

 [Original Image of 2018 WL 7021605 \(PDF\)](#)

2018 WL 7021605 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Twelfth Judicial Circuit
Civil Division
Sarasota County

BENZ RESEARCH AND DEVELOPMENT CORPORATION, a Florida corporation, Plaintiff,
v.
Armin EBRAHIMPOUR; Mark'Ennovy Personalized Care S.L., a foreign Limited company; and Mark'Ennovy
Personalized Care Ltd., a foreign Limited company, Dealtforce Ltd., a foreign Limited company, Defendants.

No. 2011-CA-004732-NC.
December 18, 2018.

**Order Awarding Fees and Costs against Defendant Armin Ebrahimpour and in Favor of Plaintiff Benz Research and
Development Corporation**

[James L. Essenson](#), Esq., [Barbara J. Welch](#), Esq., [Matthew J. Kelly](#), Esq., Law Firm of James L. Essenson, 2071 Main Street,
Sarasota, FL 34237.

[Jeffrey D. Feldman](#), Esq., Feldman & Latham, LLP, 1200 Brickell Avenue, Penthouse 1900, Miami, FL 33131.

[Lee E. Haworth](#), Judge.

I. PROCEDURAL BACKGROUND

*1 This case was originally filed on June 14, 2011 by Benz Research and Development Corporation (“BRD”) against Armin Ebrahimpour (“Ebrahimpour”), who was formerly employed by BRD in its engineering department. Corporate Defendants, mark’ennovy Personalized Care, S.L., a foreign Limited company based in Spain (“Ennovy Spain”), and mark’ennovy Personalized Care, Ltd. a foreign Limited company based in the United Kingdom (“Ennovy UK”), were added as parties by the Second Amended Complaint filed on or about September 28, 2011. Later, Dealtforce, Ltd., a foreign Limited company based in the United Kingdom and the parent company of Ennovy Spain and Ennovy UK (“Dealtforce”) was added by BRD’s Third Amended and Supplemental Complaint filed on or about August 6, 2014. Ennovy Spain, Ennovy UK and Dealtforce are hereinafter referred to collectively as the “Ennovy Defendants”.

Significantly, pursuant to a motion filed by BRD and following a five-day bench hearing, on August 27, 2015, the Honorable Peter Dubensky, Circuit Court Judge, entered an order entitled “Order on Plaintiff’s Motion to Enforce Court Orders and for Contempt Sanctions; Order on Plaintiff’s Motion to Strike Defendants’ Pleadings and for Additional Sanctions”, which was docketed on September 1, 2015 (“Sanctions Order”). In the Sanctions Order, the Court details numerous incidents of litigation misconduct and inequitable conduct on the part of all of the defendants. While the Court in the Sanctions Order struck the affirmative defenses of the Ennovy Defendants and entered certain sanctions against them, the Court found that Ebrahimpour’s conduct was “egregious” and “shocking”, struck Ebrahimpour’s pleadings in their entirety, entered a default judgment against Ebrahimpour with regard to all nine counts of BRD’s Third Amended and Supplemental Complaint filed on August 6, 2014, and ordered Ebrahimpour to be responsible for all costs and fees incurred by BRD in the prosecution of its case. The Sanctions Order is an important milestone with regard to the analysis of attorney’s fees and expenses to be awarded to BRD against Ebrahimpour, as will be more fully revealed below.

Although the Sanctions Order determined liability against Ebrahimpour, the case proceeded to trial against the Ennovy Defendants as to liability and damages, and against Ebrahimpour as to the issue of damages. The case was tried before a jury

commencing on May 1, 2017, and a jury verdict was rendered on May 17, 2017. The jury returned a verdict of \$12,000.00 against Ebrahimpour for breach of contract in connection with Ebrahimpour's employment agreement with BRD, which was signed on November 11, 2002. The jury awarded damages against Ebrahimpour in the amount of \$65,000.00 for misappropriation of BRD's trade secrets and also found liability by clear and convincing evidence against Ebrahimpour and Ennovy Spain for civil theft, a count which was later dismissed by the Court based on preemption of the Uniform Trade Secrets Act, pursuant to an Order entered on June 19, 2017¹. Subsequent to the jury verdict, this Court entered a Prejudgment Order on Multiple Post-Verdict Motions rendered on December 21, 2017 (the "Prejudgment Order"). In the Prejudgment Order, the Court, among other things, awarded BRD punitive damages against Ebrahimpour in the amount of \$7,000.00 and further made a finding that Ebrahimpour was liable for BRD's attorney's fees under [section 688.005 of the Florida Statutes](#), the Uniform Trade Secrets Act, based on Ebrahimpour's "willful and malicious misappropriation" of BRD's trade secrets. Subsequent to the Prejudgment Order, the Ennovy Defendants settled with BRD and were dismissed from the case.

*2 As noted, BRD's entitlement to attorney's fees and costs/expenses against Ebrahimpour was determined by the Court in the Sanctions Order and again in the Prejudgment Order. Accordingly, a hearing was held on December 3rd and December 4th, 2018 to determine the amount of BRD's attorney's fees and expenses to be assessed against Ebrahimpour. On those two days, the Court heard the testimony of James Matulis, a Tampa attorney who testified as an expert witness for BRD, and two of BRD's principal lawyers in the case, Jeffrey D. Feldman and James L. Essenson. The Court also heard the testimony of Ebrahimpour, who appeared pro se, received into evidence detailed exhibits containing BRD's billings from three different firms, detailed statements of expenses incurred by BRD, summaries of all fees and expenses, excerpts of a deposition of Ebrahimpour taken on July 18, 2012 and other exhibits. The Court also received caselaw and heard arguments of counsel and Ebrahimpour. The Court is otherwise fully advised in the premises.

