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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

COMPUTER SERVICE TAX CASES.

A139445

**JCCP No. CJC 05-004442
(San Francisco City & County
Super. Ct. No. CGC 03-419192)**

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Fred Sondheimer appeals from a judgment that approved class action settlements between respondents Diane Mohan and DeMarco Enterprises, Inc. (Plaintiffs), on the one hand, and Dell, Inc. (Dell)¹ and the State Board of Equalization (the SBE), on the other. Sondheimer also appeals from an order awarding attorney fees and expenses to class counsel. Although well over 200,000 claims for compensation were filed pursuant to the settlement agreements, Sondheimer is the only appellant.

In this court, Sondheimer challenges the fairness of the settlements to the class members, the adequacy of the notices class members received about the litigation, and the amount of the attorney fee award. We find none of Sondheimer's objections meritorious and accordingly affirm.

¹ We use the terms Dell or Defendants to refer collectively to defendants Dell, Inc., Dell Catalog Sales L.P., and Dell Marketing L.P. Additional defendants are Qualxserv LLC, and BancTec, Inc. Defendants have joined in the brief filed by Plaintiffs. (Cal. Rules of Court, rule 8.200(a)(5).)

FACTUAL AND PROCEDURAL BACKGROUND

The litigation from which this appeal arises began more than 10 years ago, and the case therefore has a long history. Below, we will set forth only so much of that history as is relevant to the issues raised on appeal.

The Initial Stages of the Litigation and the Prior Appeal

In April 2003, Mohan filed her original class action complaint, alleging that Dell had engaged in unfair or deceptive acts or practices in connection with the improper collection of tax on optional sales of computer hardware service contracts. An amended complaint filed in August 2003 added the remaining defendants. On October 29, 2003, the litigation was designated complex and assigned to the trial judge.

After Mohan conducted substantial discovery, including production, inventory, and analysis of thousands of pages of documents and taking depositions in Texas and California, Defendants filed motions for summary judgment and a motion to dismiss the complaint for failure to join an indispensable party—the SBE. The latter motion was denied on March 19, 2004. Defendants filed a petition for writ of mandate, and we stayed further proceedings in the trial court pending resolution of that petition. Following briefing, we denied Defendants’ writ petition on August 17, 2004.

In November 2004, Defendants filed cross claims against the SBE for refund and/or indemnification. Defendants did so “ ‘to account for the possibility that the Court could agree with Plaintiffs’ and grant plaintiffs relief, [thus] defendants cross-complained against SBE to recover taxes collected from plaintiffs (and others similarly situated) and remitted to SBE.” (*Dell, Inc. v. Superior Court* (2008) 159 Cal.App.4th 911, 920 (*Dell, Inc.*)).) The SBE agreed to accept briefs from Plaintiffs and Defendants addressing the taxability issue and to render an informal, nonbinding opinion letter. The agency’s March 16, 2005 opinion letter concluded the service contracts at issue were subject to California use and/or sales tax.

In 2005, other actions asserting similar claims against Defendants and the SBE were ordered coordinated before the trial judge. Beginning in early 2006, the parties’ counsel met to negotiate a settlement but were unable to resolve the case. Instead, the

parties agreed to “a bench trial on the discrete issue of whether the sale by one or more of the retailer defendants of a service contract to Mohan in May 2001, or to DeMarco in October 2003, was subject to California sales or use tax.” (*Dell, Inc., supra*, 159 Cal.App.4th at p. 920.)

After a bench trial, the lower court concluded that tax should not have been charged. (*Dell, Inc., supra*, 159 Cal.App.4th at p. 916.) The trial court then issued an order pursuant to Code of Civil Procedure section 166.1,² and Defendants filed a petition for writ of mandate. In a published opinion, Division Four of this court agreed with the trial judge’s resolution of the taxability issue.³ (*Dell, Inc., supra*, 159 Cal.App.4th at pp. 917, 921.) Defendants accordingly stopped collecting “tax” on optional service contracts they sold to California purchasers.

Plaintiffs filed their fourth amended complaint on June 26, 2008. Further briefing and argument over a number of contested issues followed. At the same time, the parties recommenced settlement discussions, some of which were supervised by the trial judge.

The Two Class Settlements

After a settlement conference before the court on September 29, 2011, the parties reached agreement on the substantive terms of two class settlements, which together resolved the class claims brought by Plaintiffs and Defendants’ cross-claims against the SBE. The settlement agreements were executed in November 2011. After the parties reached agreement on the structure and substantive terms of the respective settlements, including the claim procedures and benefits payable to class members, Plaintiffs’ counsel

² Code of Civil Procedure section 166.1 provides in pertinent part: “Upon the written request of any party or his or her counsel, or at the judge’s discretion, a judge may indicate in any interlocutory order a belief that there is a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation.”

