JAMS ARBITRATION CASE REFERENCE NO. 1130009693

Jordan, Kylae, **Claimant/Cross-Respondent,** **and** **Long, Jeffrey Landon, et al.,** **Respondents/ Cross Claimants.**	**RULING ON PHASE 2 MOTIONS FOR FEES, COSTS, INTEREST, and on PUNITIVE DAMAGES and FINAL AWARD**

Following briefing and oral argument by all counsel on October 30, 2023, for the Phase 2 of the hearing, and having taken the matters under submission, the Arbitrator rules on the motions and issues his Final Award as follows:

Background

As part of Phase 2 of the hearing, Claimant has filed his motion/briefing for attorneys' fees and costs (*see* NOM and Memorandum of point and authorities, Declaration of Scott Radcliffe, Declaration of Kylae Jordan, and attached exhibits, particularly Ex. B ("Time Ticker Diary Report") and Memorandum of Costs. Respondents have filed an opposition sans declarations or exhibits. All briefs, declarations and exhibits submitted to the Arbitrator have been read and reviewed. No Reply was permitted. As set forth below, the Motion for Fees and Costs and interest is granted, as is the Motion for Punitive Damages (analyzed separately, below), and this shall constitute the FINAL AWARD in this arbitration proceeding, coupled with the Interim Award and incorporated ruling.

The Post-Phase 1 Case Management Conference Re Discovery and Scheduling of Phase 2 Hearing Order determined the parties agreed to conduct the hearing on the Phase 2 on October 30, 2024, in an abbreviated hearing format via ZOOM. Precedent to declaring the hearing closed as to Phase 2, the parties were to submit briefing as set out in the scheduling order of October 2, 2024. The briefing on the fees and costs issues was to be completed by October 15, 2024, (no opposition briefing/papers were filed by the stated deadline but were filed one day late), and the briefing on the issue of punitive damages was to be completed by October 25, 2024. (JAMS file id. # 966388).No opposition was filed on October 25, 2024, as ordered.[1] However, the Arbitrator has considered the

[1] As do courts, Arbitrators retain the discretion to consider late-filed briefs. Here, the briefing schedule was agreed to by the parties. The Arbitrator has considered the late-filed brief of Respondents as to the briefing/motion on fees, costs and

late-filed briefing. All briefing is therefore complete.

The motion for fees and costs, *inter alia*, states (in the notice of motion) that it is made pursuant to Corporations Code Sections 25401, 25500-25502, and C.C.P. Sections 998, 1032[2] and 1033.5. The papers also state "Claimant requests the arbitrator award him all of his attorney's fees and costs incurred plus accrued interest. Because the arbitrator has found that Landon and Linda Long are the alter ego of ICON Holdings, Inc. and Infusion Factory, LLC, Claimant requests the Arbitrator issue an order finding that any recoverable fees and costs are entered against all Respondents jointly and severally." [emphasis added] (MPA p. 4.)

The Phase 1 Interim Ruling and related Ruling (*See* Phase 1 Interim Award, JAMS file Id. #939658 and Ruling on Claimant's Request for Clarification of Certain Issues Related to Punitive Damages, JAMS file Id. #930661) are incorporated by this reference. As noted in the Ruling on the Request for Clarification, the ruling was attached to the interim Phase 1 award and incorporated therein.

Claimant is the Prevailing Party, and seeks his attorney's fees and costs (plus interest) incurred in this action pursuant to Corporations Code Sections 25401, 25500-25502, and C.C.P. Sections 998, 1032 and 1033.5. As set out in the Declarations of Scott Radcliffe and Kylae Jordan served with the brief/moving papers, Claimant seeks attorney's fees in the amount of $255,642.50 and costs in the amount of $115,716.90. Together, Claimant seeks a total of $371,359.40. As noted in the motion, the Phase I Award awarded Claimant interest on his $500,000 investment at 7% through May 24, 2024. Claimant requests the Arbitrator issue additional interest that has accrued from May 24, 2024, through October 24, 2024, in the amount of $14,583.33. Thus, Claimant seeks a total of fees, costs, and accrued interest of $385,942.73.

