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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES LALIBERTE et al.,

Plaintiffs and Respondents,

v.

PACIFIC MERCANTILE BANK,

Defendant and Appellant.

G045275

(Super. Ct. No. 03CC07092)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, David C. Velasquez, Judge. Reversed and remanded.

Sheppard, Mullin, Richter & Hampton, Robert S. Beall, Isaiah Z. Weedn and Whitney A. Hodges for Defendant and Appellant.

Arias, Ozzello & Gignac, Mark A. Ozzello, Alfredo Torrijos; Newmeyer & Dillion and Thomas F. Newmeyer for Plaintiffs and Respondents.

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Defendant Pacific Mercantile Bank (Pacific) appeals from an order awarding plaintiffs James LaLiberte, Dennis O'Connor, and Jann O'Connor (collectively, Plaintiffs unless otherwise indicated) nearly \$740,000 in attorney fees and costs. Plaintiffs sought their attorney fees and costs under the Truth in Lending Act (Act; 15 U.S.C. § 1601 et seq.) based on a class action settlement they reached with Pacific. Although Plaintiffs alleged an individual claim for rescission and statutory damages, the parties agreed only to settle a single claim that Pacific violated the Act by failing to accurately disclose its finance charges on home loans Pacific provided to the class members.

Pacific does not challenge Plaintiffs' right to recover fees and costs under the Act, but contends the trial court abused its discretion in setting the fee amount because it failed to consider that Plaintiffs achieved only limited success in this action. Specifically, Pacific contends the trial court should have significantly reduced Plaintiffs' attorney fees because Plaintiffs did not prevail on several claims and obtained only a small portion of the relief they sought. We agree the trial court failed to consider the degree of success Plaintiffs achieved in this action and therefore reverse and remand for the trial court to reconsider the amount of attorney fees based on the legal standards we discuss below.

I

FACTS AND PROCEDURAL HISTORY

LaLiberte refinanced his home mortgage through Pacific in 2002. He later sued Pacific, alleging Pacific violated the Act by failing to timely provide a Truth in Lending Disclosure Statement (Disclosure Statement) accurately disclosing all finance charges and two copies of a Notice of Right to Cancel accurately advising LaLiberte of his right to rescind the transaction. The O'Connors also refinanced their home mortgage through Pacific in 2002 and likewise claimed Pacific violated the Act by failing to timely

provide them with a proper Disclosure Statement and Notice of Right to Cancel. Pacific rejected Plaintiffs' demand that Pacific rescind their loans.

In May 2003, Plaintiffs filed suit against Pacific, alleging claims for violation of the Act, rescission, fraud in the inducement, intentional fraud, and violation of Business and Professions Code section 17200.¹ The complaint sought statutory damages for each violation of the Act, rescission of Plaintiffs' loans, compensatory damages, and punitive damages.

Shortly after Pacific answered, Plaintiffs filed their first amended complaint alleging the same five claims as a class action. The trial court sustained Pacific's demurrer to the first amended complaint with leave to amend, finding Plaintiffs failed to allege sufficient common facts to establish a single class or state a specific claim for fraud. The court also "question[ed] whether an action for class rescission may be maintained under *this* set of facts." (Original italics.)

Plaintiffs' second amended complaint dropped the two fraud claims, but continued to allege claims for violation of the Act and section 17200. The second amended complaint alleged four claims for violation of the Act on behalf of four separate subclasses seeking actual damages, statutory damages, and rescission of all class members' loans with Pacific. The trial court sustained Pacific's demurrer to the second amended complaint with leave to amend on the class claims seeking statutory damages, concluding Plaintiffs must "identify the specific provisions of defendant's instruction manuals or policies which led to the violations of the [Act] plaintiff has alleged." The court sustained the demurrer without leave to amend on the claims seeking actual damages and classwide rescission because Plaintiffs' allegations showed they could not allege sufficient detrimental reliance to recover actual damages and rescission could not be sought as a classwide remedy.

¹ All future statutory references are to the Business and Professions Code unless otherwise noted.

In their third amended complaint, Plaintiffs eliminated all subclasses and alleged a single class claim for violation of the Act. They sought statutory damages for all class members based on Pacific's systematic failure to accurately disclose its finance charges. Plaintiffs also alleged a separate cause of action on their own behalf for violation of the Act seeking rescission of their loans and statutory damages based on Pacific's failure to timely provide accurate Disclosure Statements and Notices of Right to Cancel. The trial court sustained Pacific's demurrer to Plaintiffs' class claim in the third amended complaint without leave to amend, finding Plaintiffs did not belong to the class they sought to represent.

