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WARLEY TEIXEIRA MARTINS,

Plaintiff,

vs.

**CALICO CONSTRUCTION CORPORATION;
 CONSTRUCTION CORP.; ALAN CANCRO;
 GRAND OAKS CONDOMINIUM;
 ABC CORPORATIONS 1-10; JOHN DOES 1-10,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: ESSEX COUNTY**

DOCKET NO.: ESX-L-7479-22

Civil Action

**COMBINED ORDER FOR FINAL
 JUDGMENT
 UPON COMPENSATORY DAMAGES
 JURY VERDICT AND OFFER OF
 JUDGMENT**

THIS MATTER having come before the Court by way of jury trial beginning on August 10, 2026 and concluding by way of jury verdict rendered on August 20, 2026 before the Honorable Thomas R. Vena, J.S.C., and Gerald H. Clark, Esq., and Jake W. Antonaccio, Esq., of Clark Law Firm, P.C., attorneys for the Plaintiff, and Michael Palma of the Law Office of Frank A. Viscomi counsel for Defendants, Alan Cancro and Calico Construction Corp., aka, Callico Construction Corp., appearing, and the jury having rendered their compensatory damages verdict on August 20, 2026 in the total amount of \$ 8,773,085.84 with liability allocated 85% to Defendants Alan Cancro and Calico Construction Corp., aka Callico Construction Corp., and 15% to Plaintiff Warley Teixeira Martins and it appearing that the complaint in this matter was filed on December 15, 2022, and for good cause being shown;

IT IS on this 15th day of October, 2026, **ORDERED** as follows:

- Judgment be and hereby is entered in favor of plaintiff Warley Teixeira Martins, and against defendant Alan Cancro and Calico Construction Corp., in the amount of \$7,139,634.22 (Seven Million One Hundred Thirty Nine Thousand Six Hundred Thirty Four Dollars with 22/100 cents) plus pre-judgment and post-judgment interest in accordance with *Rules* 4:42-11 and 4:58-2, calculated as follows:

December 15, 2022 - December 31, 2022 (16 days)	@2.25% =	\$5,461.76
January 1, 2023 - December 31, 2023 (365 days)	@2.25% =	\$124,587.32
January 1, 2024 - December 31, 2024 (366 days)	@5.50% =	\$304,546.78
January 1, 2025 - December 31, 2025 (365 days)	@7.50% =	\$415,291.07
January 1, 2026 - May 3, 2026 (122 days)	@6.50% =	\$120,301.76
May 4, 2026 (DED)- October 14, 2026 (163days)	@8.00% ¹ =	\$197,823.32

Total Pre-Judgment Interest from December 15, 2022-October 14, 2026
(not including future medical bills and future lost wages) = \$1,168,012.01

Plus Total Molded² Jury Award = \$7,139,634.22

Interest Plus Total Molded Jury Award: = \$8,307,646.23

- Defendant, Alan Cancro and Calico Construction Corp., be and hereby is ordered to reimburse counsel for plaintiff \$90,136.21 in costs and \$1,098,194.69 in fees (total cost and fee award as of date of this order, subject to additions is \$1,188,330.90). This is in addition to the \$8,307,646.23 judgment upon jury verdict pursuant to *Rule* 4:58-2 (Consequences of Non-Acceptance of Claimant's Offer) and *Rendine v. Pantzer*, 141 N.J. 292, 324 (1995);

¹ Interest rate is calculated at 8.00% from the discovery end date as required by Offer of Judgment *Rule* 4:58-2. Awards for future medical expenses and future lost wages and costs and fee shifting are not included in the pre-judgment interest calculations, but are included in post judgment interest calculations. *Rule* 4:42-11. Total amount of verdict, less 15% comparative negligence, for purposes of calculating pre-judgment interest is \$5,537,214.22. Total amount of verdict, less 15% comparative negligence, for purposes of calculating post-judgment interest is \$8,521,764.19.

