UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AVERY ARMANI, Plaintiff, v. NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a corporation; DOES 1 through 10, INCLUSIVE, Defendant.	CV 13-07058 RSWL (RZx) **ORDER Re: PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, TO DETERMINE COSTS AND INTEREST RATE** [48]

I. INTRODUCTION

Currently before the Court is Plaintiff Avery Armani's ("Plaintiff") Motion for Attorney's Fees, to Determine Costs and Interest Rate ("Motion") against Defendant Northwestern Mutual Life Insurance Company ("Defendant"). Pl.'s Mot. for Att'y's Fees ("Mot."), ECF No. 48. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS in part and DENIES in part** Plaintiff's Motion for Attorney's

Fees.

II. BACKGROUND

A. Factual Background

Plaintiff worked as a full-time controller for the Renaissance Insurance Agency ("Renaissance") from November 3, 2008 to May 18, 2011. Ruling and Order re Court Trial 2:1-5, ECF No. 27. On January 6, 2011, Plaintiff injured his back lifting a backup power supply while at work. Id. at 4:19-20. Plaintiff was diagnosed with a lumbar region sprain, muscle spasms, and sciatica. Id. at 4:22-5:6. Plaintiff stopped working on May 18, 2011. Id. at 6:14-15.

As a Renaissance employee, Plaintiff was insured under a group long-term disability policy ("the LTD Plan") issued by Defendant. Id. at 2:6-8. Plaintiff completed a Group Disability Claim Employee Statement for Defendant on July 15, 2011, reporting that his back injury prevented him "from sitting, standing, walking, driving, and concentrating for prolonged periods of time without experiencing a lot of pain &/or difficulty." Id. at 8:12-17.

Between September 2011 and January 2012, Plaintiff continued to visit chiropractors, pain specialists, and physicians, all of whom confirmed that Plaintiff's disability precluded him from working. Id. at 13:14-14:26. On January 16, 2012, another chiropractor indicated that Plaintiff was limited to sitting for four hours a day and to standing and walking for two

hours a day, but believed that Plaintiff's condition would improve and that he could return to work on July 6, 2012. Id. at 14:26-15:8. Based on these medical records, Defendant's reviewing physician, Dr. John Hart, determined that Plaintiff was capable of working in a sedentary position. Id. at 15:9-19.

By letter dated July 9, 2013, Defendant informed Plaintiff that his LTD claim was being closed because his records did not support a disability under the "own occupation" or "any occupation" test. Id. at 18:24-28. Plaintiff appealed the decision and asked for review by a second doctor. Id. at 19:1-6. After being assigned to review Plaintiff's records, Dr. Hans Carlson also found that the records "[did] not support that [Plaintiff] would be precluded from sedentary-level work." Id. at 19:6-12. Defendant informed Plaintiff that it was upholding its claim decision. Id. at 19:18-20.

B. Procedural Background

Pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), Plaintiff filed his Complaint against Defendant on September 23, 2013 [1]. Following a bench trial, on November 25, 2014, this Court awarded Plaintiff benefits for the remainder of the first 24 months of his disability under the LTD Plan (nine days total), but also found that Plaintiff failed to show by a preponderance of the evidence that he was disabled from "all occupations" after July 18, 2013 [27].

On December 1, 2014, Plaintiff appealed this Court's Judgment [29], and on November 4, 2016, the Ninth Circuit Court of Appeals vacated the part of this Court's Judgment denying Plaintiff his long-term disability benefits and remanded the case for further proceedings [31]. After Plaintiff's Writ of Mandamus was granted reversing this Court's remand of the matter to Defendant, this Court entered Judgment for Plaintiff on May 18, 2017 [47]. On May 30, 2017, Plaintiff filed the instant Motion for Attorney's Fees [48]. On June 26, 2017, Defendant filed its Opposition [51], and Plaintiff's Reply followed on June 28, 2017 [54].

