



Skye Orthobiologics, LLC et al v. CTM Biomedical, LLC et al

2024 | Cited 0 times | C.D. California | February 21, 2024

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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

SKYE ORTHOBIOLOGICS, LLC, et al.,

Plaintiffs, v.

CTM BIOMEDICAL, LLC, et al.,

Defendants.

Case No.: 2:20-cv-03444-MEMF-PVCx ORDER GRANTING DEFENDANT MIKE STUMPE'S AND DEFENDANT NATHAN BOULAIS'S MOTION FOR ATTORNEY'S FEES AND COSTS [ECF NOS. 582, 602]

Before the Court are two Motion for Attorney's Fees and Costs filed by Individual Defendants Mike Stumpe and Nathan Boulais. ECF Nos. 528, 602. For the reasons stated herein, the Court hereby GRANTS the Motions for Attorney's Fees and Costs.

I. Background

A. Factual Background Plaintiff Human Regenerative Technologies, LLC ("HRT") processes and manufactures medical products that are derived from human placental tissue. Plaintiff Skye Orthobiologics, LLC ("Skye," or collectively with HRT, the "Skye Plaintiffs" or "Plaintiffs") sells various human tissue products, including products manufactured by HRT, among other products. Defendant Bryan Banman ("Banman") is a former Senior Vice President of Business Development of Skye. Banman is also the current President and CEO of Defendant CTM Biomedical, LLC ("CTM") —a company that also sells human tissue products—which he started while he was still employed by Skye. This case concerns Plaintiffs Skye and HRT's allegations that Banman —along with his new company CTM, and the related entity CTM Medical Inc. ("CTM Med.," or collectively with CTM, the "CTM Defendants"), and Defendants Mike Stumpe ("Stumpe"), Nathan Boulais ("Boulais"), and Pablo Seoane ("Seoane") —misappropriated the Skye Plaintiffs' trade secrets, breached relevant contracts and duties, and interfered with the Skye Plaintiffs' contracts and prospective economic advantage.



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B. Procedural History Plaintiffs initially filed the instant action on April 14, 2020. ECF No. 1 (“Complaint”). After various amendments, the operative Fourth Amended Complaint was filed on February 3, 2022. ECF No. 130 (“4AC”). Specifically against Stumpe and Boulais, the 4AC alleged causes of action of (1) violation of RICO, (2) conspiracy to violate RICO, (3) misappropriation of trade secrets under the Defense Trade Secrets Act (“DTSA”) , (4) conversion (against Stumpe only), and (5) tortious interference with prospective economic advantage. *Id.* At the summary judgment stage, Stumpe and Boulais joined in arguments made by other defendants, and sought summary judgment as to all claims brought against them. ECF No. 212 –13.

On May 25, 2023, this Court granted summary judgment in part, and relevant to Stumpe and Boulais, dismissed the conversion and tortious interference with prospective economic advantage claims. ECF No. 248 (“MSJ Order”). However, the Court denied summary judgment as to the RICO claims and the DTSA claim (as to Skye’s customer lists and information and Skye’s sales representative training methods), and Skye pursued these at trial against Stumpe and Boulais. *Id.*

On August 29, 2023, after a jury trial in the case, the jury found, relevant to Stumpe and Boulais, that (1) Skye had not proven the existence of a RICO enterprise, and (2) that Skye did not prove that it was the owner of its sales representative training methods nor order history information. ECF No. 511 (“Verdict”). As the jury found no liability as to Skye’s RICO and DTSA claims, there was no liability as to Stumpe and Boulais individually at the conclusion of the trial.

On December 21, 2023, Stumpe filed the instant Motion for Attorney’s Fees and Costs. ECF No. 582 (the “Stumpe Motion”). On January 17, 2024, Plaintiffs filed an opposition to the Stumpe Motion. ECF No. 599 (“Stumpe Opposition”). On January 24, 2024, Stumpe filed a reply. ECF No. 604 (“Stumpe Reply”).

On January 19, 2024, Boulais filed his Motion for Attorney’s Fees and Costs. ECF No. 602 (the “Boulais Motion”). On February 2, 2024, Plaintiffs filed an opposition to the Boulais Motion. ECF No. 610 (“Boulais Opposition”). On February 9, 2024, Boulais filed a reply. ECF No. 612 (“Boulais Reply”).