²Verdict is molded down 15% for comparative negligence and past medical expenses molded down to workers compensation payment of \$119,719.67.

3. Final Judgment (subject to further cost and fee shifting and post judgment interest additions) be and hereby is entered in favor of plaintiff and against defendants, Alan Cancro and Calico Construction Corp., Callico Construction Corp., in the total combined amount of **\$9,495,977.13 (Nine Million Four Hundred Ninety-Five Thousand Nine Hundred Seventy-Seven and 13/100)**

4. The total Post Judgement Interest Per Day following entry of Judgement, which does include future medical bills, future lost wages and *Rule* 4:58-2 cost and fee shifting as per *Rule* 4:42-11 is \$1,867.78 and the Clerk of the Court shall add this to the judgment upon request of Counsel for Plaintiff without the need for motion practice.

IT IS FURTHER ORDERED that a copy of this Order shall be deemed served upon all parties upon the Court electronically filing same.

A handwritten signature in black ink that reads "Thomas R. Vena". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Hon. Thomas R. Vena , J.S.C.

It is so ordered, see Statement of Reasons attached hereto.

Case Title: Martins v. Callico Construction**Docket No.:** ESX-L-007479-22**STATEMENT OF REASONS**

Plaintiff has filed a Motion for Cost and Fee Shifting under R. 4:58-2 for Non-Acceptance of Offer of Judgment, and a Motion to Enter Final Judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Warley Martins, filed a complaint against Defendants, Callico Construction Corporation and Alan Cancro, on December 15, 2022. Plaintiff demanded to hold Defendants jointly and severally liable for the injuries he sustained on a construction site on January 20, 2021. Plaintiff was a construction worker employed by Callico Construction when he was locked out of the construction site and unable to retrieve his car keys. Plaintiff called Defendants but was unsuccessful in gaining access to the site. Plaintiff then climbed up the rear balcony in efforts to access the building, but fell, and suffered serious and permanent injuries.

Trial commenced on August 10, 2026, and a verdict was entered on August 20, 2026. The jury found Defendants and Plaintiff negligent, and that this negligence was the proximate cause of Plaintiff's injuries. The jury apportioned 15% negligence to Plaintiff and 85% negligence to Defendants. The jury awarded Plaintiff the following:

\$6,000,000.00 for pain and suffering
 \$493,295.84 for past medical expenses
 \$450,000.00 for future medical expenses
 \$394,650.00 for past lost income
 \$1,435,200.00 for future lost income

Plaintiff filed a Motion for Cost and Fee Shifting under R. 4:58-2 for Non-Acceptance of Offer of Judgment, and a Motion to Enter Final Judgment on September 9, 2026. Defendant filed a Motion for New Trial, and in the alternative, a Motion for Judgement Notwithstanding the Verdict, and a Motion for Remittitur on September 3, 2026.

ARGUMENTS*Plaintiff's Arguments*

I. Offer of Judgment Rule is Intended to Encourage Settlement and Penalize the Rejection of Reasonable Offers

Plaintiff states on April 15, 2024, Plaintiff filed an Offer of Judgment in accordance with R. 4:58-1 in the amount of \$1,900,000. Plaintiff asserts this offer was ignored by Defendant. Plaintiff states that because he obtained a jury verdict that is 120% of the offer or more, he is entitled to cost and fee shifting, from April 15, 2024, to present, pursuant to R. 4:58-6, and 4:42-9(d).

Plaintiff asserts that the insurance carrier for Callico Construction and Alan Cancro consistently and "vigorously" hindered Plaintiff's efforts throughout the four-year litigation. Plaintiff states the total costs incurred from April 15, 2024, to present are \$90,136.21. Plaintiff contends

Defendant continuously scoffed at Plaintiff's case throughout litigation. Plaintiff points out that despite this, he received a favorable verdict. Plaintiff states that totaling the verdict and subtracting 15% for comparative negligence, the Plaintiff will recover about 336% of the offer of judgment, which is well in excess of the 120% per R. 4:58-6. Plaintiff also states the ongoing interest on the judgment until it is paid is \$1,800/day.