³ Division Four explained that a “mixed sale in which a Dell computer and service contract [are] sold at the same time, for a single undifferentiated price on the invoice . . . is only partially taxable—the computer is taxed and the service contract is not taxed.” (*Dell, Inc., supra*, 159 Cal.App.4th at p. 921.)

negotiated with Defendants concerning an award of reasonable attorney fees and expenses to be paid by Defendants.

Once the SBE voted to approve the terms of its agreement, the parties filed a joint motion for preliminary approval. After a hearing in early December 2011, the parties revised the settlement class definitions and portions of the proposed class notice and then appeared at a further hearing on December 12, 2011. Following that hearing, the trial court preliminarily certified the settlement classes, designated Mohan and DeMarco, respectively, as class representatives, appointed Plaintiffs' counsel as class counsel, granted preliminary approval to the proposed settlements, and directed that notice be given to class members.

The trial court certified two classes, the Dell Settlement Class and the SBE Settlement Class. Sondheimer is a member of the Dell Settlement Class. The settlement classes included “[a]ll persons (a) who purchased from Defendants one or more Optional Service Contracts . . . (b) whose ‘ship-to’ address for such purchase was a location in the State of California, and (c) who paid any amount of money denominated as a ‘tax’ calculated in whole or in part on the charge for the purchase of such Optional Service Contract(s).”

Each class member who filed a valid claim is entitled to cash compensation in the full amount of all tax overpayments. At the close of the claims filing period on May 29, 2013, the refunds payable by the SBE amounted to \$45,453,340.71, plus interest. The claims payable by Dell amounted to \$4,100,393.94. Dell paid all costs associated with providing notice to members of the respective settlement classes and all costs for administering the Dell settlement. Dell also agreed to pay to class counsel any court-approved award of attorney fees and expenses not exceeding \$11 million. Class counsel, in turn, agreed not to seek an award exceeding that amount.

Notices to the Settlement Classes

Dell produced to Plaintiffs and the SBE, databases consisting of approximately 20 million individual purchase transactions. Plaintiffs' counsel and the SBE analyzed the transaction data and tested, verified, and corrected the respective databases. The SBE

also conducted audits of the business records of certain Defendants. The databases were finalized in November 2012, after which the parties conducted testing of a settlement website.

Using the verified databases, the settlement administrator sent an individualized notice to each member of the settlement classes for whom Dell had a valid mailing address. In January 2013, the settlement administrator mailed 3,666,608 such notices to members of the SBE Settlement Class, and 1,246,356 individualized notices to members of the Dell Settlement Class.⁴ Each individualized notice also directed the class members to the website created and maintained by the settlement administrator, www.sctaxsett.com, which contained additional information, including copies of the settlement agreements, a “frequently asked questions” guide, and a toll-free telephone number for a claims assistance office established by class counsel. The settlement administrator also published a summary notice of the settlements in six California newspapers of wide circulation.

Notice was mailed to approximately 4.9 million purchasers in January 2013, and was posted on the settlement website, on Dell’s website, and on the SBE’s website. On February 15, 2013, more than 30 days prior to the deadline for filing objections to the proposed settlements, the settlement administrator published on the settlement website copies of class counsel’s motion for award of attorney fees and expenses, supporting declarations, and memorandum. Only 167 persons requested exclusion from one or both

⁴ The individualized notices contained: (1) a summary of the litigation concerning payment of “tax” on purchases of optional service contracts from Defendants and an announcement of the class member’s interest in a proposed settlement of the litigation; (2) a summary of the proposed settlements and a description of how to file an electronic claim for compensation; (3) a description of the procedures for opting out of the class; (4) a statement that the trial court would consider comments or objections to the proposed settlement on or before March 19, 2013; (5) a statement that any judgment entered in the case would bind all class members who do not request exclusion; and (6) a statement that class members who did not request exclusion could, if they so desired, retain their own counsel.

of the settlement classes, and the trial judge received only three objections, one of which was filed by Sondheimer's counsel.

The Fairness Hearing, Approval of the Settlements, and the Fee Award

The trial judge conducted a fairness hearing on April 18, 2013, and Sondheimer was the sole objector to appear. At the hearing, the trial judge overruled all objections and announced his intention to approve the proposed settlements and to award reasonable attorney fees and expenses to class counsel. Sondheimer then filed an objection to the form of a proposed order awarding reasonable attorney fees submitted by the parties. Class counsel responded and included the settlement administrator's declaration concerning the number and amount of valid claims filed as of the close of the claims filing period.

The trial court entered orders approving the settlements and awarding fees on June 12, 2013, and judgment was entered on that same date. The trial court approved the full amount of class counsel's request for fees and expenses, and it therefore awarded a total of \$11 million. Sondheimer filed his notice of appeal on August 6, 2013.

