DISTRICT COURT, MESA COUNTY, COLORADO Address: 125 N. Spruce Street Grand Junction, Colorado 81501-5841	DATE FILED January 2, 2025 3:34 PM FILING ID: C99EBABCA8F14 CASE NUMBER: 2023CV52
Plaintiff: DEREK PAIZ **v.** **Defendant** RED ROCK AUTO GROUP II, Inc.	**▼COURT USE ONLY▼**
Robert O. Rice (Utah Bar No. 6639) Colorado Pro Hac Vice No. (23PHV7635) Stephanie E. Hanawalt (Utah Bar No. 18402) Colorado Pro Hac Vice No. (23PHV7636) RAY QUINNEY & NEBEKER P.C. 36 South State Street, Suite 1400 Salt Lake City, Utah 84111 Telephone: 801-532-1500 Fax: 801-532-7543 E-mail: rrice@rqn.com shanawalt@rqn.com Counsel for Defendant **Colorado Associated Counsel:** Nicholas H. Gower HOSKIN FARINA & KAMPF Professional Corporation 200 Grand Avenue, Suite 400 Post Office Box 40 Grand Junction, Colorado 81502-0040 Telephone: (970) 986-3400 Fax: (970) 986-3401 E-mail: *ngower@hfak.com* Attorney Reg. No. 42801	Case No. 2023CV000052 Div.: 9 Ctrm.

DEFENDANT'S MOTION FOR ATTORNEYS' FEES PURSUANT TO C.R.S. §§ 8-4-110 AND 13-17-102

Pursuant to C.R.S. §§ 8-4-110 and 13-17-102 and Rule 121, § 1-22(2) of the Colorado Rules of Civil Procedure, Defendant Red Rock Auto Group II, Inc. ("Red Rock"), by and through counsel, respectfully submits this Motion for Attorneys' Fees ("Motion") in the amount

of $210,746.50. The Declaration of Robert Rice ("Rice Declaration") is also submitted contemporaneously in support of the instant Motion.

CERTIFICATE OF CONFERRAL

Undersigned counsel certifies that it attempted to confer with Plaintiff twice via email on January 2, 2025. Plaintiff did not respond to either email communication by the time Red Rock filed the instant Motion.

INTRODUCTION

Plaintiff filed the instant action on October 16, 2023, seeking alleged lost wages in violation of the Colorado Wage Claim Act ("CWCA"), Colo. Rev. Stat. § 8-4-101 *et seq*. Plaintiff later amended his complaint to add additional claims for breach of contract, unjust enrichment, and promissory estoppel. A three-day trial was held on Plaintiff's wage claim and unjust enrichment claim between December 9-11, 2024. Plaintiff's wage claim under the CWCA was tried to a jury and a verdict was returned in favor of Red Rock. Plaintiff's unjust enrichment claim was decided by the Court, which also ruled in favor of Red Rock. As the prevailing party in this action, Red Rock seeks an award of attorney's fees incurred in defending this action in the amount of $210,746.50 pursuant to Section 8-4-110 of the CWCA. Red Rock also seeks attorneys' fees under C.R.S. § 13-17-102 as a result of Plaintiff's vexatious, bad faith conduct throughout the lawsuit.

ARGUMENT

According to the Colorado Rules of Civil Procedure, a motion for attorneys' fees "shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated." C.R.C.P. 121, § 1-22(2). The motion should also "be

accompanied by any supporting documentation, including materials evidencing the attorney's time spent, the fee agreement between the attorney and client, and the reasonableness of the fees." *Id*.

I. RED ROCK SEEKS AN AWARD OF ATTORNEYS' FEES PURSUANT TO THE CWCA, C.R.S. § 8-4-110.

a. Generally

This Court has the discretion to award Red Rock attorneys' fees under the CWCA. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199, 1205 (Colo. App. 2010) (permitting award of attorneys' fees "even where the employee's Wage Act claim was not frivolous."). Section 8-4-110 of the CWCA "allows the court to award costs and attorney fees to the party that prevailed on a Wage Act claim." *Carruthers*, 251 P.3d at 1202. "In deciding whether to award fees to a prevailing employer, the court should consider all relevant circumstances." *Id*. at 1211. These circumstances typically include the following:

> (1) the scope and history of the litigation; (2) the ability of the employee to pay an award of fees; (3) the relative hardship to the employee of an award of fees; (4) the ability of the employer to absorb the fees it incurred; (5) whether an award of fees will deter others from acting in similar circumstances; (6) the relative merits of the parties' respective positions in the litigation; (7) whether the employee's claim was frivolous, objectively unreasonable, or groundless; (8) whether the employee acted in bad faith; (9) whether the unsuccessful claim was based on a good faith attempt to resolve a significant legal question under the Wage Act; and (10) the significance of the claim under the Wage Act in relation to the entire litigation.

