Tentative Rulings for February 1, 2023
Department 501

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).)

20CECG02437 ***Dakota Goad v. County of Fresno*** **(Dept. 501)**

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(03)

Tentative Ruling

Re: ***GBT Roadline, LLC v. Midline Insurance Services, Inc.***
Superior Court Case No. 21CECG03688

Hearing Date: February 1, 2023 (Dept. 501)

Motion: by Defendants Amneet Kaur and Midline Insurance Services, Inc., to Set Aside Default

Tentative Ruling:

To deny defendants' motion to set aside the default entered against them. (Code Civ. Proc. § 473.5.)

Explanation:

First, with regard to the motion to set aside the default entered against defendant Midline Insurance Services, Midline is a suspended corporation and thus has no right to appear in the action or move to set aside the default. (Corp. Code § 2205; *Palm Valley Homeowners Assn. v. Design MTC* (2000) 85 Cal.App.4th 553, 560; *Timberline, Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1365-1366.) The court intends to take judicial notice of the California Secretary of State's website, which shows that Midline is a suspended corporation. The court intends to deny the motion as to Midline without reaching the merits of defendant's contentions.

Second, with regard to defendant Amneet Kaur's motion, Kaur moves to set aside the default under Code of Civil Procedure section 473.5.[1] Section 473.5 states that, "[w]hen service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered." (Code Civ. Proc., § 473.5, subd. (a).)

"A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not

[1] Defendants' notice of motion also cites to Code of Civil Procedure section 473, subdivision (b), but it appears that defendants are actually relying on section 473.5. In any event, defendants have made no attempt to show that their defaults were taken as a result of mistake, inadvertence, surprise, or excusable neglect. Instead, they rely entirely on the claim that they were never personally served with the summons and complaint and had no actual knowledge of the action. Therefore, the court will disregard the reference to relief under section 473, subdivision (b).

caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action." (Code Civ. Proc., § 473.5, subd. (b).)

"Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action." (Code Civ. Proc., § 473.5, subd. (c).)

"Section 473.5, Code of Civil Procedure … permits the court to set aside a default or default judgment against a defendant and allow him to defend the action on its merits if (1) he received through no inexcusable fault of his own, no actual notice of the action in time to appear and defend, and had not made a general appearance; (2) a default or default judgment has been entered against him by the court; (3) he acted with reasonable diligence in serving and filing the notice of motion to set aside the default or default judgment; and (4) he has a meritorious defense." (*Goya v. P.E.R.U. Enterprises* (1978) 87 Cal.App.3d 886, 890–891, internal citation and footnote omitted.)

"A defendant is entitled to relief under section 473a of the Code of Civil Procedure if he has not been served personally with summons and if he has shown that he has a good defense to the action on the merits, unless it appears that he had actual notice of the pendency of the action and that his failure to appear therein was due to his neglect or laches and has resulted in prejudice to plaintiff, under such circumstances that it would be inequitable to grant the relief. Section 473a was not designed to afford relief to a defendant who with 'full knowledge' of constructive service upon him remains inactive. Whether or not relief should be granted under said section 473a is a matter within the discretion of the trial court and its order will not be disturbed except for an abuse of discretion." (*Brockman v. Wagenbach* (1957) 152 Cal.App.2d 603, 612, internal citations omitted.)

"Under section 473.5, … a defendant's right to relief from a default judgment initially turns on whether or not he had actual notice of the action in which the judgment was entered against him. The phrase 'actual notice' in section 473.5 'means genuine knowledge of the party litigant and does not contemplate notice imputed to a principal from an attorney's actual notice.'" (*Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1077, quoting *Rosenthal v. Garner* (1983) 142 Cal.App.3d 891, 895 [holding that service of summons and complaint on defendant's attorney was insufficient to give the defendant "actual notice" of the action under section 473.5].)

Here, defendant Kaur claims that the Summons and Complaint were not personally served on her on February 6, 2022, that she no longer resided at the address on Harvard Avenue in Fresno when the process server claims to have served her, that the server actually served her estranged husband, Harpreet Singh, at their old address, and that Singh called her to tell her that a lawsuit had been served on him that was apparently meant for her. (Kaur decl., ¶¶ 5-6.) Singh told her he would send the papers to her, but he never did and she never received copies of them. (*Id*. at ¶ 6.) She claims that the process server lied when he completed the proof of service, and that she was

never served with the documents, which were instead served on her husband. (*Id*. at ¶ 8.) She was residing in Roseville at the time of the alleged personal service. (*Ibid*.)