DISCUSSION

Sondheimer raises three basic challenges to the judgment and order before us. He contends the settlements should not have been approved because class counsel breached their fiduciary duties to the class and acted improperly in negotiating the attorney fee agreement. He further contends the notice to the class members denied them due process of law. Finally, Sondheimer argues the trial court committed various abuses of discretion in awarding attorney fees and expenses to class counsel. For the reasons that follow, we find none of these arguments persuasive.

Before proceeding to discuss Sondheimer's arguments, however, we must disagree with a recurring theme in his briefs. He repeatedly contends the trial court erred by failing to take into account federal practice with regard to class action settlements. This is so, Sondheimer says, "because the California Supreme Court has advised lower courts that reference should be made to federal law where issues arise regarding class action procedures." But California trial courts should use federal class action procedures only

“in the absence of controlling California authority[.]” (*La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872.) Here, California authority is not absent, and this division’s opinions provide much of it.⁵

I. *Challenges to the Settlements*

Sondheimer asserts three objections to the settlements. He contends class counsel breached their fiduciary duty to the class by negotiating for payment of attorney fees directly to counsel, rather than to the class members. He also contends class counsel’s negotiation of a “clear sailing” provision was evidence of “collusion.” Finally, Sondheimer claims as evidence of collusion the negotiation of a provision in the settlement agreement by which Dell would retain the difference between any attorney fees awarded by the trial court and the \$11 million allotted. None of these arguments has merit.

A. *Standard of Review*

Since the trial court has broad discretion to determine whether a settlement is fair and reasonable, on appeal “ ‘[o]ur review is therefore limited to a determination whether the record shows “a clear abuse of discretion.” ’ ” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) We presume the trial court properly upheld the validity of the settlement, and Sondheimer has the burden of overcoming this presumption by affirmatively showing error. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1143.) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

⁵ We also note our displeasure with the language Sondheimer’s counsel uses to describe the trial judge and his actions. For example, counsel says the trial court acted as an “enabler” in class counsel’s failure to inform class members about their rights. Elsewhere in the opening brief, counsel accuses the trial court of defending “[p]otential abuses” and of “sound[ing] more like an expert testifying on behalf of Class Counsel than a trial court judge scrutinizing a fee application.” “Disparaging the trial judge is a tactic that is not taken lightly by a reviewing court.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 422.)

litigation; and (4) the percentage of objectors is small.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

B. *Sondheimer’s Arguments Are Contrary to This Court’s Precedent.*

We quickly dispose of Sondheimer’s first argument. He contends “the fees should be part of the Class’s pot because the Class had a claim for fees which was abandoned by Class Counsel.” We recently rejected a nearly identical argument, and Sondheimer does not explain why we should overrule our own precedent. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558-559 [difference between fees actually awarded to class counsel and maximum amount defendant agreed to pay was not surplus belonging to class members]; see *Flannery v. Prentice* (2001) 26 Cal.4th 572, 590 [attorney fees awarded under Fair Employment and Housing Act “belong, absent an enforceable agreement to the contrary, to the attorneys who labored to earn them”]; *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1509-1510 (*Lindelli*) [same; attorney fees awarded under Code Civ. Proc., § 1021.5].)

Sondheimer’s next objection fares no better. As part of the fee negotiations, Defendants agreed not to object to class counsel’s request for an award of attorney fees—to be paid by Dell and not the settlement class members—so long as the amount of the request did not exceed \$11 million. Class counsel, in turn, agreed not to seek an award exceeding that amount. As we explained in *Consumer Privacy Cases, supra*, 175 Cal.App.4th at page 552, “[a]n attorney fee agreement of this type is sometimes referred to as a ‘clear sailing agreement.’ ” We also noted that “commentators have agreed that such an agreement is proper.” (*Id.* at p. 553.)

In support of his objection, Sondheimer relies exclusively on *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935 (*Bluetooth*). In that case, the Ninth Circuit expressed reservations about the fairness of clear sailing agreements because they carry “ ‘the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class[.]’ [Citations.]” (*Id.* at p. 947.) Despite these concerns, the Ninth Circuit did not categorically forbid clear sailing agreements; it held only that federal

district courts have a heightened duty to scrutinize them for fairness. (See *id.* at p. 948.) Thus, far from being forbidden, “clear sailing agreements are routinely accepted in both the federal and California courts.”⁶ (*Hartless v. Clorox Co.* (S.D. Cal. 2011) 273 F.R.D. 630, 645, fn. 6, citing *Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 553.)

Consequently, although Sondheimer contends the trial court abused its discretion by “refus[ing] to consider relevant federal practice” regarding such agreements, federal practice does not automatically forbid them. And whatever federal practice may be, California courts are not bound by the opinions of lower federal courts, particularly on issues of state law. (E.g., *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 764.) Moreover, our opinion in *Consumer Privacy Cases, supra*, 175 Cal.App.4th 545 appears to be the only published California decision explicitly addressing the validity of clear sailing agreements.⁷ As such, the trial court was bound to follow it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) There can be no abuse of discretion when the trial court follows binding appellate precedent.

