SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

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MORELLI LAW FIRM, PLLC,

Plaintiff,

- v -

MARK PEREZ,

Defendant.

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INDEX NO. 150661/2022

MOTION DATE 10/17/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the motion by plaintiff Morelli Law Firm, PLLC ("MLF"), for an order, pursuant to CPLR 3025, granting leave to amend the complaint to assert a cause of action for *quantum meruit*, is granted.

Brief Background

The Court presumes the reader's familiarity with the substantive and procedural posture of this action, in which MLF seeks to recover from its former client, defendant Mark Perez ("Mr. Perez"), a 10% contingency fee for the post-trial and appellate work it performed on his behalf as a plaintiff in an underlying Labor Law action. In November 2016, the parties entered into a contingency fee agreement pursuant to which MLF earned a one-third contingency fee for all of its pre-trial and trial work performed for Mr. Perez that resulted in a $102 million jury verdict, which was ultimately settled during post-trial proceedings for $55 million. MLF received its one-third fee on the $55 million settlement. The contingency fee agreement provided that additional fees may be required for post-trial and appellate work. MLF claims entitlement to an additional 10% contingency fee for such work based upon an implied agreement.

The initial complaint in this matter, filed on January 20, 2022, asserts a single cause of action for a declaratory judgment that MLF "is entitled to a 10% enhanced contingency fee. . . which amounts to $5.5 million in attorney's fees, pursuant to both oral and written notice provided by [MLF] to [Mr. Perez] in advance of performance." Mr. Perez' answer contained, *inter alia*, counterclaims for breach of contract, breach of fiduciary duty, and conversion. Following motion practice and related appeals on the counterclaims, the viable claims at present sound in contract: MLF's request for a declaratory judgment that it is entitled to $5.5 million in attorney's fees based upon the parties' alleged implied 10% contingency fee agreement, and Mr. Perez' counterclaim for MLF's alleged breach of the parties' November 2016 contingency fee agreement by "improperly withholding an additional $5.5 million in settlement funds." As is

here pertinent, the Appellate Division, First Department dismissed Mr. Perez' breach of fiduciary duty claims based upon his allegation that MLF failed to reveal certain settlement offers tendered in the Labor Law action, with leave to replead "additional concealed offers" (NYSCEF Doc. No. 51). Mr. Perez did not replead in accordance with the Appellate Division's direction. The Appellate Division also affirmed the trial court's dismissal of Mr. Perez' claims based upon MLF's alleged misappropriation of escrowed funds.

Throughout the litigation, MLF's potential entitlement to *quantum meruit* damages had been raised by the parties, as well as the Appellate Division. However, MLF consistently asserted its position that it was entitled to the additional 10% contingency fee ($5.5 million) by way of agreement, and rejected Mr. Perez' counteroffer to pay MLF on an hourly basis because it does not do hourly billing in accordance with its business model.

Upon this state of the pleadings and record, by Decision and Order dated May 20, 2025 (NYSCEF Doc. No. 155, 156; the "May 20 Order"), this Court resolved the parties' competing motions to compel discovery, finding certain of Mr. Perez' demands to be improper as seeking material irrelevant to the contract claims and upholding the other demands. MLF appealed the Court's May 20 Order then withdrew its appeal given Mr. Perez' waiver of discovery thereunder (NYSCEF Doc. No. 164).

Following attempts to assist in settlement of this matter, the Court issued a Final Discovery Order (NYSCEF Doc. No. 165), which, *inter alia,* set a briefing schedule for MLF's motion to amend the complaint and directed depositions to be completed by February 28, 2026, with MLF to file a Note of Issue by March 6, 2026.

The Instant Motion to Amend

MLF nows move to amend the complaint to add a cause of action for *quantum meruit*. The proposed amended complaint does not omit or revise the original factual allegations, nor does it add any new allegations. Rather, the proposed amended complaint asserts, in pertinent part:

> 81. In the alternative, if the trier of fact ultimately determines that MLF is not owed a 10% appellate fee pursuant to an implied contract between the parties for the post-trial and appellate work it performed in representing Mr. Perez, Plaintiff is entitled to be paid the reasonable value of the legal services provided pursuant to the doctrine of quantum meruit.