Id. Each of these factors favors an award of attorneys' fees against Plaintiff.

b. The scope and history of the litigation.

This case involved a substantial amount of legal work over a 14-month period, including a three-day trial. A significant portion of this work was due in no small part to the numerous vexatious motions filed by Plaintiff during the discovery period and in the weeks leading up to

trial that sought to needlessly expand the scope of the case. Red Rock incurred significant and unnecessary legal fees responding to each of these motions.[1]

c. Plaintiff's ability to pay fees.

Any argument by Plaintiff that he lacks the ability to pay fees is no bar to awarding attorneys' fees to Red Rock. As an initial matter, this Court's decision to award fees must be considered under the "totality of the circumstances . . . ." *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199, 1211 (Colo. App. 2010) (citing *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1115 (Colo. 1996)). Plaintiff's ability to pay attorneys' fees must be weighed against CWCA policy designed "to protect an employer against nuisance litigation." *Hall v. Bassett & Assocs., Inc.*, No. 20-CV-01067-NRN, 2021 WL 5162555, at *2 (D. Colo. Nov. 5, 2021) (citing *Geras v. Int'l Bus. Machines Corp*., 726 F. Supp. 2d 1292, 1297 (D. Colo. 2010), *aff'd*, 638 F.3d 1311 (10th Cir. 2011) (citing *Hartman v. Freedman*, 197 Colo. 275, 280, 591 P.2d 1318, 1322 (1979) and *Voller v. Gertz*, 107 P.3d 1129, 1132 (Colo. App. 2004)). This policy cannot be sustained if vexatious litigants can avoid liability for fees by simply claiming an inability to pay.

As a factual matter, Plaintiff admitted at trial that he was paid well by Red Rock, and he presented no evidence that he was financially unprepared to pay fees in this matter. Hence, there

[1] These responses include the following in chronological order: (1) Response to Motion for Entry of Judgment against Defendant; (2) Response to Motion to Extend Discovery; (3) Response to Motion for New Trial Date; (4) Response to Motion to Amend Complaint and New Trial; and (5) Response to Motion for Default Judgment. Plaintiff filed at least eight frivolous motions between the time his counsel withdrew and the trial. One of these motions was decided by the Court before any response was due. The responses to two of Plaintiff's other motions were incorporated into Red Rock's response to Motion to Amend Complaint and New Trial. Red Rock notes that the Court has already granted a prior Motion for Attorneys' Fees filed by Red Rock in relation to Plaintiff's Motion to Amend and Plaintiff's Motion for Default Judgment. *See* Order: Motion for Attorneys' Fees, dated December 30, 2024. Red Rock has thus subtracted the fees related to those two motions from the amount requested in this Motion and will submit those fees separately as specified in the Court's order.

are no facts before the Court that would enable it to find Plaintiff is unable to pay an award of attorneys' fees. Hence, this factor favors granting the Motion.

d. The resulting hardship to Plaintiff.

Plaintiff has proven himself to be a determined and resourceful litigant and has presented no evidence that it would be a hardship to pay the fees caused by his frivolous litigation. The Court is entitled to consider these facts and circumstances, along with the CWCA's policy designed "to protect an employer against nuisance litigation." *Hall*, 2021 WL 5162555, at *2. Hence, this factor is no bar to the Court granting the instant Motion.

e. Employer's ability to absorb fees.

Any argument that Red Rock is positioned to absorb fees expended in this action is also no bar to the Court granting this Motion. It bears repeating that this Court's determination of an award of fees must be made on all facts and circumstances, not just on Red Rock's ability to fund its defense, an effort it had no choice but to undertake. If Red Rock's practice of meeting its financial obligations by paying its bills as they become due is of concern, the Court is free to order a reduced award of fees, which "will still further the [CWCA's] purpose of deterring employees' from filing ill-advised lawsuits." *Hall v. Bassett & Assocs., Inc.*, No. 20-CV-01067-NRN, 2021 WL 5162555, at *3 (D. Colo. Nov. 5, 2021) (awarding partial fees to employer in CWCA action). Finally, it bears recalling that Red Rock, in an unprecedented fashion, assisted Plaintiff in presenting his case by giving him access to Red Rock's trial presentation platform known as Trial Director to display exhibits to the jury and providing him a free paralegal to organize and present his evidence to the jury. It would be ironic indeed if Plaintiff were relieved of expenses that Red Rock assumed solely for his benefit.

f. An award of fees will deter other employees from filing similar frivolous lawsuits.