Finally, Sondheimer contends the inclusion of a so-called “ ‘kicker’ ” provision (under which all fees not awarded would revert to Defendants rather than the class) is evidence of collusion. (See *Bluetooth, supra*, 654 F.3d at p. 947.) The trial court, however, found no evidence of collusion during the settlement negotiations and noted that “negotiations over attorneys’ fees and expenses began only after the parties had reached agreement on the substantive terms of the settlements.” We cannot reverse this factual finding when Sondheimer presents no evidence of collusion other than the existence of the kicker provision itself. Here, as in *Consumer Privacy Cases*, the “defendant merely established the outer limits of its liability for fees, and agreed not to

⁶ Sondheimer’s description of *Bluetooth’s* holding is at best incomplete, and we note with some concern that this is not the first time his counsel has inaccurately described persuasive authorities cited to this court. (See *Consumer Privacy Cases, supra*, 175 Cal.App.4th at pp. 553-554, 558 [noting counsel mischaracterized statements in Manual for Complex Litigation].)

⁷ Although it appears we were the first court to confront the question squarely, we observed that other decisions had implicitly approved clear sailing agreements. (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 554 [citing cases].)

oppose a fee application within the defined range, without conceding the propriety of any particular amount. A court must still determine the reasonableness of the fee, and must do so whether or not there is an objection presented from the class.” (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 559.) In any event, Sondheimer’s argument appears largely moot. Unlike the trial court in *Consumer Privacy Cases*, here the trial court awarded the full amount of the fee requested, and thus there was no “ ‘surplus’ ” that could revert to the class. (Cf. *id.* at p. 558 [trial court awarded less than the maximum amount defendant had agreed to pay in fees].)

II. *Challenge to the Class Notice*

Sondheimer also contends the class notice denied members of the settlement classes due process of law. Under this heading, he raises a number of objections to statements in the notice.⁸ We find no merit in any of them.

Although Sondheimer does not identify the standard of review we should apply to his challenges to the notice, we review de novo assertions that the trial court based its decision on improper criteria or erroneous legal assumptions. (*Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1390; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 235 (*Wershba*).) We review other challenges to the contents of the notice for abuse of discretion. (*Wershba, supra*, at p. 252 [trial court has “broad discretion” with regard to content of notice].) We conclude the trial court neither committed legal error nor abused its discretion.

Sondheimer argues the notice created a false impression that class members who chose to hire their own lawyers would be required to pay those lawyers out of their own

⁸ This portion of Sondheimer’s opening brief does not cite us to anything in the record demonstrating he raised these objections below, and we would therefore be justified in deeming this argument forfeited. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801.) Since Sondheimer has cited to his objections to the proposed settlement elsewhere in his opening brief, we will overlook this defect. Nevertheless, we remind counsel that references to matters in the record must be supported by a citation to the portion of the record where that matter may be found, and this rule applies regardless of where the reference occurs in the brief. (*Sky River LLC v. County of Kern* (2013) 214 Cal.App.4th 720, 741.)

pockets. He points to two allegedly misleading statements in the notice. The first statement appears in a paragraph entitled, “DO I HAVE A LAWYER IN THIS CASE?”⁹ The second is in the penultimate paragraph of the notice, which discusses when and where the court will decide to approve the settlement. Sondheimer claims the statement, “If you want your own lawyer, you may hire one at your own expense[,]” coupled with the statement, “You may also pay your own lawyer to attend [the settlement hearing], but it is not necessary[,]” had the effect of discouraging class members from seeking the assistance of counsel. This problem was allegedly exacerbated by the paragraph informing class members that they could expect to receive between \$3 and \$30 in recovery. According to Sondheimer, this made it clear to class members that consulting an attorney about the recovery of such a small amount would make no sense.

To the extent Sondheimer argues the notice is inconsistent with California Rules of Court, rule 3.766(d)(5), we disagree. That rule sets forth what information a class notice must contain if members are given the right to request exclusion from the class. (See Cal. Rules of Court, rule 3.766(d).) The subdivision on which Sondheimer relies requires that the notice include “[a] statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.” (Cal. Rules of Court, rule 3.766(d)(5).) Sondheimer interprets the rule as providing an exclusive list of what information the notice may include, but he cites no case law for this view, and we are unwilling to adopt such an interpretation in the absence of cogent argument or authority. And despite Sondheimer’s heavy reliance on federal law, he overlooks the fact that the Federal Judicial Center’s “Class Action Notices Page” includes illustrative forms of class notices that contain the very language to which he objects. (See <http://www.fjc.gov>, visited Dec. 8, 2014; accord, *Hall v. Best Buy Co., Inc.* (E.D. Pa.