II. FACTUAL BACKGROUND

At an early stage in the case, one of BRD's attorneys, James L. Essenson ("Essenson"), took the deposition upon oral examination of Ebrahimpour on July 18, 2012 at Essenson's law offices on Main Street in Sarasota, Florida. At that time, Ebrahimpour was represented by counsel, Michael E. Siegel. The Court received into evidence an excerpt of the transcript from that deposition, and also received into evidence, as Exhibit 18, a mark'envoy document dated May 1, 2011 entitled "Production Process Improvement for Contact Lens Manufacturing in Madrid Plant" ("Process Report"), which was marked for identification at the deposition as exhibit 97, and heard testimony from Essenson and Ebrahimpour with regard to the deposition and the Process Report. Significantly, the Process Report contained, *inter alia*, on page 9, a SolidWorks assembly model of the BRD desktop wax dispenser which was an important, if not the central, issue in the trade secret case. ("SolidWorks" is a computer-aided design ("CAD") program used by engineers to assist in the design of machinery.) Ebrahimpour admitted at trial that the assembly model of the desktop wax dispenser depicted in the Process Report was derived from BRD drawings that he had misappropriated from BRD when he left BRD's employment. At the evidentiary hearing on attorney's fees, Ebrahimpour confirmed that when he was shown page 9 of the Process Report on July 18, 2012, he knew that the assembly model was BRD's property and that he was essentially caught utilizing BRD's property in his work for Ennovy Spain. However, at the July 18, 2012 deposition, instead of acknowledging his defalcation, Ebrahimpour gave both false and misleading testimony with regard to the Process Report and maintained his position until the falsity of his statements was proven collaterally when the original BRD drawings were found on Ennovy Spain's computer server and when BRD discovered that the drawings were forwarded to a parts manufacturer, Michael Menchen in Pinellas Park, Florida, to fabricate parts.

The Court finds that Ebrahimpour's false testimony at the July 18, 2012 deposition, and his maintenance of these false positions throughout much of the litigation, sparked an explosion of discovery and court hearings that brought about six more years of protracted and expensive litigation. This conduct, and other conduct, led to the findings of Judge Dubensky in the Sanctions Order resulting in a finding of litigation misconduct and inequitable conduct under a doctrine discussed by the Supreme Court of Florida in the case of [Bitterman v. Bitterman, 714 So.2d 356 \(Fla. 1998\)](#).

In addition, unlike most litigation, where wrongdoing occurs before the suit is filed, substantial impropriety, including spoliation of evidence, obfuscation and concealing of essential information by Ebrahimpour and other defendants, occurred while the case was ongoing. This increased the lawyers' time, required costly experts to be retained, forced foreign

depositions to be taken, and expanded exponentially the discovery resources necessary for BRD to obtain its result.

III. ANALYSIS OF FEE REQUEST

A. FACTUAL BACKGROUND TO BRD'S FEE REQUEST

*3 For the purposes of analyzing BRD's fee request, the Court has divided the case into two significant time periods:

1. The period from the beginning of the case on May 9, 2011 to the docketing of the Sanctions Order on September 1, 2015 (the "Sanctions Order Period"); and
2. The period from September 1, 2015 up and through the hearings on December 3rd and 4th, 2018, including time for preparation of the proposed orders (the "Post-Sanctions Order Period").

However, the following factual background is relevant to both periods.

BRD engaged its longtime attorneys, the Law Firm of James L. Essenson (the "Essenson Firm") to investigate and prosecute the action in May of 2011. The case progressed through a protracted contest involving *in personam* jurisdiction over Ennovy Spain and Ennovy UK (including an appeal of the order finding jurisdiction, which appeal was briefed and then voluntarily dismissed by Ennovy Spain and Ennovy UK), and then proceeded on to the merits. The Essenson Firm is a small general practice firm in Sarasota, with emphasis on civil litigation. By order docketed on July 31, 2014, with discovery still pending, the predecessor judge denied BRD's Motion to Continue the Trial which was set for the trial period commencing September 15, 2014. Feeling the time pressure and sensing that not all of the evidence had been produced by the Defendants, the Essenson Firm, with BRD's permission, sought additional legal help. Through a referral source, Essenson located Feldman Gale, P.A., in Miami, Florida ("FG"). After a meeting with BRD, FG was engaged to handle the imminent trial of the action, and conduct additional discovery. The principal Essenson Firm attorneys involved in the case were James L. Essenson and Barbara J. Welch, and, later, Matthew J. Kelly. The principal attorneys involved from FG were Jeffrey D. Feldman as lead counsel, Samuel A. Lewis, Lawrence Gordon and David Stahl. (Other attorneys, paralegals and support staff were also involved.) The FG lawyers later joined the international law firm of Cozen O'Connor at the end of June of 2016 ("Cozen"). In August of 2018, Mr. Feldman left Cozen and is now practicing in Miami with Feldman & Latham, LLP.

B. ANALYSIS OF ROWE/RULE 4-1.5(b) FACTORS

In analyzing the legal fee request, the Court considered the guidelines set forth in  [Florida Patients Compensation Fund v. Rowe](#), 472 So.2d 1145, 1150-1151 and [Rule 4-1.5\(b\) of the Florida Rules of Professional Conduct](#) as set forth below. Based on the factors enumerated in *Rowe* and [Rule 4-1.5](#), the Court identified some of the key considerations (but not every consideration) that the Court considered in rendering this opinion, as follows.