As discussed in depth below, Plaintiff's claims lacked merit, were frivolous, groundless, and objectively unreasonable, and were brought in bad faith. An award of fees would thus deter other employees from filing similar frivolous lawsuits and further the CWCA's policy to "protect an employer against nuisance litigation." *Hall*, 2021 WL 5162555, at *2.

g. Plaintiff's claims lack merit.

The jury and the Court rejected Plaintiff's claims in their entirety. Clearly, this factor favors an award of attorneys' fees.

h. Plaintiff's claims were frivolous, objectively unreasonable, and groundless.

Plaintiff's claims were indeed frivolous, objectively unreasonable, and groundless. The jury appears to have reached this same conclusion when after three days of evidence (dominated by Plaintiff's lengthy testimony and review of countless documents) it reached a verdict in Red Rock's favor in a scant 44 minutes. While the jury's precise deliberations remain unknown, it cannot be denied that the jury quickly and easily dispensed with Plaintiff's claims.

In any event, Plaintiff's own testimony proves his claims was frivolous, unreasonable and groundless. The absurdity of Plaintiff's claims is made clear by Plaintiff's own testimony about a claim that can only be described as fantastical. Plaintiff testified he was originally promised a job as a detailer paid on a straight-forward hourly basis of $18.00 per hour. But after he objected to what he believed was too low an hourly rate for washing cars, he built his case on the absurd notion that he renegotiated a wage deal that was worth more than a half million dollars annually. And after three days of testimony, he offered no credible evidence supporting this foundational aspect of his claim.

In short, the basis of Plaintiff's claim that he renegotiated a wage deal worth a half million dollars in annual wages was "objectively unreasonable" from the start. Even Plaintiff recognized this when he admitted to the Court during trial that there was "no mutual assent" between him and Red Rock with respect to an agreement to pay him the wages he claimed were owing. To be clear, Plaintiff's testimony was that there was "no mutual assent" supporting an agreement containing the exact terms that formed the basis of his claim for wages. With this admission, it was objectively unreasonable for Plaintiff to prosecute any aspect of his wage claim.

Plaintiff's failure to present any credible evidence in support of his basic case theory also proves his claim was frivolous and groundless. Plaintiff's best evidence in support of his wage claim was the May 20, 2023 text exchange between he and his manager, Andy Borders, in which the two discussed putting certain car detail work in Plaintiff's "name." (Trial Exhibits 23 and 26.) Plaintiff argued that this text exchange represented a post hoc promise by Red Rock to pay him for all detail work performed at the dealership – whether or not Plaintiff did the work himself. In fact, on that same day, Red Rock paid Plaintiff for the "paint and fabric" work he in fact performed on May 20, 2022, work he repeatedly argued to the Jury he was not paid for. (Trial Exhibit 15, p. 73.) In any event, it was objectively unreasonable for Plaintiff to argue that the texts supported his claim for multiple reasons. First, the texts say nothing to suggest that Red Rock would pay Plaintiff for work he did not do. Further, Plaintiff himself testified that there was "no mutual assent" between the parties that he would be paid for work he did not do. Other than the May 20 Text, Plaintiff provided no other documents supporting his claim. In contrast, Red Rock's documents consistently demonstrated that it paid Plaintiff for every minute of work

for which he was entitled to wages, without fail. (*See* Trial Exhibits 11-13 and 15.) As such, it was objectively unreasonable for Plaintiff to argue the text exchange represented evidence of "earned, vested and determinable" wages. Colo. Rev. Stat. §§ 8-4-101(14)(a)(I) and 8-4-109(1)(a).

Plaintiff made another argument obviously rejected by the jury that further evidences the unreasonable and frivolous nature of his claims. Specifically, Plaintiff argued that he was entitled to an additional approximately $1,000 in damages based on two checks he claimed never to have received. In the first instance, Plaintiff claimed he never received a check in the amount of $446.58 reflected in an Earnings Statement contained in Trial Exhibit 13. (See Trial Exhibit 13, p. 2.) In fact, a check in that same amount was cashed at a Grand Junction Walmart under the endorsed signature of Derek Paiz. (Trial Exhibit 33.) Plaintiff also admitted cashing his final paycheck in the same fashion, again under the endorsed signature of Derek Paiz. (Trial Exhibit 34.) Trial evidence proved that both checks were "manual" checks that Red Rock processed outside the standard payroll procedure. Plaintiff's endorsed signature on both documents proved Plaintiff not only received, but also cashed the checks. The second check Plaintiff argued he never received was another $446.58 payment reflected in an Earnings Statement contained in Trial Exhibit 13. (See Trial Exhibit 13, p. 4.) But trial evidence proved this second check was simply a duplicate accounting entry made in error, meaning that Red Rock never actually wrote the check. Instead, it mistakenly generated an earnings statement for a check that never existed. Nonetheless, Plaintiff attempted to exploit this benign sequence of events to argue that he was cheated out of two paychecks. In fact, he cashed one, and the other never existed. His argument