COSTS/FEES

AUTHORITY AND ANALYSIS

After prevailing at arbitration, Claimant Kylae Jordan requests the Arbitrator issue an order granting him his attorney's fees incurred to date in the amount of $255,642.50. (*See* Declaration of

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interest. In the October 2, 2024, scheduling order (JAMS Ref. #966388) the parties expressly agreed to a hearing on the Phase 2, to be heard on October 30, 2024. The opposition to the punitive damages briefing was to have been filed by October 25, 2024, leaving the Arbitrator scant time to prepare a ruling addressing the issues remaining on the fees, etc. and punitive damages. On October 28, a large tranche of documents and Respondents' ICON and Landon Long's opposition brief re punitive damages was filed, and the Arbitrator has considered the brief, as part of the instant Final Award and ruling on the motion.

[2] Under § 1032(b) a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Scott Radcliffe ("Radcliffe Dec.) at ¶¶ 2-51, 65-67; *see* Declaration of Kylae Jordan ("Jordan Dec.") at ¶¶ 3-4.) Claimant requests he be awarded his costs of $115,716.90. (*See* Radcliffe Dec. at ¶ 68 and Jordan Dec. at ¶¶ 6-7.) Costs and fees incurred to date are $371,359.40. (*See* Radcliffe Dec. at ¶ 69) The Phase I Award awarded Claimant interest on his $500,000 investment at 7% through May 24, 2024. Claimant requests the Arbitrator issue additional interest through October 24, 2024 in the amount of $14,583.33. (*See* Radcliffe Dec. at ¶ 70.) Claimant seeks a total of fees, costs, and accrued interest totaling $385,942.73. (*Id.* at ¶ 71.) Further, as argued, because Landon and Linda Long have been declared the alter ego of ICON Holdings, Inc. and Infusion Factory, LLC., Claimant requests the Arbitrator issue an order finding that all recoverable fees and costs be awarded against all Respondents jointly and severally.[3]

Opposing parties raise a number of different arguments to address the fees request. It is argued that Claimant is not entitled to fees "for claims that were not asserted at arbitration", citing to *Liu v. Moore* (1999) 69 Cal.App.4th 745. *Liu* is inapposite. The Court there held that a party who is voluntarily dismissed, with or without prejudice, after he files a Code Civ. Proc., § 425.16, motion to strike, is nevertheless entitled to have the merits of such motion heard as a predicate to a determination of the party's motion for attorney fees and costs under Code Civ. Proc., § 425.16, subd. (c). *Liu* has no application under the facts presented here.

Respondents further argue attorney's fees are not recoverable for Jordan's post-investment claims, the argument here seeming to be that "Though Jordan successfully pursued "post-investment" claims for breaches of fiduciary duty against Landon and Linda and breach of contract against Icon, Jordan's Motion does not argue that these claims entitle him to recover his attorneys' fees." The

[3] Under the common law, an application of the alter ego doctrine allows a court to disregard the corporate entity and treat the corporation's acts as if they were done by the party actually controlling the corporation. (*Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 824.) The alter ego doctrine is an equitable principle that elevates substance over form in order to prevent an inequitable result arising from unjustifiably observing a corporation's separate existence. (*Id.*) The doctrine is applied, and a party other than the corporation is liable for the corporation's acts, when recognition of the corporate structure would "sanction a fraud or promote injustice." (*Id.*) California law does not limit alter ego liability to circumstances where the corporate entity was a sham or created with intent to defraud; it can also be applied when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose (*JPV I L.P. v. Koetting,* (2023) 88 Cal.App.5th 172) alter ego doctrine can make an individual directly responsible for the actions of a corporation if there is a unity of interest and ownership and if failing to disregard the corporate entity would result in an inequitable outcome.

As addressed in the Phase 1 Interim Ruling, various factors are applied in reaching the result; these include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, inter alia. No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. *See e.g. Sonora Diamond Corp.* (2000) 83 Cal. App. 4th 523, 538.

Arbitrator has addressed in a footnote, herein, that he does not view the motion so narrowly and the argument is rejected. It is further to be noted that even if the argument had merit, the Opposition simply posits an "approximate" number ($32,325) as nonrecoverable under this theory. There is no analysis addressing this number or declaration of Respondents or counsel establishing how this number was arrived at. The "Time Ticket Reports" attached to the motion show hundreds of entries and there is no break-out of hours supporting respondents' argument.