Rowe/4-1.5(b)(1) factors to be considered as guidelines in determining a reasonable fee include:

- 1. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly.***

Application to this case: These factors had a significant impact on the hourly rates, total hours, and thus the resulting fees, as follows.

“Time and Labor” factors had a significant impact on the hourly rates, total hours, and, thus the resulting fees. The time and labor required were extensive, as shown by the extensive court file containing almost 1900 separate filings, in excess of 40 hearings, numerous depositions, some overseas in Europe, and dozens and dozens of discovery requests during the pendency of the case. The sanctions trial in 2015 consumed 5 full days and the jury trial consumed 13 days.

*4 *“The novelty, complexity and difficulty of the questions involved”* also weighed heavily in this case in at least two significant ways. First, the subject matter of the dispute involved complicated issues relating to highly technical trade secret and proprietary manufacturing processes and equipment. Second, BRD’s lawyers were able to uncover Defendants’ litigation misconduct only through exhaustive forensic analysis of electronically stored information (ESI) contained in computer files, emails, and computer-aided design (CAD) files and software.

“The skill requisite to perform the legal service properly” was also a very significant factor, as the highly technical subject matter and the extensive and critical aspects of the ESI located in the files at issue (discussed above) required counsel with various highly-specific skills, including, among other aspects (1) education and aptitude in advanced mechanical technologies, (2) education and knowledge in obtaining, discovering and analyzing ESI, including CAD software and files, (3) ability in organizing a complex dispute, including staffing and managing the case file for the dispute, and (4) an extensive background in taking complex and highly technical, high stakes cases through trial, including the ability to do so in a very compressed timeframe.

2. *The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.*

Application to this case:

The size and complexity of the case required a significant amount of time and resources for both firms, but particularly for the FG firm, which would reasonably preclude the professionals involved from being able to service other firm clients in any significant way. This factor became particularly significant as the case approached trial in September, 2014, thus requiring BRD to retain the FG firm with its significant resources and expertise. The demands of the case continued to be significant even after trial was continued, in light of the extensive discovery and efforts required to obtain and present evidence of the litigation misconduct that resulted in entry of the Sanctions Order in the end of August, 2015.

3. *The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.*

Application to this case:

The fee, or rate of fee, customarily charged in the Tampa Bay area, including Sarasota and Manatee counties, is also an important factor, including the rates and fees that are required to obtain counsel that are capable and willing to assist in the trial of a highly complex case on very short notice, as occurred in this case. In addition to his personal knowledge of the rates customarily charged in the Tampa Bay area, including Sarasota, for services of a comparable or similar nature, BRD’s fee expert, James Matulis testified that he also consulted the 2015 Economic Survey with respect to rates charged by attorneys that specialize in intellectual property during 2014, and found the FG rates reasonable.

4. *The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained.*

Application to this case: These factors also had a significant impact on the rates and fees in this case, as follows.

“The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the

representation” - for BRD, the significance of this case could not be higher, as evidenced by Dr. Patrick H. Benz’s testimony that the misappropriated trade secrets and confidential information would allow a competitor to essentially replicate a significant portion of BRD’s proprietary contact lens manufacturing process and equipment, developed over the course of many years and costing many millions of dollars. This case could easily be characterized as a “bet the company” case.

*5 *“The results obtained”* - BRD’s attorney’s achieved excellent results, as shown by the Court striking Ebrahimpour’s pleadings and the Ennovy Defendants’ affirmative defenses and awarding fees, as set forth in the Sanctions Order, despite the difficulty of prevailing against parties that engage in litigation misconduct of the type involved in this case. The jury trial yielded a verdict of \$6,280,800.00 against Ennovy Spain, a verdict of \$77,000.00 against Ebrahimpour, and a permanent injunction was ordered against Ebrahimpour, all excellent results obtained by BRD’s lawyers. Entitlement to attorney’s fees against Ebrahimpour and Ennovy Spain was also awarded to BRD in the Prejudgment Order, as well as \$7,000.00 in punitive damages against Ebrahimpour.

5. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client

Application to this case:

This factor is particularly important as it relates to the FG firm, which was retained just five weeks before the case was to proceed to trial, justifying fees to be awarded based on the FG and Cozen rates charged.

6. The nature and length of the professional relationship with the client

Application to this case:

The Essenson Firm has a long relationship with BRD, spanning some 25 years.

7. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.

Application to this case:

All of the attorneys retained by BRD have excellent reputations and are highly skilled, thorough, and diligent, as reflected in their work product and the results obtained. Messrs. Feldman and Lewis of the FG firm were known to BRD’s fee expert, James Matulis, through extensive participation in Florida Bar activities relating to intellectual property. Mr. Matulis testified as to the FG attorneys’ excellent reputations in the community, and the Court finds that the exceptional diligence, extensive preparation, and thoughtful presentation of the FG attorneys bears out Mr. Matulis’ opinion. The Court is familiar with Essenson and his firm over a period extending thirty odd years including numerous appearances in this Court, and Essenson’s work in the case shows him to be a capable, well prepared, diligent, and thoughtful attorney with an excellent reputation in the legal community.

