster's San Francisco office,
28 where he focuses his practice on class and collective employment, consumer, and civil rights litigation

1 filed in California and throughout the country. He was admitted to the Minnesota Bar in 2005 and the
2 California Bar in 2007. His hourly rate is \$825. From 2020 through 2026, he was recognized as a
3 Northern California Super Lawyer, after being named a Rising Star from 2012-2019. He was named
4 one of the “Best Lawyers in America” for several years including 2026.

5 5. Daniel Brome has been a licensed attorney in California since 2011. He is no longer
6 with the firm, but at the time he worked on this case his hourly rate was \$575. He has extensive
7 experience representing employees, particularly in complex wage and hour litigation and has
8 represented thousands of employees in class and collective actions.

9 6. Christine Rued has been a paralegal for over 30 years, has a master’s degree in criminal
10 justice, bachelor’s degree in psychology, and associate degree in paralegal studies, and has taught
11 paralegal and criminal justice courses at various locations in the Twin Cities. Her hourly rate is \$195.

12 7. Up to December 22, 2025, my office spent 40.5 hours on this matter, totaling
13 \$20,460.50 in attorneys’ fees. I can provide a detail of the hours if the Court requests (under seal to
14 protect privileged and work product information). The chart below provides a summary of the hours
15 spent on this matter by individuals at my firm:

Name	Rate	Hours	Total
Michele Fisher, Managing Partner, 25 Years of Experience	\$725	12.4	\$8,990.00
Matthew Helland, Partner, 20 Years of Experience (California Based)	\$825	.1	\$82.50
Daniel Brome, Formerly Sr. Counsel, 14 Years of Experience (California Based)	\$575	15.6	\$8,970.00
Christine Rued, Paralegal, Over 30 Years of Experience	\$195	12.4	2,418.00
Total		40.5	\$20,460.50

16 8. Below is a true and correct copy of costs incurred that are being sought by my firm
17 (\$2,594.06), all of which relate to filings, service, and *pro hac vice*:
18

Date	Paid To	Description	Amount
7/27/2023	Check to Case Anywhere - Filing fee	Complaint/includes filing fee and Case Anywhere fees	\$1,505.72
8/7/2023	Check to Pro Legal Support Services, Inc - Courier service	Service	\$170.00
8/8/2023	Check to Case Anywhere - Filing fee	Proof of Service Filing	\$15.06
8/18/2023	Check to Pro Legal Support Services, Inc - Courier service	Service	\$170.00
9/27/2023	Check to Case Anywhere - Filing fee	Joint Case Mgmt.	\$15.06
12/19/2023	Check to Case Anywhere - Filing fee	Amended Complaint	\$15.06
1/26/2024	Check to Case Anywhere - Filing fee	Palitz <i>Pro Hac</i>	\$561.09
1/29/2024	Check to Case Anywhere - Filing fee	Palitz <i>Pro Hac</i> Refile	\$15.06
2/16/2024	Check to Case Anywhere - Filing fee	Palitz <i>Pro Hac</i> Proof of Serv. on State Bar	\$15.06
2/21/2024	Check to Case Anywhere - Filing fee	<i>Pro Hac</i> Donnell	\$11.33
4/1/2024	Check to Michele R Fisher - Reimburse Case Anywhere filing fees	Stip Re Am. Complaint	\$47.12
4/16/2025	Check to Case Anywhere - Filing fee	Case Mgmt. Stmt.	\$13.39
4/24/2025	Check to Case Anywhere - Filing fee	Stip. and Proposed Order Am. Complaint	\$40.11
Total			\$2,594.06
12/9/2025	Check to Case Anywhere – Filing Fee	Notice of Appearance for Matthew Helland	\$13.46
1/23/2026	Check to Case Anywhere – Filing Fee	Motion for <i>Pro Hac</i> for Palitz	\$114.82
2/18/2026	Check to Case Anywhere- Filing Fee	Proof of Service on CA State Bar (<i>Pro Hac</i> for Palitz)	\$21.67
3/13/2026	Check to Case Anywhere – Filing Fee	Proposed Order on <i>Pro Hac</i> for Palitz	\$21.67

Total Add'l Costs			\$171.62
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9. The *pro hac vice* costs above are costs our firm incurred related to Michael Palitz's *pro hac vice* filings and service.