Kaur's husband, Harpreet Singh, has also filed his declaration in support of the motion, which states that Kaur was not personally served with the documents and that the process server actually served him instead. (Singh decl., ¶¶ 5-8.) He claims that, at the time of the attempted service, his wife was living in Roseville for the better part of a year and a quarter, and that she was not living in Fresno at the time. (*Id*. at ¶ 9.)

However, where the plaintiff has filed a proof of service showing that a registered process server personally served the defendant at the listed address on a specific date, there is a rebuttable presumption that the facts in the proof of service are true, and the defendant has the burden of producing evidence showing that he was not served. (Evidence Code § 647; *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390.) Also, the trial court is not required to accept defendant's self-serving declaration that he was not served where a registered process server has submitted a verified proof of service. (*Ibid*.) Here, the proof of service was signed by a registered process server, so there is a rebuttable presumption that service was completed as stated in the proof of service.

Also, the registered process server, Richard Goeringer, has filed his own declaration, in which he states that he served Kaur by personal delivery on February 6, 2022, at 6:15 p.m. (Goeringer decl., ¶ 5.) He went to the address for defendant that plaintiffs' counsel had located through a LexisNexis search, which was the last known address for Kaur. (*Id*. at ¶ 5; Dhanjan decl., ¶¶ 3-4.) Goeringer went to the address on Harvard Avenue and asked for Amneet Kaur. (*Id*. at ¶ 5.) Kaur identified herself, at which point Goeringer served her with the documents both in her personal capacity and as agent for service of process for Midline. (*Ibid*.) He remembers Kaur as an attractive woman with dark hair. (*Ibid*.) Kaur accepted the documents by taking them in her hands. (*Ibid*.) Goeringer then completed the proofs of service to plaintiffs' counsel for filing. (*Id*. at ¶ 6.)

Thus, the court has two sets of conflicting declarations regarding the question of whether defendant was actually personally served with the Summons and Complaint. As a result, the court must make a determination of which version of events is more credible. The court is not required to take the defendant's self-serving denial of being served at face value and accept it as the truth. The registered process server has no obvious motive to lie about serving defendant here, whereas defendant has strong reasons to lie about being served. Also, it is worth noting that defendant allegedly has a history of lying about other matters, such as whether she added plaintiffs' driver as a covered driver under the insurance policy. She also allegedly bounced two checks to plaintiffs after insurance coverage was denied. While these facts have not been finally adjudicated, they cast some doubt on her credibility. Therefore, the court believes that the defendant's denials of being served lack credibility, and that the process server's version of events is more credible and accurate than defendant's version.

Also, it is notable that defendant admits that her husband told her about being served with a lawsuit that was addressed to her on February 6, 2022, but she did nothing about the lawsuit until the filing of the present motion on September 21, 2022, more than

seven months later, and more than five months after the default against her was entered. Defendant offers no excuse or explanation for her lengthy delay in taking action to defend herself or seeking relief from the default. One of the requirements under section 473.5 is that defendant bring the motion within a "reasonable time" after entry of the default, which means that she must be diligent in seeking relief. Here, it does not appear that a delay of over five months was reasonable, especially since defendant was admits that she was aware since February 6, 2022, that a lawsuit naming her had been served on her husband. Therefore, defendant has not shown that she brought her motion within a reasonable time.

In addition, defendant has failed to show that she has any meritorious defense to the action. She has submitted an unverified proposed Answer that raises five affirmative defenses. However, the defenses are generic, boilerplate defenses that have no obvious applicability to the facts of the present case. Defendant has not provided any evidence or argument that would explain how she might have a valid defense against plaintiffs' claims. Therefore, defendant has failed to meet her burden of showing that she has a meritorious defense that she could raise if relief from the default is granted.

As a result, the court intends to deny the motion for relief from the default as to both defendants.

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: DTT on 1/30/2023.
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: ***Woods v. Lithia JEF, Inc., et al.***
Court Case No. 20CECG02448

Hearing Date: February 1, 2023 (Dept. 501)

Motion: by Plaintiff for an Award of Attorney's Fees and Expenses

Tentative Ruling:

To grant the motion for attorney's fees in the amount of $66,533.60; to also award plaintiff costs and expenses of $5,505.74. Payment of both sums shall be made by defendant Lithia JEF, Inc., to the Law Office of A. L. Hinton within 30 days of the clerk's service of this minute order.

