

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

10/10/2014

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
S. Uppendahl  
Deputy

AMBER WINTERS, et al.

GEOFFREY M TRACHTENBERG

v.

BANNER HEALTH NETWORK, et al.

CHRISTOPHER L HERING

L ERIC DOWELL

UNDER ADVISEMENT RULING

The Court has had under advisement Plaintiffs' Application for Attorneys' Fees. Having read and considered the briefing and having heard oral argument, the Court issues the following rulings.

**I.**

The Court may award fees under the private attorney general doctrine to a party who has vindicated a right that (1) benefits a large number of people, (2) requires private enforcement, and (3) is of societal importance. *Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609 (1989). The doctrine can apply against private defendants to the same extent as governmental ones. *Ariz. Ctr. for Law in the Pub. Interest v. Hassell*, 172 Ariz. 356, 371 (App. 1991).

As a threshold matter, Defendants object because the Complaint did not state a claim for fees under this doctrine. The Court agrees with Plaintiffs that Rule 54(g)(1) does not require specific citation to statute, contract provision, or substantive theory.<sup>1</sup> *See Arizona Attorneys' Fee Manual* § 1.3.1 (5<sup>th</sup> ed.) (2014 Supp.); *cf. Prendergast v. City of Tempe*, 143 Ariz. 14, 22 (App. 1984) (request for attorneys' fees is sufficient when set forth in pleading without specific

---

<sup>1</sup> "A claim for attorneys' fees shall be made in the pleadings." Ariz. R. Civ. P. 54(g)(1).  
Docket Code 926 Form V000A

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

10/10/2014

reference to statute).<sup>2</sup> The issue is whether the pleading gives fair notice of the claim asserted. *See Best v. Edwards*, 217 Ariz. 497, 504 (App. 2008) (notice pleading requires merely “notice of the relief sought”); *Toney v. Bouthillier*, 129 Ariz. 402, 408 (App. 1981) (“failure to make reference to a statute is not fatal to a claim”). The Second Amended Complaint gave Defendants fair notice that Plaintiffs were seeking fees.<sup>3</sup>

Defendants argue that this case does not fit the private attorney general doctrine. The Court agrees with Plaintiffs that it does. Plaintiffs vindicated the right of indigent Arizonans to the protections afforded by federal Medicaid law. *See Arnold*, 160 Ariz. at 609 (applying doctrine in Rule 23(b)(2) class action involving right of indigent Arizonans to receive mental health care). The right could only be enforced privately because vindication required a direct challenge to a duly enacted statute. *See Hassell*, 172 Ariz. at 371; *Kadish v. Ariz. State Land Dep’t*, 177 Ariz. 322, 330 (App. 1993). Finally, this case is about more than vindication of personal economic interests. (Opp. at 7-8.) As the Supreme Court recognized in *Arnold*, how the legislature treats “the sick [and] the needy” is of importance to all Arizonans. 160 Ariz. at 609-10.

Plaintiffs seek a multiplier of 2.0 to the lodestar to compensate counsel for the risk in undertaking and conducting the litigation.<sup>4</sup> Although a multiplier might be appropriate under the common fund doctrine, *see Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 351-53 (App. 2006), the Court agrees with Defendants that it is not appropriate under the private attorney general doctrine. *See Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, 272-75 (App. 2003); *Charles I. Friedman, id.* To the extent *Kadish* intimates to the contrary, the Court agrees with Defendants that this is not the “rare and exceptional” case in which the lodestar should be multiplied. *See Kadish*, 177 Ariz. at 333.

**II.**

Plaintiffs request an award of attorneys’ fees of \$621,520 to The Entrekin Law Firm and \$600,381.75 to Levenbaum Trachtenberg, PLC. (*See Reply* at 21-22.)

Defendants urge that the Application be denied in its entirety because it is “tainted by misconduct.” (Opp. at 9-11.) The Court finds to the contrary and concurs with Plaintiffs’ replies to Defendants’ objections to categories of time entries 5 through 21 [*See Reply* at 7-23].

---

<sup>2</sup> *See King v. Titsworth*, 221 Ariz. 597, 599 (App. 2009) (distinguishing *Prendergast* on basis that defendant in *King* did not include notice of claim for attorneys’ fees in a pleading, and noting that rules on which *Prendergast* relied have been modified or abrogated).

<sup>3</sup> Defendants obliquely admit that the basis on which Plaintiffs sought fees made no difference to them in terms of settlement analysis. *See generally* Manual at § 1.5.

<sup>4</sup> “The lodestar is the product of the hours expended times a reasonable hourly rate of compensation.” *Kadish*, 177 Ariz. at 331-32.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

10/10/2014

Having reviewed and evaluated the affidavits submitted by Plaintiffs' counsel and considering the factors set forth in *Associated Indemn. Corp. v. Warner*, 143 Ariz. 567 [1985], the Court finds given the totality of these circumstances, that the Final Fee Calculations requested by Plaintiffs' counsel are "reasonable".

**III.**

Accordingly, based on the foregoing,

IT IS ORDERED granting Plaintiffs' Application For Attorney Fees;

IT IS FURTHER ORDERED awarding attorney fees of \$621,520 to the Entrekin Law Firm and \$600,381.75 to Levenbaum Trachtenberg, PLC;

IT IS FURTHER ORDERED denying Defendants' Motion for Findings of Fact and Conclusions of Law on Plaintiffs' Application for Attorneys' Fees.