10. Nichols Kaster, PLLP is not seeking reimbursement for \$171.62 in costs incurred since December 2025.

11. From December 23, 2025 to present, my office spent an additional 17.9 hours on this matter, totaling \$11,429.50 in attorneys' fees. The chart below provides a summary of those additional hours:

Name	Rate	Hours	Total
Michele R. Fisher	\$725	10.70	\$7,757.50
Matthew Helland	\$825	3.60	\$2,970.00
Christine Rued	\$195	3.60	\$702.00
Total		17.9	11,429.50

12. The time reflected in paragraphs 7 and 11 totals **\$31,890.00** (58.4 hours) and was spent on tasks such as research, editing, drafting, finalizing court documents, and reviewing fees and costs.

13. The rates for the attorneys and staff at my firm are supported by authority. *See, e.g., Rao v. St. Jude Medical S.C., Inc.*, Order, No. 19-cv-923 (D. Minn. Dec. 27, 2023) (\$675 approved for Fisher, \$375 for associate attorney with 5 years of experience, and \$195 for paralegal Rued), Ex. A; *Medina v. Evolve Mortgage Services, LLC*, 2023 WL 11915763, at *9 (C.D. Cal. Apr. 3, 2023) (approving \$725 for Helland, \$525 for Brome, and \$195 for paralegals); *Sanders v. BNSF Railway Co.*, 2022 WL 17414504, at *12 (D. Minn. Dec. 5, 2022) (finding reasonable Nichols Kaster, PLLP rates of \$775 for 40 years of experience, \$475 for 10 years of experience, \$350 to \$475 for associates, and \$195 for paralegal); *Kudatsky v. Tyler Techs., Inc.*, 2021 WL 5356724, at *5 (N.D. Cal. Nov. 17, 2021) (5 years ago finding Nichols Kaster, PLLP rates reasonable at \$175 for non-lawyers, \$450 for Brome, and \$650 for Helland); *Monroe v. FTS USA, LLC*, 2020 WL 13227389, at *7 (W.D. Tenn.

1 Oct. 13, 2020), *aff'd*, 17 F.4th 664 (6th Cir. 2021) (nearly 5 years ago finding Nichols Kaster, PLLP
2 attorney rates of \$500–\$600 reasonable); *Bisaccia v. Revel Sys. Inc.*, 2019 WL 3220275, at *8 (N.D.
3 Cal. July 17, 2019) (finding Nichols Kaster, PLLP rates of \$175 for paralegals, \$425 for senior
4 associates (Brome), and \$625–\$675 for partners (Helland) reasonable); *McCulloch v. Baker Hughes*
5 *Inteq Drilling Fluids, Inc.*, 2017 WL 5665848, at *8 (E.D. Cal. Nov. 27, 2017) (approving rates 6
6 years ago of \$525 for Fisher who had 17 years of experience at the time and \$350 for Brome with 6
7 years of experience); *Bitner v. Wyndham Vacations Resorts, Inc.*, 2017 WL 11674541, at *1–2 (W.D.
8 Wis. Nov. 9, 2017) (approving rates ranging from \$185 to \$625 in 2017 for Nichols Kaster, PLLP
9 attorneys).

10 14. Attached is a true and correct copy of **Exhibit A**, *Rao v. St. Jude Medical S.C., Inc.*,
11 Order, No. 19-cv-923 (D. Minn. Dec. 27, 2023).

12 I declare under penalty of perjury, under the laws of the State of California, that the
13 foregoing is true and correct. Executed this 9th day of September, 2026 at Milan, Italy.

14 NICHOLS KASTER, PLLP

15 By: /s/ Michele R. Fisher
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EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Thomas Rao,

Case No. 19-cv-923 (DTS)

Plaintiff,

ORDER

v.

St. Jude Medical S.C., Inc., et al.,

Defendants.

Plaintiff Thomas Rao moves for \$1,246,104.35 in attorneys' fees and \$31,396.92 in costs. Dkt. No. 463. This amount is in addition to the \$17,604.70 requested in the bill of costs [Dkt. No. 461]. For the reasons discussed below, Plaintiff's motion is granted in part and denied in part. Plaintiff is entitled to \$295,193.46 in attorneys' fees and \$7,446.89 in costs separate from the bill of costs, for a total award of \$302,640.35.