The Opposition next argues that attorney's fees are not recoverable for Claimant prevailing against Icon and Infusion's counterclaims. There is no authority cited for this proposition, and the contractual provisions in the Holder Rights Agreement and the SPA, cited herein, would appear to rebut Respondents' argument. Respondents further argue that fees incurred in the "failed writ of attachment are not recoverable." For the same reason as stated above, this argument fails.

Finally, it is argued that Linda Long is not jointly liable for fees and costs under Section 25501. As is noted herein, there are *other* legal claims upon which Linda was found liable, and which form the basis for a fees and costs claim against her. Respondents' brief concedes "Jordan successfully pursued "post-investment" claims for breaches of fiduciary duty against Landon and Linda and breach of contract against Icon." Linda was found to be an alter ego of Icon.

Claimant argues that a prevailing party is entitled to costs as a matter of right, pursuant to Code of Civil Procedure section 1032(b). Section 1033.5(a)(10) provides that costs may include attorney's fees when authorized by statute or contract.[4] Under the notice of motion, section 1033.5 is

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[4] The Phase 1 Interim Award states, in part, "As is seen in the evidence, ICON breached numerous sections of the SPA and HRA, many of which Respondents do not dispute." While the Opposition focuses solely on section 25501, as a basis for denial of the fees motion as to Linda Long, the notice of motion is not so restrictive in its scope, requesting the Arbitrator find "that all recoverable fees and costs be awarded..." (NOM, p. 2), and section 1033.5 is listed in the notice of motion as a basis for the recovery or fees and costs (when authorized under "contract", "statute" or "law.") The Arbitrator notes, for example, that under the Holders Rights Agreement, in evidence, section 4.8 imposes costs and attorney fees, and states:

"4.8 Costs and Attorneys; fees. In the event that any action, suit or other proceeding is instituted based upon or arising out of this Holders in the Company (whether based on breach of contract, tort, breach of duty or any other theory), the prevailing party shall recover all of such party's costs (including, but not limited to expert witness costs) and reasonable attorneys' fees incurred in each such action, suit or other proceeding including any and all appeals or petitions therefrom."

The Stock Purchase Agreement, section 6.10 contains a similar provision. Both exhibits are in evidence in the action. Further, the request for fees is made under the Holder Rights Agreement and the SPA and "as allowed for under law." (*See, e.g.,* Complaint, which is incorporated into the Demand for Arbitration, p. 3 of 7). Even Respondents concede Jordan prevailed against Linda on certain causes of action (*see* Opp. p. 7, l. 12), although Respondents read the Interim Award more narrowly than the language of the Award suggests, and breach of contract is certainly addressed. (*see* Award, p. 92). Importantly, the finding of alter ego wraps Linda and Landon into such claims.

The Arbitrator perceives the motion as seeking fees based on the findings as set out in the Interim Award, including all "recoverable fees" awarded.

asserted as a basis for making of the motion. Broadly speaking, prevailing hourly rates serve as a basis for the lodestar. *Ketchum v. Moses* (2001) 24 Cal.4th 1122.

COSTS

Respondents do not challenge the claim of costs save to argue that Linda Long is not jointly liable for fees and costs "under section 25501." This has been addressed, above, and rejected. Costs, as noted, are set out in the Memorandum of Costs (JAMS file Id. 966118) and are supported by the various exhibits and the Radcliffe and Jordan declarations. The Radcliffe declaration outlines, more than adequately, the discovery and related costs incident thereto (*see* Memorandum of Costs)[5] No evidence is presented by Respondents challenging the costs asserted, nor declaration of counsel. The Arbitrator concludes the costs, as stated by Claimant, are appropriate, adequately supported by evidence, and reasonable and shall be awarded against Respondents as requested.