that he was entitled to another approximately $1,000 in damages is further evidence of the frivolous lengths to which Plaintiff went in an attempt to prove his baseless claims.

The frivolous, objectively unreasonable, and groundless nature of Plaintiff's claims is also proven by the oft-times nonsensical, implausible and at times juvenile positions Plaintiff took during motion practice and at trial. For example, Paiz sought to introduce evidence of what he represented to the court were "real and ongoing criminal investigations related to my wage claim." (Plaintiff's Response to Motion in Limine No. 8.) Turns out, the only "criminal investigation" Plaintiff was able to evidence was his own hand-written report to the Grand Junction Police in which Plaintiff offered no explanation of any criminal conduct and described one of the "suspects" in his report as an someone "who looks like lights are on but nobody home" who "smells like cheap liquor." (Response to Plaintiff's Attempt to Amend Complaint and New Trial, dated November 26, 2024, Ex. A.) Plaintiff's evidence of "criminal investigations" involving Red Rock was nothing more than a clumsy, failed attempt to prank the Court.

Plaintiff's games continued at trial, where he offered varied, but consistently unbelievable, testimony about how much he worked and how much he was owed. On one day, he testified he worked on 285 cars; on another it was 236. On top of that, he asserted he detailed another 300 cars during the less than three months of his employment. Ultimately, he asserted he detailed more than 600 cars. He confirmed it took him up to 3 hours to detail a single car, meaning that he would have had to work up to 1,800 hours during his less than three-month tenure at Red Rock. Assuming a generous 12 weeks of employment, this means Plaintiff would have had to work 150 hours a week to complete the tasks he told a jury he was required to

perform. This volume of hours is unreasonably implausible if not physically impossible. Similarly, his trial testimony varied widely regarding his damages during his abbreviated career. Once it was $131,000, then it $600,000, and then it was $34,000. In contrast, Red Rock's evidence consistently showed he was paid accurately for all 396.6 hours of flat rate work that Paiz performed, which even Plaintiff conceded meant he was "well paid." In fact, trial evidence proved that had Plaintiff remained employed, he would have earned $48,000 annually, $15,270 more than the national average of $32,730 for detailers.

In short, Plaintiff's entire case theory was founded on the unreasonable, frivolous and baseless theory that Plaintiff renegotiated an $18/hour job into a multi-million dollar career (had Plaintiff been able to sustain meaningful employment at Red Rock) washing cars. He advanced this theory using embellished testimony that he was promised the moon in a deal that even he confessed lacked "mutual assent," lies about the work he performed and a hoax that Red Rock was the subject of "criminal investigations."

i. Plaintiff acted in bad faith.

To make matters worse, Plaintiff knew his claim was groundless. There is no better evidence of this than Plaintiff's admission that the deal he asked the jury to believe he had made failed for lack of mutual assent. Further, his testimony about the number of hours he worked and the volume of cars he processed was so extravagant that Plaintiff clearly knew his testimony was false. In addition, Plaintiff was calculated in his lies. For example, Plaintiff initially represented to the Court that he "performed [paint and fabric protection] work on [witness Natasha Bury Wilder's] [v]ehicle and was not paid this work." (Plaintiff's Response to Defendant's Motion in Limine No. 6.) However, Bury Wilder purchased her vehicle from Red Rock Nissan. (*See* Purchase Agreement, attached as Exhibit B to Defendant's Motion in Limine No. 6.) At trial,

Plaintiff admitted that he did not perform any detail work on Red Rock Nissan vehicles. When at trial it became clear to Plaintiff that he had boxed himself into a corner based on his misrepresentation to the Cour that he had worked on Bury Wilder's car, he withdrew her as a witness.

Finally, the pace of Plaintiff's presentation of his case was lumbering and intentionally slow, clearly designed to drive up costs and limit time available for Red Rock's case. In a similar vein, Plaintiff repeatedly filed baseless motions and opposed Red Rock's motion without legal basis, in an obvious attempt to drive up costs and leverage a settlement offer. The Court should not reward these bad faith efforts and thus, should grant the Motion.

j. Plaintiff's lawsuit did not implicate a significant legal question under the CWCA.