BACKGROUND

Thomas Rao and Kristina Jones sued Defendants Abbott and St. Jude on April 3, 2019, asserting various causes of action related to their treatment while employed by Defendants. See Compl., Dkt. No. 1. Nichols Kaster, PLLP (Counsel) began representing both Rao and Jones on April 12, 2019. Dkt. No. 7. Jones settled her claims with Defendants in December 2019, leaving Rao as the sole plaintiff. See Dkt. Nos. 62, 65. Shortly thereafter, Plaintiff filed a Second Amended Complaint asserting nine causes of action.¹ Defendants moved to dismiss his claims for negligent hiring and for unpaid wages

¹ Plaintiff brought claims for: (1) breach of contract; (2) unpaid wages under the Minnesota Payment of Wages Act (MPWA); (3) retaliation under the Florida Whistleblower Act; (4) declaratory relief; (5) negligent hiring; (6) age discrimination under the Age Discrimination in Employment Act (ADEA); (7) retaliation under Title VII; (8) age discrimination under the

under the Minnesota Payment of Wages Act (MPWA), and moved to partially dismiss his claim for declaratory judgment. Dkt. No. 70. The Magistrate Judge recommended granting Defendants' motion, and the District Judge dismissed those claims on July 20, 2020. Dkt. Nos. 100, 108. Plaintiff filed a Third Amended Complaint in September 2020, seeking punitive damages in connection with his retaliation claims and his claim for age discrimination under Florida law. See Dkt. No. 123.

In January 2021, Defendants brought a counterclaim alleging Plaintiff breached the non-competition and non-solicitation provisions in his employment agreement. Dkt. No. 139. On August 26 of that year, Plaintiff moved for partial summary judgment on Defendants' counterclaim and to bifurcate the counterclaim from his claims. Dkt. Nos. 189, 214. That same day, Defendants moved for summary judgment on all of Plaintiff's claims. Dkt. No. 194. The District Judge partially granted Plaintiff's motion, restricting the scope of Defendants' counterclaim but leaving the bulk of the allegations intact; he denied Plaintiff's motion to bifurcate. Dkt. No. 282. The District Judge also partially granted Defendants' motion, dismissing the portion of Plaintiff's breach of contract claim related to unpaid commission and the portion of his state law retaliation claim related to his participation in a 2017 investigation involving Gordon Ware. *Id.* Plaintiff's retaliation claim relating to his participation in a later investigation involving Kristina Jones survived summary judgment. *Id.*

The parties consented to the jurisdiction of the undersigned magistrate judge on April 12, 2023. Dkt. No. 307. On May 1, 2023, Defendants made a settlement offer of

Florida Civil Rights Act; and (9) retaliation under the Florida Civil Rights Act. See Dkt. No. 66.

\$350,000. See Dkt. No. 471. Two days later, Plaintiff rejected the offer. *Id.* At the pretrial conference on September 13, 2023, Plaintiff represented that he did not intend to pursue a settlement. See *id.* However, on September 22, Plaintiff presented a settlement demand of \$350,000. *Id.* Defendants rejected his offer and the case proceeded to trial. *Id.*

Trial was held from October 10 to 19, 2023. Before closing arguments, the Court ruled that Plaintiff had not presented evidence sufficient for a jury to reasonably award punitive damages, so it would not be giving a punitive damages instruction. Dkt. No. 450 at 5-6. The jury was then instructed on Plaintiff's breach of contract, retaliation, and age discrimination claims, and on the non-competition portion of Defendants' counterclaim. *Id.* at 13-18. During closing arguments, Plaintiff asked the jury to award \$517,938 in lost wages, commissions, and benefits—the amount calculated by his expert witness—and up to twice that much in damages for emotional distress. *Id.* at 99-100.

The jury returned a verdict in favor of Plaintiff on his breach of contract and retaliation claims and on Defendants' counterclaim, and in favor of Defendants on the age discrimination claim. Dkt. No. 442. The jury awarded Plaintiff lost wages in the amount of \$39,030. *Id.* Plaintiff now moves for \$1,246,104.35 in attorneys' fees for 2,505.60 hours expended in this case. Dkt. Nos. 463, 465.

ANALYSIS

Title VII affords the Court discretion to award reasonable attorneys' fees to a prevailing party. See 42 U.S.C. § 2000e-5(k). "Before deciding whether an award of attorney's fees is appropriate . . . a court must determine whether the party seeking fees has prevailed in the litigation." *CRST Van Expedited, Inc. v. E.E.O.C.*, 578 U.S. 419, 422 (2016). To be a prevailing party, a claimant must show that: (1) there has been a court-

ordered change in the legal relationship between the plaintiff and the defendant; (2) the judgment was rendered in the claimant's favor, regardless of the amount of damages awarded; and (3) the claimant received judicial relief. *Doe v. Nixon*, 716 F.3d 1041, 1048 (8th Cir. 2013). Here, Plaintiff obtained judicial relief in the form of a monetary judgment ordered by the Court that changed the legal relationship between him and Defendants; he has attained "prevailing party status." *Id.* But prevailing party status "brings the plaintiff only across the statutory threshold. It remains for the district court to determine what fee is 'reasonable.'" *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