Plaintiffs appealed the trial court's rulings sustaining Pacific's demurrers to the second and third amended complaints. In a published opinion, we affirmed the trial court's ruling that Plaintiffs could not allege a class claim seeking rescission because "rescission under [the Act] is a personal remedy not suitable for class action treatment." (*LaLiberte v. Pacific Mercantile Bank* (2007) 147 Cal.App.4th 1, 10 (*LaLiberte I*)). But we reversed the trial court's decision denying Plaintiffs leave to amend the class claim alleged in the third amended complaint because it appeared they could allege sufficient facts showing they shared a common interest with the class they sought to represent. (*Id.* at p. 8.)

While their appeal was pending, Plaintiffs filed a fourth amended complaint alleging individual claims only. The fourth amended complaint alleged two claims for violation of the Act, one seeking actual and statutory damages for Pacific's failure to provide accurate Disclosure Statements and a second seeking rescission, actual damages, and statutory damages for Pacific's failure to provide accurate Disclosure Statements and Notices of Right to Cancel.

After we published *LaLiberte I*, Plaintiffs filed their fifth amended complaint again alleging a class claim for statutory damages based on Pacific's failure to accurately disclose its finance charges. Plaintiffs also alleged an individual claim seeking

rescission of their loans and statutory damages based on Pacific's failure to provide accurate Disclosure Statements and Notices of Right to Cancel.

Plaintiffs moved to certify a class consisting of all borrowers who refinanced a loan with Pacific and paid a closing fee that Pacific failed to disclose in the Disclosure Statement. The trial court denied Plaintiffs' motion and Plaintiffs again appealed. We reversed in an unpublished decision and remanded the case with instructions for the trial court to grant Plaintiffs' class certification motion. (*LaLiberte v. Pacific Mercantile Bank* (March 30, 2009, G040248) [nonpub. opn].)

After the trial court certified Plaintiffs' class, the parties negotiated a settlement regarding the class claim alleged in the fifth amended complaint. Pacific agreed to pay Plaintiffs \$22,500 for their services as class representative and an additional \$202,500 to be distributed among the class members. The settlement only applied to Plaintiffs' class claim for statutory damages based on Pacific's failure to accurately disclose its finance charges; it did not apply to the individual claim Plaintiffs alleged in their fifth amended complaint. The settlement preserved Plaintiffs' right to seek attorney fees under the Act. Based on the settlement, the trial court entered a judgment dismissing the class claim with prejudice. The record does not reflect the disposition of Plaintiffs' individual claim alleged in the fifth amended complaint.

Plaintiffs filed a motion seeking nearly \$775,000 in attorney fees and costs on the class claim they settled. Specifically, Plaintiffs sought (1) \$17,284.50 in fees and \$1,374.89 in costs for the law firm of Newmeyer & Dillion, which filed the original complaint on Plaintiffs' behalf and provided other miscellaneous services throughout the action, and (2) \$706,620.50 in fees and \$48,418 in costs for the law firm of Arias, Ozzello & Gignac, which assumed Plaintiffs' representation when they asserted a class action.

Pacific opposed the motion, arguing Plaintiffs could recover fees only for the single class action claim the parties settled, not for their individual claims or for any

other class claim because Plaintiffs did not succeed on those allegations and they were not related to the claim the parties settled. In their reply, Plaintiffs agreed to two minor reductions in their fee request. First, they withdrew their request for \$1,440 in fees spent on a discovery motion because the court previously awarded Plaintiffs that amount in sanctions. Second, Plaintiffs withdrew their request for \$14,800 in fees spent on the fourth amended complaint because that pleading did not include a class claim. Plaintiffs never sought fees for their original complaint because it too alleged only individual claims.

The trial court granted Plaintiffs' motion and awarded them a total of \$ 738,216.09. It awarded Plaintiffs the full amount requested for Newmeyer & Dillion's fees and costs, the full amount requested for Arias, Ozzello & Gignac's fees (less the minor amounts Plaintiffs withdrew), and a reduced amount for Arias, Ozzello & Gignac's costs.² The court explained, "Pursuant to the provisions of 15 USC §1640(a), the court hereby finds the amount of attorneys' fees and costs of the action submitted are reasonable and fair [¶] [Plaintiffs' counsel] has testified in reply that the plaintiffs have not included in the request for attorneys' fees 'the time associated with the individual claims.' The court interprets the reference to the term 'time' as meaning attorneys' time. Thus, the court makes no allocation of attorneys' fees to the individual claims. . . ."³ (Original underscore.) Pacific timely appealed.

² The court awarded Plaintiffs \$17,284.50 in fees and \$1,374.89 in costs for work Newmeyer & Dillion performed and \$690,380.50 in fees and \$29,176.20 in costs for work Arias, Ozzello & Gignac performed.

