Tentative Rulings for May 1, 2025
Department 503

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.

21CECG02923 ***Rodriguez v. Summersweet Farms, Inc*. is continued to Thursday, June 12, 2025 at 3:30 p.m. in Department 503.**

24CECG02049 ***Rivera v. Netafim Irrigation, Inc*. is continued to Tuesday, June 17, 2025 at 3:30 p.m. in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(20)

Tentative Ruling

Re: ***DeLara v. Garcia et al.***
Superior Court Case No. 23CECG04948

Hearing Date: May 1, 2025 (Dept. 503)

Motion: By Plaintiff DeLara for Deemed Admissions Order

Tentative Ruling:

To grant. The truth of all matters specified in the Request for Admissions, Set One, propounded on defendants Cesar Garcia and Maria Patricio-Montez are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) To impose reasonable sanctions in the sum of $1,260 against Cesar Garcia and Maria Patricio-Montez jointly and severally, and in favor of moving party Rodney DeLara, to be paid to moving party's counsel within 20 days of service of the order by the clerk.

Explanation:

On 7/30/2024 plaintiff served defendants Garcia and Patricio-Montez with Requests for Admission, Set One. Responses were due by 8/28/2024. To date no responses have been served. Plaintiff now moves for a deemed admissions order. Since no responses have been served, an order admitted all matters specified in the requests for admission (Code Civ. Proc., § 2033.280, subd. (b)), is warranted, and reasonable sanctions must be imposed (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subd. (a); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404). This will be the order of the court unless defendants serve, before the hearing on the motion, proposed responses that are in substantial compliance with Code of Civil Procedure section 2033.220.

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: JS on 4/24/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Eric Hadder v. Phillip McClelland***
Superior Court Case No. 24CECG03024

Hearing Date: May 1, 2025 (Dept. 503)

Motion: Defendant Michael Dean Herbert's Demurrer to the Complaint

Tentative Ruling:

To deny, without prejudice, as untimely filed. (Code Civ. Proc., § 1005, subd. (b).)

Explanation:

The demurring party must file and serve the notice and all supporting papers at least 16 *court* days before the hearing. (Code Civ. Proc., § 1005, subd. (b).) Here, the demurrer was filed and served April 15, 2025 for a May 1, 2025 hearing, which is only 12 court days before the hearing. (Code Civ. Proc., § 12c.) As such, the motion is untimely filed.

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: JS (Judge's initials) on 4/29/2025 (Date).

Tentative Ruling

(03)

Re: ***Garza v. City of Parlier***
Superior Court Case No. 21CECG02953

Hearing Date: May 1, 2025 (Dept. 503)

Motion: Plaintiff's Motion for Attorney's Fees
Defendant's Motion to Tax Plaintiff's Costs

Tentative Ruling:

To grant plaintiff's motion for attorney's fees in the amount of $246,573.75. Defendant shall tender the attorney's fees to the Law Offices of Alan Romero within 30 days of the service of this order.

To grant defendant's motion to tax costs in part and deny in part. The court taxes plaintiff's memo of costs in the total amount of $3,540.29.

Explanation:

Motion for Attorney's Fees

"The court is authorized to award reasonable attorney's fees to a plaintiff who brings a successful action for a violation of" Labor Code section 1102.5. (Labor Code, § 1102.5, subd. (j).) Because plaintiff obtained a jury verdict against defendant City of Parlier in the amount of $1 million on his whistleblower claim, an award of reasonable attorney's fees is appropriate.

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.) Here, defendant seeks a loadstar of $338,598.25, a 2.0 multiplier, and an additional $7,200.00 for preparing the reply to the instant fee motion for a total of $684,396.50.

As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) 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

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez*, *supra*, 36 Cal.App.4th at p. 361.) However, while an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The constitutional requirement of just compensation, "cannot be interpreted as giving the [prevailing party] carte blanche authority to 'run up the bill.' " (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 880.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 950.)

Fees Requested

Here lodestar fees of $338,598.25 are requested for 532.5 hours of work by six attorneys and five paralegals. Plaintiff further requests an additional anticipated $7,200 to compensate for the attorney hours to be spent reviewing defendant's opposition, preparing a reply, and attending a hearing. The basis for the trial court's calculation must be the actual hours counsel has devoted to the case, less those that result from inefficient or duplicative use of time. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 395, citing *Ketchum v. Moses*, supra, 24 Cal.4th at p. 1133.)

Initially, the court notes that the documentation supporting the hours claimed by counsel appears inaccurate in several respects. While trial counsel Alan Romero asserts that "all members of his firm … have reviewed each entry" for accuracy and that "[e]ach employee of this firm personally keeps contemporaneous time records using Clio Manage, a legal practice management software suite," the court notes that the submitted records are in a spreadsheet. (See Romero Decl. at ¶ 22.) Significantly, there is no explanation as to how the spreadsheet was prepared and the spreadsheet's accuracy has not been established. For example, the court observes that trial counsel's time for Friday, August 6, 2024, the fourth day of trial, is not included in the spreadsheet. Furthermore, although trial counsel asserts the firm "track[s] and bill[s] our time at the nearest tenth of an hour," the billing is replete with time entries in the hundredth of hours.

Nevertheless, the court has reviewed each billing entry and finds that the time billed by the attorney timekeepers is not excessive. No deductions shall be made to the time sought for attorneys' work on this matter.