Explanation:

A prevailing buyer in an action under the Song–Beverly Act "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." (Civ. Code, § 1794, subd. (d).) The statute "requires the trial court to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable. These circumstances may include, but are not limited to, factors such as the complexity of the case and procedural demands, the skill exhibited and the results achieved. If the time expended or the monetary charge being made for the time expended are not reasonable under all the circumstances, then the court must take this into account and award attorney fees in a lesser amount. A prevailing buyer has the burden of 'showing that the fees incurred were "allowable," were "reasonably necessary to the conduct of the litigation," and were "reasonable in amount." ' " (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104.)

Calculating the Fees

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48; *Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 817 [lodestar applies to Song-Beverly litigation].) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method '"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 III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

1. Number of Hours Reasonably Expended

Here, plaintiff's counsel, Alicia L. Hinton, recorded 93.6 hours of attorney time, and requested an additional anticipated $6,863.00 in fees and costs to compensate for the hours to be spent reviewing defendant's opposition, preparing a reply, a hearing and post hearing activities. (Hinton Decl. at ¶ 24.) Defendant made no objection to the hourly rate, but claims plaintiff should recover no fees after defendant's June 8, 2022, Code of Civil Procedure section 998 offer (a reduction of $7,065.00), that no multiplier was warranted, and that the expense for fee motion should be reduced by half. ($3,463.60).

No Challenges to Specific Billing Entries

Defendant does not challenge any particular time entry as excessive, duplicative, irrelevant, or clerical. "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice. Failure to raise specific challenges in the trial court forfeits the claim on appeal." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.)

- *Fees Incurred After June 8, 2023 Are Recoverable*

Defendant argues that the lodestar attorney's fees should be reduced by $7,065.00 representing the attorney's fees incurred after June 8, 2022, the date of defendant's Code of Civil Procedure section 998 offer, and July 28, 2022, when the case settled. Defendant claims these fees were unnecessary and not reasonably incurred.

However, plaintiff *did not accept* defendant's section 998 offer. As demonstrated by defendant's Exhibit L, plaintiff contended the offer was invalid, and made a counteroffer for $5,000 more than defendant's settlement offer on June 24, 2022, and it was *this offer* that was accepted by defendant in July 2022. Given the trial date of September 6, 2022, and the impending discovery cutoff of August 7, 2022, it was reasonable and prudent for plaintiff to schedule and take the depositions of defendant's employees on June 21, 2022.

- *Fees for the Attorney's Fee Motion Are Not Excessive*

Defendant contends that "[a]t least 50% of Plaintiff's brief for attorneys' fees and the supporting declaration relate to matters regarding Plaintiff's entitlement to attorneys' fees and costs" and that this work was unnecessary because the parties' settlement agreement and release stipulated that the plaintiff was the prevailing party.

However, in the court's review of the moving papers, the discussion concerning plaintiff's general entitlement to fees, found in Section II, is approximately only one page in length. The remainder of the motions discusses the facts and events of the case, and

the entitlement to the requested amount of attorney's fees. This does not warrant any deduction in the fees requested for the motion.

Plaintiff's counsel spent only 11 hours of her time drafting the moving papers, and anticipated an additional five hours would be spent in reviewing the opposition, preparing a reply and preparing for and attending the anticipated hearing. This is well within the average time claimed for an attorney's fee motion in this court's experience.

2. Reasonable Hourly Compensation

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) Ordinarily, "'the value of an attorney's time . . . is reflected in his normal billing rate.'" (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

The court is familiar with the past and present rates of charged by trial attorneys, including attorneys who practice in specialized fields, in Central California. In March 2021, this court awarded plaintiff's counsel fees based on a rate of $400 per hour in *Trost v. Thor Motor Coach, Inc., et al*., Fresno Superior Court case no. 19CECG00562.

Consumer litigation, especially regarding vehicles, is not for the causal lawyer. The learning curve is steep and the tenacity and skill of opposing counsel and funds of the corporate defendants are impressive. Accordingly, the court finds the $425 hourly rate charged by plaintiff's counsel in this matter to be reasonable based on her over 9 years of practice specializing in consumer protection law.

The total hourly fees to be awarded is therefore $46,643.60. [$39,780.00 plus $6,863.00.]