Plaintiff cites R. 4:58-2, 4:58-6, and 4:42-9(b) and states that since the verdict is 120% or more, Defendant must pay costs and fees from the date of the Offer of Judgment forward, in addition to 8% interest on the judgment. Plaintiff notes the purpose of the Offer of Judgment Rule is to promote settlement. Pressler v. Verneiro, Current N.J. Court Rules, cmt. 1 on R. 4:58 (2018); Crudup v. Marrero, 57 N.J. 353, 357 (1971); Wiese v. Dedhia, 188 N.J. 587, 593 (2006) (quoting Schettino v. Roizman Dev., 158 N.J. 476, 482 (1999)). Plaintiff contends the Offer of Judgment Rule is intended to penalize those who reject a settlement offer that turns out to be more favorable than the judgment. Id. Plaintiff asserts the R. 4:58-2 does not allow the judge any discretion whether to award attorney's fees and costs pursuant to the Offer of Judgment Rule. Feliciano v. Faldetta, 434 N.J. Super. 543, 548 (App. Div. 2014) citing Weise, 188 N.J. at 592.

II. RPC 1.5(a) Reasonableness Factors

Plaintiff cites to R. 4:42-9(b)'s mandated consideration of RPC 1.5(a) reasonableness factors. Plaintiff further points to law concerning fee applications in class action litigation as instructive. These cases state the factors do not need to be applied formulaically, and these factors function to encourage risky and novel litigation. See Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 (3d Cir. 2000); In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166, 196 (E.D. Pa. 2000). The factors are as follows:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Plaintiff then proceeds to explain and analyze each of the eight factors as they pertain to the facts here.

Factor (1)- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

Plaintiff contends this case was not a "garden variety personal injury case," and was complex litigation based on the aggregate of issues. These issues included federal OSHA regulations, Jersey City Construction Ordinance, construction industry standards, etc. Litigation also consisted of substantial discovery, depositions, documents, experts, motion practice, and not to mention, a 10-day trial. Plaintiff contends the trial consumed counsels' lives and Plaintiff, Warley Martins, lived with counsel and his wife throughout the trial. Plaintiff's counsel states the firm

primarily engages in contingency work, and while they did not maintain contemporaneous time records, they did do a thorough review to find the firm devoted 1207 hours over 2.5 years. Plaintiff further states they devoted hard work, persistence, great risk, and expense to this construction injury matter.

Factor (2)- the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

Plaintiff claims this litigation impacted the firm's ability to handle other matters for the last 2.5 years. Plaintiff states the firm devoted immense amounts of time despite not being paid throughout the duration of the litigation. Plaintiff contends counsel had to decline to take on other cases.

Factor (3)- the fee customarily charged in the locality for similar legal services;

Plaintiff argues that their attorneys' fees are separate from their contingency fees and should be calculated by the hours expended multiplied by a reasonable hourly rate. Feliciano, 434 N.J. Super. at 548-9. Plaintiff also contends that counsel, since working years in the field, is familiar with hourly rates customary to this type of litigation in NJ. As of January 2026, these are the following hourly rates at Clark Law Firm, PC.:

\$750 Partner/Member (e.g., Gerald Clark)
 \$650 Of Counsel/Counsel Attorneys
 \$650 Senior Attorneys
 \$500 Associate Attorneys

Plaintiff states these rates are within reason and have been approved in past litigation counsel has conducted in NJ and federal court. Plaintiff contends the fees are far under the Laffey Matrix, which justifies a billing as high as \$1,227 for work done in this case. Plaintiff explains the Laffey Matrix was adopted by the Third Circuit to determine reasonable hourly rates for attorneys in fee shifting cases. See Interfaith Community Organization v. Honeywell International, Inc., 426 F.3d 694 (3rd Cir. 2005). Plaintiff provides the below table comparing the law firm's rate to those recommended by the Laffey Matrix.