Plaintiff's lawsuit did not involve a good faith attempt to resolve any new or significant legal questions under the CWCA. Plaintiff brought a standard, run-of-the-mill wage claim, asserting only that Red Rock failed to pay Plaintiff all wages that he earned during his employment. His baseless motions and cumbersome trial presentation astronomically drove up costs on what should have been a simple matter.

k. The CWCA claim was paramount to Plaintiff's case.

The CWCA claim was the basis for Plaintiff's entire case. Plaintiff originally brought only claims under the CWCA. The other claim at issue at trial, Plaintiff's unjust enrichment claim, was added later in the case as an alternate theory of recovery if Plaintiff could not prove the CWCA claim. Plaintiff used the same facts and evidence to present his CWCA claim that he did for the unjust enrichment claim. The unjust enrichment claim was only presented to the Court because a verdict was returned in favor of Red Rock on the CWCA claim.

II. RED ROCK ALSO SEEKS AN AWARD OF ATTORNEYS' FEES PURSUANT TO C.R.S. § 13-17-102.

For similar reasons, Red Rock seeks an award of attorneys' fees pursuant to C.R.S. § 13-17-102. This provision specifically provides that "the court shall award, by way of judgment or separate order, reasonable attorney fees against any attorney or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification." C.R.S. § 13-17-102(2). An action lacks "substantial justification" where it is "substantially frivolous, substantially groundless, or substantially vexatious." *Id*. § 13-17-102(9)(a). The Court must also award attorneys' fees where an action "was interposed for delay or harassment or if the court finds that . . . [a] party unnecessarily expanded the proceeding by other improper conduct, including but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure." *Id*. § 13-17-102(4). Where a party appears without an attorney, attorney fees should not be assessed "unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense, or any part of the action or defense, was substantially frivolous, substantially groundless, or substantially vexatious. *Id*. § 13-17-102(6). Thus, as described above, Red Rock is also entitled to an award of attorneys' fees under Section 13-17-102 because Plaintiff knowingly and intentionally brought a lawsuit against Red Rock that lacked substantial justification.

III. THE ATTORNEYS' FEES SOUGHT ARE REASONABLE.

A "trial court is vested with broad discretion to determine whether the fees requested by a particular legal team are justified for the particular work performed and the results achieved in a particular case." *Payan v. Nash Finch Co.*, 2012 COA 135M, ¶ 46, 310 P.3d 212, *as modified on denial of reh'g* (Nov. 8, 2012). "The initial estimate of a reasonable attorney fee is reached by

calculating the 'lodestar' amount, which represents the number of hours reasonably expended multiplied by a reasonable hourly rate." *Dubray v. Intertribal Bison Co-op.*, 192 P.3d 604, 608 (Colo. App. 2008). "That amount may then be adjusted based upon several factors, including the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, awards in similar cases, and the degree of success achieved." *Id*.

Red Rock seeks $210,746.50 in attorneys' fees. The method by which those fees were calculated is set forth in the Rice Declaration and the exhibits attached thereto. In sum, the attorneys' fees sought by Red Rock represent the total number of hours expended in defending Red Rock in this action multiplied by a reasonable hourly rate for each attorney or paralegal who worked on the case. Counsel for Red Rock performed a significant amount of legal work over a 14-month period, including sorting through and responding to multiple vexatious motions filed by Plaintiff during the discovery period and in the weeks leading up to trial. All of the foregoing work, as more particularly described in the billing invoices attached to the Rice Declaration, was reasonably necessary to adequately defend Red Rock in this action.

CONCLUSION

For the foregoing reasons, Red Rock respectfully requests an award of its reasonable attorneys' fees incurred in defending this action in the amount of $210,746.50.

DATED this 2nd day of January 2025.

RAY QUINNEY & NEBEKER P.C.

/s/ Robert O. Rice
Robert O. Rice
Stephanie E. Hanawalt

HOSKIN, FARINA & KAMPF P.C.

/s/ Nicholas H. Gower
Nicholas H. Gower

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of January 2025, service of the foregoing **DEFENDANT'S MOTION FOR ATTORNEYS' FEES PURSUANT TO C.R.S. §§ 8-4-110 AND 13-17-102**, was made and served on all parties in this matter via Colorado Courts E-Filing System (CCES).

A copy of the foregoing was sent electronically to the following:

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/s/ Doris Van den Akker
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