⁹ The paragraph reads in full: “The Court appointed the law firms of Louderback Law Group, in San Francisco, California, and Ellis & Rapacki LLP, in Boston, Massachusetts, as Class Counsel to represent you and other Dell Settlement Class Members. You will not be charged for these lawyers. [¶] If you do not request exclusion and remain in the class, you may, if you so desire, enter an appearance through counsel in the Lawsuit. If you want your own lawyer, you may hire one at your own expense.”

2011) 274 F.R.D. 154, 164, fn. 10, 168 [approving notice telling class members “ ‘if you so desire, you may consult with and hire an attorney who may then enter an appearance in this action’ ”].)

More significantly, Sondheimer offers no evidence that any class member was actually misled by the notice. (See *Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at pp. 1391-1392 [rejecting challenge to content of notice where objector cited no evidence that any class members were deceived or misled].) Indeed, Sondheimer’s own appearance below undermines his claim that the notice discouraged class members from consulting and hiring their own attorneys. The alleged defects in the notice clearly were not sufficient to discourage Sondheimer.¹⁰

Sondheimer also contends the notice induced class members not to concern themselves with the issue of attorney fees, because it informed members, “You will NOT have to pay any . . . attorneys’ fees and expenses for participating in this settlement[,]” and “You will not be charged for these lawyers.” But these statements were entirely consistent with the terms of the settlement agreement, which provides that “*Dell* shall pay an award of attorneys’ fees and expenses to Class Counsel, a total amount not to exceed eleven million dollars (\$11,000,000).” (Italics added.)

Sondheimer’s related contention that “class members had an interest in opposing this direct payment of their attorneys’ fee claim to Class Counsel” is based on a premise we have already rejected—that the attorney fee award belonged to the class rather than to counsel. (*Consumer Privacy Cases*, *supra*, 175 Cal.App.4th at pp. 558-559; *Lindelli*, *supra*, 139 Cal.App.4th at pp. 1509-1510.) His argument that class counsel failed to disclose a conflict of interest fails for the same reason. Sondheimer asserts that class counsel abandoned the class members’ claim for attorney fees and pursued that claim for themselves, and thus class counsel were obligated to disclose this “conflict of interest.”

¹⁰ This irony was not lost on the trial court. At the hearing below, Sondheimer’s counsel asked, “[W]hat person in their right mind is going to go hire an attorney . . . when their interest in the case is \$3 or \$30?” To which the trial court responded, “I guess whoever hired you would be one.”

Once again, since the attorney fee award belonged to counsel, and not to the class members, there was no conflict of interest.¹¹

III. *Challenges to the Attorney Fee Award*

The bulk of Sondheimer's arguments are devoted to the trial court's award of attorney fees. He first contends the documentation class counsel provided to the trial court is insufficient to support the award. He next argues the trial court failed to consider various factors in calculating the lodestar. Sondheimer further contends the trial court should have compelled class counsel to produce certain documents and to explain their prelitigation efforts to settle the matter.

A. *Standard of Review*

We review the trial court's order awarding attorney fees for abuse of discretion. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) " 'The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' " (*Ibid.*) We presume the fees awarded by the trial court are reasonable, and as the objector, Sondheimer must show error in the award. (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 556.)

B. *Class Counsel Provided Sufficient Documentation to Support the Attorney Fee Award.*

Sondheimer's first contention is effectively a challenge to the sufficiency of the evidence to support the fee award. He argues the information submitted by class counsel was insufficiently detailed with regard to who performed the services, what services were

¹¹ Sondheimer's contention that approval of the notice was an abuse of discretion is based on extremely selective quotations from the reporter's transcript of the fairness hearing. For example, he emphasizes the trial court's statement that "if the Notice is no good, that doesn't matter . . ." This quote is taken entirely out of context, because what the court was explaining was that the substantial cost the SBE incurred in preparing to process refund claims would not matter if the notice was ineffective.

performed, and the amount of time spent on the services for which compensation was sought. In Sondheimer’s view, the trial court’s failure to require the submission of detailed billing records amounted to a “rubber-stamp approval” of the hours class counsel claimed. In addition, he argues the absence of detailed billing records precludes us from exercising effective appellate review of the award and denied absent class members the right to participate meaningfully in the approval process. We disagree.

Under California law, detailed billing timesheets are not necessary to support an award of attorney fees under the lodestar method. (E.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 64 (*Chavez*); *Wershba, supra*, 91 Cal.App.4th at p. 254.) California courts have frequently relied on declarations from counsel in making awards of attorney fees in class actions. (*Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1119 [trial court considered declarations of class counsel documenting hours expended on litigation]; *Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 556 [same].) It is entirely permissible for a trial court to rely on such declarations when detailed timesheets are not submitted. (*Chavez, supra*, 162 Cal.App.4th at pp. 63-64 [class counsel submitted declaration but no billing records].) Contrary to Sondheimer’s contention, there is no requirement that class counsel “provide billing records showing the number of hours the [attorneys] spent on particular activities or days.”¹² (*Id.* at p. 64.)