Attorney	Clark Law Firm Hour Rate	<u>Laffey Matrix</u> Recommended Rate
Gerald H. Clark	\$750	\$1227
Lazaro Berenguer	\$500	\$1019
Jake Antonaccio	\$500	\$625

Plaintiff estimates counsel's base fees are \$861,327.17 and are asking for an enhancement under Rendine. Plaintiff's counsel also claims they incurred costs of \$94,494.16 in total. Plaintiff relies on the Court's assertion in Rendine that hourly rate should be enhanced to reflect the actual risk an attorney took. Rendine, 141 N.J. at 338. Plaintiff states that the NJ Appellate Division in Feliciano suggests fee enhancement under Rendine may be discretionary in the Offer of Judgment context. Overall, Plaintiff requests a 1.5 multiplier, so \$861,329.17 x 1.5 (an additional \$430,664.59) = \$1,291,993.76. Plaintiff argues a 1.5 multiplier had been approved in Hoiland v. AJD Construction.

Factor (4)- the amount involved and results obtained

Plaintiff refers to analysis in factor (3) and restates the jury verdict alone is around \$8.2 million, which is in excess of the 120% threshold established in the Offer of Judgment Rule.

Factor (5)- the time limitation imposed by the client or the circumstances

Plaintiff states these results were achieved through hard work and commitment. Plaintiff's counsel contends he was never "off duty." Whether working on the case, sharing dinner and watching tv with Plaintiff, and even driving Plaintiff to the beach and church, Plaintiff's counsel states the effort is reflected in the verdict.

Factor (6)- the nature and length of the professional relationship with the client

Plaintiff states his relationship with counsel began in January 2021. Plaintiff contends this case consumed much of counsel's life, working weekends and nights. Overall, Plaintiff argues both counsel and himself developed an amicable relationship based on shared commitment to the case at hand, and throughout the two and a half years worked together to receive a favorable outcome.

Factor (7)- the experience, reputation, and ability of the lawyer or lawyers performing the services

Plaintiff asserts Gerald Clark, Esq. was first designated a Certified Trial Attorney by the NJ Supreme Court in 2007. Plaintiff states that Gerald Clark has been a member of the Board of Governors of the New Jersey Association for Justice for many years. Gerald Clark also started a legal podcast, was listed in 2006 as New Jersey law Journal's "40 under 40," and named "Rising Stars Super Lawyer" from 2000-2012, as well as a "Super Lawyer" every year since 2013.

Plaintiff argues Gerald Clark, Esq. has been instrumental in shaping NJ construction injury law. See Costa v. Gaccione, 408 N.J. Super. 362 (App. Div. 2009); Slack v. Whalen, 327 N.J. Super. 186 (App. Div. 2000); Fernandes v. DAR Development Corp., 222 N.J. 390 (2015). Plaintiff further quotes accolades Gerald Clark, Esq. received from various judges. Plaintiff further contends Jake Antonaccio, Esq., albeit a newer attorney who graduated in 2019, has successfully litigated numerous diverse personal injury cases. Jake Antonaccio, Esq., has also co-authored NJ Appellate Division and Supreme Court briefs. Overall, Plaintiff contends counsel possess substantial skill, experience, and knowledge which contributed to the success of this litigation.

Factor (8)- whether the fee is fixed or contingent

Plaintiff states the fee in this matter is contingent. Plaintiff states fee application under R. 4:58-2 is separate from the contingency fee. Feliciano, 434 N.J. Super at 549.