ATTORNEY FEES

At the outset it bears noting that there is no argument, or evidence, from Respondents that the rates charged by Claimant's counsel were unreasonable. "[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.'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131–1132.) "[T]he lodestar is the basic fee for comparable legal services in the community; it 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." (*Id.* at p. 1132.) "[A]nchoring the calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts."'" (Ibid.) "When using the lodestar method to calculate attorney fees … , the ultimate goal is 'to determine a "reasonable" attorney fee … .'" (*Chavez v. City*

[5] The Radcliffe Declaration, Ex. C, set out what is asserted to be true and correct copies of all invoices of costs totaling $115,716.90. Parenthetically, Ex. B is a 39-page exhibit, setting out the invoices for services rendered by Ales Radcliffe LLP. The Memorandum of Costs (Worksheet), also in JAMS Access, sets out all asserted costs.

of Los Angeles (2010) 47 Cal.4th 970, 985 "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 [8] court is convinced that it is clearly wrong."'" (*Ketchum,* at p. 1132.) Moreover, the Arbitrator is aware of the cautionary observations in the applicable cases to the effect that a court should not consider these factors to the extent that they are already encompassed within the lodestar, in order to avoid unfair double counting. It should be observed that counsel for Claimant seeks no multiplier in the papers.

Generally, the Arbitrator may base his attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, or otherwise. *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 571-572. The reasonable market value of the attorney's services is the measure of the reasonable hourly rate. (*PLCM Group Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094) A reasonable hourly rate "is the product of a multiplicity of factors" including the general market rate. *See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1003-1004. The lodestar rate should reflect rates charged in the "community for similar services by lawyers of reasonably comparable skill, experience and reputation." (*Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783.) It has been held that the trial court (here the Arbitrator, a retired Superior Court judge in the arbitral forum, having addressed hundreds of similar matters) "possesses personal expertise in the value of the legal services rendered in the case before it." (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661; *see, also PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1096 ["'The value of legal services performed in a case is a matter in which the trial court has its own expertise.'"]. "There is no hard-and-fast rule limiting the factors that may justify an exercise of discretion to increase or decrease a lodestar calculation." *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834. There is no contrary evidence presented that the hourly rates charged by Claimant's attorneys are in excess to what is generally charged by counsel in similar matters in the areas where this case was arbitrated. Indeed, the Arbitrator finds that these fees are quite reasonable for this type of litigation. Accordingly, the Arbitrator concludes that the hourly *rates* charged by Claimant's counsel (and other consulting attorneys, e.g., Fred Koenen (*see* Jordan Decl. para. 3)) are reasonable for this litigation. The Arbitrator has reviewed Ex. A to Jordan's declaration re the invoices of Schinner & Shain, LLP (Mr. Koenen) , as well as Ex. B (Gavrilov &

Brooks invoices), and concludes the hourly rates are reasonable and appropriate.[6]

This, then, takes us to the hours expended by counsel for the tasks set out in the itemization of hours. Counsel requesting an award of attorney fees must define the scope of his or her work to a sufficient degree of specificity in billing entries "so as to meaningfully enlighten the court of those [entries] related to" the claims upon which the attorney's client prevailed. *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 689. Claimant's counsel has done so here by attaching the billing entries. This is not, however, the end of the inquiry. Despite no declaration or analysis from Respondents regarding the hours spent, the Arbitrator has nonetheless reviewed the billing entries in their entirety. While reasonable persons reviewing the entries may differ as to the appropriate amount of time allocated to certain tasks, the Arbitrator cannot say, after reviewing each entry, that any entry is excessive or unreasonable given the nature and complexity of the facts and legal issues presented.

As with all such cases involving complex issues that may implicate different legal theories, it is difficult to segregate out what tasks are allocable to one specific legal theory, and certain facts and consequent work performed may be relevant to more than one of the causes of action. The contractual fees provisions and statutory fees assist the Arbitrator here, rendering such an allocation less of a concerning issue. The Arbitrator concludes that the fees are related to the claims on which the Arbitrator found liability, and, at the very least, all the stated claims are inextricably intertwined. The Arbitrator further concludes that the fee amounts charged are reasonable and appropriate and awards such fees as requested in the moving papers.

INTEREST

As argued by Claimant, the Phase I Award awarded Claimant interest on his $500,000 investment at 7% through May 24, 2024. Claimant requests the Arbitrator issue additional interest from May 24, 2024, through October 24, 2024, in the amount of $14,583.33. The Opposition papers do not address or challenge the interest issue at all; this is taken as a concession on the issue and the amount requested is allowed. (*See, e.g.,* CIVIL CODE § 3287 et seq.)