MLF's proposed pleading further alleges that: MLF "performed significant post-trial and appellate work in good faith"; Mr. Perez "knowingly accepted those services" and did not direct MLF to stop work; MLF "had a reasonable expectation of compensation" for its post-trial and appellate work on behalf of Mr. Perez; and sets forth the factors to be considered in determining quantum meruit damages.

In support of its request for leave to amend, MLF argues that the proposed amended complaint does not set forth any new facts, will not result in any prejudice or surprise because discovery is still ongoing, and the newly asserted *quantum meruit* cause of action is not palpably insufficient or patently devoid of merit as the initial pleading gave notice of the claim and the issue was raised throughout the litigation. In opposition, Mr. Perez argues, in the main, that he would be severely prejudiced by the amendment due to MLF's delay of three years in asserting this claim without a reasonable excuse for such delay. He asserts that he will be hindered in his defense to a *quantum meruit* cause of action in view of his waiver of document production under this Court's May 20 Order, which, notably, denied his discovery demands relative to a *quantum meruit* claim (i.e., communications and documents between MLF and its retained appellate attorney). Mr. Perez argues that amendment would be futile as MLF cannot establish a right to *quantum meruit* because the parties' contingency retainer agreement covers all fees, and MLF waived this right by consistently asserting its entitlement to the 10% fee and not the reasonable value of its services.

The Amendment is Granted

CPLR 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (*Fahey v County of Ontario*, 44 NY2d 934 [1978]; *JP Morgan Chase Bank, N.A. v Low Cost Bearings N.Y., Inc.*, 107 AD3d 643 [1st Dept 2013] [leave to amend granted in "absence of evidence of substantial prejudice or surprise or that proposed amendments were 'palpably insufficient or patently devoid of merit'"); *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]). However, "[i]n order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted. Where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied" (*Eighth Ave. Garage Corp. v HKL Realty Corp*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]). The motion to amend the pleading "shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading" (CPLR 3025[b]).

MLF's proposed cause of action for *quantum meruit* does not cause surprise or prejudice to Mr. Perez, for at least four reasons. First, Mr. Perez himself, early on and throughout the litigation, raised the issue of MLF's potential entitlement to the reasonable value of its services for post-trial and appellate work. MLF's consistent assertion of its entitlement to an additional 10% contingency fee by way of an alleged agreement, and that it did not bill hourly, does not constitute the type of voluntary and intentional conduct evincing a relinquishment of a known right such that MLF waived its right to assert *quantum meruit* damages (*see generally Ess & Vee Acoustical & Lathing Contrs., Inc. v Prato Verde, Inc.*, 268 AD2d 332, 332 [1st Dept 2000] ["Waiver is an intentional relinquishment of a known right and should not be lightly presumed. The intent to waive 'must be unmistakably manifested, and is not to be inferred from a doubtful or equivocal act.'"] [internal citations omitted]). Indeed, MLF noted its right to seek the reasonable value of its services at least once during the litigation. Thus, there can be no surprise by reason of the proposed amendment.

Second, MLF has not unreasonably delayed, without excuse, to move to amend the complaint such that Mr. Perez is unduly prejudiced. MLF commenced this action in January 2022, with the first year focused on pleadings motions and related appeals. Discovery

proceedings are still underway, with depositions set to be completed by February 2026 (and – under this Order – additional documents shall be produced). Under these circumstances, MLF's three-year delay in moving to amend the complaint to add an additional cause of action only, and not new facts, is not so great as to warrant denial of the amendment (*see Jacobson v McNeil Consumer & Specialty Pharms.*, 68 AD3d 652, 654 [1st Dept 2009] [second amended complaint "did not allege any new facts or occurrences, but merely set forth an additional legal theory" and defendants did not establish prejudice because "fact discovery was still being conducted, the deadline to complete expert depositions was eight months away, the deadline to file a note of issue was nine months away, and no trial date had yet been set"]; *compare Pecora v Pecora*, 204 AD3d 611 [1st Dept 2022] [amendment denied as delay of 10 years from underlying event and 7 years from initial complaint prejudiced defendants]; *Burke, Albright, Harter & Rzepka LLP v Sills*, 187 AD3d 1507 [4th Dept 2020] [amendment denied where 14 year delay in seeking amendment]; *Spiegel v Kempner*, 145 AD3d 505 [1st Dept 2016] [delay of 3 years after first motion to amend denied and 9 years after underlying incident warranted denial of amendment]).

