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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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STACY L. WEBER and TIMOTHY
J. WEBER,

NO. 2:15-CV-01829 WBS

Plaintiffs,

v.

ORDER RE: MOTION FOR ATTORNEYS'
FEES AND COSTS

TMG LOGISTICS, INC., and
DAVINDER SINGH MINHAS,

Defendants.

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Before the court is defendants' Motion for Attorneys' Fees and Costs filed August 9, 2018. (Docket No. 185.) Under Federal Rule of Civil Procedure 37(c)(2), a court may award reasonable expenses, including attorney's fees, where "a party fails to admit what is requested" under a request for admission "if the requesting party later proves . . . the matter true." The court must award such expenses unless (1) the request was properly objected to, (2) "the admission sought was of no

1 substantial importance," (3) "the party failing to admit had a
2 reasonable ground to believe that it might prevail on the
3 matter," or (4), "there was other good reason for the failure to
4 admit." Fed. R. Civ. P. 37(c)(2). "In determining whether a
5 party reasonably believed it might prevail for purposes of Rule
6 37(c)(2), the true test is 'not whether [the] party prevailed at
7 trial but rather whether [it] acted reasonably in believing that
8 [it] might prevail.'" Paradise Nw., Inc. v. Randhawa, No. 2:09-
9 cv-02027-MCE-DAD, 2014 WL 3867426, at *2 (E.D. Cal. Aug. 6, 2014)
10 (citation omitted).


11 Defendants claim that they are entitled to attorney's
12 fees and expenses under Rule 37(c)(2) based on plaintiff's
13 failure to admit that she did not sustain lost wages or loss of
14 earning capacity. The court agrees that the evidence at trial
15 tended to show that plaintiff did not in fact sustain lost wages
16 or loss of earning capacity as a result of the accident, as found
17 by the jury. Nevertheless, plaintiff did produce some evidence
18 tending to show that she would or could have earned more had she
19 not suffered the alleged injuries she claims were caused by the
20 accident at issue in this case. In essence, plaintiff argued
21 that while her family's income may not have decreased in the
22 years after the accident, it would have increased more had she
23 been able to continue with her real estate investing work fully
24 as she had before the accident, or if she was not precluded from
25 doing other work in the future she may have otherwise been
26 qualified to perform.

27 The court notes that the determination of whether
28 plaintiff suffered lost income or loss of earning capacity hinged

1 in part on the jury's credibility determination as to plaintiff
2 and plaintiff's witnesses, who testified that she was unable to
3 continue her prior real estate work after the accident due to her
4 physical and mental condition. Plaintiff also supported her loss
5 of income and loss of earning capacity claims with expert
6 testimony. Under these circumstances, plaintiff's evidence,
7 while ultimately not persuasive, was a sufficient basis for a
8 reasonable belief that she would prevail at trial on her lost
9 wages and loss of earning capacity claims.¹ Accordingly, the
10 court will deny defendants' request for attorney's fees and
11 expenses.

12 IT IS THEREFORE ORDERED that defendants' Motion for
13 Attorneys' Fees and Costs (Docket No. 185) be, and the same
14 hereby is, DENIED.

15 Dated: October 9, 2018


16 **WILLIAM B. SHUBB**
17 **UNITED STATES DISTRICT JUDGE**

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¹ Moreover, even assuming that plaintiff did not have a
26 reasonable basis for her lost wages and loss of earning capacity
27 claims, several of the claimed fees and expenses do not appear to
28 be incurred solely as a result of defending these claims. (See,
e.g., Mot. Ex. J at 20-22 (billing entries for trial time related
to Stacy and Timothy Weber).)