Moreover, Sondheimer is simply incorrect in claiming that class counsel failed to provide the information he contends is crucial. Class counsel Charles Louderback and Frederick Ellis submitted declarations in support of the motion for an award of attorney fees. Louderback’s declaration is 10 pages long, and Ellis’s is 24 pages. Louderback explained his firm’s role as local counsel in the case, and he set forth the total number of hours his firm had expended on the case, as well as the hourly rates charged for the attorneys involved. His declaration included a statement of his own credentials and

¹² It necessarily follows that we decline Sondheimer’s request that “California adopt a bright-line rule denying lodestar multipliers” where class counsel do not submit detailed time records showing which timekeepers performed what services, for what period of time, and at what rates. As explained above, the rule he urges us to adopt conflicts with firmly established California case law.

experience, as well as that of other timekeepers who had performed work on the case. He also chronicled the 10-year history of the litigation and summarized the tasks he and his colleagues had undertaken in the course of their representation. Ellis's declaration was even more extensive, and it described in detail the stages of the litigation and the legal work his firm had performed on behalf of the class. Ellis also identified the attorney timekeepers who had worked on the case, the number of hours each had expended, and their hourly billing rates. Furthermore, Ellis provided a list of other class actions in which he had served as lead counsel for the class.

These declarations are entitled to credence unless there is a clear indication they are erroneous. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 785.) As further support for the fee award, the trial judge relied on his own recollection of the litigation, his review of the docket sheet, his own experience as a judge presiding over class actions, and his experience as an attorney defending such actions. Although Sondheimer seeks to fault the trial judge for doing so, the trial judge could properly rely on his experience with this particular case, on his general experience as a lawyer, and on a review of the court's files.¹³ (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1250 (*Taylor*) [trial judge relied on his own years as attorney in civil practice in analyzing reasonableness of fee request]; *Chavez, supra*, 162 Cal.App.4th at p. 64 [experienced trial judge is best judge of value of legal services rendered in his court]; *Dover Mobile Estates v. Fiber Form Products, Inc.* (1990) 220 Cal.App.3d 1494, 1501 [pleadings and depositions in court files are evidence of work attorneys performed].)

¹³ The United States Supreme Court explained in a similar context, "The essential goal [of attorney fee awards] is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time. And appellate courts must give substantial deference to these determinations, in light of 'the [trial] court's superior understanding of the litigation.' [Citations.] We can hardly think of a sphere of judicial decisionmaking in which appellate micromanagement has less to recommend it." (*Fox v. Vice* (2011) 131 S.Ct. 2205, 2216.)

Faced with this supporting evidence, Sondheimer offers only speculation that there might have been excessive consultation among counsel, failure to delegate work efficiently, excessive time spent on tasks, and duplication of work. (See *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485, 494 [appellants “filed no declarations in opposition to the fees and presented no proof that there was a duplication of services”].) This is insufficient to satisfy his burden to show error in the award. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [“General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice.”].) If Sondheimer was dissatisfied with the court’s calculation of allowable attorney fees, it was incumbent upon him to request specific findings from the trial court. (See *Taylor, supra*, 222 Cal.App.4th at p. 1250.) Having failed to do so, he may not now complain of error on appeal.¹⁴ (*Id.* at p. 1251.)

C. *Alleged Nondisclosure of Class Counsel’s Fee Sharing Agreement, Retainer Agreements, and Prelitigation Settlement Efforts*

We dispense quickly with Sondheimer’s contentions that the trial court abused its discretion in failing to require disclosure of class counsel’s fee sharing agreement, counsel’s retainer agreements,¹⁵ and counsel’s prelitigation settlement efforts. While

¹⁴ We also reject Sondheimer’s claim that the documentation provided by class counsel is inadequate to permit him to demonstrate that the fees awarded were excessive. Sondheimer is simply wrong in asserting the record before the trial court “only includes law firms’ and lawyers’ total billing hours.” He ignores class counsel’s declarations and their lengthy descriptions of the work their firms performed on the litigation. Sondheimer does not identify a single task specified in class counsel’s declarations that he considers unnecessary, and he does not claim the overall number of hours expended was unreasonable.

For similar reasons, we reject his argument that class members were denied meaningful participation in the fee award process. The documentation provided in this case was certainly adequate to permit class members to object to the amount of the fees. (See *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1119 [fee request supported by “extensive documentation,” including the plaintiffs’ oral and written argument justifying fees and declarations from class counsel].)

¹⁵ Sondheimer’s counsel conceded at the fairness hearing that no law required submission of the retainer agreements the representative plaintiffs signed with class counsel. Having

Sondheimer devotes a number of pages in his opening brief to his attempt to demonstrate error, nowhere does he articulate how he might have been prejudiced by the failure to disclose either the fee sharing agreement or the retainer agreements. Thus, even if we were to assume the trial court's failure to require their disclosure was an abuse of discretion, the error would not require reversal absent a showing of prejudice. (See *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at pp. 1128-1129 [although trial court erred in refusing to approve fee arbitration provision, error did not require reversal because appellant failed to demonstrate actual prejudice].) And contrary to Sondheimer's claims, the fee sharing agreements were not only disclosed but were served on his counsel two weeks before the fairness hearing as part of the joint motion for approval of the settlements. (See Cal. Rules of Court, rule 3.769(b) ["Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."].)