The starting point in determining reasonable attorneys' fees is the lodestar method, which involves multiplying the number of hours reasonably expended by a reasonable hourly rate. See *id.* This calculation provides an objective initial estimate, but it "does not end the inquiry." *Id.* at 433-34. Courts also consider the plaintiff's level of success; "where the plaintiff [has] achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Id.* at 440. Along with the plaintiff's overall success, courts also account for "the necessity and usefulness of the plaintiff's activity in the particular matter for which fees are requested" and "the efficiency with which the plaintiff's attorneys conducted that activity." *Jenkins ex. rel. Jenkins v. Missouri*, 127 F.3d 709, 718 (8th Cir. 1997). The Court may also consider a plaintiff's failure to obtain a punitive damages instruction, *Loggins v. Delo*, 999 F.2d 364, 369 (8th Cir. 1993), or his rejection of a substantial settlement offer as factors in determining an award of reasonable attorney's fees. See *Parke v. First Reliance Standard Life Ins. Co.*, 368 F.3d 999, 1012 (8th Cir. 2004); *Owner Operator Indep. Drivers Ass'n*,

Inc. v. Supervalu, Inc., No. CIV. 05-2809, 2012 WL 6760098, at *6 (D. Minn. Sept. 30, 2012).

The Court first calculates the appropriate lodestar by removing hours not reasonably expended, then applies percentage reductions to that amount based on a careful consideration of Plaintiff's success in the case as a whole.

I. Lodestar Amount

Plaintiff seeks attorneys' fees for 2,505.60 hours expended by three attorneys and a paralegal billing at rates between \$195 and \$675 per hour. "The starting point for determining attorneys' fees is the 'lodestar,' which is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate." *Orduno v. Pietrzak*, 932 F.3d 710, 719 (8th Cir. 2019).

A. Reasonable Hourly Rates

A reasonable hourly rate is one that is in line with prevailing rates "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); see *McDonald v. Armontrout*, 860 F.2d 1456, 1459 (8th Cir. 1988). The burden is on the fee applicant to "produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are" reasonable. *Id.*

Plaintiff seeks attorneys' fees at an hourly rate of \$675 for partner and lead counsel Michele Fisher, \$375 for associates Kayla Kienzle and Caroline Bressman, and \$195 for paralegal Christine Rued. Plaintiff dedicates nine pages to defending the reasonableness of these rates and establishing the bona fides of each lawyer, in addition to submitting eight declarations from local lawyers with comparable experience who bill similar rates.

However, Defendants do not contest, and the Court sees no issue with, Counsel's proposed rates. Hourly rates of \$675 for a partner with over 23 years of relevant experience, \$375 for second-chair associates with 5 years of experience, and \$195 for a paralegal with over 25 years of experience are all reasonable rates for employment lawyers and paralegals of a similar caliber in Minneapolis. See, e.g., *Ness v. City of Bloomington*, No. CV 19-2882, 2022 WL 1050043, at *5 (D. Minn. Apr. 7, 2022); *Fancher v. Klann*, No. CIV. 13-435, 2015 WL 1810235, at *2 (D. Minn. Apr. 21, 2015); *Madison v. Willis*, No. CIV. 09-930, 2011 WL 851479, at *1 (D. Minn. Mar. 9, 2011).

Nor does the Court find that Counsel's representation fell below expected standards; to the contrary, Counsel provided zealous, proficient advocacy throughout more than four years of litigation. The requested hourly rates are reasonable and consistent with the rates of local lawyers with similar skill and experience.

B. Hours Reasonably Expended

Plaintiff seeks fees for 2,505.60 hours of work performed in this case. When conducting a lodestar analysis, a court should exclude "hours that were not reasonably expended." *Hensley*, 461 U.S. at 434. "[H]ours that are excessive, redundant, or otherwise unnecessary' must be excluded" from the court's determination of reasonable time expended on the case. *Miller v. Dugan*, 764 F.3d 826, 832 (8th Cir. 2014) (quoting *El-Tabeach v. Clarke*, 616 F.3d 834, 842 (8th Cir. 2010)). The fee applicant bears the burden of documenting the hours expended, and "[i]nadequate documentation may warrant a reduced fee." *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991).

Counsel's billing records contain multiple duplicative entries. Between October 13, 2023, and October 24, 2023, there are numerous entries listed twice, some of which

would have required one attorney to work over 24 hours in a day.² Removing these duplicative entries results in a reduction of \$43,450.50.