III. Molding the Verdict to Collateral Sources and Comparative Negligence

Plaintiff contends the proposed final judgment reduces the base jury award by 15% for comparative negligence and then calculates pre- and post-judgment interest on the reduced award. Plaintiff cites NJ's Comparative Negligence Act, which requires a plaintiff's damages to be diminished by the percentage of negligence attributed to that plaintiff. N.J. Stat. § 2A:15-5.1. Consistent with the rule, the proposed judgment applies the jury's 15% comparative-negligence allocation: excludes future medical expenses, future wage loss, and offer-of-judgment costs and fees from prejudgment interest, and includes those amounts when calculating post-judgment interest. Id.

Furthermore, Plaintiff states the collateral source rule does not apply in molding calculations. Plaintiff states no collateral source reduction applies because New Jersey's collateral-source statute expressly excludes workers' compensation benefits. N.J. Stat. § 2A:15-97. Plaintiff contends, instead, the workers' compensation carrier is entitled to reimbursement from the employee's third-party recovery, including reimbursement for paid medical expenses, to prevent recovery from two sources for the same injury. Talmadge v. Burn, 446 N.J. Super. 413, 418 (2016); Frazier v. N.J. Mfrs. Ins. Co., 142 N.J. 590, 602 (1995). Plaintiff argues that because workers' compensation negotiated and paid \$119,719.67 in past medical expenses, the proposed judgment reduces that portion of the award from \$493,235.84 to \$119,719.67.

In addition to molding the verdict, Plaintiff claims the new verdict must also reflect the comparative negligence of Plaintiff and is to be calculated as follows:

Pain and Suffering	\$6,000,000.00
Past Medical Expenses	\$119,719.67
Future Medical Expenses	\$450,000.00
Past Lost Income	\$394,650.00
Future Lost Income	\$1,435,200.00
Total Modified Verdict:	\$8,399,569.67
Less Plaintiffs Comparative	15%
Net Verdict:	\$7,139,634.22

IV. *Pre- and Post-Judgment Interest*

A. **Pre-Judgment Interest**

Plaintiff contends R. 4:42-1 l(b) allow s for pre-judgment interest that is the same as post-judgment interest. Plaintiff states he post judgment interest rates as of July 22, 2026, are attached. (Exhibit O, Pre- and Post-Judgment Interest Rate Table). Plaintiff states such rates are calculated with "plus 2% per annum" as per R. 4:42-1 l(a)(iii). Plaintiff explains prejudgment rates only apply to pain and suffering, past medical, and past lost income as follows:

Pain and Suffering	\$6,000,000.00
Past Medical Expenses	\$119,719.67
Past Lost Income	\$394,650.00
Pre-Judgement Interest Verdict	\$6,514,369.67
Less Plaintiffs Comparative	15%

Pre-Judgement Interest Net \$5,537,214.22

December 15, 2022 - December 31, 2022 (16 days)	@2.25% ³ =	\$5,461.76
January 1, 2023 - December 31, 2023 (365 days)	@2.25% =	\$124,587.32
January 1, 2024 - December 31, 2024 (366 days) ⁴	@5.50% =	\$304,546.78
January 1, 2025 - December 31, 2025 (365 days)	@7.50% =	\$415,291.07
January 1, 2026 - May 3, 2026 (122 days)	@6.50% =	\$120,301.76
May 4, 2026 - September 25, 2026 (144 days)	@8.00% ⁵ =	\$174,764.16

Total Pre-Judgment Interest \$1,144,952.85

B. Post-Judgment Interest

Plaintiff states that R. 4:42-1 l(a) allows for post-judgment interest on "judgments ... for the payment of money, taxed costs and attorney's fees shall bear simple interest ... " Id. As such, post-judgment interest applies to the entire verdict as follows:

Pain and Suffering	\$6,000,000.00
Past Medical Expenses	\$119,719.67
Future Medical Expenses	\$450,000.00
Past Lost Income	\$394,650.00
Future Lost Income	\$1,435,200.00

Total Modified Verdict:	\$8,399,569.67
Less Plaintiffs Comparative	15%

Molded Verdict:	\$7,139,634.22
Plus Costs and Fees	\$1,382,129.97

Post-Judgement Interest Base:	\$8,521,764.19
Interest per day:	\$1,867.78

Plaintiff also attached a worksheet for calculation (Exhibit F: Calculation Worksheet). Plaintiff also notes interest rate is set to 8% from the date of the completion of discovery on May 3, 3036.