Regarding prelitigation settlement efforts, the California Supreme Court has held such efforts are relevant in determining whether a fee award is proper under Code of Civil Procedure section 1021.5 (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 258), but the fee award before us was not made pursuant to that statute. Sondheimer cites no authority for the proposition that these efforts must be considered where fees are awarded pursuant to an agreement negotiated after settlement of a class action. We may disregard arguments unsupported by citation to legal authority. (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827, fn. 1 (*Sheily*).)

D. *The Trial Court Did Not Abuse its Discretion by Awarding a Multiplier.*

Sondheimer contends the trial court's award of a multiplier was contrary to California class action attorney fee jurisprudence. Much of this portion of Sondheimer's

conceded the matter in the trial court, Sondheimer may not claim otherwise in this court. (See *Planned Protective Services, Inc. v. Gorton* (1988) 200 Cal.App.3d 1, 12-13.)

brief is simply a restatement of arguments we have rejected above, and we will not repeat them here. We therefore address only those contentions that are not duplicative.

Sondheimer raises a number of perfunctory challenges to the hourly rates the trial court used as the basis for the award. His challenges are unsupported by citation of authority, and we could therefore deem them forfeited. (*Sheily, supra*, 122 Cal.App.4th at pp. 826-827, fn. 1.) Even if they are not forfeited, they are meritless. The trial court did not err in compensating class counsel at current hourly rates. The purpose of using current rates is “to compensate for delay in receipt of payment” and use of current rates is within the trial court’s discretion. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051.) Nor did the trial court err in compensating class counsel at what Sondheimer calls “partner billing rates of attorneys at large firms.” Class counsel supported their rates with a declaration attesting to billing rates approved by courts in other California consumer class actions, and those rates ranged from \$650 per hour to \$825 per hour. They also explained that each of the lead attorneys had more than 25 years of litigation experience and that Ellis had served as lead counsel in seven consumer class actions. In light of counsel’s experience, we cannot say the trial court abused its discretion in approving the requested rates. (Cf. *Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661-662 [rate of \$300 per hour reasonable for graduate of unaccredited law school who had become a lawyer less than three years before undertaking case].)

Sondheimer also contends the factors used to justify a multiplier were inadequate as a matter of law. Here again, Sondheimer’s arguments are largely unsupported by citation to relevant authority, and we could therefore deem them forfeited. (*Sheily, supra*, 122 Cal.App.4th at pp. 826-827, fn. 1.) Assuming the arguments are properly before us, they are meritless.

“Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) Sondheimer makes the conclusory claim that the trial

court's justification for the multiplier was inadequate as a matter of law. He faults the trial court's finding that the results obtained by class counsel merited a multiplier, but he fails to explain why the court's justification failed to meet the necessary legal standard. The trial court noted the settlements were extraordinarily difficult to achieve and represented an excellent result for the class members. To the extent Sondheimer argues this language was somehow inadequate, "[n]othing . . . requires the trial court to recite an express finding that class counsel's representation 'far exceed[ed]' the level of representation that comparably skilled attorneys would have provided." (*Chavez, supra*, 162 Cal.App.4th at p. 61.)

Sondheimer further contends the trial court refused to take into account the actual payout to class members, as opposed to the amounts made available to them. Based upon the settlement administrator's final claims report, the aggregate value of the settlement compensation amounts to over \$45 million under the SBE settlement and over \$4 million under the Dell settlement. This sum of nearly \$50 million does not include the \$11 million in attorney fees paid by Dell. Thus, even if we exclude the attorney fees from the value of the settlement compensation, the fee award amounts to roughly 22.5 percent of the compensation to be paid out.

In *Consumer Privacy Cases*, we explained that "[i]t may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 557, fn. omitted.) We there noted that a fee award of 25 percent of the recovery was the benchmark award in common fund cases and found an award amounting to 21.4 percent of the recovery to be "well within what have been deemed to be reasonable ranges." (*Id.* at p. 557, fn. 13; accord, *Chavez, supra*, 162 Cal.App.4th at p. 66, fn. 11 [approving fee award amounting to 27.9 percent of the benefits to the class].) In light of our precedents, we discern no error in the trial court's decision to award fees amounting to 22.5 percent of the compensation to be paid to class members, particularly

given that the award comes only after a decade of litigation. Indeed, as explained earlier (see *ante*, p. 10), since these precedents were binding on the trial court, it did not err in following them.¹⁶ In sum, Sondheimer has failed to meet his burden on appeal of showing the trial court abused its discretion. (*Consumer Privacy Cases*, *supra*, 175 Cal.App.4th at p. 556.)