CONCLUSION ON THE MOTION FOR FEES, COSTS, and INTEREST

As set out in the motion of Claimant, Jordan seeks a total of fees, costs, and accrued interest totaling $385,942.73, which is hereby awarded to claimant.

[6] The Radcliffe Declaration details his fees ($375/hour) and the papers reflect the charges of other counsel. Radcliffe avers that he uses a computer billing software program to ensure accuracy of billing, that he has reviewed all his time entries (as has the Arbitrator) and avers they are accurate, reasonable and necessary. As set out in para. 67 the total of all attorney fees amounts to $255,642.50. (Ex. B)

MOTION/BRIEFING RE PUNITIVE DAMAGES

The Arbitrator will address the briefing on punitive damages separately, but as part of this Ruling and FINAL AWARD.[7] A separate notice of motion was filed on October 18, 2024, along with a Declaration of Scott Radcliffe and Exhibits. An opposition was filed on October 28, 2024, three days late. No Reply was permitted.

Civil Code Section 3294 authorizes the imposition of punitive damages where it is proven by clear and convincing evidence that the Defendant[8] has been guilty of fraud. Civil Code Section 3294(c)(3) defines fraud as a means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

The Arbitrator weighs three factors or "guideposts" in determining whether punitive damages are appropriate: (1) the degree of reprehensibility of the Respondents' misconduct; (2) harm suffered; and (3) Respondents' wealth. (*Zaxis Wireless Commc'ns, Inc. v. Motor Sound Corp.* (2001) 89 Cal. App. 4th 577, 581–82; *see also Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1171–1172 (Simon); *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418 (State Farm); *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1222–1223; *see* CACI No. 3940.)

"'[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.'" (*State Farm, supra,* 538 U.S. at p. 419.) Courts "'determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice,

[7] The Arbitrator has reviewed the notice of motion directed to Landon Long and ICON, the declaration of attorney Radcliffe, and the attached exhibits, which includes Landon Long responses to Claimant's requests for production of documents (Ex. A to Radcliffe Decl.), excerpted pages of the September 30, 2024 Landon Long deposition (Ex. B), Ex. C (Billing Statement, Rocket Mortgage), and Redfin, Trulia and Zillow estimates of home value (Ex. D) and a screen shot from SacramentoAppraisalBlog.com (Ex. E.) While no formal objection is made to the home value estimates, the Arbitrator did not consider them in reaching his ultimate result.

[8] The parties are aware that in arbitration, the word "claimant" is generally substituted for "plaintiff" and that "Respondent" is generally substituted for "defendant." The terms are synonymous.

trickery, or deceit, or mere accident.'" (*Simon, supra,* 35 Cal.4th at p. 1180, quoting *State Farm, supra*, at p. 419.)[9]

On "Reprehensibility", Claimant argues Landon was found to have defrauded Claimant and did so repeatedly to enrich himself and serve his own interests. It is also argued that "Landon is also a serial entrepreneur and is involved in at least two new businesses. He will very likely rip-off future investors if he is not appropriately punished now." (Claimant Brief, p. 6) Speculation as to future events does not forward the analysis that must be made, and is irrelevant and without evidentiary support (*see, e.g. Bardin v Oates* (2004) 119 Cal. App. 4th 1, 13). It is clear, however, as more fully articulated in the Interim Award, that misrepresentations were knowingly made to make the investment appear far more attractive to an investor like Jordan. The ultimate result was detailed at the Phase 1 hearing. Claimant cites to *Bardis, supra*, in arguing reprehensibility. The Court in *Bardis,* of course, addressed a post-trial review of an award of punitive damages it found to be excessive, concluding "that the punitive damages award here cannot exceed the single-digit ratio guidepost set forth in *Campbell* and still survive federal due process scrutiny." (*Id.* at p. 25.) Nevertheless, the case is constructive in addressing the factors to be applied.

Claimant argues the second factor, of "ratio", suggests a certain award be made (*see* p. 7 Claimant Brief) and suggests various "conservative" numbers. The *Bardis* case describes this as follows: "The second factor to consider is the relationship between the punitive damages award and the actual harm suffered,..." (*Id.* p. 22).