³ The trial court later entered a written order prepared by Plaintiffs' counsel providing the following findings: "A. For purposes of the present Motion, counsel for the class has segregated all time spent on the claims associated with the class action, so as to provide this Court with a basis to make this award. [¶] B. The Court determines that the class claims asserted in the First through Fifth Amended Complaint are related for purposes of making this award. [¶] C. The Court makes this award pursuant to 15 USC §1640. The court has taken [into] consideration: [¶] (1) The extraordinary length of time the litigation has been pending; [¶] (2) All pleadings, Motions to Compel and

II

DISCUSSION

Pacific does not challenge Plaintiffs’ right to recover attorney fees and costs, the hourly rate for Plaintiffs’ counsel, or the amount of costs the trial court awarded. Instead, Pacific challenges only the amount of attorney fees the trial court awarded, arguing the limited success Plaintiffs achieved required the trial court to significantly reduce Plaintiffs’ attorney fees. Because Plaintiffs succeeded only on their class claim for statutory damages based on Pacific’s failure to accurately disclose its finance charges, Pacific contends the trial court erred in awarding Plaintiffs fees for any other claim they alleged during this action.

A. *Standard of Review*

“Our review of the amount of attorney fees awarded is deferential. [Citation.] Because the ‘experienced trial judge is the best judge of the value of professional services rendered in his court,’ we will not disturb the trial court’s decision unless convinced that it is clearly wrong, meaning that it is an abuse of discretion. [Citations.] However, “[t]he scope of discretion always resides in the particular law being applied, i.e., in the ‘legal principles governing the subject of [the] action. . . .’ Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an ‘abuse’ of discretion.” [Citations.] When the record is unclear whether the trial court’s award of attorney fees is consistent with the applicable legal principles, we may reverse the award and remand the case to the trial court for further consideration and amplification of its reasoning. [Citations.]” (*In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1051-1052 (*Vitamin Cases*)).

other Discovery issues; [¶] (3) The unique issues involved in the litigation and the fact that some of the issues were issues of first impression for the Court; [¶] (4) The time, effort and results of both appellate reviews; and [¶] (5) The relationship between the amount of the fee awarded and the result obtained.”

B. *Relevant Legal Principles Regarding Attorney Fee Awards*

The Act authorizes an award of reasonable attorney fees in “any successful action” to enforce its requirements. (15 U.S.C. § 1640(a)(3).) The award is mandatory. (*Purtle v. Eldridge Auto Sales* (6th Cir. 1996) 91 F.3d 797, 802.)

“[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ [Citation.]” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Federal courts also use the “lodestar” method for determining a reasonable attorney fee award under a number of fee shifting statutes, including the Act. (*McCutcheon v. America’s Servicing Co.* (3d Cir. 2009) 560 F.3d 143, 150 (*McCutcheon*); see also *Hensley v. Eckerhart* (1983) 461 U.S. 424, 433 (*Hensley*) [“The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate”].)

After determining the lodestar figure, the trial court must decide whether to adjust that figure upward or downward based on a variety of factors. (*Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 238 (*Environmental Protection Information Center*); *Vitamin Cases, supra*, 110 Cal.App.4th at p. 1052; see also *Hensley, supra*, 461 U.S. at p. 434.) Here, Plaintiffs did not ask the trial court to adjust their lodestar figure upward,⁴ but

⁴ Factors which may support an upward adjustment include “(1) ‘the novelty and difficulty of the questions involved, and the skill displayed in presenting them’; (2) ‘the extent to which the nature of the litigation precluded other employment by the attorneys’; [and] (3) ‘the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award’” (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834.) These are just a few examples of the factors that may support an upward adjustment, but “[t]here is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation.” (*Ibid.*)

Pacific asked the court to adjust the figure downward because it believed Plaintiffs achieved only limited success.

“California law, like federal law, considers the extent of a plaintiff’s success a crucial factor in determining the amount of a prevailing party’s attorney fees.” (*Environmental Protection Information Center, supra*, 190 Cal.App.4th at p. 238; see also *Hensley, supra*, 461 U.S. at p. 434.) Indeed, “the degree or extent of [the plaintiffs’] success in obtaining the results which they sought must be taken into consideration in determining the extent of attorney fees which it would be *reasonable* for them to recover.” (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 248, original italics (*Sokolow*).)

In *Hensley*, the United States Supreme Court developed a two-step analysis for determining a reasonable attorney fee award where the plaintiff obtained only limited success. (*Hensley, supra*, 461 U.S. at p. 434.) California courts have repeatedly applied *Hensley* to determine fee awards in limited success cases. (See, e.g., *Environmental Protection Information Center, supra*, 190 Cal.App.4th at pp. 238-239; *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 417-418, 422-428 (*Harman II*); *Harman v. City and County of San Francisco* (2006) 136 Cal.App.4th 1279, 1316 (*Harman I*); *Sokolow, supra*, 213 Cal.App.3d at pp. 247-248.)