The credentials, diligence, and abilities of the remaining professionals, including Messrs. Gordon, Stahl, Weaver, and Horowitz with the FG firm, and Ms. Welch and Mr. Kelly of the Essenson Firm, are reflected in their education and work experience as shown below, and their abilities are shown in their work product reflected in the case filings and their billing entries. In the Court’s opinion, each lawyer’s billable rates and billing entries are commensurate with their skills, expertise and reputation, as more particularly set forth below.

8. Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

Application to this case: Not applicable.

C. REASONABLE HOURLY RATES

1. The Law Firm of James L. Essenson Rates and Qualifications

The Essenson Firm charged the following rates between May, 2011 (the start of this case) and September 1, 2015 (the Sanctions Order Period) for the following principal billers in this case:

TIMEKEEPER	RATE		EXPERIENCE AS OF 8/2015
	5/2011–7/2014	8/2014–8/2015	
James L. Essenson, Attorney	\$350/hr	\$400/hr	38 years
Barbara J. Welch, Attorney	\$280/hr	\$300/hr	17 years
Matthew J. Kelly, Associate	N/A ²	*6 \$175/hr	1 year
Darice A. Wallace, Paralegal	\$120/hr	\$120/hr	16 years
Megan R. Chapman, Paralegal	\$75-\$90/hr	\$90/hr	10 years
Tia McKibbin, Acctg. Assistant	\$90/hr	\$90/hr	1.5 years
Britton Williams, File Clerk	\$50/hr	\$50/hr	1.5 years
Tia McKibbin, Admin Assistant	\$50/hr	N/A	5 years

Mr. Essenson is a *Summa Cum Laude* graduate of New York University, a member of Phi Beta Kappa and a graduate of the State University of New York at Buffalo, School of Law, receiving his Juris Doctor degree in 1977. Mr. Essenson was admitted to practice in New York in 1978 and was admitted to the Florida Bar in 1983. Mr. Essenson is also admitted to practice in the United States District Court, Middle District of Florida. Judge Dubensky observed in open court in this case that Mr. Essenson is “as highly regarded an attorney as can be found in this area.” (6/5/2014 Transcript, p. 262, lines 4-8).

Barbara Welch graduated *Cum Laude* from the University of Central Florida before receiving her Juris Doctor from Boston University School of Law in 1998. She has been with the Essenson Firm since 2003, and was admitted to the Florida Bar in February of 2003. Ms. Welch is also admitted to practice in Massachusetts and in the United States District Court, Middle District of Florida.

Matthew J. Kelly is a graduate of the University of South Florida and received his Juris Doctor from Stetson University in

2014. Mr. Kelly has practiced with the Essenson Firm since being admitted to the Florida Bar in October of 2014. He is also admitted to practice in the United States District Court, Middle District of Florida.

The billing rates for the professionals at the Essenson Firm for both the Sanctions Order Period and the Post-Sanctions Order Period are well within the normal range for similarly qualified professionals in this area.

2. Feldman Gale/Cozen O. Connor Law Firm Rates and Qualifications

FG was retained just five weeks before this case was set to be tried in September, 2014. The usual and customary FG/Cozen rates for its attorneys are generally higher than the rates applicable in the Twelfth Judicial Circuit. In addition to its regular rates, FG charged BRD a 20% premium due to the exigent circumstances of the impending trial (the “Exigency Fee”). The Exigency Fee ended when the Sanctions Order was docketed on September 1, 2015.

In arriving at this fee agreement, BRD and the FG firm appropriately considered the challenges to the FG firm of performing a large amount of legal work in a short period of time. In addition, the unique circumstances of this case and the qualifications of the members of the FG trial team support these rates. The rates FG charged BRD, and the years of experience of the FG firm’s principal participants, upon first being retained in 2014 are as follows (the rates include the Exigency Fee):

*7 TIMEKEEPER	RATE 8/2014 — PRESENT	EXPERIENCE AS OF 8/2015
Jeffrey Feldman, Member	\$720/hour	33 years
Lawrence Gordon, Member	\$600/hour	31 years
Samuel Lewis, Member	\$582/hour	18 years
David M. Stahl, Associate	\$330/hour	4 years
Matthew Horowitz, Associate	\$330/hour	2 years
Megan Baker, Law School Graduate ³	\$225/hour	0 years
Jennifer Mendoza, Paralegal	\$210/hour	30 years
Kimberly Jordan, Paralegal	\$180/hour	30 years

James Matulis testified that, in his experience, there are few litigators in the area with significance that are able and willing to step into a complex intellectual property case just five weeks before trial, and even fewer that have the necessary firm resources available to have a team of attorneys and paralegals available to assist. The FG firm had both. In addition, Mr.

Matulis testified that it is highly disruptive to a law firm to have a large number of its lawyers, paralegals, and staff stop work on their active files and appear in a hotly contested complex litigation just before trial, as it impacts the firm's ability to service its existing clients. In addition, Mr. Matulis testified that undertaking a complex trial in a short period of time can also create enhanced liability risks for the lawyers involved.