Defendant's Opposition

Defendant raises no opposition to Plaintiff's calculation of the molded verdict and the prejudgment interest. Defendant does contend that Plaintiff's calculation of attorney fees and application of a fee enhancement to \$430,644.00 is improper. Defendant rebuts Plaintiff's reliance on Rendine v. Panzter, and distinguishes the facts in Rendine from the facts in this case. Defendant contends while the Appellate Court in Rendine granted a liberal fee enhancement, that was for the purpose of ending discrimination and not for a personal injury case presented here. Rendine v. Panzter, 141 N.J. 292, 321 (1995). Defendant asserts there is no indication Plaintiff had difficulty finding representation and Plaintiff's counsel is in no way being undercompensated for its work.

Defendant cites to Blum v. Stenson, arguing the U.S. Supreme Court has discouraged fee enhancement and indicated that the quality of representation is reflected in an attorney's hourly rate. Blum v. Stenson, 465 U.S. 886, 899–902 (1984). Defendant points to the U.S. Supreme Court's ruling that a showing of high representation and complex litigation is still an insufficient basis to warrant fee enhancement. Id.

Defendant further objects to the Court entering judgment until Defendant's post-trial motions are decided.

LEGAL STANDARD

Pursuant to R. 4:58-1(a) any party may serve an opposing party an offer of judgment, any time more than 20 days before the actual trial date. “Inducement to settlement has remained the fundamental purpose of the rule as it has evolved.” Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:58. However, pursuant to R. 4:58-2(a), if the claimants offer is not accepted, and the suit proceeds to trial, and then the claimant receives a verdict worth 120% or more of the offer, excluding allowable prejudgment interest and counsel fees, the claimant can recover, “(1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney’s fee for such subsequent services as are compelled by the non-acceptance” in addition to the costs of the suit. R. 4:58-2(c) states no allowances will be granted should they impose any undue hardship or unfairness on the offeree who rejected the settlement offer. The burden is on the offeree to establish a claim of undue hardship or lack of fairness.

However, the amount of the fee is to be fixed by the court upon consideration of the relevant circumstances. Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:58. Furthermore, any fee allowed under this rule must be reasonable, must comport with R 4:42-9(b) and must be supported by adequate findings of the trial judge based on proofs. Id.

Pursuant to R. 4:58-6, applications for allowances pursuant to R. 4:58 must be made in accordance with R. 4:42-9(b) within 20 days after entry of final judgment. Under R. 4:42-9(b), which provides the rule for attorney’s fees, all applications for allowances of fees must be supported by an affidavit of services and addresses the factors enumerated in RPC 1.5(a). These factors are as follows:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

The affidavit must also include a further recitation of other factors relevant to the evaluation of the services rendered, such as the amount the allowance applies for, and an itemization of disbursements for which reimbursement is sought. R. 4:42-9.

DECISION

Plaintiff's Motion for Cost and Fee Shift is hereby GRANTED. Plaintiff's Motion to Enter Final Judgement is hereby GRANTED.

While Defendant's argument, that Plaintiff's citation to Rendine as support for fee shifting is misplaced, has some merit by distinguishing the facts, ultimately, fee shifting is permitted pursuant to the Offer of Judgment Rule. N.J. Court Rules, R. 4:58-2. R. 4:58-2 states that if the offer of a claimant is not accepted and the claimant obtains a money judgment that is 120% of the offer or more, the claimant is allowed to recoup, in addition to costs of the suit: "(1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery . . . and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance." N.J. Court Rules, R. 4:58-2(a).