In *Hensley*’s first step, the trial court must ask whether “the plaintiff fail[ed] to prevail on claims that were unrelated to the claims on which he [or she] succeeded?” (*Hensley, supra*, 461 U.S. at p. 434.) No certain method exists for determining when claims are “‘related’ or ‘unrelated.’” (*Id.* at p. 437, fn. 12; *Harman II, supra*, 158 Cal.App.4th at p. 423.) “[T]he concept of a related *Hensley* claim embraces claims that involve ‘a common core of facts *or*[, alternatively,] are based on related legal theories.’” (*Harman I, supra*, 136 Cal.App.4th at p. 1311, original italics.) “[A] useful tool for making this determination is to focus on whether the claims seek relief for essentially the same course of conduct. Under this analysis, an unsuccessful claim will

be *unrelated* to a successful claim when the relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised.’ [Citations.]’ (*Ibid.*; *Harman II*, at p. 423.)

Work on an unsuccessful and unrelated claim “cannot be deemed to have been ‘expended in pursuit of the ultimate result achieved’ . . . and therefore no fee may be awarded for services on the unsuccessful claim.” (*Hensley, supra*, 461 U.S. at p. 435; *Harman II, supra*, 158 Cal.App.4th at p. 417.) Accordingly, a prevailing party generally must apportion the attorney fees he or she incurred between successful and unsuccessful claims when the claims are unrelated. (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 157; *Harman II*, at p. 417.)

If successful and unsuccessful claims are related, the amount of attorney fees sought may still be reduced depending on the degree of success the plaintiff achieved. *Hensley*’s second step requires the trial court to evaluate “the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” (*Hensley, supra*, 461 U.S. at p. 435; *Harman II, supra*, 158 Cal.App.4th at p. 417.) “Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. . . . In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. [Citation.] Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court’s rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.” (*Hensley*, at p. 435, fn. omitted.)

“If, on the other hand, a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff’s claims were interrelated, nonfrivolous, and raised in good faith. . . . Again, the

most critical factor is the degree of success obtained.” (*Hensley, supra*, 461 U.S. at p. 436; *Harman II, supra*, 158 Cal.App.4th at pp. 417-418.)

No precise rule or formula exists for making the determination required by either of *Hensley*’s two steps and the trial court “necessarily has discretion in making this equitable judgment.” (*Hensley, supra*, 461 U.S. at pp. 436-437.) The court “may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success” if it exercises its discretion based on the foregoing principles. (*Ibid.*) To facilitate appellate review, the court must “provide a concise but clear explanation of its reasons for the fee award [and] . . . make clear that it . . . considered the relationship between the amount of the fee awarded and the results obtained.” (*Id.* at p. 437; *Harman I, supra*, 136 Cal.App.4th at pp. 1308, 1317; *Sokolow, supra*, 213 Cal.App.3d at p. 248.)

C. *The Trial Court Properly Found All of Plaintiffs’ Claims Related, but Abused Its Discretion in Failing to Consider the Degree of Success Plaintiffs Achieved*

Pacific contends the trial court could award Plaintiffs fees only for the single class claim the parties settled because Plaintiffs did not succeed on any other claim *and* all other claims were unrelated to the claim the parties settled.

1. All of Plaintiffs Claims Were Related

In Pacific’s view, all other claims Plaintiffs alleged during this action were unrelated to the settlement because the other claims were based on violations of the Act distinct from the single technical violation on which the parties based their agreement. For example, Pacific contends Plaintiffs’ claim that Pacific violated the Act by failing to timely provide a proper Notice of Right to Cancel was unrelated to Plaintiffs’ claim that Pacific violated the Act by failing to accurately disclose its finance charges because the

two claims were based on violations of different statutory provisions.⁵ Pacific carries its argument to the logical extreme, arguing that the failure to accurately disclose its finance charges and the annual percentage rate were unrelated because the two claims were based on different paragraphs of the same statute.⁶ This argument, however, incorrectly focuses on the specific statutory provisions Pacific violated rather than the underlying facts and conduct giving rise to the statutory violations.

As explained above, related claims “involve a common core of facts” or are “based on related legal theories.” (*Harman I, supra*, 136 Cal.App.4th at p. 1311; *Harman II, supra*, 158 Cal.App.4th at p. 423.) To be unrelated, an unsuccessful claim must seek “to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which” the successful claim was based. (*Ibid.*) This standard for identifying related claims is “very expansive” and requires the court to “examine the nature and ‘course of conduct’ upon which the claims are based.” (*Harman II*, at p. 423.)