III. DISCUSSION

A. Legal Standard

1. Attorney's Fees

29 U.S.C. § 1132(g)(1) states that "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." Under the "American Rule," each party to a lawsuit is generally responsible for its own attorney's fees. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). The general rule in federal courts is that attorney's fees will not be awarded in civil cases absent an express statutory command. Id. When attorney's fees are awarded, the amount of the fee award is subject to the court's discretion. Rodriguez v. Disner, 688 F.3d 645, 653 (9th Cir. 2012). If a plaintiff is entitled to an award of attorney's fees, then the district court

should be guided by the considerations identified in Hensley. In Hensley, the Supreme Court approved the lodestar method for calculating fees by multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate. 461 U.S. at 429.

In determining the appropriate hourly rate to be included in a lodestar calculation, the district court must look to the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986), reh'g denied amended on other grounds, 808 F.2d 1373 (9th Cir. 1987). In determining the appropriate number of hours to be included in a lodestar calculation, the district court should exclude hours "that are excessive, redundant, or otherwise unnecessary." Hensley, 461 U.S. at 434. "The party seeking the award should provide documentary evidence to the court concerning the number of hours spent[.]" McCown v. City of Fontana, 565 F.3d 1097, 1102 (9th Cir. 2009) (internal citation omitted). Counsel must demonstrate that the time actually spent was reasonably necessary to effectively litigate the claims. Sealy, Inc. v. Easy Living, Inc., 743 F.2d 1378, 1385 n.4 (9th Cir. 1984).

In exercising its discretion in determining whether a party should be awarded attorney's fees, courts should consider the following factors: (1) the degree

of the opposing parties' culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of fees; (3) whether an award of fees against the opposing parties would deter others from acting under similar circumstances; (4) whether the parties requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties' positions. Hummell v. S.E. Rykoff & Co., 634 F.2d 446, 453 (9th Cir. 1980).

B. Analysis

1. Defendant's Request for Judicial Notice

Defendant requests the Court take judicial notice of the weekly average 1-year constant maturity Treasury yield rates from July 2013 to May 12, 2017, as published by the Board of Governors of the Federal Reserve System. Def.'s Req. for Jud. Ntc. 2:1-7. This was downloaded from the Federal Reserve Bank of St. Louis' website. Id. at 2:14-17.

A court may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Plaintiff does not object to Defendant's Request for Judicial Notice. VMR Products, LLC v. V2H ApS, No. 2:13-CV-7719-CBM-JEMX, 2016 WL 1177834, at *1 (C.D. Cal. Mar. 18, 2016). Courts may also take judicial notice of "records and reports of

administrative bodies." Balance Studio, Inc. v. Cybernet Entm't, LLC, No. 15-CV-04038-DMR, 2016 WL 1559745, at *1 n.2 (N.D. Cal. Apr. 18, 2016)(quoting Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986)). As this document was downloaded from the Federal Reserve Bank of St. Louis' website and its accuracy cannot reasonably be questioned, the Court **GRANTS** Defendant's request for judicial notice.

2. The Hummell Factors Weigh in Favor of Awarding Attorney's Fees

As an initial matter, Defendant spends the majority of its Opposition raising issues that are irrelevant to the instant Motion. See generally Def.'s Opp'n to Pl.'s Mot. for Att'y's Fees ("Opp'n"). Defendant spends a significant amount of time discussing Plaintiff's lack of cooperation in providing requested documents to Defendant to process his claim. See id. at 7-10:10. However, the Opposition to this Motion is not the appropriate avenue to raise issues Defendant is having in paying Plaintiff's benefits and these arguments do nothing to assist the Court in determining the appropriate attorney's fees. Moreover, in its March 2015 Order granting Plaintiff's Writ of Mandamus, the Ninth Circuit awarded Plaintiff attorney's fees. While this Court still needs to determine the appropriate hourly rate and reasonable amount of hours expended, Defendant attempts to argue that despite the

Ninth Circuit's ruling, this Court should deny Plaintiff's Motion because of irrelevant issues. Nevertheless, the Court will still go into an analysis of the factors courts look to when determining if attorney's fees are appropriate in ERISA cases.