II. Applicable Law

Under California law, a party may recover fees that are contractually provided for. *Farmers Ins. Exchange v. Law Offices of Conrado Joe Sayas, Jr.*, 250 F.3d 1234, 1237 (9th Cir. 2001). Specifically, California Civil Code Section 1717 provides that “[i]n any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded” to the prevailing party, then such a provision is enforceable. Cal. Civ. Code § 1717(a). The prevailing party is defined as “the party who recovered a greater relief in the action on the contract.” Cal. Civ. Code § 1717(b)(1).



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STUMPE MOTION (ECF No. 582) I. Discussion

Stumpe moves for attorney's fees under the statutory provision of the DTSA as well as under a contractual basis. The parties do not dispute that Stumpe is the prevailing party in this action, 1

and the Court agrees that this is an appropriate finding given that the litigation against Stumpe has concluded in dismissal of Plaintiffs' claims against Stumpe by a jury, which has created a "material alteration of the legal relationship" between the parties here. *Cadkin v. Loose*, 569 F.3d 1142, 1148 (9th Cir. 2009); see also *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker*, 2 Cal. App. 5th 252, 260 (2016) (determination of prevailing party "focuses on who prevailed 'on a

1 Plaintiffs dispute that Stumpe is the prevailing party as to any breach of contract claim (as none exists), but do not seriously dispute that Stumpe is the prevailing party as to all other claims actually brought against him. Stumpe Opposition at 16. practical level' by achieving its main litigation objectives"). The Court finds that Stumpe is entitled to attorney's fees under relevant contracts between the parties, and GRANTS the Stumpe Motion on this basis. 2

A. Stumpe is Entitled to Fees Under Contract Section 1717 mandates the recovery of attorney's fees where appropriate. Cal. Civ. Code § 1717 (prevailing party "shall be entitled to reasonable attorney's fees") (emphasis added). Here, Stumpe is the principal of two companies, Novus Ortho Corp. and Silenda Medical, Inc., that entered into sales contracts with Skye (the "Agreements"). ECF Nos. 582-3 ("Novus Agreement"), 582-4 ("Silenda Agreement"). The Agreements contain identical fee-shifting provisions:

The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled to, in addition to any other rights and remedies that such prevailing party may have, to reimbursement for expenses incurred by such prevailing party, including court costs and reasonable attorneys' fees . . . Novus Agreement & Silenda Agreement at 9, Section 10.6.

Skye first argues that the Agreements cannot be enforced by this Court because they contain a forum selection clause stating that Delaware courts have "exclusive jurisdiction to adjudicate any dispute arising out of this Agreement." Novus Agreement & Silenda Agreement at 8, Section 10.1. However, Skye was the party who brought this lawsuit in this Court, and therefore the Court finds that it has waived any jurisdictional arguments. Moreover California "has a fundamental policy interest in protecting its citizens from 'unfair litigation tactics or procedures,' including non-reciprocal attorney's fees clauses." *First Intercontinental Bank v. Ahn*, 798 F.3d 1149, 1155 (9th Cir. 2015). Skye cannot bring a claim against Stumpe based on his relationship as established by the Agreements in California without consenting to enforcement of those same terms against it in this forum.

Skye next argues that Stumpe cannot be considered the prevailing party since there was no breach of contract claim. Stumpe Opposition at 16. But, the Agreements do not state that fees will be



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2 Accordingly, the Court need not reach whether Stumpe would be entitled to fees under the DTSA. recoverable against a contract claim—they state that fees are recoverable “in any legal action . . . arising out of this Agreement.” Novus Agreement & Silenda Agreement at 9, Section 10.6 (emphasis added). Skye does not appear to dispute that the lawsuit arises out of the Agreements, and the Court finds that the lawsuit does arise out of the Agreements. See *California Wholesale Material Supply, Inc. v. Norm Wilson & Sons, Inc.*, 96 Cal. App. 4th 598, 605 (2002) (“California courts liberally construe ‘on a contract’ to extend to any action as long as an action ‘involves’ a contract . . .”). The Ninth Circuit has rejected such a narrow reading of a fee shifting provision. See *3250 Wilshire Blvd. Bldg. v. W.R. Grace & Co.*, 990 F.2d 487, 489 (9th Cir. 1993) (“The language of [the fee] provision includes not only contract enforcement actions, but actions relating to the ‘subject matter’ of the agreement.”). Here, the Agreements relate to Stumpe’s sales relationship with Skye, and the only basis on which Skye has any claims against him.