Counsel claims to have removed entries related to Defendants' counterclaim, because although Plaintiff prevailed on the counterclaim, the contract does not provide for recovery of fees to the prevailing party. The Court agrees that time spent on the counterclaim is not compensable as attorneys' fees. See *Swiss Reinsurance Am. Corp. v. SuperValu, Inc.*, 743 F. Supp. 2d 1050, 1059 (D. Minn. 2010) ("Generally, attorneys' fees are not recoverable unless there is specific contract language permitting recovery."). A review of Counsel's billing records shows that 33.1 hours (\$13,277.50 in fees) are entries related to the counterclaim.³ That amount is subtracted from the attorneys' fees.

Finally, the Court finds that certain entries for clerical tasks should be discarded. Entries such as "transcribe interview notes," "type up phone call notes," and "scan missing binder divider pages" are not compensable as attorneys' fees. See *Rosen v. Wentworth*, 13 F. Supp. 3d 944, 952-53 (D. Minn. 2014) (noting that tasks like printing documents, mailing letters, and collating files "cannot fairly be accounted for at an attorney's, or even a paralegal's, billing rate"). The Court finds that such entries total \$8,602.50 of the requested fees. See Def's. Mem. in Opp'n, App. Section V, Dkt. No. 470-2 at 7-9. Counsel's request is further reduced by this amount.

² For example, on October 17, 2023, one attorney submitted two identical 16.2-hour entries; on October 13, 2023, one attorney submitted six entries totaling over 30 hours. See Fisher Decl., Ex. 7, Dkt. No. 468-7 at 38.

³ Entries specifically referencing the counterclaim total 12.1 hours, while entries related to Plaintiff's motion to bifurcate the counterclaim or Plaintiff's motion for summary judgment on the counterclaim total 21 hours. See Fisher Decl., Ex. 7; Def's. Mem. in Opp'n, App. Section IV.A, Dkt. No. 470-2 at 5-6.

After making the above deductions for duplicative and clerical entries and those related to the counterclaim, the proper lodestar amount is \$1,180,773.85.

II. Degree of Success

After determining the lodestar, courts may reduce the amount to account for a prevailing party's limited success. See *Hensley*, 461 U.S. at 436 (When "a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount."). "A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." *Id.* at 440.

"[T]he most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quoting *Hensley*, 461 U.S. at 436). When a plaintiff has achieved only limited success, "the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Blackorby v. BNSF Ry. Co.*, 60 F.4th 415, 420 (8th Cir. 2023) (quoting *Marshall v. Anderson Excavating & Wrecking Co.*, 8 F.4th 700, 713 (8th Cir. 2021)). However, the Eighth Circuit has "explicitly rejected a 'rule of proportionality' in civil rights cases because tying the attorney's fees to the amount awarded would discourage litigants with small amounts of damages from pursuing a civil rights claim in court." *Simpson v. Merchants & Planters Bank*, 441 F.3d 572, 581 (8th Cir. 2006).

Instead, the preferred approach is that reductions for limited success be made on the basis of time spent on unrelated, unsuccessful claims. *H.J. Inc.*, 925 F.2d at 261; see *Kennedy Bldg. Assocs. v. Viacom, Inc.*, 375 F.3d 731, 748 (8th Cir. 2004) ("No fee can be awarded on unsuccessful claims that were not related to the successful claim."). In

such cases, the court “may either attempt to identify and then eliminate the hours spent on non-compensable claims or may simply reduce the award to account for the plaintiff’s limited success.” *H.J. Inc.*, 925 F.2d at 260.

For the reasons explained below, the Court finds that Plaintiff’s limited success warrants a significant reduction in the fee award. Because Counsel’s documentation generally does not show which claims were the subject of the work, making it difficult to remove hours spent on unsuccessful claims, the Court will assess Plaintiff’s success throughout the case to determine an appropriate reduction to the lodestar.

A. Unsuccessful Claims Pre-Trial

Prior to trial, two of Plaintiff’s claims were dismissed in their entirety and two more were partially dismissed. Defendants argue that Plaintiff’s fee award should be reduced for work done on these unsuccessful claims. In determining whether a fee award should be reduced for unsuccessful claims, courts assess whether “they are sufficiently related to the successful claim because ‘they involve a common core of facts or are based on related legal theories.’” *Marez v. Saint-Gobain Containers, Inc.*, 688 F.3d 958, 965 (8th Cir. 2012) (quoting *Emery v. Hunt*, 272 F.3d 1042, 1046 (8th Cir. 2001)).

Plaintiff’s negligent hiring and Minnesota Payment of Wages Act (MPWA) claims were dismissed prior to trial. The MPWA claim was premised on Defendants’ alleged failure to pay Plaintiff’s salary, bonuses, and commissions for the final months of his employment and the year following his termination. Because Plaintiff had never lived or worked in Minnesota, the claim was dismissed due to lack of standing. But the allegations supporting that claim arise from the same set of facts as his successful breach of contract claim, because they both relate to his alleged termination without cause and resulting lost

wages. Thus, the evidence and arguments developed for the unsuccessful MPWA claim may have contributed to Plaintiff's success on the breach of contract claim at trial. The fee will not be reduced for work done on this claim.