Here, Plaintiffs’ claims involved a common core of facts because they all arose from the same refinance transactions with Pacific. Although each claim alleged a different defect in the disclosures and notices Pacific provided as part of those

⁵ Title 15 United States Code section 1635 establishes Pacific’s obligation to provide consumers a Notice of Right to Cancel while title 15 United States Code section 1638(a)(3) establishes Pacific’s obligation to provide a Disclosure Statement accurately disclosing the amount of finance charges.

⁶ Title 15 United States Code section 1638(a)(3) establishes Pacific’s obligation to accurately disclose its finance charges and title 15 United States Code section 1638(a)(4) establishes its obligation to disclose the annual percentage rate for the loan. The language of these two paragraphs shows how related they are because the obligation to disclose the annual percentage rate is merely the obligation to disclose the finance charges expressed as an annual percentage rate. In relevant part, title 15 United States Code section 1638(a) provides that “the creditor shall disclose each of the following items, to the extent applicable: [¶] . . . [¶] (3) The ‘finance charge’, not itemized, using that term. [¶] (4) The finance charge expressed as an ‘annual percentage rate’, using that term. . . .”

transactions, every claim alleged Pacific failed to timely and properly provide all required disclosures and notices. Plaintiffs' claims did not seek to remedy distinct and separate courses of conduct. Instead, they sought to remedy a single course of conduct regarding Pacific's Disclosure Statements and Notices of Right to Cancel. Even the common law fraud claims and the section 17200 claim Plaintiffs alleged in earlier versions of their complaint were based on Pacific's failure to timely and properly provide the disclosures and notices the Act required.

Pacific contends Plaintiffs' claims were unrelated because some claims sought statutory damages, and others sought rescission, classwide remedies, or individual remedies. The remedies Plaintiffs' sought, however, did not render their claims unrelated because all claims arose from a common core of facts and sought to remedy a single course of conduct. Indeed, although Plaintiffs' various claims sought different forms of relief, they all sought to remedy the same course of conduct. Plaintiffs' success, or lack thereof, in obtaining all of the relief they sought is considered during the second step of *Hensley's* analysis, but it does not define whether Plaintiffs' claims are related. (See *Hensley, supra*, 461 U.S. at pp. 434-436; *Harman II, supra*, 158 Cal.App.4th at pp. 422-425; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989 ["Although fees are not reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims [citation], 'under state law as well as federal law, a reduced fee award is appropriate when a claimant achieves only limited success'"].)

Pacific also contends Plaintiffs did not allege the specific class claim the parties settled until the second amended complaint and therefore all claims alleged before that time were unrelated. It is mistaken. All of Plaintiffs' pleadings alleged claims based on Pacific's failure to accurately disclose its finance charges. Under the relatedness standard discussed above, the relevant inquiry is whether Plaintiffs sought to remedy the same conduct, not the specific claim they alleged.

The trial court found all of Plaintiffs' class claims were related and therefore Plaintiffs could recover their fees regarding those claims without allocating the fees between successful and unsuccessful claims. We agree that all of Plaintiffs' claims were related and now must consider whether *Hensley*'s second step nonetheless requires a reduction in Plaintiffs' fees based on the degree of success they achieved.

2. The Trial Court Failed to Consider Plaintiffs' Degree of Success

According to Pacific, the trial court abused its discretion when it failed to consider that Plaintiffs succeeded on only one of the several claims they alleged during this action and obtained only a small portion of the relief they sought. We agree the trial court failed to consider Plaintiffs' degree of success in setting the amount of attorney fees it awarded.

“[A] partially prevailing party is not necessarily entitled to all incurred fees even where the work on the successful and unsuccessful claims was overlapping.” (*Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 344.) “[T]he degree or extent of [the plaintiffs'] success in obtaining the results which they sought must be taken into consideration in determining the extent of attorney fees which it would be *reasonable* for them to recover.” (*Sokolow, supra*, 213 Cal.App.3d at p. 248.) In particular, “the court must consider the significance of the overall relief obtained by the prevailing party in relation to the hours reasonably expended on the litigation and whether the expenditure of counsel's time was reasonable in relation to the success achieved.” (*Mann*, at p. 344.) As the *Hensley* court explained, “the most critical factor is the degree of success obtained.” (*Hensley, supra*, 461 U.S. at p. 436.)

In evaluating a plaintiff's success, it is not enough for the court merely to inquire whether the plaintiff obtained significant relief because that inquiry does not address how the relief obtained compares to the relief sought. (*Hensley, supra*, 461 U.S.

at pp. 438-440.) “A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” (*Id.* at p. 440.)