Moreover, it is rare for any firm to have a group of attorneys with the unique qualifications for a case of this nature, yet the FG team does. The FG team includes attorneys with specialized knowledge uniquely relevant to this case, such as David M. Stahl, a former senior software engineer who developed and managed software modules for 3D Computer-Aided Design software used by mechanical engineers to create 3D modules. Similarly, Samuel Lewis, a former computer software developer who later served as the Chair of the Computer Law Committee of the Florida Bar, is, according to Mr. Matulis, well-respected for his in-depth knowledge of Electronically Stored Information (ESI), including metadata, as indicated by his frequent publication of articles and serving as a lecturer or panelist at bar events related to E-Discovery. It is notable that a significant portion of the litigation misconduct in this case was discovered through analysis of metadata contained in the SolidWorks CAD software files obtained through discovery, including some from a third party. The FG litigation team, including the evidentiary hearing that resulted in the Sanctions Order, and the jury trial, was led by Jeffrey D. Feldman, a former Assistant U.S. Attorney with over 35 years of experience litigating and trying complex high stakes cases. Notably, Messrs. Feldman and Lewis are both Board Certified in Intellectual Property law, and cumulatively have over 50 years of experience practicing complex law. Matthew N. Horowitz has a degree in mechanical engineering, an area of knowledge that had particular application to the present case. In short, although there are other attorneys that practice Intellectual Property ("IP") in the area, there are few, if any, firms with attorneys having the varied and unique qualifications that were so important to litigating and detecting the fraud in this case. Essenson, in his search for assistance in litigating the case, was unable to find this combination of talents in the Twelfth Judicial Circuit, and extending his search to the Miami area, with its higher rates, was justified.

***8** The combination of uncommon talents at the FG (later Cozen) firm for this case; the ability and willingness to assemble a team to try the case on just five weeks' notice; and the ability and knowledge required to locate the evidence of defendants' litigation misconduct that was found largely in the metadata of CAD software and to effectively present it to the Court; along with the exceptional results obtained in the Sanctions Order, and later in the jury trial, when taken together, justify the larger than usual hourly rate structure charged by the FG (and later, Cozen) firm.

Further, evidence was adduced that the rates charged by the FG firm are within the range of rates commonly charged for complex IP litigation. Mr. Matulis testified that according to the most recent survey of IP attorneys published by the AIPLA, in 2014 the top quartile of IP attorneys nationwide with 35 or more years of experience charged \$653/hour, and the top ten percent charge \$855/hour. The third quartile (75%) of IP attorneys nationwide with 15-24 years of experience charged an average of \$515/hour, and the top ten percent charged \$692/hour. The FG firm's rates are well within these ranges, and in fact, are closer to the lower end of the range.

Importantly, Mr. Matulis noted that these rates reported in the AIPLA survey are the *standard* hourly rates reported by these attorneys, rather than the hourly rates charged in extreme circumstances, such as those faced by the FG firm upon appearing in this case.

Based upon all of the above, it is the holding of this Court that the regular hourly rates charged by the billing professionals at the Essenson Firm and the FG and Cozen firms are reasonable under all the circumstances of this case. However, the Exigency Fee and the time required to bring FG "up to speed" are disallowed, as more particularly discussed below.

In determining fees to be awarded pursuant to a sanction order, the Second District Court of Appeal has ruled that the Court can use its discretion and award higher, nonlocal rates than are customarily charged in the venue, as long as those rates are the actual rates charged by the attorney and reasonable in light of all the circumstances.  [Eve's Garden, Inc. v. Upshaw & Upshaw, Inc.](#), 801 So.2d. 976, 979 (Fla. 2d DCA 2001). This is because the purpose of entering sanction awards when a party engages in litigation misconduct is "both to punish the recalcitrant party and to reimburse the victim." *Id.* For the same reasons, the Court has the discretion to award fees incurred by attorneys while traveling to the venue. *Id.* In the present case, this Court found the defendants' actions to be much worse than simply "recalcitrant," therefore justifying the Court to exercise its discretion and award the regular rates actually paid by BRD to FG, Cozen, and the Essenson Firm. Incontroverted evidence was adduced that BRD had paid all of the attorney fee bills and expense items placed into evidence.

Use of the FG and Cozen rates actually charged to, and paid by, BRD in calculating the lodestar is also dictated by Florida Professional Rule of Conduct Rule 1-5.(c), which states:

4-1.5 (c) Consideration of Ail Factors.

In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

As noted above, the Court finds the fees relating to Feldman and his litigation team to be above those in the community locally. However, they are approved in all respects, except as to the Exigency Fee and subject to an adjustment made by attorney Matulis, reducing the Feldman Gale fees for the time required to “bring FG up to speed on the case”, resulting in a downward adjudgment of approximately \$100,000.00 from the actual billings. The Court finds this downward adjustment reasonable and appropriate as is the Court’s rejection of the Exigency Fee. Feldman and his associates brought a high level of skill and specialized expertise to the case not available usually in the Twelfth Judicial Circuit and they performed at exceptional levels of organizational and technical competence, and diligence.

IV. FACTUAL FINDINGS REGARDING REASONABLENESS OF LEGAL FEES

A. SANCTIONS ORDER PERIOD (5/9/11 TO 9/1/15)

*9 The Court finds the rates and times expended for each timekeeper set forth on Exhibit “A” attached hereto and incorporated herein by reference to be reasonable and necessary for prosecution of the instant case against Ebrahimpour, subject to a reduction of 20% for the Exigency Fee for FG, which is indicated on Exhibit “A”.

B. POST-SANCTIONS ORDER PERIOD (THROUGH 10/31/2018)

The evidence adduced at the attorney fee hearing from Plaintiffs attorneys and the expert witness, James Matulis, reduced the number of hours actually expended based on a fair allocation of time dedicated to discovery of damages relating to Ebrahimpour, proof of damages relating to Ebrahimpour, and matters inextricably intertwined with same and other matters. Ebrahimpour is not being charged for billings relating to proving liability against the Ennovy Defendants. Notably, the Essenson Firm reduced its total billings in this second phase of the case by more than 35%, the Feldman Gale firm reduced its billings by more than 88%, and the Cozen O’Connor firm reduced its billings by 63%. The reductions not attributable to Ebrahimpour total \$2,257,034.80 for all three firms. The Court ratifies these reductions and finds them reasonable.

