

Tentative Rulings for May 1, 2024
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

19CECG03266 *Espiridion Sanchez v. CRST Expedited, Inc.* is continued to Thursday, June 13, 2024, at 3:30 pm. in Dept. 502.

23CECG04525 *William Wilkins v. Prieto Automotive, Inc.* is continued to Wednesday, June 26, 2024, at 3:30 p.m. in Dept. 502

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(03)

Tentative Ruling

Re: **Fadi Abboud v. Gary Yep**
Superior Court Case No. 22CECG03765

Hearing Date: May 1, 2024 (Dept. 502)

Motion: Plaintiffs' Motion for Attorney's Fees and Costs as the
Prevailing Plaintiffs

Tentative Ruling:

To deny plaintiffs' motion for attorney's fees and costs, without prejudice.

Explanation:

While plaintiffs are entitled to an award of attorney's fees under the language of the easement agreement and the court's judgment, their counsel has failed to provide the court with enough evidence regarding the hours spent on the case and the tasks performed to find that the requested fees are reasonable and should be approved. She has also not provided enough evidence to support the request to approve her law clerk's rate of \$225 per hour.

In *Serrano v. Priest* (1977) 20 Cal.3d 25, the California Supreme Court stated: " 'The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.'" (*Serrano, supra*, at p. 48, fn. 23, citation omitted.)

"In *Serrano IV*, applying the same principles to the statutory fee award under Code of Civil Procedure section 1021.5, we reiterated that fee awards should be fully compensatory. We approved the calculation of attorney fees beginning with a lodestar figure based on the reasonable hours spent, multiplied by the hourly prevailing rate for private attorneys in the community conducting *noncontingent* litigation of the same type. We remarked that the reasonable value of attorney services is variously defined as the "hourly amount to which attorneys of like skill in the area would typically be entitled." We noted that the lodestar figure was subject to augmentation based on factors including the contingent nature of the litigation. We held in *Serrano IV* that, absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the hours *reasonably spent*, including those relating solely to the fee." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133, citations and paragraph break omitted, italics in original.)

"[I]n *PLCM Group, Inc. v. Drexler*, we instructed: '[T]he fee setting inquiry in California ordinarily begins with the "lodestar," i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate.... The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at

the fair market value for the legal services provided. Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.'" (*Id.* at p. 1134, citations omitted.)

While the party moving for a fee award does not have to submit detailed billing records, they do have to provide a declaration from counsel attesting to the time spent by the attorney on the case, the tasks performed, and his or her billing rate in order to support the court's lodestar calculation. (*Sommers v. Erb* (1992) 2 Cal.App.4th 1644, 1651.) "For determining attorney fees, '[a]ny rational calculation method is permissible.' 'The law is clear ... that an award of attorney fees may be based on counsel's declarations, without production of detailed time records.' Billing documentation is not required. (*People v. Kelly* (2020) 59 Cal.App.5th 1172, 1183, citations omitted, italics in original.)

Here, plaintiffs seek an award of \$16,135 in attorney's fees and \$1,258.16 in costs. Plaintiffs' counsel states that her hourly rate is \$300, and that her law clerk's rate is \$225 per hour. While counsel's rate appears to be reasonable and consistent with the rates charged by other attorneys of similar skill, education, and experience in the Fresno area, plaintiffs' counsel has not provided any information about the education, background, skill and experience of her law clerk. Therefore, she has not provided enough evidence for the court to determine that the requested rate of \$225 per hour for her clerk is reasonable.

In her reply, plaintiffs' counsel argues that the court should approve the law clerk's rate because Judge Simpson approved the same clerk's rate in another case in March of 2020, when the clerk's rate was \$150 per hour. However, the fact that a different judge approved the clerk's rate in a different case four years ago does not establish that the clerk's rate here is reasonable, especially since the clerk's rate is now significantly higher than it was in 2020. It is also worth noting that Judge Simpson found that other law clerks in the Fresno area were billing \$120 to \$150 at the time, which supported his decision to allow the \$150 hourly rate. (Court's Tentative Ruling dated March 11, 2020 in *Saint-Fleur v. County of Fresno*, case no. 13CECG00838, Exhibit A to Reply decl. of Tipton.) There is no similar evidence here that law clerks in the Fresno area are billing at rates of \$225.

As a result, there is no evidence to support the plaintiffs' request to approve the law clerk's rate of \$225 per hour. This is a particularly significant omission because plaintiffs' counsel admits that her clerk did a substantial amount of work in the case, including conducting legal research and drafting the trial and reply briefs. (Tipton Reply decl., ¶ 8.) Without some evidence to support his requested hourly rate, there is no way for the court to determine that the requested fees are reasonable.

Also, plaintiffs' counsel has not provided any evidence of the number of hours she and her clerk spent on the case or the specific tasks that they performed. She only states that plaintiffs have incurred and paid \$14,935 in attorney's fees in the matter. (Tipton decl., ¶ 17.) She also gives a general overview of the tasks performed in the case, without stating how many hours were incurred on each task or who performed them. (*Id.* at ¶¶ 7-16.) In addition, she states that she spent two hours drafting the fees motion, and that she anticipates spending another hour on the reply and appearing at the hearing, for a total of \$1,200 in attorney's fees and \$60 in filing fees. (*Id.* at ¶¶ 19, 21.) Plaintiffs also incurred other costs of \$1,198.16, as stated in the memo of costs. (*Id.* at ¶ 20.)

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Tentative Ruling

Re: **GTP Structures I, LLC v. Akal Broadcasting Corporation**
Superior Court Case No. 20CECG01656

Hearing Date: May 1, 2024 (Dept. 502)

Motion: By Plaintiff to Enforce Settlement

Tentative Ruling:

To grant.

Explanation:

Plaintiff's motion attaches the subject "Stipulation for Conditional Entry of Judgment," which reserves court jurisdiction for enforcement (§ 3), specifies the amount indebtedness, and that interest would accrue and court costs charged upon default. (§ 2.) Counsel's supporting declaration, made under penalty of perjury, attests to the balance remaining, demands made, interest and cost calculations, and credit for payments received. This information, which is uncontroverted by defendant, is sufficient for the court to summarily decide this motion in plaintiff's favor. (Code Civ. Pro., § 664.6; *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 04/29/24 .
(Judge's initials) (Date)

