Tentative Rulings for February 10, 2026
Department 501

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.

25CECG01717 ***Orlonzo Hedrington v. William Woolman*** **is continued to Wednesday, February 11, 2026, at 3:30 p.m. in Department 501.**

24CECG02997 ***Cocola Broadcasting Companies, LLC v. My Central Valley, LLC*** **is continued to Thursday, February 19, 2026, at 3:30 p.m., in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(29)

Tentative Ruling

Re: ***Doe v. Washington Unified School District***
Superior Court Case No. 24CECG02799

Hearing Date: February 10, 2026 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

Explanation:

The Petition provides that claimant has special needs, giving rise to the issue of a special needs trust, as the proposed structured settlement begins paying out upon claimant's 18th birthday. The court notes that this is not addressed in any way in the Petition, thus the Petition is denied without prejudice.

Note that if petitioner determines that a special needs trust is appropriate, petitioner must file the proposed special needs trust with the Probate Division and have the trust approved prior to filing an amended petition to compromise the minor's claim. (See Superior Court of Fresno County, Local Rules, rule 7.19.)

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 2/9/2026.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Alarcon, Sr. v. Monroe, et al.***
Superior Court Case No. 18CECG00898

Hearing Date: February 10, 2026 (Dept. 501)

Motion: by Defendant Fresno Skilled Nursing & Wellness Centre, LLC individually and dba Healthcare Centre of Fresno for Summary Judgment or in the alternative, Summary Adjudication

Tentative Ruling:

To grant defendant Fresno Skilled Nursing & Wellness Centre, LLC individually and dba Healthcare Centre of Fresno's (hereinafter, "defendant") motion for summary judgment as to the entire Complaint. (Code Civ. Proc. § 437c.) Defendant shall submit a proposed judgment consistent with the court's order within 10 days of the date of this order.

Explanation:

Defendant moves for summary judgment or, in the alternative, summary adjudication of each separate cause of action and the claim for punitive damages. Defendant's motion relies primarily on the expert declaration of Dr. Daniel J. Bressler, M.D. to show that it did not breach the standard of care, cause plaintiff's injuries, act with recklessness, oppression, fraud, or malice, and violate the Patients' Bill of Rights when it cared for plaintiff, and thus it is entitled to summary adjudication of the elder abuse, negligence, and violation of residents' rights claims. Additionally, defendant relies on Dr. Bressler's declaration to show that defendant engaged in any oppressive, malicious, or fraudulent conduct, and thus it is entitled to summary adjudication of the punitive damages claim.

"The standard of care in a medical malpractice case requires that physicians exercise in diagnosis and treatment that reasonable degree of skill, knowledge and care ordinarily possessed and exercised by members of the medical profession under similar circumstances. ' "The standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman."'" (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 983–984, internal citations omitted.)

Also, the Welfare and Institutions Code defines "neglect" in the context of elder abuse claims as "[t]he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (Welf. & Inst. Code, § 15610.57, subd. (a)(1).) By statute, neglect includes, but is not limited to: (1) "[f]ailure to assist in personal hygiene, or in the

provision of food, clothing, or shelter"; (2) "[f]ailure to provide medical care for physical and mental health needs"; (3) "[f]ailure to protect from health and safety hazards"; and (4) "[f]ailure to prevent malnutrition or dehydration." (Welf. & Inst. Code, § 15610.57, subd. (b)(1)-(4).) The plaintiff also must prove "that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 407.)

A plaintiff may recover the heightened remedies provided by the Elder Abuse Act upon proof by clear and convincing evidence both that the defendant is liable for neglect and that "the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of" the neglect. (Welf. & Inst. Code, § 15657; accord, *Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972.) "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur [citations] [.] Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.' [Citation.]" (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31–32.)

The Patients' Bill of Rights, Health and Safety Code section 1430, subdivision (b), states:

> A current or former resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(Health & Saf. Code, § 1430, subd. (b).)

Normally, the question of whether a medical professional's care and treatment of a patient fell within the standard of care or caused the plaintiff's injuries is a matter that can only be established through expert testimony. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.) "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence." (*Hutchinson v. United States* (9th Cir. 1988) 838 F.2d 390, 392.)

Here, defendant presents the declaration of its expert in skilled nursing facilities, Dr. Daniel J. Bressler, M.D., who summarizes the plaintiff's treatment history and then states

that, "To a reasonable degree of medical and nursing probability the care and treatment provided to plaintiff by Defendant and its staff members was in all times in compliance with the requisite standard of care." (UMF No. 49, Bressler Decl., ¶ 49.) "It is my further opinion, which I make to a reasonable degree of medical probability, that none of Plaintiff/decedent's alleged injuries or death were the result of any act or omission by FSNWC staff. Rather, his claimed injuries were the result of the natural history of Plaintiff/decedent's multiple preexisting comorbidities, all of which were present on admission to FSNWC. [Plaintiff's] medical conditions and injuries were . . . unavoidable even in the absence of negligence or malfeasance." (UMF No. 49, Bressler Decl., ¶ 48.)

"To a reasonable degree of medical probability, I found no indication in the records that FSNWC caused or contributed to any of Plaintiff/decedent's alleged injuries. To the contrary, the records were replete with efforts made to address Plaintiff's needs." (UMF No. 44, Bressler Decl., ¶ 44.) "The conduct of FSNWC and its staff with respect to the care, treatment, and services provided to Plaintiff/decedent was at no time malicious, reckless, fraudulent, neglectful, oppressive, or despicable." (*Ibid*.) "Based upon my review of the records, my experience, my education, training, and expertise in geriatrics and internal medicine, it is my professional opinion, to a reasonable degree of medical probability, that the FSNWC staff did not neglect or abuse Plaintiff." (UMF No. 46, Bressler Decl., ¶ 46.)

"I also found that the services provided to Plaintiff/decedent reflected a level of care consistent with appropriate staffing levels. There was no evidence in the records indicating that there was understaffing or a lack of training in the personnel who provided care, treatment, and services to Plaintiff/decedent. There is simply no evidence in the records to establish that any of the FSNWC employees were unfit to perform the duties they performed with regard to Plaintiff/decedent." (UMF No. 47, Bressler Decl., ¶ 47.)

"Moreover, the Defendants' care and treatment complied with all applicable state and federal statutes and regulations." (UMF No. 51, Bressler Decl., ¶ 51.)

Therefore, defendant has met its burden of producing expert testimony showing that it did not breach the standard of care, cause plaintiff's injuries, act with recklessness, oppression, fraud, or malice, or violate the Patients' Bill of Rights when it cared for plaintiff. As a result, the burden shifts to plaintiff to present his own expert testimony showing that defendant did breach the standard of care, caused his injuries, acted with recklessness, oppression, fraud, or malice, and that his rights as a patient were violated.

Plaintiff's opposition does not present any evidence to controvert defendant's evidence, and instead argues that Dr. Bressler's declaration is based entirely on unauthenticated hearsay and medical records that lack foundation. However, the court is not considering the objections, as they were not submitted to the court in the formatting as provided in California Rules of Court, rule 3.1354, which provides that "all written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion." (*Id.,* at rule 3.1354(b).) Accordingly, any disputes of facts based on the objections are also not considered.

Plaintiff also argues that Dr. Bressler makes conclusions outside the scope of his expertise as a medical physician, which would be more appropriate for an expert in

nursing home management. Dr. Bressler provides that he is a board-certified geriatrician, who served as the Medical Director at Mission Hills Post-Acute Care ("MHPAC"), a skilled nursing facility, from 2007 to 2017, and as the Assistant Medical Director from 2018 to 2020. Since 2020, he has served as the Quality Assurance Advisor for MHPAC. (UMF No. 2, Bressler Decl., ¶ 2.) Given these qualifications, Dr. Bressler's expert testimony in this case appears appropriate.

Consequently, the court intends to grant defendant's motion for summary judgment as to the entire operative Complaint.

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 2/9/2026.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Cleveland v. Willow Creek Post Acute, LLC***
Superior Court Case No. 25CECG01857

Hearing Date: February 10, 2026 (Dept. 501)

Motion: by Defendant Willow Creek Post Acute, LLC to Compel Arbitration and Stay the Proceedings

Tentative Ruling:

To grant the motion to compel arbitration and stay the proceedings pending arbitration.

Explanation:

This motion arises out of a complaint filed by Plaintiff Greenville Cleveland, individually and as Successor-In Interest to Decedent Geraldine Cleveland. The Complaint asserts five causes of action: 1) elder abuse and neglect, 2) negligence, 3) violation of Patient's Bill of Rights, 4) wrongful death-negligence, and 5) wrongful death-elder abuse by neglect. Defendant Willow Creek Post Acute asserts that Decedent executed an arbitration agreement and seeks to compel arbitration and stay the matter pending such.

Here, there is no dispute that Decedent signed the arbitration agreement. Plaintiff argues that it is unenforceable because plaintiff Greenville Cleveland did not sign it and his independent causes of action for wrongful death based on elder neglect under the Elder Abuse and Dependent Adult Civil Protection Act ("EADACPA") cannot be compelled to arbitration.

Wrongful Death Claim

Generally, "plaintiffs cannot be compelled to arbitrate their disputes if they have not previously agreed to arbitration." (*Holland v. Silverscreen Healthcare, Inc*. (2025) 18 Cal.5th 364, 370.) However, the California Supreme Court recognized in *Ruiz v. Podolsky* (2010) 50 Cal.4th 838 that an exception exists where wrongful death claims are based on medical malpractice where patients agreed to arbitrate such pursuant to the Medical Injury Compensation Reform Act ("MICRA") as codified in Code of Civil Procedure section 1295. (*Holland v. Silverscreen Healthcare, Inc*., *supra*, 18 Cal.5th at p. 370.) There, an arbitration agreement may bind a patient's heirs in a wrongful death action. (*Ibid*.) In August of 2025, the California Supreme Court clarified that Ruiz and Code of Civil Procedure section 1295 do not so bind nonsignatories where a wrongful death claim is made premised on alleged deficiencies in a nursing facilities provision of custodial care. (*Id*. at p. 371.)

Here, plaintiff alleges that Decedent was admitted to defendant Willow Creek for rehabilitation, assistance with daily tasks, and medication administration. (Complaint, ¶

22.) Plaintiff alleges that Decedent was a high fall risk dependent on defendants for assistance with activities of daily living, but that defendants failed to create a fall risk care plan and to implement fall-risk interventions. (Id. at ¶¶ 23-24.) Plaintiff alleges that defendant failed to provide a suitable room for Decedent, never lowering the bed to an appropriate height and not having floor mats. (Id. at ¶ 25.) Plaintiff alleges a fall-risk care plan would have informed staff that Decedent needed assistance with going to the bathroom every four hours, to avoid Decedent attempting to transfer herself to her wheelchair. (Id. at ¶ 26.) Plaintiff also alleges defendant was understaffed and provided insufficient training regarding fall-risk patients. (Id. at ¶ 28.) At approximately 3:30 a.m. on September 12, 2024, Decedent fell when attempting to transfer herself from her bed after defendant failed to assist her in transferring to go to the bathroom after she had called for help and waited for hours. (Id. at ¶ 29.) Decedent sustained a brain bleed, fractured neck, black eyed and bruising to her arms, but was left for approximately one and a half hours before receiving care. (Ibid.) After being hospitalized from September 13, 2024, Decedent returned to defendant on September 29, 2024. (Id. at ¶¶ 31-35.)

The Complaint fails to allege when or how Decedent died. However, a Death Certificate attached as Exhibit 1 shows that Decedent died on March 14, 2025,and lists cardiac arrest, congestive heart failure, aspiration pneumonia, end stage renal disease on hemodialysis, hypertension and atrial fibrillation.

In order to plead wrongful death, a plaintiff must allege a negligent or wrongful act, the resulting death, and the damages suffered by the heirs. (*Faiaipau* v. *THC-Orange County, LLC* (2025) 340 Cal.Rptr.3d 272, 280.) For a wrongful death claim, the relevant acts are those which caused the death, "not any acts that caused other injuries to [Decedent] before her death." (*Ibid*.) As alleged, the Complaint does not allege either Decedent's death or the acts which caused it. Therefore, the court not in a position to assess whether a wrongful death claim is premised on custodial neglect or professional negligence. In fact, this leaves the court with just the remaining causes of action.

Exclusion of Code of Civil Procedure Section 1281.2, Subdivision (c)

The agreement explicitly states,

> "The parties agree that the California Code of Civil Procedure shall not govern this Agreement. Accordingly, the parties agree that California Code of Civil Procedure §1281.2(c) is excluded from this Agreement. The parties do not want any claims not subject to arbitration to impede any and all other claims from being ordered to binding contractual arbitration."

(Vang Decl., Exh. A, Art. 5.)

It also provides, "This Agreement is binding on all parties, including the Resident's personal representative, agents, executors, family members, successors in interest, and heirs." (Id. at Art. 7.)

Code of Civil Procedure section 1281.2, subdivision (c), articulates that where a party to an arbitration agreement is also a party to a pending court action involving a third party arising from the same events and there is a possibility of conflicting rulings on common issues, then such parties cannot be compelled to arbitration. It notes that this provision is not applicable to agreements to arbitrate disputes involving professional negligence of a health care provider pursuant to Code of Civil Procedure section 1295. (Code Civ. Proc., § 1281.2, subd. (c).)

Here, plaintiff's arguments focus on the wrongful death claim not being subject to arbitration and therefore the remaining claims, which may be subject to arbitration, should not be compelled pursuant to Code of Civil Procedure section 1281.2, subdivision (c). However, as noted above, plaintiff has inadequately pled the wrongful death claim. Also, here, there is an explicit exclusion of the applicability of Code of Civil Procedure section 1281.2, subdivision (c). Where the parties state a clear intent to not apply Code of Civil Procedure section 1281.2, subdivision (c),in order to defeat enforcement, the court is "required to give effect to that intent." (*Gloster v. Sonic Automotive, Inc*. (2014) 226 Cal.App.4th 438, 447.)

Thus, where the court here has insufficient information regarding the wrongful death claims and the agreement explicitly excludes Code of Civil Procedure section 1281.2, subdivision (c), the court is inclined to grant the motion to compel arbitration and stay the proceedings pending such.

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 2/9/2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Hall v. Fresno Unified School District Employee Health Care Plan***
Superior Court Case No. 20CECG00607

Hearing Date: February 10, 2026 (Dept. 501)

Motion: (1) by Defendant Fresno Unified School District Employee Health Care Plan for Admission *Pro Hac Vice*
(2) by Defendant Fresno Unified School District Employee Health Care Plan to Bifurcate

Tentative Ruling:

To grant the application of Susan V. Metcalfe for admission *pro hac vice*. (Cal. Rules of Court, rule 9.40(a).)

To grant and order bifurcation of trial into two phases.

Explanation:

Pro Hac Vice

Susan V. Metcalfe seeks admission *pro hac vice* to represent defendant Fresno Unified School District Employee Health Care Plan ("defendant"). The application sufficiently complies with California Rules of Court, rule 9.40.

Plaintiff Worldwide Aircraft Services, Inc. ("plaintiff") opposes. As plaintiff notes, permission to make a limited appearance *pro hac vice* lies solely within the discretion of the court in question. (See *Walter E. Heller Western, Inc. v. Superior Court* (1980) 111 Cal.App.3d 706, 711; *Leis v. Flynt* (1979) 439 U.S. 438, 441-442 [finding that there is no statutory or constitutional right to appear pro hac vice].) Of the only material argument submitted, the court finds that a single prior admission within the past two years does not constitute an abuse of admission *pro hac vice* necessitating Metcalfe seek proper admission to the State Bar of California. The application for admission *pro hac vice* is granted.[1]

Bifurcation

Defendant further moves for an order bifurcating trial pursuant to, among other sections, Code of Civil Procedure section 597. Code of Civil Procedure section 597 provides, in pertinent part:

[1] Plaintiff states a truism that confirmation of receipt of the present application by the State Bar of California does not equate to approval. The purpose of service of the application is simply to provide notice. (Cal. Rules of Ct., rule 9.40(c)(1).)

> When the answer pleads that the action is barred by the statute of limitations… the court may, either upon its own motion or upon the motion of any party, proceed to the trial of the special defense… before the trial of any other issue in the case….

The decision to grant or deny a motion to bifurcate issues and to have separate trials lies within the court's sound discretion. (Code Civ. Proc. §§ 598, 1048, subd. (b); *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.App.3d 496, 503-504; *see also Cook v. Superior Court* (1971) 19 Cal.App.3d 832, 834.) The court also has the power to "provide for the orderly conduct of proceedings before it," and to "amend and control its process and orders so as to make them conform to law and justice." (Code Civ. Proc. § 128, subd. (a)(3),(8).)

Defendant submits that two threshold inquiries exist as to statutes of limitation, and as to immunity. The motion is granted as to both the issue of statutes of limitation under Code of Civil Procedure section 597 and the issue of government immunity under Code of Civil Procedure section 1048. These issues ask mixed questions of law and fact that would appear to call for facts distinct from the issues of the Fifth Amended Complaint.

Plaintiff opposes only to state that the matters should be submitted to a jury for fact finding. Whether the bifurcated portions of trial will be submitted to a jury is a premature inquiry independent of bifurcation itself. Plaintiff does not submit any basis to the contrary that judicial economy would not be served in separating the evidence on the issues of statutes of limitation and immunity from the core substantive claims. Accordingly, bifurcating those issues before other issues is appropriate. (*Silver v. Shemanski* (1949) 89 Cal.App.2d 520, 530 [finding that section 597 of the Code of Civil Procedure "places an imprimatur upon a practice which contemplates a trial first of the severable issue which if determined adversely to the plaintiff will obviate the necessity of a protracted trial of issues which by such determination are rendered irrelevant and immaterial."])

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 2/9/2026.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Efrain Gonzalez, SR v. Ford Motor Company***
Superior Court Case No. 22CECG03989

Hearing Date: February 10, 2026 (Dept. 501)

Motion: by Plaintiff for an Award of Attorney Fees and Costs

Tentative Ruling:

To grant and award $63,881.25 in attorney fees and $15,005.24 in costs and expenses in favor of plaintiff Efrain Gonzalez. Payment of both sums shall be made by defendant Ford Motor Company to Quill & Arrow, LLP within 30 days of the clerk's service of this minute order.

Explanation:

Attorney Fees

Plaintiff Efrain Gonzalez, Sr. (plaintiff) seeks an award of attorney fees under Civil Code section 1794, subdivision (d), against defendant Ford Motor Company (defendant). On September 13, 2025, with trial set for September 29, 2025, defendant made an Offer to Compromise pursuant to Code of Civil Procedure section 998, which plaintiff accepted on September 23, 2025. Plaintiff settled with defendant for $41,000, plus reasonable attorney fees and costs to be determined by noticed motion, in the event the parties could not informally agree upon the amount of an award. Defendant acknowledges that plaintiff is entitled to an award or his reasonable attorney fees and costs as the prevailing party, but disputes the amounts plaintiff seeks.

The amount of attorney fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.)

> In determining the reasonableness of attorney fees requested, the court should consider "... 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed.'" [Citations.]

(*Ibid*.) An award of costs must be "reasonably necessary to the conduct of the litigation" and "reasonable" in amount. (Code Civ. Proc., § 1033.5, subd. (c).) Plaintiff as the moving party bears the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325; *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816 [plaintiff

has burden of showing incurred fees are reasonably necessary to conduct litigation, allowable, and reasonable in amount].)

A trial court may not rubberstamp a request for attorney fees and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) A court assessing attorney 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.) Lodestar refers to the "number of hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "The lodestar figure may then be adjusted based on factors specific to the case, in order to fix the fee at the fair market value of the legal services provided." (*Warren v. Kia Motors America, Inc.* (2018) 30 Cal.App.5th 24, 36 [trial court must explain decision to reduce lodestar amount of attorney fees by 33 percent].)

Number of Hours Reasonably Expended

Counsel for plaintiff seeks to set the base lodestar at $47,905.00 (excluding an additional $4,000 sought in connection with anticipated time for the reply and hearing for the motion at bench). A review of each billing entry shows the time billed by the timekeepers is not excessive.

When plaintiff submitted his motion, his counsel had billed 112.5 total hours for over three years of work on the case. The amount of time spent on each task also seems to be reasonable. While defendant complains that plaintiff's counsel uses the same template pleadings and documents for repetitive tasks, and that counsel should not be compensated over and over again for the same work with minor variations, plaintiff is entitled to recover his fees for the time actually and reasonably incurred in prosecuting the action. (Civ. Code, § 1794, subd. (d).)

To the extent that plaintiff's counsel uses templates to prepare documents, the use of such templates is not inherently unreasonable. Indeed, using templates can lead to greater efficiency and save time and money, as the attorneys do not have to "reinvent the wheel" every time they draft a pleading or discovery response. Defendant has not shown that plaintiff's counsel did not actually incur the claimed hours, or that the time spent was excessive and unreasonable. For example, defendant suggests "14-16" hours expended by Daniel Nickfardjam should be stricken in toto, because multiple discovery motions were all summarily denied by the court as untimely. To support this contention, defendant submits a minute order, without the tentative ruling, as an exhibit. (The missing tentative ruling shows defendant did not respond to initial discovery requests until after plaintiff filed motions to compel.) Also, Mr. Nickfardjam's billing records itemize each discovery task, with many individual tasks billed between .10 and .40 hours.

Defendant challenges an entry for Mr. Treybig's time as follows:

> At pp. 22 of Ex. 26 to Jacobson Declaration: Mr. Treybig) [sic] purportedly spent 2.4 hours on 04/01/25 preparing very experienced Plaintiff's expert Randal Bounds for deposition, when Mr. Bounds' own billing records that I

> also reviewed reflect only two 0.3 entries for "Conference Call" with Mr. Treybig on 03/28/25 and 03/31/25 [See Plaintiff's Memorandum of Costs, Bounds' 04/14/25 Automotive Technology Invoice][.]

(Tully decl., p. 5:17-20 [first backets original].) The court has reviewed the documents supporting plaintiff's memorandum of costs and notes the job date for the deposition of Mr. Bounds was listed as April 1, 2025, on the court reporter's invoice (cost memo, pp. 43-44 of 68), yet Mr. Bounds billed 5.2 hours for "[e]xpert deposition preparation," listing the date as March 31, 2025, which appears to be a clerical error. (Cost memo., pp. 51-52 of 68.) Mr. Treybig billed an additional 2.1 hours on April 1, 2025, to defend the expert deposition of Mr. Bounds. Thus, Mr. Treybig billed a total of 4.5 hours to prepare for and defend the deposition, and Mr. Bounds billed 5.2 hours "for expert deposition preparation." The court finds Mr. Treybig's total time of 4.5 hours to prepare for and defend the deposition is reasonable.

Defendant also criticizes plaintiff and his counsel because plaintiff "rejected a defense CCP 998 offer for $55,000 for 'repurchase +' damages, but ultimately . . . resolved the matter for a $41,000 repurchase amount . . . that was [ ] 25% less than the CCP 998-proffered $55,000 [amount]." (Opp., p. 1:7-9.) Plaintiff replies, "if this were true, why does Defense Counsel, with his vast experience, not seek to bar [p]laintiff's counsels' fees, costs, and expenses after the service of the [$55,000] C.C.P. Offer to Compromise?" (Rpy., p. 1:8-9.) Plaintiff explains, with supporting documentation, that defendant waited until October 2, 2024, to serve its first "low-ball offer of $10,001," which included attorney fees, then made a second section 998 offer of $55,001.00, plus the limited amount of $10,000 for attorney fees, with no option for plaintiff to seek his reasonable attorney fees by motion, as guaranteed to the prevailing buyer under the Song-Beverly Act. (Rpy., p. 1:21-23.) As plaintiff diligently prepared for trial, defendant waited four months, on the eve of trial, to submit an offer expressly allowing for fees by motion, if necessary. The court agrees with plaintiff's contention that in addition to misleading the court, defendant's conduct throughout this case made it more difficult to resolve informally, and thereby increased the attorney fees required to finally settle this case.

Also, the fact that 12 separate timekeepers worked on the case is not necessarily evidence that the fees were excessive or unreasonable. The time records do not reflect any duplicative or unreasonable work on the case, so the fact that plaintiff used several attorneys to work on the case is not a reason to reduce the requested hours. Therefore, the court will make no deductions to the documented time expended on this matter.

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* (2001) 24 Cal.4th 1122, 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.) A contingent fee contract may provide for a larger compensation than a standard guaranteed hourly-rate for service, because the contingent fee contract "involves a gamble on the result." (*Ketchum v. Moses, supra,* 24 Cal.4th at p. 1132.)

Plaintiff correctly notes Defendant's comparison of its attorney's discounted bulk rate to his attorneys' hourly rates suggests an improper comparison. As the California Supreme Court explained:

> "A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans."

(*Ketchum v. Moses, supra,* 24 Cal.4th at pp. 1132–1133, quoting Posner, Economic Analysis of Law (4th ed.1992) pp. 534, 567.)

The "experienced trial judge is the best judge of the value of professional services rendered in his court." (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832.) Based on a consideration of various factors, the trial court may rely on its own expertise and knowledge to calculate reasonable attorney fees. (*Niederer v. Ferreira* (1987) 189 Cal. App. 3d 1485, 1507.) "When the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value." (*In re Marriage of Cueva* (1978) 86 Cal. App. 3d 290, 300.) The court is not limited to the affidavits submitted by the attorney. (*Melnyk v. Robledo* (1976) 64 Cal. App. 3d 618, 625.)

Counsel submits a total of 112.5 hours of billed time by 12 different timekeepers. To support the hourly rates charged, plaintiff submits the declaration of Kevin Jacobson (who is not requesting reimbursement for any time spent on this matter). In 2019 Mr. Jacobson co-founded Quill & Arrow, LLP, with a primary focus in Song-Beverly cases, as well as personal injury cases. As the managing partner at Quill and Arrow, LLP, Mr. Jacobson is responsible for overseeing all the associates of the firm and the litigation strategy of the thousands of cases that the firm litigates. Mr. Jacobson's rate for 2025 is $550 per hour.

In determining whether counsel's rates are appropriate for the local Fresno market, the court notes that plaintiff's counsel contracted with one experienced local Fresno consumer-protection attorney, Alicia Hinton, whose rate is $500 per hour. The rates submitted for all associates at Quill & Arrow, LLP, are below Ms. Hinton's $500 per hour rate, aside from Mr. Treybig's matching 2025 rate, which was raised from his 2024 rate of $425.

Having reviewed the qualifications of each of the 12 timekeepers, and the declaration of counsel's managing partner, Mr. Jacobson, the court finds hourly compensation for each timekeeper is reasonable for this case. Accordingly, the court sets the basic lodestar fee at $47,905.00, as requested, for the work done on the case up to the filing of the motion for attorney fees.

Counsel also seeks another $4,000.00 for fees incurred in reviewing the opposition to the fees motion, preparing a reply, and appearing at the hearing. Plaintiff submits Mr. Jacobson's second declaration in support of plaintiff's reply to establish the attorney

fees to prepare the reply and appear at the hearing. Mr. Jacobson's declaration requests an additional amount of $6,831.00 for the reply and appearance, as itemized in his declaration, which the court reduces to an additional of $4,000.00, as requested in the notice of motion.

Multiplier

Plaintiff seeks the imposition of a multiplier at 1.25 on the lodestar fee of $47,905.00 (which does not include the fees for the reply and appearance). As stated by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

> …the trial court is *not required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. In each case, the trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. It should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors under *Serrano III*. We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (*See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid*.) 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. Nor should a fee enhancement be imposed for the purpose of punishing the losing party.

(*Ketchum v. Moses, supra,* 24 Cal.4th at pp. 1138-1139 [emphasis original].) Once a lodestar is fixed, the lodestar may be adjusted based on certain factors, including: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; and (4) the contingent nature of the fee award. (*Id.* at p. 1132, *citing Serrano III, supra*, 20 Cal.3d at p. 49.)

Here, plaintiff submits that counsel took the matter on contingency and obtained an excellent result. Plaintiff further suggests that there was undue delay in settling this

matter. The court acknowledges the contingent risk taken by counsel, and finds the settlement of $41,000, which more than quadruples the original $10,001 settlement offer of October 2, 2024, to be an excellent outcome. Plaintiff filed his action in late 2022, and the delay in obtaining payment supports a multiplier. Plaintiff seeks a multiplier of 1.25 to apply to the lodestar of $47,905, which the court finds is reasonable. Applying a 1.25 multiplier results in additional fees of $11,976.25, for a total fee award of $63,881.25 ($47,905 + $11,976.25 + $4,000.00).

Costs

Costs and expenses are sought via declaration in the amount of $17,265.28. If the items on a verified statement appear to be proper charges, the statement is prima facie evidence of their propriety, and the burden is on the party contesting them to show that they were not reasonable or necessary. (*See Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) The losing party does not meet this burden by arguing that the costs were not necessary or reasonable but must present evidence to prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr.* (2015) 237 Cal.App.4th 1217, 1224.) If the claimed items are not expressly allowed by statute and are objected to, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

In Song-Beverly Act cases, Civil Code section 1794, subdivision (d), provides for an award of not only "costs", but also "expenses" to the prevailing buyer if the costs and expenses were reasonably incurred in the commencement and prosecution of the action. Courts have interpreted the term "expenses" to mean that the trial court has discretion to award more than just the costs provided under section 1033.5, and that the court may grant other costs that were reasonably incurred by the buyer in connection with the commencement and prosecution of the action. (*Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112, 137-138, [finding trial court should not have denied plaintiff's request for expert witness fees simply because they were not permitted under section 1033.5]; disapproved on other grounds by *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189.)

Defendant seeks to reduce costs by $4,642. First, defendant objects to an expert witness fee of $1,282.89 for a cancelled inspection charged by expert Darrell Blasjo. Plaintiff fails to submit a declaration with a reasonable explanation for the cancellation charges, which includes a note that the witness drove to Hanford for a vehicle inspection and was not informed until arrival that the inspection had been cancelled. (Cost memo., p. 49 of 68). Therefore, the court reduces line item 8 (witness fees) by $1,282.89.

Next, defendant objects to the $4,782 invoice charged by plaintiff's second expert, Randall Bounds, as excessive, and suggests the invoice should be reduced to no more than $2,400.00. Defendant challenges a "flat rate of $750" for a vehicle inspection (in fact, the flat rate was $725), included in the invoice. Defendant also challenges as unreasonable the 5.2 hours listed as deposition preparation by Mr. Bounds. (Cost memo., p. 51 of 68.) Mr. Bounds submits no evidence to establish that Mr. Bounds did not spend the time listed in his invoice, which appears to include the actual time spent at his deposition on April 1, 2025, although the date appears to be an error, or that plaintiff did

not incur the submitted costs. The court approves the requested witness fees of $4,782, incurred by plaintiff for the services listed in the invoice.

Finally, defendant objects to travel costs of $977.15 for Mr. Terzian. As a general rule, the court is inclined to deny costs that are not specifically enumerated in Code of Civil Procedure section 1033.5, subdivision (a). Travel costs are allowed for attending depositions (Code Civ. Proc., § 1033.5, subd. (a)(3)(C)), but there is no provision for recovery of other travel expenses. Accordingly, the court reduces line item 15 (other) by $977.15. In sum, the court reduces plaintiff's costs by $2,260.04 ($1,282.89 + $977.15), and awards plaintiff costs in the amount of $15,005.24.

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 2/9/2026.
(Judge's initials) (Date)