E. *Class Counsel's Alleged Lack of Success on Certain Claims*

Sondheimer argues the trial court did not consider the lack of success on several claims for compensation. Reducing an attorney fee award for limited success is certainly appropriate in cases under fee shifting statutes. (E.g., *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 238-239 (*EPIC*) [attorney fee award under Code Civ. Proc., § 1021.5].) But

¹⁶ We are troubled by the failure of Sondheimer's counsel to acknowledge precedent contrary to his client's position. Sondheimer's opening brief does not even cite *Consumer Privacy Cases*, and only in his reply brief does Sondheimer argue that we should reconsider that case in light of *Bluetooth*. Because Sondheimer's counsel in this case was also counsel in *Consumer Privacy Cases*, "he should in all fairness have directed the . . . court's attention to the decision and argued to the court . . . [either] that the case was not controlling" or that it should be reexamined. (*Schaefer v. State Bar* (1945) 26 Cal.2d 739, 748; see *Southern Pacific Transp. Co. v. Public Utilities Com.* (9th Cir. 1983) 716 F.2d 1285, 1291 [law firm, which had appeared in prior case that established authority contrary to law firm's position in later case, violated rules of professional conduct by failing to cite prior case in briefs].)

"The obligation to disclose adverse legal authority is an aspect of the lawyer's role as "officer of the court." . . . lawyers *should* reveal cases and statutes of the controlling jurisdiction that the court needs to be aware of in order to intelligently rule on the matter.'" (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 83, fn. 9 (*Batt*), disapproved on another point in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626 ; see Bus. & Prof. Code, § 6068, subd. (d) [attorney must "never seek to mislead the judge or any judicial officer by . . . [a] false statement of . . . law"].) Although California's Rules of Professional Conduct do not explicitly require the disclosure of contrary authority, the American Bar Association's Model Rules of Professional Conduct provides that " '[a] lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.'" (ABA Model Rules Prof. Conduct, rule 3.3(a)(2), quoted in *Batt*, *supra*, 155 Cal.App.4th at p. 83, fn. 9.)

Sondheimer cites no authority for application of the limited success rule outside of that context. (See *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, 589 & fn. 8 [noting lack of authority for reducing fee award under Civ. Code, § 1717 based on limited success].) Even assuming such reductions would be appropriate in cases like the one before us, the trial court may award a fully compensatory fee where successful and unsuccessful claims are related. (*EPIC, supra*, 190 Cal.App.4th at pp. 238, 247.) Sondheimer makes no claim that class counsel’s work on the successful claims was entirely distinct and separate from their work on the allegedly unsuccessful ones. Moreover, other than his reference to the pleadings, Sondheimer directs us to nothing in the record that actually demonstrates a lack of success on any particular claim. Again, we discern no abuse of discretion by the trial court.

F. *Ramirez v. Sturdevant Does Not Apply.*

Last, we turn to Sondheimer’s contention that the trial court violated *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904 (*Ramirez*.) According to Sondheimer, *Ramirez* holds that discussion and negotiation of attorney fees should only begin after the trial court approves the damage settlement. His opening brief emphasizes a sentence from the *Ramirez* opinion to that effect. What Sondheimer fails to tell us, however, is that the sentence upon which he relies is one in which the *Ramirez* court was quoting from the opinion of a federal court. (*Id.* at p. 923 [“ ‘Only after court approval of the damage settlement should discussion and negotiation of appropriate compensation for the attorneys begin.’ ”], quoting *Prandini v. National Tea Co.* (3d Cir. 1977) 557 F.2d 1015, 1021 (*Prandini*.) More important, Sondheimer also fails to note that the *Ramirez* court went on to *reject* the approach taken in *Prandini*. (*Ramirez, supra*, 21 Cal.App.4th at p. 924.) Instead, *Ramirez* held “that the better approach is to consider each case on its own merits[,]” and it “decline[d] to find that the inherent conflict in dual negotiations necessarily invalidates any resulting settlements.” (*Ibid.*) Thus, *Ramirez* did not hold

what Sondheimer claims, and the trial court certainly did not violate its holding by refusing to adopt the rule *Ramirez* itself rejected.¹⁷

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

¹⁷ We reject Sondheimer’s cursory argument that the trial court abused its discretion by awarding a multiplier based on the difficulty of this case “without considering Class Counsel’s efforts in this type of litigation in other states.” We are uncertain what is meant by this, and rather than explain it, Sondheimer simply refers us to arguments made elsewhere in his brief and in the trial court. We therefore deem the argument forfeited. (See *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 775 [objection to attorney fee award forfeited where unsupported by discussion and analysis of the record]; *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18 [“ ‘it is entirely *inappropriate* for an appellate brief to *incorporate by reference* documents and arguments from the proceedings below’ ”].)

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.