3. Multiplier

Plaintiff seeks a multiplier of 1.5 to apply to the lodestar. A multiplier enhancement to the lodestar "is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) A multiplier may also be applied where the attorney has shown extraordinary skill, resulting in exceptional results. (*Ibid*.; *Graham*, *supra*, 34 Cal.4th at p. 582.) Courts have substantial discretion to select the factors they deem relevant to their multiplier analysis. (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 40–41.) The factors include: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 819.)

- *Novelty and Complexity of the Issues*

In *Blum v. Stenson* (1984) 465 U.S. 886, the Supreme Court discussed what might be a basis for an upward adjustment to the lodestar. (*Blum*, *supra*, 465 U.S. at p. 886.) The

Court noted that certain suggested bases for an upward adjustment were not warranted because they were already reflected in the lodestar. (*Id*. at p. 898.) Specifically, "[t]he novelty and complexity of the issues presumably were fully reflected in the number of billable hours recorded by counsel and thus do not warrant an upward adjustment in a fee based on the number of billable hours times reasonable hourly rates." (*Ibid.*) This was a lemon law case of ordinary complexity. Counsel was appropriately compensated through her time.

- *The Skill Displayed*

In general, "special skill and experience of counsel should be reflected in the reasonableness of the hourly rates." (*Blum*, *supra*, 465 U.S. at p. 889.) As our Supreme Court has observed, "[t]he factor of extraordinary skill, in particular, appears susceptible to improper double counting; … a more skillful and experienced attorney will command a higher hourly rate. (*Ketchum*, *supra*, 24 Cal.4th at p. 1138-1139.) "Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable." (*Id*. at p. 1139.)

Here, the court has read all of the pleadings filed in this case. The skill displayed by plaintiff's counsel was very good, but not extraordinary. Counsel's hourly rates are adequate compensation.

- *The Contingent Nature of the Case*

This is the most important factor in awarding a multiplier. Our Supreme Court has explained: "[The multiplier] for contingent risk [brings] the financial incentives for attorneys enforcing important constitutional rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) The court further noted that applying a fee enhancement does not inevitably result in a windfall to attorneys: "Under our precedents, the unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk … The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." (*Ibid.*; see also *Horsford v. Board of Trustees*, *supra*, 132 Cal.App.4th at pp. 399-400.) Moreover, plaintiff's counsel has had to wait seven motions for her motion for attorney's fees to be heard. This factor weighs in favor of a multiplier.

- *Results Obtained*

Plaintiff's counsel obtained a very good result. This factor weighs in favor of a multiplier.

- *Preclusion of Other Work*

Plaintiff's counsel is a solo practitioner, and to the court's knowledge, the only attorney in the Fresno area focusing exclusively in consumer protection law. She was unable to take other work because of plaintiff's case.

Considering all of the lodestar factors, the court will impose a multiplier in favor of plaintiff, in the requested amount of 1.5, which compensates counsel for the risk of taking the case on a contingent fee basis, the need to advance costs, the delay in payment, the superior results achieved, and the preclusion of other employment, but also takes into account the fact that the case was a fairly routine lemon law action.

This 1.5 multiplier results in an additional $19,890 in fees. [Multiplier of 1.5 * $39,780.00 = $19,890.00.]

Total Attorney's Fees Awarded

The lodestar of $39,780.00, the multiplier enhancement of $19,890.00, plus the estimated fees for the instant motion of $6,863.60, bring the total attorney's fee award to $66,533.60.

Costs & Expenses

Plaintiff seeks $5,505.74 for incurred costs and expenses. Defendant did not challenge any of the claimed costs. This is a case under Civil Code section 1794, which permits a court to award both "costs and expenses." The in costs and expenses are legitimate and reasonable in amount, and will be allowed in their entirety.

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: DTT on 1/30/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***In re Angel Salvador Bautista***
Superior Court Case No. 23CECG00127

Hearing Date: February 1, 2023 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an Amended Petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the Amended Petition. In the event that oral argument is requested, both petitioner and Angel Bautista are excused from appearing.

Explanation:

Item 12 indicates that the total medical expenses paid were $6,664.79. No medical billing records were submitted in support. No evidence was submitted in support of the reduction in satisfaction of the expenses by either reported medical lienholder. In the case of Adventist Health, no evidence demonstrates that Adventist Health will accept $3,523.00 in full satisfaction of the outstanding $5,869.79. Likewise, in the case of Ronald P. Ybarra, D.C., no evidence demonstrates that Ybarra will accept $477.00 in full satisfaction of the outstanding $795.00.

For the above reasons, the Petition is denied, without prejudice.

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: DTT (Judge's initials) on 1/31/2023 (Date).