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**United States District Court
Central District of California**

MICHAEL WHITE,

Plaintiff,

v.

THE SENIOR LEADERS SEVERANCE
PAY PLAN OF DANAHER
CORPORATION AND ITS AFFILIATED
COMPANIES, an ERISA plan;
DANAHER CORPORATION, a
corporation; DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:17-cv-03476-ODW (JCx)

**ORDER DENYING DEFENDANTS’
MOTION FOR ATTORNEYS’ FEES
AND COSTS [34]**

Plaintiff Michael White claimed he was improperly denied severance benefits after his employer fired him. He sued his employer, Danaher Corporation, and The Senior Leaders Severance Pay Plan of Danaher Corporation (collectively, “Danaher”). (Compl., ECF No. 1.) On June 27, 2018, the Court granted Danaher’s Motion for Summary Judgment. (Order Granting Defs.’ Mot. for Summ. J. (“MSJ Order”), ECF No. 30.) Danaher now seeks its attorneys’ fees and costs pursuant to ERISA’s¹ civil

¹ Employee Retirement Income Securities Act, 29 U.S.C. § 1132.

1 enforcement provision. (Mot. for Attorney Fees and Costs (“Mot.”) 5, ECF No. 34.)
2 For the reasons below, the Court **DENIES** Danaher’s Motion.²

3 **I. BACKGROUND**

4 The Court addressed the factual allegations and procedural history relevant to
5 this case in its MSJ Order and incorporates that discussion here by reference. (*See*
6 ECF No. 30.) After obtaining summary judgment in its favor, Danaher now seeks an
7 award of attorneys’ fees of \$94,733.60 and costs of \$507.37. (Notice of Mot. 2.)³

8 **II. LEGAL STANDARD**

9 Under ERISA’s civil enforcement provision, “the court in its discretion may
10 allow a reasonable attorney’s fee and costs of action to either party.” 29 U.S.C.
11 § 1132(g)(1). A claimant is eligible to seek fees under section 1132(g)(1) if they have
12 achieved “some degree of success on the merits.” *Hardt v. Reliance Standard Life*
13 *Ins. Co.*, 560 U.S. 242, 245 (2010) (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680,
14 694 (1983)).

15 Once a fee claimant is found eligible, district courts must apply the factors
16 articulated in *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446 (9th Cir. 1980), in
17 exercising their discretion to award fees. *Simonia v. Glendale Nissan/Infiniti*
18 *Disability Plan*, 608 F.3d 1118, 1119 (9th Cir. 2010). The “*Hummell* factors” include:

- 19 (1) the degree of the opposing parties’ culpability or bad faith; (2) the
20 ability of the opposing parties to satisfy an award of fees; (3) whether
21 an award of fees against the opposing parties would deter others from
22 acting under similar circumstances; (4) whether the parties requesting
23 fees sought to benefit all participants and beneficiaries of an ERISA
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25 ² After considering the papers filed in connection with the Motion, the Court deems the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

26 ³ Danaher also seeks judicial notice of several documents relevant to the reasonableness of
27 Danaher’s submitted billing rates and hours. (Req. for Judicial Notice, ECF No. 34-4.) Because the
28 Court does not find a fee award appropriate, it is unnecessary to reach Danaher’s Request for
Judicial Notice. Accordingly, Danaher’s Request for Judicial Notice is **DENIED** as moot.
(ECF No. 34-4.)

1 plan or to resolve a significant legal question regarding ERISA; and
2 (5) the relative merits of the parties' positions.

3 *Hummell*, 634 F.2d at 453. No one factor is determinative, and some factors may be
4 irrelevant depending on the case. *Carpenters S. Cal. Admin. Corp. v. Russell*, 726
5 F.2d 1410, 1416 (9th Cir. 1984).

6 “[A]pplication of the *Hummell* factors must recognize the remedial purpose of
7 ERISA in favor of participants and beneficiaries.” *Honolulu Joint Apprenticeship &*
8 *Training Comm. of United Ass’n Local Union No. 675 v. Foster*, 332 F.3d 1234, 1239
9 (9th Cir. 2003). “While some Ninth Circuit authority may advise caution prior to the
10 award of attorney’s fees against [an ERISA] plaintiff, such cases do not eliminate the
11 possibility of an award of fees to a defendant generally.” *Reilly v. Charles M. Brewer*
12 *Ltd. Money Purchase Pension Plan & Tr.*, 349 F. App’x 155, 158 (9th Cir. 2009).
13 The Ninth Circuit has long made clear that “the playing field is level” and the
14 “analysis . . . must focus only on the *Hummell* factors, without favoring” either side.
15 *Id.* (quoting *Estate of Shockley v. Alyeska Pipeline Serv. Co.*, 130 F.3d 403, 408 (9th
16 Cir. 1997); *see also Cline v. Indus. Maint. Eng’g & Contracting Co.*, 200 F.3d 1223,
17 1236 (9th Cir. 2000) (recognizing the “level playing field” and affirming denial of
18 fees).