Accordingly, the Court incorporates herein by reference its findings as to hourly rates by timekeeper and number of hours expended in the charts appended hereto as Exhibits “B”, “C” and “D”, which were admitted into evidence as Composite Exhibit 15 at the hearing. (Exhibit “E” is a summary of the total fees awarded, which was admitted into evidence at Exhibit 16). The Court finds the rates and time to be both reasonable and necessary.

V. ANALYSIS OF APPLICABLE LAW

A. INEQUITABLE CONDUCT DOCTRINE AND ITS EFFECT ON THE CASE

In the case of [Bitterman v. Bitterman](#), 714 So.2d 356 (Fla. 1998), the Supreme Court of Florida presents a thorough discussion of the “inequitable conduct doctrine”. As the Court noted, in relevant part:

The inequitable conduct doctrine permits the award of attorney’s fees where one party has exhibited egregious conduct or acted in bad faith.... It is reserved for those extreme cases where a party acts in ‘bad faith, vexatiously, wantonly, or for oppressive reasons’.... Bad faith may be found not only in the actions that led to the lawsuit, but also in the conduct of the litigation.

Id. at 365 (internal citations omitted). The inequitable conduct doctrine is clearly applicable to the conduct underlying the Sanctions Order, which conduct included, without limitation, not only discovery violations, but misleading and false testimony under oath, false affidavits, vexatious trial tactics, and spoliation of evidence.

In addition, the inequitable conduct doctrine may also be found to be applicable to the sanctions contained in [section 688.005, Florida Statutes](#), regarding a “willful and malicious misappropriation” of trade secrets. Proof of this element of the statute requires scienter, willful acts, and a guilty mind, and serves both a social and judicial purpose to discourage bad faith and outrageous behavior in the conduct of commercial matters.

The application of the inequitable conduct doctrine to the concept to an award of fees and costs was squarely addressed by the Second District Court of Appeal in connection with the case of [Eve’s Garden, Inc. v. Upshaw & Upshaw, Inc.](#), 801 So.2d 976, 979 (Fla. 2d DCA 2001). In that case, our Second District Court of Appeal stated, *inter alia*, the following:

*10 The purpose of this type of legal sanction is both to punish the recalcitrant party and to reimburse the victim. The sanction hopefully serves as a deterrent of similar conduct by others in future litigation....[W]e conclude that a trial judge has the discretion to impose a fee award based upon a calculation of the actual rates charged so long as those rates are reasonable in light of all the circumstances.

Accordingly, the Court applies *Eve’s Garden* to award the rates actually charged (less the Exigency Fee and the time to bring FG up to speed) based on the principles set forth above, as the Court finds that those rates are reasonable in light of all the circumstances.

Also, similar to *Eve’s Garden*, the Court is awarding travel time and expenses relating to same. As stated in *Eve’s Garden* at 979:

Similarly, we affirm the award of attorney’s fees for travel time in this case. Although travel time is generally not compensable in this district when setting a reasonable fee, [Belmont v. Belmont](#), 761 So.2d 406 (Fla. 2d DCA 2000); [Gwen Fearing Real Estate, Inc. v. Wilson](#), 430 So.2d 589 (Fla. 4th DCA 1983); [Chandler](#), 330 So.2d 190, we conclude that travel time may be awarded when fees are awarded as a sanction under circumstances similar to this case. The defendants were aware that the failure to provide discovery could result in unnecessary hearings, and that those hearings would require the plaintiffs’ counsel to travel...

As in the *Eve’s Garden* case, the Court finds that the bad faith and the inequitable conduct of Ebrahimpour and the other defendants resulted in BRD having to travel and take extensive foreign depositions to prove its case. As these expenses were caused by the tactics of the defendants, and especially Ebrahimpour, the Court exercises its discretion to award these expenses.

As previously noted, the Court finds that the allocation of expenses between Ebrahimpour and the proof of liability against the Ennovy Defendants was fair, appropriate and reasonable, and Ebrahimpour is not being charged for any attorney’s fees directed to proving liability against the Ennovy Defendants. As to damages, the Court finds the issue of damages to be inextricably intertwined with regard to Ebrahimpour and the Ennovy Defendants. The Court’s review of the record does not

support a defendant by defendant differentiation of proof of damages, as the theory of damages, and the discovery and proof of same, was inextricably intertwined between Ebrahimpour and the Ennovy Defendants. See, e.g, *Isaias v. H.T. Hackney Co.*, 159 So.3d 1002 (Fla. 3d DCA 2015).