A fee award, however, may not be based on a simple mathematical comparison of the number of claims on which the plaintiff prevailed and the number of claims on which the plaintiff did not prevail. (*Hensley, supra*, 461 U.S. at p. 435, fn. 11.) That approach fails to account for the relative importance of each claim, any overlap between successful and unsuccessful claims, and the significance of the relief obtained. (*Ibid.*; *McCutcheon, supra*, 560 F.3d at p. 151 [“mathematically deducting fees proportional to a plaintiff’s losing claims is ‘too simplistic and unrealistic’”]; *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 783 [court must consider “the qualitative as opposed to quantitative significance of the issues”].) Instead, success is measured by analyzing the objectives the plaintiff sought to achieve through the litigation and the objectives they actually achieved. (*Sokolow, supra*, 213 Cal.App.3d at pp. 248-250.)

For example, in *Sokolow*, the plaintiffs sued for gender discrimination because a private mounted patrol unit closely affiliated with the local sheriff’s department refused to admit women. (*Sokolow, supra*, 213 Cal.App.3d at p. 235.) The plaintiffs sought an injunction against the patrol unit compelling it to admit women or, alternatively, an injunction against the sheriff’s department requiring it to sever its ties with the unit. (*Id.* at p. 239.) The trial court found the patrol unit illegally discriminated against women, but awarded plaintiffs only an injunction requiring the sheriff’s department to sever ties with the unit; it did not require the patrol unit to admit women. (*Id.* at pp. 240-242.)

The trial court thereafter denied the plaintiffs request for prevailing party attorney fees under title 42 United States Code section 1988 and Code of Civil Procedure

section 1021.5.⁷ The court found the plaintiffs were not prevailing parties because they failed to obtain the principal relief they sought — admission to the mounted patrol unit. (*Sokolow, supra*, 213 Cal.App.3d at p. 242.) The Court of Appeal reversed, concluding the plaintiffs’ failure to obtain their principal objective did not defeat their right to recover attorney fees because they still succeeded in obtaining a finding the patrol unit engaged in illegal discrimination and an injunction requiring the sheriff’s department to sever ties with the unit. (*Id.* at pp. 244-245.) As the *Sokolow* court explained, the plaintiffs’ failure to obtain all of their litigation objectives was an important consideration in setting the amount of fees, not a justification for denying the plaintiffs a fee award. (*Id.* at pp. 247-248.)

The *Sokolow* court further explained the difference between unsuccessful litigation objectives and unsuccessful theories. Where a plaintiff succeeds in obtaining all the relief he or she sought, the trial court need not reduce a fee award to account for a plaintiff’s alternative theories that the court either rejected or never reached. Attorneys are expected to pursue all available theories in pursuit of their clients’ litigation objectives because it is difficult to predict which theory will ultimately prevail. Accordingly, a plaintiff who achieves all of his or her litigation objectives should not be denied a full compensatory fee award because the trial court did not adopt all theories advanced in pursuit of those objectives. But when a plaintiff fails to obtain all of his or her litigation objectives, the trial court must consider whether the plaintiffs’ unsuccessful claims require a reduced fee award. (*Sokolow, supra*, 213 Cal.App.3d at pp. 249-250.)

Finally, the *Sokolow* court observed, “[A]lthough the trial court has discretion to make this equitable judgment of determining the amount of a fee award, it

⁷ This United States Code section authorizes an attorney fees award to prevailing parties in a successful civil rights action and this Code of Civil Procedure section authorizes an attorney fee award in a successful action enforcing an important right affecting the public interest.

must provide ‘a concise but clear explanation of its reasons for the fee award,’ making clear that it has considered the relationship between the amount of the fee awarded and the results obtained, and awarding only that amount of fees that is reasonable in relation to the results actually obtained. [Citation.]” (*Sokolow, supra*, 213 Cal.App.3d at p. 248, quoting *Hensley, supra*, 461 U.S. at p. 437; see also *Harman I, supra*, 136 Cal.App.4th at pp. 1316-1317.) The *Sokolow* court remanded the case for the trial court to determine the reasonable amount of fees based on the plaintiffs’ limited success. (*Sokolow*, at pp. 250-251.)