However, the Court finds that the fee should be reduced for time spent developing the negligent hiring claim. In January 2020, Plaintiff agreed that the negligent hiring claim could be dismissed with prejudice. See Dkt. No. 72. This claim was unrelated to Plaintiff's successful breach of contract and retaliation claims; indeed, the facts at the heart of the negligent hiring claim were determined to be inadmissible and therefore could not have supported the jury's verdict on either successful claim.⁴ Moreover, because Plaintiff voluntarily dismissed this claim, the fee award should be reduced for time spent developing it. See *Harris v. Chipotle Mexican Grill, Inc.*, No. 13-CV-1719, 2018 WL 617972, at *9 (D. Minn. Jan. 29, 2018) (reducing fee award "for Plaintiffs' work on abandoned claims and unsuccessful efforts to amend the pleadings").

Portions of Plaintiff's breach of contract and retaliation claims were dismissed on summary judgment. Defendants argue that Counsel should not be compensated for time spent developing the dismissed portions because they are unrelated to Plaintiff's successful claims. Specifically, Defendants contend that Plaintiff alleged two separate breaches of contract: (1) termination without cause, and (2) unpaid commissions owed under the contract. The unpaid commissions claim was dismissed, but Plaintiff prevailed on the termination without cause claim at trial. Similarly, Defendants argue that Plaintiff's retaliation claim involved two allegations: (1) retaliation for Plaintiff's participation in the

⁴ The negligent hiring claim was based on Brian Giuliano's felony record and allegations of sexual assault. See Third Amended Compl., Dkt. No. 123 at 39-40. The Court deemed such evidence inadmissible in its ruling on the parties' motions in *limine*. See Dkt. No. 402.

October 2017 investigation into Gordon Ware's complaints about being forced to underreport hours, and (2) retaliation for the October 2018 investigation into Kristina Jones's complaint of sexual assault. The portion of the retaliation claim regarding the 2017 Ware investigation was dismissed at summary judgment, but Plaintiff prevailed on his retaliation claim regarding the Jones investigation at trial.

The Court finds that the two portions of the breach of contract claim are sufficiently related. The allegations of unpaid commissions and termination without cause both stem from a common core of facts—namely, Defendants' breach of the employment agreement, which included a for-cause termination clause and a provision relating to commissions owed. Similarly, the dismissed portion of Plaintiff's retaliation claim is sufficiently related to the successful portion. The two investigations involve different facts, but both allegations of retaliation proceed on the same legal theory. Furthermore, Plaintiff presented evidence related to the Ware investigation in support of his successful claims at trial. The fee will not be reduced for work done on the unsuccessful portion of the retaliation claim.

It is unclear from Counsel's billing records how much time was spent developing the negligent hiring claim. Where "the court cannot separate out which hours were billed for which issues, [it] 'may simply reduce the award to account for the [plaintiff's] limited success.'" *Warnock v. Archer*, 397 F.3d 1024, 1026 (8th Cir. 2005) (quoting *Hensley*, 461 U.S. at 436-37). The Court finds that a 10% reduction of the lodestar is appropriate.

B. Unsuccessful Claims at Trial

Defendants argue that the lodestar should be reduced for Plaintiff's unsuccessful age discrimination claim and insubstantial monetary award at trial. Plaintiff argues that

the age discrimination claim was interrelated with his successful claims. The Court agrees with Defendants. Plaintiff's primary support for his age discrimination claim was text messages from Brian Giuliano, many of which were sent years before the investigations at the heart of his retaliation claim. More importantly, Plaintiff's successful retaliation claim involved investigations into other individuals' allegations of unpaid wages and sexual assault, not Plaintiff's allegations of age discrimination. Accordingly, Plaintiff's unsuccessful discrimination claim was unrelated to the retaliation and breach of contract claims on which he did prevail, and any work on that claim "cannot be deemed to have been expended in pursuit of the ultimate result achieved." *Hensley*, 461 U.S. at 435 (quotations and citation omitted). Because the age discrimination claim represented a significant component of Plaintiff's case from the start, his degree of success was substantially reduced by the verdict in favor of Defendants on that claim.