The third factor, as argued, is that of the wealth of the defendant (respondent), and here it is stated in argument that courts prescribe no rigid standard for measuring the ability to pay, and wealth, as a measure of this factor, as net worth is subject to "easy manipulation" citing *Pfeifer v. John Crane, Inc.* (2013) 220 Cal. App. 4th 1270, 1308. ["Under these principles, a defendant may have the ability to pay the award of punitive damages, even though the defendant's net worth is negative."] Claimant

[9]Some courts articulate the concepts using similar language. It is often stated that California courts traditionally look to three factors in assessing punitive damages: (1) the reprehensibility of the conduct; (2) the amount of punitive damages to have a deterrent effect on the Defendant; and (3) a reasonable relationship between the punitive damages and the injury actually suffered. BAJI 14.71 and 14.72.2; *Neal v. Farmers Ins. Exchange,* (1978) 21 Cal.3d 910, 928.

Regardless, punitive damages must also conform with federal and state due process norms. To do so, the Court (Arbitrator) should consider punitive damages in light of "guideposts" articulated by the United States and California Supreme Courts. In *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585, the United States Supreme Court weighed punitive damages by looking "to the nature and effects of the defendants' tortious conduct and the state's treatment of comparable conduct in other contexts.

notes in argument that whether the defendant's financial prospects are bleak or bright is relevant to the ultimate issue of whether the damages will ruin him or be absorbed by him.

The Opposition argues that Landon has been cooperative in providing all financial documents to assist in the inquiry as to assets. It is also argued that Claimant did not meet his evidentiary burden "proving entitlement to punitive damages." Parenthetically, "entitlement" has been addressed in the Phase 1 Interim Ruling. Nonetheless, as more fully explained in the Opposition, however, "Jordan did not satisfy his evidentiary burden and only puts forth: 1) cherry-picked testimony from Landon's deposition and 2) an inadmissible expert "opinion" regarding the value of Landon's house. Thus, a punitive damage award is barred." (p. 3, Opp.) Amongst other arguments, it is also asserted a punitive damages award would be financially ruinous, noting ""The most important question is whether the amount of the punitive damages will have deterrent effect – without being excessive." (*Adams, supra* at 111 [emphasis added].) If a punitive damages award is so disproportionate to the defendant's ability to pay, the award is excessive for that reason alone. (*Adams*, 54 Cal.3d at 111.)" In sum, it is argued that Claimant failed to satisfy his evidentiary burden. (*Id.* p. 8) The Declaration of Mr. Arvizu has been reviewed as well, and the Arbitrator has reviewed the extensive exhibits, which include bank statements (documentation), credit card statements, mortgage-related documentation, and the like, along with emails.

The Arbitrator (as does a court) has "considerable discretion" to impose punitive damages within a constitutional range (*Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 563, fn. 9; *see McGee v. Tucoemas Federal Credit Union* (2007) 153 Cal.App.4th 1351, 1362.) Indeed, as case law establishes, the court (Arbitrator) has discretion to impose a relatively nominal penalty.

Taking into consideration the various factors relevant to the inquiry, and the facts presented, punitive damages shall be assessed against Landon Long and ICON in the aggregate amount of $25,000. The Arbitrator does not view this as a nominal amount of punitive damages, and it is intended to punish and deter the conduct found and outlined in the Phase I Interim Award. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110; *Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387; *see also* Civ.Code, § 3294, subd. (a) [punitive damages may be recovered "for the sake of example and by way of punishing the defendant"].)

CONCLUSION ON THE MOTION FOR PUNITIVE DAMAGES

The request for punitive damages is granted and the sum of $25,000 is awarded to Claimant, as outlined above.

FINAL AWARD

The Arbitrator, now having ruled on the Phase I and Phase II issues presented in the Arbitration, and having concluded the ruling on the Motions/briefing for Fees and costs and interest, and punitive damages, now issues the FINAL AWARD:

The prior interim awards are incorporated by reference, along with the rulings on the motion for fees and costs and interest, and punitive damages, as stated above.

The total amount of damages awarded, as set forth in the Phase 1 Interim Award and in the instant Final Award is $1,120,942.73, which sum includes awarded fees, costs, interest, and the punitive damage award. At oral argument counsel for Claimant states no further claims are made or sought.

This Final Award resolves all issues submitted for decision in this proceeding

Dated: NOV. 19, 2024

Hon. David I. Brown (Ret.)
Arbitrator