Defendant cites Blum v. Stenson in an attempt to rebut Plaintiff's arguments in favor of fee shifting. However, as Defendant points out Plaintiff's reliance on Rendine, Defendant's reliance on Blum is misplaced. The facts from the case here and Blum are distinguishable. Blum arises out of the Civil Rights Attorney's Fees Awards Act of 1976, where the Supreme Court declared a fee enhancement is reserved for "exceptional success." 42 U.S.C. § 1988; Blum, 465 U.S. at 897. While the Supreme Court based their ruling reflective of a civil rights federal statute, the case here arises out of NJ personal injury law and thus corresponds directly to the state judicial authority of R. 4:58-2.

In Wiese v. Dedhia, the NJ Supreme Court held that the defendant would have to pay any reasonable fees and costs associated with continued litigation as a mandatory consequence for refusing a settlement offer, which later resulted in a verdict that exceeded 120% of the rejected settlement offer. Wiese v. Dedhia, 188 N.J. 587, 592 (2006) (citing to N.J. Court Rules, R. 4:58-2(a)). Here, Plaintiff offered Defendant a settlement agreement for \$1,900,000 to which Defendant ignored. Plaintiff later received a verdict for \$8,399,569.67, which was around 360% more than Plaintiff's offer. This verdict invokes the Offer of Judgment Rule and thus entitles Plaintiff to fee shifting under the court rule.

Plaintiff contends that their base fee of \$861,329.15 should be enhanced to \$1,291,993.76 with a multiplier of 1.5 (50% increase) based on Rendine. While Defendant distinguishes Rendine to support the notion that fee enhancement is not warranted here, that argument has already been rejected on the basis that fee shifting is permitted pursuant to court rule. However, Defendant's argument has merit in that a 1.5 multiplier was applied in Rendine for an NJLAD case. Particularly, in assessing fee enhancement, the NJ Supreme Court in Rendine considers the less subjective approach by the Third Circuit, which calculated the lodestar fee based on the hours spent on the case multiplied by the attorney's reasonable hourly rate of compensate. Rendine, 141 N.J. at 324. This amount was then subject to adjustment on the basis of "(1) the contingent nature of the case, reflecting the likelihood that hours were invested and expenses incurred without assurance of compensation and (2) the quality of the work performed as evidenced by the work observed, the complexity of the issues and the recovery obtained." Id. The Court in Rendine also admonishes trial courts to consider whether to increase that fee to reflect the risk of nonpayment in all cases where an attorney's compensation is entirely or substantially contingent on a favorable verdict. Id. at 337. The trial court must also consider if the attorney was able to

mitigate the risk of nonpayment. Id. at 339. Lastly, the Court recommended that, “contingency enhancements in fee-shifting cases ordinarily should range between five and fifty percent of the lodestar fee, with the enhancement in typical contingency cases ranging between twenty and thirty-five percent of the lodestar.” Id. at 343.

As Plaintiff has noted, counsel has dedicated substantial time, energy, and resources to this litigation. Plaintiff has also shown his counsel retained several accolades and experience. While they attempted to mitigate the potential for nonpayment based on a contingency fee, Plaintiff’s counsel did continue to see to other cases and were able to maintain their staff and firm operations throughout the case. However, Plaintiff’s requested 50% fee enhancement is at the highest end recommended by Rendine. As Defendant correctly distinguishes, this is a construction personal injury case while Rendine’s ruling rested on public policy against discrimination. Therefore, following the recommendation of Rendine and considering the support provided by Plaintiff’s counsel, the Court awards a 27.5% fee enhancement, $\$861,329.15 \times 1.275 = \$1,098,194.67$.

Defendant also makes no contention that should the Court grant Plaintiff’s application for allowances, that this would impose any undue hardship or unfairness on Defendant.

Accordingly, Plaintiff’s Motion for Cost and Fee Shift is hereby **GRANTED**. Plaintiff’s Motion to Enter Final Judgement is hereby **GRANTED**.