Here, Plaintiffs filed this action to rescind not only their own loans but also the loans of other class members. Plaintiffs also sought restitution for all finance charges, actual damages, and statutory damages for themselves and the other class members. Plaintiffs’ fifth amended complaint alleged both a class claim and an individual claim. The settlement related only to the class claim (the record fails to state what happened to Plaintiffs’ individual claims) and only required Pacific to pay statutory damages for a single violation of the Act based on Pacific’s failure to accurately disclose its finance charges. Plaintiffs did not obtain rescission of their loans or the other class members’ loans nor did they obtain restitution or actual damages for either themselves or the other class members. In fact, Pacific successfully opposed Plaintiffs’ claims for classwide rescission and actual damages. Plaintiffs also failed to establish Pacific violated the Act in any way other than its failure to accurately disclose its finance charges. Accordingly, although Plaintiffs succeeded in obtaining a monetary settlement for the entire class regarding a single violation of the Act, that success was limited when compared to the relief they sought for themselves and other class members.

At the hearing on Plaintiffs’ fee motion, Pacific argued this limited success required the trial court to reduce Plaintiffs’ attorney fees. The court rejected that argument, finding our reported opinion regarding Plaintiffs’ claim for classwide rescission provided “an important advancement of the law.” The court erred in focusing

on whether Plaintiffs' claim broke new legal ground, and therefore abused its discretion in applying an erroneous legal standard. (*Vitamin Cases, supra*, 110 Cal.App.4th at p. 1052 [““[t]he scope of discretion always resides in the particular law being applied, i.e., in the ‘legal principles governing the subject of [the] action. . . .’ Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an ‘abuse’ of discretion””].)

Whether our opinion provided an important advancement in the law is not germane to the attorney fee issue. In our earlier opinion, we held Plaintiffs could not obtain classwide rescission under the Act as a matter of law. Plaintiffs therefore did not succeed on that important litigation objective. The trial court must consider that lack of success in determining the amount of reasonable attorney fees and the court may not ignore that factor because we may have clarified an area of law in our published opinion denying Plaintiffs' efforts to obtain classwide rescission. The Act authorizes attorney fees in successful actions to enforce its requirements; it does not authorize fees for obtaining appellate decisions advancing the law.⁸ (See *Hensley, supra*, 461 U.S. at p. 436 [the proper inquiry is whether the plaintiff succeeded, not whether he or she pursued a nonfrivolous claim in good faith].) Moreover, we question how a published appellate decision declaring Plaintiffs and all other similarly-situated borrowers cannot obtain classwide rescission advances the law in a manner that justifies a fee award in Plaintiffs' favor.

⁸ We acknowledge that a case resulting in a published opinion may be a relevant factor on a motion for attorney fees under Code of Civil Procedure section 1021.5, where the criteria for an award include whether the case enforced an important public right and conferred a significant benefit on the general public or a large class of persons. (See, e.g., *Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 397-400.) Plaintiffs did not seek their fees under that code section and neither Plaintiffs nor the trial court cited any authority holding that a published opinion advancing the law is a relevant factor on a fee motion under the Act.

The written order the court signed several days after the hearing stated the court considered “[t]he relationship between the amount of the fee awarded and the result obtained.” This statement, however, does not alter the fact that the court applied an erroneous legal standard regarding the degree of success Plaintiffs achieved. Indeed, the conclusory statement that the court considered the “result obtained” may only be another way of saying Plaintiffs achieved success because their actions resulted in a published opinion advancing the law.

Furthermore, the court’s statement that it considered “[t]he relationship between the amount of the fee awarded and the result obtained,” without more, does not satisfy the court’s obligation to “provide ‘a concise but clear explanation of its reasons for the fee award’” (*Sokolow, supra*, 213 Cal.App.3d at p. 248.) To satisfy this “‘concise but clear’” standard, “[c]ourts need not attempt to portray the discretionary analyses that leads to their numerical conclusions as elaborate mathematical equations, but they must provide sufficient insight into their exercises of discretion to enable us to discharge our reviewing function.” (*Cunningham v. County of Los Angeles* (9th Cir. 1988) 879 F.2d 481, 485; *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1398 [“Although we do not require ‘an elaborately reasoned, calculated, or worded order . . . [and] a brief explanation of how the court arrived at its figures will do,’ [citation], ‘something more than a bald, unsupported amount is necessary’”].)⁹

The conclusory statement that the court considered the “result obtained” provides no insight into its decision to award Plaintiffs 97 percent of their attorney fees¹⁰

⁹ “California courts do not require a statement of decision with regard to fee awards [citations], but in reviewing a federal remedy, it is reasonable to insist on a record adequate to allow a meaningful review of federal standards governing the remedy. [Citations.]” (*Harman I, supra*, 136 Cal.App.4th at p. 1308.) The Act and its fee award provision is a federal remedy. (15 U.S.C. § 1601 et seq.)