Therefore, the Court finds that Stumpe is entitled to reasonable attorney’s fees and costs under the Agreements.

B. The Court Awards Stumpe \$1,009,293.96 in Fees and Costs. The Court notes that Skye does not contest the amount of fees sought in its opposition, nor argue that any fees or costs sought are unreasonable. In calculating the fees, the Court applies the lodestar method, which is calculated by using the number of hours reasonably expended by a reasonable hourly rate. *Intel Corp. v. Terabyte Int’l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). The Court finds first that the hourly rate applied by Stumpe’s counsel is reasonable. See ECF No. 582-2 (“Beral Decl.”) ¶ 24 (applying rates of \$400–\$725 for attorneys, \$275 for a paralegal, and \$225–\$414 for other staff). The Court further finds the hours expended (1,630) reasonable to defend a litigation spanning over three years (44 months)—which on average is 37 hours a month. *Id.* ¶ 51. The hours spent were reasonable based on the scope of the work necessary to successfully defend the case— throughout discovery, summary judgment, and trial. Moreover, the Court finds that the costs

requested of \$10,119.85, of which almost half were for the ordering of deposition transcripts, are reasonable. *Id.* ¶ 49.

Accordingly, the Court grants the full amount of fees and costs requested by Stumpe: \$935,816.45 in fees for 1,629.65 hours of work and \$10,119.85 in costs, plus \$63,357.66 in fees and costs incurred for the work involved with the Stumpe Motion since the filing of the reply, for a total of \$1,009,293.96. ECF No. 604-1 at 1–2.

BOULAIS MOTION (ECF No. 602) I. Discussion

Boulais moves for attorney’s fees solely on a contractual basis. For similar reasons as the Court discusses above with the Stumpe Motion, the Court finds that Boulais is contractually entitled to fees. Skye had an identical fee agreement provision with Boulais as it did with Stumpe. See ECF No.



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602-2 (“Williams Decl.”), Ex. B at 9. Plaintiffs raise no new arguments as to why contractual fees would be contrary to the law with the Boulais Motion. As with Stumpe, Plaintiffs similarly did not prove any of their claims against Boulais, making him the prevailing party. The Court also finds that the claims against Boulais arose out of his contract with Skye.

The Court further finds that the fees sought by Boulais, and not contested by Plaintiffs, are reasonable. The Court finds first that the hourly rate applied by Stumpe’s counsel is reasonable. See Boulais Motion at 13 (applying rates of \$405–\$760 for attorneys and \$100–\$290 for other staff). The Court further finds the hours expended (1,383.2) reasonable to defend a litigation spanning over three years. *Id.* at 9. The hours spent were reasonable based on the scope of the work necessary to successfully defend the case—throughout discovery, summary judgment, and trial. Moreover, the Court finds that the costs requested of \$46,375.06 reasonable. *Id.* at 14.

Accordingly, the Court grants the full amount of fees and costs requested by Boulais: \$562,512 in fees and \$40,375.06 in costs, plus \$31,110.37 in fees and costs incurred for the work involved with the Boulais Motion, for a total of \$639,997.43. Boulais Reply at 5.

*** II. Conclusion

For the foregoing reasons, the Court hereby ORDERS as follows: 1. Stumpe’s Motion for Attorney’s Fees and Costs (ECF No. 582) is GRANTED; and 2. The Court awards attorney’s fees to Stumpe in the amount of \$998,969.45 and costs in the

amount of \$10,324.51 for a total of \$1,009,293.96. 3. Boulais’s Motion for Attorney’s Fees and Costs (ECF No. 602) is GRANTED; and 4. The Court awards attorney’s fees to Boulais in the amount of \$592,976 and costs in the

amount of \$47,021.43 for a total of \$639,997.43.

IT IS SO ORDERED.

Dated: February 21, 2024 _____ MAAME EWUSI-MENSAH
FRIMPONG United States District Judge