In any action brought by a plan participant, beneficiary, or fiduciary under ERISA, "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g). The Ninth Circuit has held that a successful ERISA participant who "prevails in his suit . . . to enforce his rights under his plan should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Smith v. CMTA-IAM Pension Trust, 746 F.2d 587, 589 (9th Cir. 1984) (internal quotation marks and citation omitted).

The Court finds Plaintiff is entitled to attorney's fees because the Hummell factors courts consider in deciding whether to grant attorney's fees weigh in Plaintiff's favor. 634 F.2d at 453; see also Mardirossian v. Guardian Life Ins. Co. of America, 457 F. Supp. 2d 1038, 1044 (C.D. Cal. 2006)(awarding plaintiff attorney's fees because four of the five Hummell factors weighed in his favor). When applying these factors, ERISA's goal of providing remedies to individuals "should be liberally construed in favor of protecting participants in employee benefit plans." McElwaine v. US West, Inc., 176 F.3d 1167, 1172 (9th

Cir. 1999).

a. *Degree of Defendant's Culpability or Bad Faith*

When there is no evidence of bad faith, the first Hummell factor weighs neither for a plaintiff nor a defendant and is therefore not decisive. Frei v. Hartford Life Ins. Co., No. C-05-01191 EDL, 2006 WL 1409360, at *3 (N.D. Cal. May 23, 2006)(holding the first factor in the plaintiff's request for attorney's fees was neutral because there was no evidence of bad faith on the plaintiff or the defendant's part); see also Smith, 746 F.2d at 590 ("[a]s there was no bad faith on either side, this factor should not have been considered decisive"). Here, Defendant alleges that Plaintiff has acted in bad faith by refusing to turn over tax returns along with other earning documents, preventing Defendant from calculating the amount of benefits owed to Plaintiff. Opp'n 14:7-13. However, Plaintiff argues that he has sixty days to respond to Defendant's request, and at the time the parties briefed this Motion the sixty-day window had not yet elapsed. Pl.'s Reply to Mot. for Att'y's Fees ("Reply") 4:2-10. Because Plaintiff still had time to respond to Defendant's requests, it is not evident to the Court that he has acted in bad faith. Since neither Plaintiff nor Defendant acted in bad faith, this first factor is neutral.

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b. *Ability of the Opposing Party to Satisfy an Award of Fees*

The second Hummell factor weighs in Plaintiff's favor because Defendant can satisfy an award of fees. Defendant itself admits that it is capable of satisfying an award of fees. Opp'n 14:16-18; Mardirossian, 457 F. Supp. 2d at 1045. The ability of a party to satisfy an award of fees is relevant to a court's inquiry. Smith, 746 F.2d at 589 (9th Cir. 1984). While the Court agrees with Defendant that this factor alone is not determinative, it nevertheless weighs in Plaintiff's favor.

c. *Whether an Award Would Deter Others*

Defendant argues an award would not deter others from acting in similar circumstances because Defendant was simply defending its position and it should not be penalized for doing so. Opp'n 14:20-28. The Court finds that the third Hummell factor weighs in Plaintiff's favor because an award of attorney's fees could deter insurance companies from denying benefits to those with work-related injuries or to investigate a claim more thoroughly when there is a dispute. When the position of both parties has some merit, "a decision clarifying the terms of a plan after litigation benefits all participants and beneficiaries by settling a disputed provision or ambiguity." Smith, 746 F.2d at 590 (holding the third Hummell factor weighed in the plaintiff's favor because litigation

removed ambiguity from the terms of his plan and was a deterrent to trustees to deny such claims in the future).