¹⁰ The billing statements Plaintiffs submitted to support their motion showed total fees for Newmeyer & Dillion of \$21,873.50 and total fees for Arias, Ozzello &

despite achieving only a portion of their litigation objectives. In particular, nothing in the record shows the court considered the “result obtained” in comparison to the results Plaintiffs failed to obtain. (*Sokolow, supra*, 213 Cal.App.3d at p. 247 [“the trial court must still determine what amount of fees would be ‘reasonable’ in light of the relative extent or degree of the party’s success in obtaining the results sought”].) The foregoing standards do not require a detailed explanation or calculation showing precisely how the court considered Plaintiffs’ degree of success in granting their fee motion, but there must be some acknowledgement that Plaintiffs failed to achieve some of their litigation objectives and the court considered that failure in setting the amount of the fee award.

We acknowledge the trial court made a small reduction to account for the Plaintiffs’ failure to prevail on their individual claim, noting the settlement applied to Plaintiffs’ class claim only. This minor reduction, however, does not satisfy the court’s obligation to consider Plaintiffs’ limited success for two reasons. First, it fails to account for the limited success Plaintiffs obtained on the various class claims they alleged during this action. Second, it fails to properly account for Plaintiffs’ lack of success on the individual claims they alleged. The court reduced Plaintiffs’ fees by excluding a relatively small amount for the time Plaintiffs’ counsel spent on the original and fourth amended complaints because those two pleadings only alleged individual claims. Plaintiffs’ third and fifth amended complaints, however, also alleged individual claims, in addition to class claims, and the court made no reduction for work performed on the individual claims in those pleadings. Moreover, simply allowing or disallowing time spent on individual claims versus class claims is arbitrary and fails to consider whether work relating to the individual claims also related to the successful class claim. As explained above, fees for work on unsuccessful claims may be recovered if the work also related to successful claims. Here, Plaintiffs’ individual and class claims were related

Gignac of \$706,620.50 for a grand total of \$728,494. The court awarded Plaintiffs a total of \$707,665 in attorney fees, which represents 97 percent of \$728,494.

because they arose from a common core of operative facts and sought to remedy a single course of conduct.¹¹

Based on the foregoing, we reverse the trial court's award and remand the matter for the court to reconsider Plaintiffs' motion consistent with the standards discussed in this opinion. (*Ramos, supra*, 82 Cal.App.4th at p. 629 ["Where discretion has been exercised in a manner that exceeds the applicable legal standards, the proper remedy is to reverse the order and remand the matter to the trial court in order to give it the opportunity to make a ruling that comports with those standards"]; *Harman I, supra*, 136 Cal.App.4th at pp. 1316-1317.)

In determining a reasonable amount of fees to award, the trial court should compare the relief and litigation objectives Plaintiffs obtained with the relief and litigation objectives they failed to obtain. The court should prioritize the various forms of relief and the litigation objectives Plaintiffs sought to help determine Plaintiffs' degree of success. For example, was the principal litigation objective to obtain individual and classwide rescission or was this merely another form of relief? Similarly, the trial court should determine whether the various claims Plaintiffs alleged were separate litigation objectives or merely alternative theories for obtaining the same litigation objective. For example, did the various violations of the Act Plaintiffs alleged represent alternative theories for obtaining the same relief or could Plaintiffs obtain separate or additional relief for each violation?

These are merely some of the factors the court should consider; it is not an exhaustive list. We emphasize the amount of fees to award under the standards discussed

¹¹ This does not mean the court lacks discretion to reduce Plaintiffs' fees based on their failure to succeed on their individual claims. Rather, it simply means the court may not make a wholesale reduction for Plaintiffs' lack of success on their individual claims without considering whether the individual and class claims were related.

in this opinion is vested in the trial court’s “equitable judgment” based on its familiarity with all of the circumstances surrounding this lengthy litigation. (*Hensley, supra*, 461 U.S. at pp. 436-437.) On remand the trial court should explain its ruling to show how it applied the governing legal standards. (*Id.* at p. 437; *Harman I, supra*, 136 Cal.App.4th at pp. 1308, 1317; *Sokolow, supra*, 213 Cal.App.3d at p. 248.) We express no opinion on what amount may constitute a reasonable award and reverse solely based on the trial court’s failure to properly consider Plaintiffs’ degree of success.¹²

III

DISPOSITION

The order is reversed and remanded for further proceedings consistent with this opinion. Pacific shall recover its costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.

¹² We note the trial court may not consider any success Plaintiffs may have later achieved on their individual claims because (1) the motion sought to recover Plaintiffs’ fees based solely on the settlement relating to a single class claim and (2) the record fails to reflect what, if any, success Plaintiffs achieved on their individual claims. Any request for fees based on the individual claims must be the subject of a separate motion. As discussed above, however, Plaintiffs may recover for time spent on the individual claims that were related to the successful class claim, subject to any reduction for Plaintiffs’ degree of success.