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11 Defendants

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13 Thomas C. Hudnut; and Harry L. Salamandra, Jr.

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 LEE CAPLIN, et al.,
17 Plaintiffs,

18 vs.

19 HARVARD-WESTLAKE SCHOOL, a
20 California corporation; et al.,
21 Defendants.

Case No. BC 332 406
[Hon. Ernest M. Hiroshige/Dept. 54]

**ORDER PURSUANT TO REMITTITUR
[PROPOSED]**

22 Plaintiffs Lee Caplin, Gita Caplin and "Minor Child" (their son Daniel Caplin)
23 (collectively, the "Caplins") commenced this action against defendants Harvard-Westlake School,
24 Board of Directors of Harvard-Westlake School, Thomas C. Hudnut and Harry L. Salamandra, Jr.
25 (collectively, the "Harvard-Westlake Defendants") and others on April 25, 2005. After a binding
26 arbitration, the Court entered a Judgment in favor of the Harvard-Westlake Defendants (in the sum
27 of \$521,227.68, plus interest thereon) on October 15, 2007. The Caplins appealed the Judgment.
28 The Court of Appeal reversed the Judgment, and remanded this action for further proceedings, in
its decision *D.C. v. Harvard-Westlake School*, 176 Cal.App.4th 836 (2009).¹

¹ The relevant facts and court proceedings in this action through August 14, 2008 are discussed in detail in *D.C. v. Harvard-Westlake School*, *supra*, and are incorporated herein by reference.

1 The Court of Appeal directed the Court as follows:

2 “The judgment is reversed. On remand, the trial court shall
3 take the necessary steps to ensure that plaintiffs do not pay any
4 inappropriate arbitral expenses (see *Armendariz v. Foundation*
5 *Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 107-113 [99
6 Cal.Rptr.2d 745, 6 P.3d 669]) or any attorneys fees prohibited by the
7 hate crimes laws (Civ. Code, §§ 52, subd. (b)(3), 52.1, subd. (h)).”

8 *D.C.*, 176 Cal.App.4th at 869. It also instructed that “[f]urther, on remand, either side may raise
9 allocation issues. . .” *Id.*, at 867. Those potential “allocation issues” were described as follows:

10 “[W]hether arbitral expenses and attorney fees could be
11 allocated between the hate crimes claim—to which *Armendariz*
12 applied and the common law claims—to which it did not—while the
13 hate crimes claim was part of the case. (Cf. *Carver v. Chevron*
14 *U.S.A., Inc.*, *supra*, 119 Cal.App.4th at pp. 502-506; *Cassady v.*
15 *Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 232 [51
16 Cal.Rptr.3d 527].) A related question is whether *Armendariz* and
17 the statutory one-way attorney fees provisions applied at all after the
18 hate crimes claim was dismissed, leaving only the common law
19 claims.”

20 *Id.*

21 The Court directed the Caplins and the Harvard-Westlake Defendants to brief the
22 issues to be resolved pursuant to the remittitur and it held a hearing on those issues on January 6,
23 2011. The matter was submitted for further consideration of the parties’ written materials and oral
24 arguments. The Court set forth its ruling in its “Ruling per Remittitur” dated February 1, 2011.²

25 For good cause shown, IT IS ORDERED, ADJUDGED AND DECREED THAT:

26 The Arbitrator dismissed the Caplins’ “hate crimes” claim in a ruling dated
27 October 26, 2006. *D.C.*, 176 Cal.App.4th at 846. She also ordered Mr. and Mrs. Caplin to pay the
28 Harvard-Westlake Defendants a total of \$521,227.68 in arbitration fees, attorney fees, and costs in
her “Final Award” dated August 20, 2007. *Id.*, at 847. It is undisputed that the total amount
awarded by the Arbitrator included: (i) attorney fees in the sum of \$219,006.00 for the period
through October 2006; (ii) attorney fees in the sum of \$228,911.00 for the period after October
2006; and (iii) arbitration fees and costs in the sum of \$73,310.68.³

² The “Ruling per Remittitur,” dated February 1, 2011, is incorporated herein by reference.

³ In their briefing, the Harvard-Westlake Defendants documented and explained all of those amounts. The Caplins did not dispute or challenge those amounts.

1 On remand, with respect to “inappropriate arbitral expenses,” the Harvard-
2 Westlake Defendants asserted that: (i) they were not entitled to recover any of the fees that they
3 paid to JAMS (in the sum of \$50,944.99); and (ii) the Caplins were entitled to a “credit” for the
4 fees that they paid to JAMS (in the sum of \$50,348.15). The Harvard-Westlake Defendants also
5 asserted that they were entitled to recover fees and costs in a total amount of \$22,365.69: (i) filing
6 and motion fees (\$1,209.10); (ii) depositions (\$12,770.41); and (iii) transcripts (\$8,386.18). The
7 Caplins did not dispute or challenge those amounts or the Harvard-Westlake Defendants’ recovery
8 of those fees and costs. The Court finds that the Harvard-Westlake Defendants shall recover fees
9 and costs in the sum of \$22,365.69.