Additionally, the Court determined during trial that Plaintiff had not presented evidence sufficient to warrant a punitive damages instruction. Failure to receive such an instruction is a relevant factor in gauging a plaintiff's overall success. See *Loggins*, 999 F.2d at 369 (holding that "limited success may encompass the situation where . . . a plaintiff requests both compensatory and punitive damages, but recovers only compensatory damages"); *Kennedy v. Heritage of Edina, Inc.*, No. CIV. 13-71, 2015 WL 3831204, at *3 (D. Minn. June 22, 2015).

It is also relevant that Plaintiff was awarded just \$39,030 despite seeking more than \$1.5 million. The Court declines to apply a pro rata reduction based on this disproportionately low award as Defendants suggest. See *Blackorby*, 60 F.4th at 421 (noting that "pro rata fee reductions based upon the relationship between damages

requested and damages awarded are often inappropriate”) (quoting *Gumbhir v. Curators of University of Missouri*, 157 F.3d 1141, 1147 (8th Cir. 1998)). However, assessing “the amount involved and the results obtained” necessarily entails noticing the gulf between those numbers. *Hensley*, 461 U.S. at 430 n. 3. This too weighs in favor of reducing the lodestar amount.

Similarly, the damages award is disproportionately low when compared to the amount incurred in attorneys’ fees. Plaintiff is correct that proportionality should not be the sole factor in determining attorneys’ fees in civil rights cases. See *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986); *Simpson*, 441 F.3d at 581. But a court is “not forbidden, ‘in appropriate circumstances, from considering proportionality as one factor among many in determining the amount of fees.’” *Marshall v. Anderson Excavating & Wrecking Co.*, 8 F.4th 700, 713 (8th Cir. 2021) (quoting *Cent. Pension Fund of the Int’l Union of Operating Eng’rs & Participating Emps. v. Ray Haluch Gravel Co.*, 745 F.3d 1, 6 (1st Cir. 2014)). Counsel requests attorneys’ fees in an amount over 31 times greater than Plaintiff’s compensatory damages award. While basing fees solely on the damages awarded would be inappropriate, Plaintiff’s disproportionately low recovery is certainly a factor to consider in determining reasonable attorneys’ fees. See *Loggins*, 999 F.2d at 369 (upholding district court’s decision “to consider the amount of damages in determining the reasonableness of a fee”); *Moriarty v. Svec*, 233 F.3d 955, 968 (7th Cir. 2000) (noting that a “district court’s fee order should evidence increased reflection before awarding attorney’s fees that are large multiples of the damages recovered or multiples of the damages claimed”).

Plaintiff had limited success at trial. He prevailed on two of his three claims and on Defendants' counterclaim, but he failed to present evidence sufficient to warrant a punitive damages instruction. Moreover, the jury's compensatory damages award was a small fraction of the amount he sought at trial and the amount Counsel seeks here. Under the facts of this case, such a disproportionately low award is relevant to determining reasonable attorneys' fees. The Court finds that Plaintiff's limited success at trial warrants a 50% reduction in the lodestar amount.

III. Rejection of Substantial Settlement Offer

Attorneys' fees accumulated after a party rejects a substantial settlement offer provide minimal benefit to the prevailing party and may be reduced. *See Marek v. Chesny*, 473 U.S. 1, 11 (1985) (holding that attorneys' fees incurred after a Rule 68 settlement offer were not recoverable). "Substantial settlement offers should be considered by the district court as a factor in determining an award of reasonable attorney's fees, even where Rule 68 does not apply." *Parke*, 368 F.3d at 1012 (quoting *Moriarty*, 233 F.3d at 967). A settlement offer is substantial if "the offered amount appears to be roughly equal to or more than the total damages recovered by the prevailing party. In such circumstances, a district court should reflect on whether to award only a percentage (including zero percent) of the attorney's fees that were incurred after the date of the settlement offer." *Moriarty*, 233 F.3d at 967; *see Sheppard v. Riverview Nursing Center, Inc.*, 88 F.3d 1332, 1337 (4th Cir. 1996) (finding that courts may consider a plaintiff's refusal of a settlement offer as one factor in determining reasonable attorneys' fees); *Owner Operator Indep. Drivers Ass'n*, 2012 WL 6760098, at *7 ("[T]he Court may

consider the rejection of a substantial settlement offer in determining the reasonableness of fees.”).

On May 3, 2023, Plaintiff rejected a settlement offer of \$350,000. Between May and October 2023, when the jury awarded Plaintiff \$39,030 in damages, Counsel billed 1,159.90 hours and accumulated nearly \$600,000 in attorneys’ fees. These post-offer services provided minimal monetary benefit to Plaintiff. Thus, Plaintiff’s rejection of a settlement offer many times as high as the ultimate damages award weighs in favor of reducing the attorneys’ fees. Because nearly half of the total fees were incurred after Plaintiff rejected the settlement offer, a 15% reduction of the lodestar is appropriate.