Here, awarding attorney's fees to Plaintiff could deter Defendant from denying similar claims to future claimants since this litigation clarified the term "sedentary" with regards to ERISA. Awarding Plaintiff attorney's fees would deter insurance companies from denying appropriate benefits to those with conditions that do not allow them to perform sedentary work. Thus, the third factor marginally weighs in Plaintiff's favor.

d. *Party Requesting Fees Sought to Benefit All Participants and Beneficiaries of an ERISA Plan or to Resolve a Significant Legal Question Regarding ERISA*

As an initial matter, Plaintiff did not seek to benefit all plan participants and beneficiaries of an ERISA plan because this was an individual claim. Mardirossian, 457 F. Supp. 2d at 1045. However, arguably, this litigation has assisted in resolving the meaning of the word "sedentary" as it relates to insurance claims. If the litigation will assist plan fiduciaries to some degree in their future administration of plan benefits, then this factor weighs in Plaintiff's favor. See Arnett v. Hartford Life & Acc. Ins. Co., 558 F. Supp. 2d 975, 980 (C.D. Cal. 2007)(finding that a court's analysis in

determining disability also benefits additional plan participants). Similarly, other employees with the same job description as Plaintiff covered under a similar plan will benefit from clarification of the word "sedentary" as set forth by the Ninth Circuit because clarifications are useful in resolving ambiguities. Smith, 746 F.2d at 590. Therefore, the fourth factor weighs in Plaintiff's favor.

e. *Relative Merits of the Parties' Positions*

The fifth Hummell factor weighs in Plaintiff's favor because Plaintiff received a favorable judgment in this case. When a party obtains a judgment in their favor, the court should weigh this factor accordingly. See Arnett, 558 F. Supp. 2d at 980; Mardirossian, 457 F. Supp. 2d at 1045. While this Court initially partially ruled in Defendant's favor after the bench trial, Plaintiff received a judgment from this Court on the merits of his case on May 18, 2017, after the appeal to the Ninth Circuit. Defendant's argument that Plaintiff is now working has no basis in determining whether the parties' positions have merit. Opp'n 15:26-16:6. Accordingly, the fifth factor weighs in Plaintiff's favor.

As the majority of the Hummell factors weigh in Plaintiff's favor, there are no special circumstances that would render an award unjust, and considering the Ninth Circuit's Order on May 8, 2017, Plaintiff is entitled to attorney's fees.

3. The Lodestar Calculation

Next, the Court must determine the lodestar figure, which is the reasonable hourly rate multiplied by the reasonable hours expended as set forth in Hensley. Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1110 (9th Cir. 2014). Then, the Court must determine if for any reason the lodestar figure should be adjusted. Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992).[1] There is a presumption that the lodestar calculation represents a reasonable fee. Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996).

Plaintiff requests $104,647.50 in attorney's fees for 152.3 hours spent on the litigation for this case. Mot. 8:1-4. Plaintiff's lead counsel, Charles Fleishman, requests an hourly rate of $675 for 144.5 hours he spent on the case. Declaration of Charles Fleishman ("Charles Fleishman Decl.") ¶¶ 4, 6, ECF No. 48. He requests an additional four hours for reviewing

[1] In Kerr, the Ninth Circuit found the following factors important in determining whether attorney's fees are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Id.

and responding to Defendant's Opposition to the instant Motion and four hours for appearing at the hearing for this Motion. Id. He believes $675 per hour is a reasonable rate because of his extensive experience with ERISA claims and the complex nature of ERISA law. Id. at ¶¶ 7-8. His experience includes approximately 200 ERISA claims and he is currently working on ten ERISA matters. Id. at ¶ 7. Attorney Paul Fleishman requests an hourly rate of $450 per hour for 3.8 hours spent on the case. Id.

a. *Hourly Rate*

"Fee applicants have the burden of producing evidence that their requested fees are 'in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" Chaudhry, 751 F.3d at 1110 (quoting Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980 (9th Cir. 2008)). The relevant community is the forum in which the district court sits. Id. The district court has discretion in determining which fees are reasonable. Id.

Attorney Charles Fleishman has been practicing since 1970 and he states that his practice is devoted to ERISA claims. Charles Fleishman Decl. ¶¶ 1, 4. He has tried approximately 225 jury trials and 1500 court trials, including 200 ERISA cases. Id. at ¶¶ 3, 7. Additionally, Charles Fleishman was previously awarded $600 per hour and Paul Fleishman was awarded $350 per

hour in a 2012 Eastern District of California case. Mot. 7:1-3. Paul Fleishman has been practicing since 2007 exclusively in the area of ERISA and has been recognized as a Southern California Rising Star in the field of ERISA every year since 2013. Declaration of Paul Fleishman ("Paul Fleishman Decl.") ¶¶ 2, 4, ECF No. 48-3. Paul Fleishman has also previously been awarded $350 by this Court in a different case in 2011 and $400 in an ERISA case in this District in 2015. Id. at ¶ 5.