B. PROPORTIONALITY

Ebrahimpour points out that the jury verdict rendered in this case is only 1.2% of the amount of fees requested by BRD. The Court rejects this proportionality argument based on the holding in *State Farm Fire & Casualty Co. v. Palma*, 555 So.2d 836 (Fla. 1990). The *Palma* Court concluded that State Farm chose to “go to the mat” over a \$600.00 bill for a thermographic examination. *Id.* at 837. In the *Palma* case, the Court awarded an attorney’s fee to Palma in the amount of \$253,500.00, a proportionality of .2% when compared to the \$600.00 amount in controversy, some six times less than the 1.2% argued by Ebrahimpour. The words of the Supreme Court in *Palma* with regard to State Farm are equally applicable to Ebrahimpour in the instant case:

Having chosen to stand and fight over this charge, State Farm, of course, made a business judgment for which it should have known a day of reckoning would come should it lose in the end.... [T]he parties elected to go toe-to-toe over the issue and they brought to bear all of their skill and resources to try to win the day.... This is an illustration of the need for flexibility to allow for this type of unique and rare case, especially where the prevailing party has not been the primary cause of the extensive litigation.

*11 *Id.* at 837-838.

In the instant case, Ebrahimpour made a decision to not admit his misappropriation of trade secrets when confronted with the assembly model of the BRD desktop wax dispenser at that early moment in the July 18, 2012 deposition. Mr. Matulis testified that at that point in the case, BRD had incurred only approximately \$240,000.00 in attorney’s fees. Instead of answering truthfully, Ebrahimpour chose to give false and misleading statements, and he and the Ennovy Defendants chose to ‘go to the mat’ with BRD over their misappropriation of BRD’s trade secrets. Thus, Ebrahimpour is responsible under *Palma* for his tactics and decisions, which were the primary cause of the extensive litigation.

The Court has considered the overall result, including the importance of the entry of the permanent injunction against Ebrahimpour, and the Court sees no basis to reduce the lodestar findings in the attached schedules based on the concept of proportionality.

C. FEES FOR FEES (11/1/2018 THROUGH 12/4/2018, INCLUDING PREPARATION OF FINAL JUDGMENT, PERMANENT INJUNCTION, AND ATTORNEY FEE ORDER)

The Court makes the specific finding based on the principles enunciated in *Condren v. Bell*, 853 So.2d , 610 (Fla. 4th DCA 2003), that the concept established in *State Farm Fire and Casualty Co. v. Palma*, 629 So.2d 830 (Fla. 1993) regarding fees for litigating the amount of fees does not apply in the instant case because the award of attorney’s fees and costs is a sanction, and therefore the Court awards fees for litigating the amount of fees because of the sanctions which are supported by substantial competent evidence in the record. Accordingly, fees are awardable to the Essenson Firm for litigating the amount of fees and to Jeffrey D. Feldman for his necessary participation and testimony on the first day of the hearing, December 3, 2018. Accordingly, on the fees for fees issue, the Court awards the Essenson Firm the sum of \$40,000.00 based on a blended reasonable rate of \$400.00 per billable hour for 100 hours of time, and awards Jeffrey D. Feldman, \$28,903.50 based on 42.82 hours at \$675.00 per hour, plus 8 ½ hours for attending the hearing and testifying at the rate of \$675.00 per

hour, or \$5,737.50, for a total of \$34,641.00, for proving the amount of fees. The Court also awards the Essenson Firm 10 hours at \$450.00 per hour, or \$4,500.00, for the drafting of the fee orders and final judgment.

D. EXPERT WITNESS FEES

Experts are entitled to compensation for testifying at attorney fee hearings for prevailing parties if they were reasonably anticipating being paid. *D'Alusio v. Gould & Lamb* 36 So.3d 842, 847 (Fla. 2d DCA 2010) (citing to  *Rock v. Prairie Building Solutions, Inc.*, 854 So.2d 722 (Fla. 2d DCA 2003)). Mr. Matulis' work was extensive and he testified he was expecting to be paid.

The Court found Mr. Matulis' analysis of the lawyers, the rates and the issues in the case spot on. Mr. Matulis personally reviewed literally thousands of billing entries since the beginning of this now eight-year case. His testimony and report was thoughtful, comprehensive, and incredibly detailed and balanced. Much of the substance of his methodologies have been adopted by the order of this Court. Accordingly, based on the evidence adduced, James Matulis is awarded the following amount of fees based on the billings indicated at the rate of \$450.00 per billable hour for his time, and \$150.00 per billable hour for his paralegal, plus expenses, as more particularly set forth in the invoices admitted into evidence as part of Exhibit "12", which the Court finds reasonable including the number of hours indicated therein:

*12 Date	Invoice No.	Amount
7/13/2016	Invoice 181	\$40,805.00
2/13/2018	Invoice 315	\$ 1,845.00
7/6/2018	Invoice 350	\$22,597.98
Testimony	12/3/18 hearing	\$15,500.00
Attendance/Hearing	10 hrs. @ \$450/hr	\$ 4,500.00
Total to James Matulis		\$85,247.98

The lodestar findings regarding Mr. Matulis' billings are summarized on the charts attached hereto and incorporated by reference as Composite Exhibit "F".

E. PREJUDGMENT INTEREST

BRD is entitled to prejudgment interest on the award of attorney fees from the date of determination of entitlement.  *Quality Engineered Installation Inc. v. Higley South Inc.*, 670 So.2d 929 (Fla. 1996). Both entitlement to fees and to prejudgment interest were determined by the Court in the Prejudgment Order entered on December 21, 2017.

VI. BRD'S EXPENSES / COSTS

With regard to the issue of BRD's expenses, the Court admitted into evidence as Exhibit 12 a three-ring binder setting forth a comprehensive list of costs statements together with back-up invoices and summaries of same for various categories of expenses incurred by BRD by and through each of its law firms. The Court admitted into evidence a summary of the costs / expenses incurred by BRD in connection with the litigation as exhibit 13, a copy being attached hereto as Exhibit "G" and incorporated herein by reference.