19 III. DISCUSSION

20 Having obtained summary judgment in their favor, no question exists that
21 Danaher succeeded on the merits. After considering the *Hummell* factors, however,
22 the Court finds that a fee award is not appropriate.

23 A. Bad Faith

24 “[T]o avoid a finding of bad faith under the *Hummell* factors, plaintiffs must
25 have a reasonable belief that they could prove an actionable ERISA claim.” *Cline*,
26 200 F.3d at 1236. White claimed that Danaher abused its discretion in finding he was
27 terminated for cause and consequently denying him severance benefits. The operative
28 question is then whether he had a reasonable belief that he could prove his claim.

1 White asserted several arguments in support of his claim. (*See e.g.*, MSJ Order 11,
2 15–16 (including that Danaher reviewed improper summaries when reviewing his
3 claim, failed to provide specific reasons for denying his benefits, and operated under a
4 structural conflict of interest warranting increased scrutiny).) White’s claim may have
5 been marginal, but that does not make it unreasonable. Although ultimately
6 unsuccessful, after reviewing the record, the Court cannot find White’s claim to have
7 been brought in bad faith. Thus, this factor weighs against awarding fees.

8 **B. Ability to Satisfy Fee Award**

9 The second *Hummell* factor considers the ability of the opposing party to satisfy
10 the fee award. 634 F.2d at 453. Neither party disputes its ability to pay Defendants’
11 fees. In such circumstances, the Ninth Circuit has found this factor to be neutral. *See*
12 *Foster*, 332 F.3d at 1239; *see also Reilly*, 349 F. App’x at 157.

13 **C. Deterrence**

14 Deterrence is more appropriately considered respecting a fee award to an
15 ERISA plaintiff, and thus is of less significance here. *See Tingey v. Pixley-Richards*
16 *W., Inc.*, 958 F.2d 908, 910 (9th Cir. 1992). The interest in deterrence must be
17 “balanced against the interest in ensuring that plan participants are not overdeterred
18 from pursuing the prompt enforcement of their rights under a plan.” *Black v. Greater*
19 *Bay Bancorp Exec. Supplemental Comp. Benefits Plan*, No. 16-CV-00486-EDL, 2018
20 WL 1510084, at *6 (N.D. Cal. Mar. 27, 2018), *appeal docketed*, No. 18-1570 (9th Cir.
21 Apr. 26, 2018). The cost of litigation and unlikelihood of success generally deter
22 ERISA plaintiffs from frivolous litigation. *Sanjiv Goel, M.D., Inc. v. Motion Picture*
23 *Indus. Pension & Health Plan*, No. CV 14-2056 PSG (CWX), 2015 WL 13376563, at
24 *4 (C.D. Cal. Oct. 23, 2015). There is no need for additional deterrence where a fee
25 award would “tend to deter marginal but meritorious” claims. *Corder v. Howard*
26 *Johnson & Co.*, 53 F.3d 225, 232 (9th Cir. 1994). Because the Court does not find
27 that White acted in bad faith, there is no need to further deter similar claims.
28 Accordingly, this factor weighs against awarding fees.

1 **D. Benefit to All**

2 “A lawsuit that benefits all plan participants or leads to the resolution of
3 important legal questions regarding ERISA can support the award of fees.” *Goel*,
4 2015 WL 13376563, at *4. As with deterrence, this factor is more appropriately
5 considered respecting a fee award to an ERISA plaintiff, not a defendant. *See id.*
6 (citing *Tingey*, 958 F.2d at 910). White sought to recover severance benefits for
7 himself, not to benefit other plan participants or resolve important legal questions.
8 However, neither is the Court convinced that Danaher’s motivation was anything
9 more than a desire to avoid a severance payment to White. Thus, this factor is neutral.

10 **E. Relative Merits**

11 The final *Hummell* factor is the “relative merits of the parties’ positions.” 634
12 F.2d at 453. There is no question that Danaher prevailed on all issues. Thus, this
13 factor favors a fee award.

14 Reviewing the *Hummell* factors, two factors weigh against, two factors are
15 neutral, and one factor favors a fee award. Only when a litigant has achieved some
16 success on the merits *and* the *Hummell* factors weigh in favor is a fee award
17 appropriate. Danaher obtained summary judgment in its favor, but the *Hummell*
18 factors do not favor a fee award. Accordingly, the Court denies Danaher’s motion for
19 attorneys’ fees and costs.

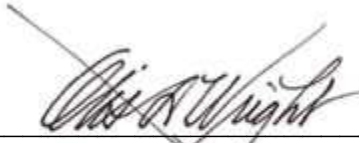
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1 **IV. CONCLUSION**

2 For the reasons above, the Court **DENIES** Danaher's motion for attorneys' fees
3 and costs. (ECF No. 34.)

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5 **IT IS SO ORDERED.**

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7 October 22, 2018

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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**

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