Third, Mr. Perez is entitled to conduct discovery on the *quantum meruit* claim and, thus, will be able to adequately prepare a defense thereto. Mr. Perez notes, and it is undisputed, that his waiver of document production under the May 20 Order was based on the pleadings as of that date. In other words, Mr. Perez waived discovery *only* as relates to MLF's claim that the parties agreed to an additional 10% contingency fee. Mr. Perez did not, and could not, waive his right to discovery directed to MLF's *quantum meruit* claim; therefore, he is entitled documents related to the reasonable value of MLF's post-trial and appellate legal services.

In this regard, MLF shall produce to Mr. Perez, by January 15, 2026, documents and communications between MLF and appellate counsel Hon. (ret.) David Saxe, including the regular meetings MLF alleges it had with the appellate counsel team, as requested in Mr. Perez' Demands ¶¶ 19 and 24. MLF shall also produce all documents – including but not limited to: letters, emails, notes, internal and external memos, communication logs, draft and final briefs, draft and final post-trial motions – relative to each element of its *quantum meruit* claim, and all documents, not otherwise produced, upon which MLF will rely to support its *quantum meruit* claim. MLF concedes that it has no objection to additional discovery on its newly asserted claim for which Mr. Perez is entitled to prepare a defense.

Contrary to Mr. Perez' argument, he is not entitled to discovery of alleged unconveyed settlement offers. The Appellate Division, First Department dismissed Mr. Perez' breach of fiduciary duty claims related to the alleged unconveyed settlement offers, with leave to replead, and Mr. Perez failed to replead in accordance with the Appellate Division's order. Similarly, he is not entitled to discovery on MLF's alleged misappropriation of escrowed funds because the Appellate Division affirmed the trial court's dismissal of Mr. Perez' claims arising out of this allegation. Thus, while an attorney's alleged ethical violations may be relevant to a *quantum meruit* claim (*see DeGregorio v Bender*, 52 AD3d 645, 646 [2d Dept 2008] [quantum meruit legal fees award remitted where "hearing court failed to consider and give appropriate weight to . . . the court's own finding of ethical violations committed" by attorney]), there has been no finding that MLF engaged in ethical violations, nor can there be as the claims supporting such conclusion have been dismissed. Any issues with the amount of interest earned on the escrowed funds can be considered by the trier of fact in its assessment of damages, one way or the other.

Fourth, and finally, MLF's policy of billing on a contingency basis only, and not hourly, does not necessarily render its claim for *quantum meruit* damages futile. While contemporaneous timesheets would certainly be compelling proof of the "nature and extent" of the attorney's services (*see Rahmey v Blum,* 95 AD2d 294 [2d Dept 1983] [assessing fees under 42 USC 1988]), the absence of such proof may be weighed by the trier of fact in determining MLF's *quantum meruit* claim.

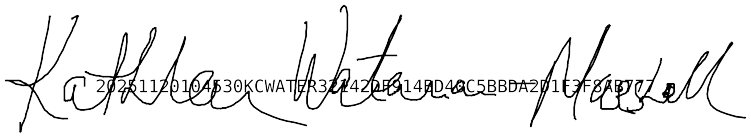
Accordingly, it is hereby

ORDERED that the motion by the Morelli Law Firm, PLLC for leave to amend its complaint pursuant to CPLR 3025(b) is granted and the amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. No. 171) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the Mark Perez shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that, **by January 15, 2026**, the Morelli Law Firm shall produce to Mark Perez, the following documents relative to its newly asserted *Quantum Meruit* claim: (1) documents and communications between the Morelli Law Firm and appellate counsel Hon. (ret.) David Saxe, including the regular meetings it alleges it had with the appellate counsel team, as requested in Mr. Perez' Demands ¶¶ 19 and 24; (2) all documents – including but not limited to: letters, emails, notes, internal and external memos, communication logs, draft and final briefs, draft and final post-trial motions – relative to each element of the *quantum meruit* claim; and (3) all documents, not otherwise produced, upon which the Morelli Law Firm will rely to support its *quantum meruit* claim; and it is further

ORDERED that all other dates and deadlines set forth in the Final Discovery Order shall remain the same.



11/19/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**