The Court awards all of these costs / expenses, some of which do not fit the statewide guidelines, and the Court is liberally construing the award of expenses of BRD, principally for two reasons:

1. BRD was in a difficult position of having to conduct extraordinary discovery and fight a very zealous defense against skilled and aggressive opponents. The Court finds the award of these expenses necessary and part of the concept of providing a sanction for the type of conduct that has been demonstrated by Ebrahimpour in this case under the inequitable conduct doctrine.

2. Secondly, litigation expenses are also based on the Employment Agreement entered into on November 11, 2002 between BRD, as Employer (referred to in the Employment Agreement as "BENZ"), and Ebrahimpour (referred to in the Employment Agreement as "EMPLOYEE"), which states in relevant part:

EMPLOYEE agrees to be liable for all of **BENZ'S** reasonable attorney's fees and expenses incurred in connection with the enforcement of this Agreement In the event of any breach by **EMPLOYEE**

The language in the Employment Agreement is broader than the statewide guidelines on costs, incorporating all of BRD's "expenses incurred", and the jury found that Ebrahimpour had breached the Employment Agreement and awarded BRD damages. The unambiguous contract language is subject to being enforced by the Court without engrafting limits which are not contained in the contract language. See, e.g. [Trial Practices, Inc. v. Hahn Loeser & Parks, LLP, 228 So.3d 1184, 1192-93 \(Fla. 2d DCA 2017\)](#) (citing to, among other things, [Panama City Bay County Airport and Indus. Dist V. Kellogg Brown & Root Services, Inc., 136 So.3d 788 n.1 \(Fla. 1st DCA 2014\)](#)).

Additionally, as noted, the award of expenses in this case is consistent with the Sanctions Order entered against Ebrahimpour for inequitable conduct and with the willful and malicious misappropriation of trade secrets finding by the Court against Ebrahimpour in violation of the Uniform Trade Secrets Act under [section 688.005, Florida Statutes](#).

VII. DECRETAL PORTION OF ORDER

*13 Accordingly, based on the foregoing analysis, it is hereby ORDERED AND ADJUDGED as follows:

The Plaintiff, Benz Research and Development Corporation, shall recover attorney's fees and expenses from the Defendant, Armin Ebrahimpour, in the following amounts:

- | | |
|---|-------------------|
| 1. Sanction Order Period Fees: 5/9/11 to 9/1/15 | = \$ 3,087,918.48 |
| 2. Post-Sanction Period Fees through 10/31/2018 | = \$ 1,472,598.50 |
| 3. Expert Witness fees: \$15,500 and \$4,500* (James Matulis) | = \$ 20,000.00 |
| 4. Fees for Fees: | |

a. Essenson Firm: 100 hours at \$400/hr (blended rate)	= \$ 40,000.00
b. Essenson Law Firm: 10 hours at \$450/hr for drafting final orders	= \$ 4,500.00
c. Jeffrey D. Feldman 42.82 hours at \$675/hr = \$28,903.50, plus 8 ½ hours = \$5,737.50	= \$ 34,641.00
5. Expenses / Costs	= \$ 1,155,616.09
6. Prejudgment Interest on attorney fees (\$4,560,516.98 x 5.35% /365 = \$688.4593 per diem for 363 days from December 21, 2017 to December 18, 2018)	= \$ 242,650.73
TOTAL	= \$ 6,057,924.80

The total amount due and owing to Benz Research and Development Corporation from Armin Ebrahimpour for fees, costs / expenses, and interest is SIX MILLION FIFTY-SEVEN THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS AND EIGHTY CENTS (\$6,057,924.80).

The amount set forth above shall be incorporated into a final judgment entered by this Court against Armin Ebrahimpour and in favor of Benz Research and Development Corporation on the date hereof.

DONE AND ORDERED in Sarasota County, Florida on this 18 day of December, 2018.

<<signature>>

LEE E. HAWORTH, SENIOR JUDGE

CIRCUIT COURT

Copies Furnished To:

James L. Essenson, Esq.

Barbara J. Welch, Esq.

Matthew J. Kelly, Esq.

LAW FIRM OF JAMES L. ESSENSEN

2071 Main Street

Sarasota, FL 34237

Jeffrey D. Feldman, Esq.

FELDMAN & LATHAM, LLP

1200 Brickell Avenue

Penthouse 1900 Miami, FL 33131

Armin Ebrahimpour

14028 Nighthawk Terrace

Bradenton, FL 34202

Appendix not available.

Footnotes

- ¹ Verdicts were also rendered against Ennovy Spain as follows: For tortious interference with a contract: \$1,400,000.00; Misappropriation of trade secrets: \$30,800.00; and unjust enrichment: \$4,850,000.00.
- ² Matthew J. Kelly was sworn in as an attorney on October 2, 2014; subsequent to October 3, 2014, his attorney rate was \$150/hour. Prior to that, Mr. Kelly's services were billed at \$90/hour as a law school graduate (between May 1, 2014 and August 1, 2014), and before that as a law clerk at \$50.00/hr. (August, 2013-October, 2013) and then at \$60.00/hr. (October, 2013-May 2014).
- ³ Ms. Baker had graduated from law school but had not yet taken the bar exam at this time.
- ⁴ The three prior invoices of James Matulis are incorporated into the award of expenses and are part of the expense exhibits and summary admitted into evidence as Exhibits 12 and 13. Exhibit 13 is attached hereto as Exhibit "G".