Charles Fleishman and Paul Fleishman's rates of $675 and $450 are reasonable, because they reflect the prevailing market rate in this community for their levels of experience. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990)(citing Chalmers, 796 F.2d at 1214). Additionally, it is appropriate to adjust an hourly rate for delay in payment, as was the case here since the case was taken on a contingency basis. Missouri v. Jenkins by Agyei, 491 U.S. 274, 283-84 (1989).

Plaintiff submits affidavits from attorneys in this District supporting their requested rates. Michael McKuin's declaration states that $700 and $500 would be

more appropriate hourly rates for Charles Fleishman and Paul Fleishman; however, he concedes that in his 23-year practice in ERISA litigation, he has been awarded $550 per hour. Declaration of Michael McKuin ("McKuin Decl.") ¶¶ 6, 8, ECF No. 48-4. The Declaration of Susan Horner points to a case where an attorney was awarded $700 in an ERISA litigation. Declaration of Susan Horner ("Horner Decl.") ¶ 10, ECF No. 48-5. The remaining cases Ms. Horner cites to shows that attorneys have also been awarded hourly rates of $575-$650. Id. at ¶¶ 11-16. Moreover, Paul Fleishman was awarded $400 in an ERISA case in 2015.

Therefore, the Court finds $675 per hour for Charles Fleishman and $450 per hour for Paul Fleishman are reasonable hourly rates based on counsels' levels of experience and prior awards.

b. *Reasonable Hours*

A district court has "wide latitude in determining the number of hours that were reasonably expended by the prevailing lawyers." Sorenson v. Mink, 239 F.3d 1140, 1147 (9th Cir. 2001). The fee applicant "bears the burden of documenting the appropriate hours expended in litigation and must submit evidence in support of hours worked." Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir. 1992).

Charles Fleishman spent 144.5 hours and Paul Fleishman spent 3.8 hours preparing for and litigating this case. "A court may award attorneys' fees only for

the number of hours it concludes were reasonably expended litigating the case" and should exclude hours that are excessive, redundant, or otherwise unnecessary. Mardirossian, 457 F. Supp. 2d at 1049.

Plaintiff's time sheets do not appear to be excessive, redundant, nor otherwise unnecessary because they are not duplicative. Charles Fleishman appears to have tracked his time meticulously, as has Paul Fleishman. Paul Fleishman spent the majority of his hours reviewing Charles Fleishman's work, which is not uncommon for attorneys and thus not duplicative. After a review of the time sheets, the Court finds the requested number of hours are reasonable.

Charles Fleishman also anticipated and requested four hours for reviewing and responding to Defendant's Opposition for the instant Motion and four hours for appearing at the hearing for this Motion. This matter was taken under submission and the parties did not appear at a hearing, therefore Charles Fleishman is not entitled to the four hours requested for an appearance. The Court finds that four hours is reasonable for reviewing Defendant's Opposition and preparing the Reply. Therefore, Charles Fleishman shall be compensated for a total of 148.5 hours and Paul Fleishman shall be compensated for a total of 3.8 hours.

Using the hourly rate of $675 per hour for Charles Fleishman, multiplied by the 148.5 hours he spent

working on this case, his total fee comes to $100,237.50. For Paul Fleishman, at an hourly rate of $450 per hour and 3.8 hours spent on this litigation, the fee amounts to $1,710. When totaled, the sum is $9101,947.50.