10 On remand, with respect to “attorneys fees prohibited by hate crimes laws,” the
11 Harvard-Westlake Defendants asserted that they were entitled to recover attorneys’ fees: (i) in the
12 sum of \$147,473.50 for the period through October 2006 (i.e., attorneys’ fees incurred before the
13 Caplins’ “hate crimes” claim was dismissed);⁴ and (ii) in the sum of \$228,911.00 for the period
14 after October 2006 (i.e., attorneys’ fees incurred after the “hate crimes” claim was dismissed).
15 The Caplins challenged the Harvard-Westlake Defendants’ recovery of such attorneys’ fees.

16 The Court finds that the Harvard-Westlake Defendants shall not recover any
17 attorneys’ fees for the period prior to the Arbitrator’s dismissal of the Caplins’ “hate crimes”
18 claim. In particular, it concludes that: (i) the allegations for the Caplins’ “hate crimes” claim and
19 their common law claims “inextricably overlap” under *Carver v. Chevron U.S.A., Inc.*, 119
20 Cal.App.4th 498 (2004); (ii) the Caplins’ “hate crimes” claim and their common law claims arose
21 from the same transaction (i.e., the “hate crimes” allegations led to the theories and facts that
22 purportedly justified the common law claims) under *Wood v. Santa Monica Escrow Co.*, 151
23 Cal.App.4th 1186 (2007); and (iii) the policy of encouraging the reporting and prosecution of “hate
24 crimes” (under the “hate crimes” statutes) justifies a liberal interpretation of the one-way attorney
25

26 ⁴ In their briefing, the Harvard-Westlake Defendants documented and explained their assertion
27 that the attorneys’ fees awarded by the Arbitrator for that period (\$219,006.00) should be reduced
28 by the sum of \$71,532.50 (i.e., a sum that exceeded the attorneys’ fees that they incurred in
defense of the “hate crimes” claim).

1 fee provisions in the "hate crimes" statutes that bar attorneys' fees for a prevailing defendant.

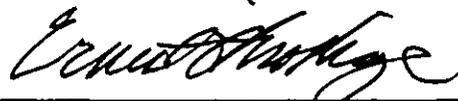
2 The Court finds that the Harvard-Westlake Defendants shall recover all of their
3 attorneys' fees (in the sum of \$228,911.00) for the period after the Arbitrator's dismissal of the
4 Caplins' "hate crimes" claim. In particular, it concludes that the one-way attorney fee provisions
5 in the "hate crimes" statutes and any allocation of attorneys' fees no longer pertained after the
6 dismissal of the "hate crimes" claim.

7 On remand, the Caplins asserted that the Arbitrator's "Final Award" was "void" in
8 its entirety.⁵ The Harvard-Westlake Defendants challenged that assertion. The Court denies the
9 Caplins' argument. In particular, it concludes that: (i) the Court's legal responsibility under the
10 remittitur is to determine the awardable costs and attorneys' fees pursuant to the Court of Appeal's
11 direction; and (ii) the Court does not have authority to rule on the Caplins' additional argument
12 since it is beyond the scope of the Court's legal responsibility at this time.

13 In summary, the Court finds and orders that the Harvard-Westlake Defendants shall
14 recover attorneys' fees and costs in the sum of \$200,928.34 from Mr. and Mrs. Caplin as follows:⁶

16	Attorneys' Fees	\$228,911.00
17	Filing and Motion Fees	1,209.10
18	Depositions	12,770.41
19	Transcripts	8,386.18
20	Less "Credit" (Caplins' JAMS fees)	<u>-50,348.15</u>
21	TOTAL:	\$200,928.34

22 DATED: 3-16, 2011

23 
24 Honorable Ernest M. Hiroshige
25 Superior Court Judge

26 ⁵ In their briefing, the Caplins acknowledged that their argument was "beyond the need to
conform to the Court of Appeal's mandate on remand."

27 ⁶ Counsel for the Harvard-Westlake Defendants shall prepare and submit a Judgment (in the sum
28 of \$200,928.34, plus interest thereon) in favor of the Harvard-Westlake Defendants.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within entitled action; my business address is One Wilshire Boulevard, Suite
6 2000, Los Angeles, California 90017-3383.

7 On February 22, 2011, I served the foregoing document(s) described as **ORDER**
8 **PURSUANT TO REMITTITUR [PROPOSED]** on the interested parties in this action by
9 placing a copy thereof enclosed in a sealed envelope addressed as follows:

10 **See Attached List**

11 **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the
12 U.S. Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of
13 collection and processing correspondence for mailing. Under that practice, it would be
14 deposited with the U.S. postal service on that same day with postage thereon fully prepaid
15 at Los Angeles, California in the ordinary course of business. I am aware that on motion
16 of the party served, service is presumed invalid if postal cancellation date or postage meter
17 date is more than one day after date of deposit for mailing in affidavit.

18 **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the
19 addressee(s) facsimile number(s) noted herein. The facsimile machine used complies with
20 Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008(e), I caused
21 the machine to print a transmission record of the transmission, a copy of which is attached
22 to this declaration.

23 Executed on February 22, 2011, at Los Angeles, California.

24 **(State)** I declare under penalty of perjury under the laws of the State of California
25 that the foregoing is true and correct.

26 **(Federal)** I declare that I am employed in the office of a member of the bar of this
27 Court at whose direction the service was made. I declare under penalty of
28 perjury under the laws of the United States of America that the foregoing
is true and correct.

29 
Therese Maucere-Cirino

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