IV. Costs

Plaintiff requests that the Court award \$31,396.92 in costs for expert witness fees, Court-ordered mediation with a Special Master, Relativity document storage, Plaintiff’s travel and lodging for the trial, and Westlaw Research. Defendants object only to the expert witness fees (\$18,300) and mediation costs (\$5,650.03).

Title VII affords courts discretion to award expert fees to the prevailing party as part of the costs. See 42 U.S.C. § 2000e-5(k). Expert fees can be awarded if the court determines the expert was reasonably necessary to the case. See *Benson v. Nw. Airlines, Inc.*, No. CIV. 4-95-581, 1997 WL 122897, at *6 (D. Minn. Mar. 18, 1997). The Court finds that Plaintiff’s damages expert was not reasonably necessary to the case. The expert testified that, based on his calculation of lost wages and commissions, Plaintiff sustained over \$500,000 in damages due to his termination. Dkt. No. 447 at 134. This number included factors like potential earnings from a savings plan and the value of health benefits. *Id.* at 127-35. But the jury determined that Plaintiff’s lost

wages totaled \$39,030, a number entirely unrelated to the expert's calculation. Because the expert's testimony was not reasonably necessary to Plaintiff's case for damages, the Court will not award fees for the expert witness.

Defendants also argue that Plaintiff should not be awarded mediation costs, because neither § 1920 nor Title VII provide for such costs as taxable expenses. They are correct. The Eighth Circuit has held that taxing a mediator's fee was an abuse of discretion. *Brisco-Wade v. Carnahan*, 297 F.3d 781, 782 (8th Cir. 2002); see also *M.P., ex rel. K.P. v. Indep. Sch. Dist. No. 721*, No. CIV 01-771, 2007 WL 844688, at *3 (D. Minn. Mar. 16, 2007); *Mota v. Univ. of Tex. Houston Health Sci. Ctr.*, 261 F.3d 512, 529–30 (5th Cir.2001) (holding in Title VII case that district court abused its discretion in taxing losing party with costs of mediation because neither § 1920 nor Title VII listed such expenses as taxable).

Plaintiff is not entitled to recover costs related to his expert damages witness or the mediation. The Court will however award the remaining \$7,446.89 in costs requested in this motion.

CONCLUSION

The above reductions, based on Plaintiff's limited success in the case and his rejection of a substantial settlement offer, amount to a 75% total reduction of the lodestar. Plaintiff is therefore awarded \$295,193.46 in attorneys' fees.⁵ The Court finds this amount reasonable after careful consideration of "the most critical factor"—the "degree of success obtained." *Hensley*, 461 U.S. at 436. Here, Plaintiff achieved limited success in the case as a whole. His negligent hiring claim, which was unrelated to his successful claims, was

⁵ $1,180,773.85 - (1,180,773.85 \times 0.75) = 295,193.46$.

dismissed prior to trial. He rejected a substantial settlement offer in an amount many times greater than his eventual damages award. At trial, Plaintiff did not present sufficient evidence to warrant a punitive damages instruction. The jury entered a verdict in his favor on two of his three claims but awarded damages a small fraction of the amount he requested. A 75% reduction based on such limited success is consistent with attorneys' fees awarded in similar cases. *See, e.g., Standley v. Chilhowee R-IV Sch. Dist.*, 5 F.3d 319, 324 (8th Cir. 1993) (approving of 70% reduction for limited success in § 1983 case); *Burks v. Siemens Energy & Automation, Inc.*, 215 F.3d 880, 883 (8th Cir. 2000) (approving of 75% reduction for limited success); *Meecorp Cap. Markets, LLC v. PSC of Two Harbors, LLC*, No. CIV. 09-2067, 2012 WL 90109, at *2 (D. Minn. Jan. 11, 2012) (80% reduction for limited success); *Owner Operator Indep. Drivers Ass'n*, 2012 WL 6760098, at *11 (75% reduction for limited success and rejected settlement offer); *Noble v. Herrington*, 732 F. Supp. 114, 117 (D.D.C. 1989) (80% reduction for limited success in Title VII case). Plaintiff is also entitled to \$7,446.89 in costs, for a total award of \$302,640.35.

ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Attorneys' Fees and Costs [Dkt. No. 463] is **GRANTED IN PART AND DENIED IN PART**.

2. Plaintiff is awarded attorneys' fees in the amount of \$295,193.46 and costs in the amount of \$7,446.89.

Dated: December 27, 2023

s/David T. Schultz
DAVID T. SCHULTZ
U.S. Magistrate Judge