Finally, the Court must look to the Kerr factors in determining whether the lodestar figure is reasonable and if it should be adjusted. 526 F.2d at 70. When looking at the totality of the circumstances, none of the Kerr factors necessitate that the Court adjust the lodestar figure. This matter was litigated for the past four years and required time and labor, including an appeal to the Ninth Circuit and a Writ of Mandamus. ERISA litigation is a particularized field that requires specialized skills to perform the legal services. Charles Fleishman and Paul Fleishman did take this matter on a contingency basis and Plaintiff did achieve positive results, as he was awarded all of the past benefits he sought. Additionally, both attorneys have dedicated a significant number of years to the practice of ERISA litigation. Therefore, the lodestar figure is appropriate and reasonable and does not require an adjustment.

4. Plaintiff is Entitled to Costs

Plaintiff also requests $1,660.36 for costs associated with the litigation, including $400 for filing the Complaint, $505 for filing an appeal to the Ninth Circuit, $255.36 for printing briefs to the Ninth

Circuit, and $500 for filing a petition for a Writ of Mandamus. Charles Fleishman Decl. ¶ 11. Defendant argues that Plaintiff should be denied his costs because he failed to make an application to the Clerk of Court for costs. Opp'n 2:12. While Local Rule 54-2.1 does state that a party shall file with the Clerk of Court and serve an application for costs, in ERISA cases such as the instant case, it is the Court, not the Clerk of Court, who awards fees and costs in its discretion. Mogck v. UNUM Life Ins. Co. of America, No. Civ. 99-CV-201-CGA, 2001 WL 34084379, at *1-2 (S.D. Cal. Jan. 8, 2001); 29 U.S.C. § 1132(g). Therefore, Plaintiff is awarded $1,660.36 in costs.

5. Prejudgment Interest on Award

Plaintiff also requests prejudgment interest on the benefits owed him at a rate of ten percent. Mot. 7:15-18. Plaintiff argues that ERISA statutes do not mention interest and therefore there is no set rate; thus, the Court should use California Insurance Code § 10111.2 to set the interest rate. Id. at 7:19-23. Defendant argues that if interest is awarded, it should be at the same rate as post-judgment interest as set forth by 28 U.S.C. § 1961(a) and not as set by the California Insurance Code, which is preempted by ERISA. Opp'n 10:20-11:12.

The Ninth Circuit has held that the decision to award interest in an ERISA case "is a question of fairness, lying within the court's sound discretion, to

be answered by balancing the equities." Day v. AT&T Disability Income Plan, 608 F. App'x 454, 458 (9th Cir. Apr. 9, 2015)(unpublished)(quoting Shaw v. Int'l Ass'n of Machinists & Aerospace Workers Pension Plan, 750 F.2d 1458, 1465 (9th Cir. 1985)). Additionally, awarding interest as set forth in 28 U.S.C. § 1961(a) is reasonable, unless there is substantial evidence or the equities of a specific case require a different interest rate. Id. (citing Blankenship v. Liberty Life Assur. Co. of Bos., 486 F.3d 620, 628 (9th Cir. 2007)).

Plaintiff's argument that the interest rate should be set based on California Insurance Code § 10111.2 is unconvincing. As stated above, it is within the Court's discretion to award interest and to determine the rate. Using the rate as set forth by 28 U.S.C. § 1961(a) has not only been found to be reasonable, but it is also fair and just to all parties. The Court need not go into a discussion of whether the California Insurance Code is preempted by ERISA because the Court exercises its discretion to award prejudgment interest as set forth in 28 U.S.C. § 1961(a).

Plaintiff shall be awarded prejudgment interest at a rate equal to the average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System for the calendar week preceding the due date of any past due benefit payment. 28 U.S.C. § 1961(a). The interest is to be compounded annually.

IV. CONCLUSION

For the reasons set forth above, the Court **GRANTS in part and DENIES in part** Plaintiff's Motion for Attorney's Fees. Plaintiff is awarded a total of $101,947.50 in attorney's fees, $1,660.36 in costs, and prejudgment interest on the total amount of benefits owed to Plaintiff at the applicable rate as set forth by 29 U.S.C. § 1961(a) to be compounded annually.

IT IS SO ORDERED.

DATED: July 24, 2017

s/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge