

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, August 3, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

18-CVC-10752

TORRES, VANESSA

VS.

FCA US LLC A DELAWARE LIMITED
LIABILITY COMPANY

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Plaintiff's request for attorney's fees and costs is GRANTED.

Actual costs and expenses, including attorney's fees, may be recovered by a prevailing buyer under the Song- Beverly Act. Civil Code § 1794(d) provides:

If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

Thus, the statute includes a "reasonable attorney's fees" standard.

The attorney bears the burden of proof as to reasonableness of any fee claim. CCP §1033.5(c)(5). This burden requires competent evidence as to the nature and value of the services rendered. (Martino v. Denevi (1986) 182 Cal.App.3d 553, 559) "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (Martino, 182 Cal.App.3d at 559.)

In determining whether the requested attorney's fees are "reasonable," the Court's first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. The Court of Appeal has expressly held the lodestar method applies to determining attorneys' fees under the Song-Beverly Act. (Robertson v. Fleetwood Travel Trailers of California, Inc. (2006) 144 Cal.App.4th 785, 817)

The lodestar figure may then be adjusted, based on consideration of facts specific to the case, in order to fix the fee at the fair market value for the legal services provided. (Emphasis added.) Gorman v. Tassajara Development Corp. (2008) 162 Cal.App.4th 770, 774 [internal citations omitted]. In determining whether to adjust the lodestar figure, the Court may consider the nature and difficulty of the litigation, the amount of money involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case. (EnPalm LLC v. Teitler (2008) 162 Cal.App.4th 770, 774; PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096)

Plaintiff has submitted declarations showing that Plaintiff's counsel incurred a total of \$40,497.50 in attorney fees. (Romano Decl. ¶ 17.) This includes \$1,887.50 incurred by attorney Tim Whelan, \$5,240.00 incurred by attorney Aliaksandra Valitkaya, and \$33,370 incurred by attorney Mark Romano. (Plaintiff's Fee Statement Sorted by Attorney)

- Attorney Tim Whelan billed 1.5 hours at \$425 per hour and 2.9 hours at \$500 per hour. Whelan's hourly rate increased from \$425 to \$500 per hour mid September 2019. (Whelan Decl. ¶ 5)
- Attorney Valitkaya billed 13.1 hours at \$400 per hour, and has been practicing law for 7 years, the last two years in California, having been admitted to practice in several other states since 2013. (Valitskaya ¶¶ 6-7)
- Mark Romano billed 33.5 hours at \$500 per hour and 27.7 hours at \$600 per hour. Romano's hourly rate increased from \$500 to \$600 per hour in October 2019. (Romano ¶ 9, Plaintiff's Fee Statement).

All three attorneys provided declarations and a detailed billing statement, broken down by individual attorney was filed on June 16, 2020. This satisfies the requirement of competent evidence as to the nature and value of the services rendered. (See Martino, supra, at p. 559.)

While the hourly rates of \$400 - \$600 (as charged in this case) are high hourly rates for attorneys in our particular county, the opposing party offers no evidence of lower rates for comparative attorneys in the community, other than a general statement that the rates are too high for Amador County.

The court reduces the total amount of attorney's fees by \$10,900, which includes striking the hours billed for the motion to compel discovery responses which was denied as untimely as a matter of law, and a reduction of hours overall, due to the court's understanding of the boiler plate, high volume nature of lemon law and what the court views as excessive number of hours billed.

Ultimately, the amount of the attorney fees to be awarded is a matter within the sound discretion of the trial court. The trial court is the best judge of the value of professional services rendered in its court, and while its judgment is subject to appellate review, that determination will not be disturbed on appeal unless the court is convinced it is clearly wrong. (Akins at 1134 citing Serrano v. Priest (1977) 20 Cal.3d 25, 49)

Plaintiff is awarded attorney fees in the amount of \$29,597.50 and costs in the amount of \$2,755.24 for a total of \$32,352.74.

Counsel for Plaintiff to prepare and submit conforming order.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

18-CVC-10819

JACKSON RANCHERIA BAND OF MIWUK
INDIANS

VS.

DEFENDANT'S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

Defendant's Motion to Set Aside Entry of Default is DENIED.

The purpose of section 473 is to enable trial courts to set aside a proceeding in order to allow the party to proceed on the merits rather than allowing defeat caused by mistake, inadvertence, etc. *Bowman v. Bowman* (1947) 29 Cal.2d 808. Section §473 is liberally applied to carry out the policy of permitting trial on the merits. (*Ramsey Trucking Co. v. Mitchell* (1961) 195 Cal.App.2d 621.) "Even in a case where the showing under section 473 is not strong, or where there is any doubt as to setting aside of a default, such doubt should be resolved in favor of the application." (*Rosenthal v. Gardner* (1983) 142 Cal.App.3d 891, 898.) Mistake, inadvertence or neglect will warrant relief from a default if, upon consideration of the evidence it is found to be excusable. Examples of mistakes of fact that have justified the vacating of default judgments include reasonable mistakes made as to the fact of service. (*Riskin v. Towers* (1944) 24 Cal.2d 274.)

Defendant's declaration is lacking such facts lending to any excusable mistake, inadvertence or neglect. Instead, her declaration alludes to the fact that she knew about the lawsuit and was in communication with Plaintiff's former attorney, Charles Merrill, about the nature of the dispute.

"The next thing I knew I was being sued for the original alleged debt which I had agreed to pay without any knowledge of the authenticity of the same". (Dalton Decl. p. 3 lines 6-8)

Dalton does not indicate in her declaration exactly under what timeframe that knowledge was available to her, but it appears to have been some time prior to receiving notice of the default on August 8, 2020.

In opposition, Plaintiff offers the declaration of previous counsel, Charles E. Merrill, regarding emails, letters, and phone calls between Mr. Merrill and Defendant, which conclude that Defendant was aware of the lawsuit and actively avoiding service, not responding to mail or signing a Notice of Acknowledgment of receipt, and personal service was unsuccessful due to Defendant living on property with a locked gate. (Merrill Decl.)

Further, Plaintiff offers the declaration of Adam Dalton, brother of Defendant's deceased husband, to which letters from Defendant to Adam Dalton are attached. In these letters, dated December 7, 2017 and May 20, 2019, respectively, Defendant makes statements such as "I had not responded to the tribe's attorney as I did not know what to say..." (Adam Dalton Decl. Exh 1) and "...can you please call off your pitbull lawyer! I'm not going to court over this we don't need to" (Adam Dalton Decl. Exh 2)

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-10827

JOHNATHAN KUNTZ BY AND THROUGH
GUARDIAN AD LITEM M

VS.

SANTINELLI, RIELLE

CIVIL MISCELLANEOUS MOTION - PLAINTIFF

TENTATIVE RULING:

On the court's own motion, Petition to Approve Compromise of Pending Action is continued to August 10, 2020 at 8:30 a.m. in Department 1.

19-CVC-11080

JUDSON, ERIC

VS.

SALERNO, GIOVANNI

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

On the court's own motion, Defendant Sutter Amador Hospital's Motion to Dismiss and Defendant Salerno's Motion to Compel Responses are continued to August 24, 2020 at 8:30 a.m. in Department 1.

Neither further notice of this ruling nor a formal order per CRC 3.1312 is required.

20-CVC-11686

KARAI, SANGEETH

VS.

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

The court notes that Petitioner's Motion Confirming Arbitration Award set for August 3, 2020 was served by mail to attorney John B. Allen.

However, Respondent, Robert Devlin filed the Petition to Confirm Contractual Arbitration Award on June 29, 2020, in pro per.

The moving party is ordered to file a declaration clarifying what action is requested of the court, and a proposed order, if appropriate.

On the court's own motion the Motion Confirming Arbitration Award is continued to August 10, 2020 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

20-CVC-11691

FROMME, JINELLE

VS.

NONE

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

On the court's own motion, Petition to Approve Compromise of Disputed Claim is continued to August 10, 2020 at 8:30 a.m. in Department 1.