The time billed by non-attorneys is another matter, as a review of the billing reveals a multitude of time entries for clerical and administrative work by paralegals. Paralegal fees may be awarded as attorney's fees if the trial court deems it appropriate. (*Roe v. Halbig* (2018) 29 Cal.App.5th 286, 312.) The Memorandum of Points and Authorities indicates that Chelsy Velis, Esperanza Lemus, Jeremias Montenegro, and Vanessa Melendez are all certified paralegals, but no actual evidence has been offered to support this characterization, as counsel's declaration does not mention the paralegals' experience and/or qualifications. Andrew Chacon is described as an "uncertified paralegal," which the court understands to mean he is a paralegal as defined by Business

and Professions Code section 6450, subdivision (c)(3) or (4). The failure to support Mr. Chacon's status as a paralegal by the required attorney declaration describing the requisite experience and qualifications to permit Mr. Chacon to be called a "paralegal" under California law is troubling, but as all but 3 hours of Mr. Chacon's time will be disallowed the court will treat him as an office assistant.

The court views purely clerical or secretarial tasks as activities that should not be billed at a lawyer or paralegal's usual rate, regardless of who performs them. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288, fn. 10.) Calendaring, preparing proofs of service, internal filing, preparing binders for a hearing, and scanning are examples of tasks that have been found to be purely clerical and thus noncompensable, or compensable at a greatly reduced billing rate. (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1187; *Ridgeway v. Wal-Mart Stores Inc*. (N.D. Cal. 2017) 269 F.Supp.3d 975, 991.)

Again, the court has reviewed all the billing entries and noted many entries for purely clerical tasks requiring no specialized legal knowledge, including: emailing (forwarding) documents and correspondence, efiling and serving documents, uploading, downloading and "logging" documents into a computerized system, scheduling and calendaring events, updating calendars, and verifying those calendared dates, and as well as reading correspondence by and to the attorneys. (See billing entries for Esperanza Lemus[1] 4/21/23: "Saved stamped copies of Def's MOPA Reply and Def's Objections" .2; 5/8/23: "Downloaded forms RA010 and form RA020" .2; 8/9/23 "reviewed + moved service emails from oc to gmail subfolder" .1; 8/11/23: "Reviewed + logged service/filing emails" .1. Jeremias Montenegro: 5/3/24 "finalized/filed/and served opp for motion to divide trial" 1; 5/31/24 "save and email atty re Sabrina Rodriguez deposition transcripts" .1; 6/7/24 "read email from AJR to alan re stip to continue trial, updated calendar to allow 15 mins for AJR to join hearing earlier" .2; 7/16/24 "read email from Alan Romero to OC about trial continuance" .1; Vanessa Melendrez: 11/2/22 "Zoom link for Garza" .09; 1/3/22 "File/Serve IDC Statement .5; 8/9/23 "review, pdf, and upload declaration ISO msj opp to clio matter, prep dec for signature and send to client" .1; 9/19/23 "review all correspondence re Informal Writ Response, filing was accepted in the 5th district court of appeal" .2; 2/2/24 "review and clear correspondence re petition for writ being denied" .1.) Additionally, paralegal Chelsy Velis also spent a large amount of her time simply verifying others had done their work correctly. (See Chelsy Velis billing entries for 4/24/23: "… confirm emails and attachments logged/saved, check calendar that all relevant dates were updated" .5; "Confirm emails logged…" .25; "Confirm response downloaded and saved correctly, double check for all calendaring that may be missing" .25; 4/25/23: "Confirm docs saved, email logged, check calendar and task list to confirm correct dates were calendared" .5.) Accordingly, the court deducts 54.64 hours of paralegal time and 12.45 hours of Andrew Chacon's time.

2. Reasonable Hourly Compensation

[1] Spelling, capitalization, and punctuation are all from original text.

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 parties dispute what the reasonable billing rate is for the plaintiffs' counsel. 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.)

Here, trial counsel Alan Romero seeks $900.00 per hour, Lucas Rowe seeks $700.00 per hour, and $600 per hours is sought for Angela Xie, Sara Simmons, Ted Wells, and Eric Hahn. Plaintiff seeks a rate of $250 per hour for the allegedly certified paralegals and $185 per hour for Andrew Chacon, the office assistant. These rates are all high for Fresno.

"[I]n the 'unusual circumstance' that local counsel is unavailable," a trial court may award an out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) In such rare cases, the justification for awarding the higher rate is that out-of-town rates are needed "to attract attorneys who are sufficient to the cause." (*Ibid*.) At a minimum, therefore, the party seeking out-of-town rates is required to make a "sufficient showing ... that hiring local counsel was impracticable," and the exception is accordingly inapplicable where "no effort was made to retain local counsel." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.)

The only evidence before the court concerning the efforts made to find local counsel is plaintiff's declaration: "I had difficult[ty] finding counsel in the Central Valley and sought legal advice as to the identity of a lawyer who would be able to assist me in a case of a police officer engaging in protected whistleblowing activity against their own department. Another attorney referred me to Romero Law, APC, and I was unable to find a lawyer in my general geographical area, I agreed to retain a law firm situated in Los Angeles County." (Garza Decl. at ¶ 3.) "If I had been able to identify and retain a competent public corruption civil litigation firm in Fresno County, or elsewhere in the Central Valley, I may have retained such a firm. However, the firm that I identified as having the best, specialized skillset to assist me in my claims of Labor Code § 1102.5 retaliation was in another part of the state." (*Id*. at ¶ 4.) This is both vague and conclusory. Plaintiff does not does not describe how he searched for attorneys. He does not state that he could not identify any local experienced employment counsel who represents plaintiffs on a contingency basis. He does not identify who he contacted for "legal advice." He does not state that he ever contacted any local attorneys. Nor does he describe the results of any such consultations. . This is unlike the situation in *Horsford*, where plaintiff presented declarations from multiple attorneys with whom plaintiff had

spoken and who declined to represent him. (*Horsford*, *supra*, at pp. 398-399.) Accordingly, the court will award fees based on local rates.

The court finds that the reasonable value of trial counsel Alan Romero's time, an attorney admitted to the bar in 2006, who possesses substantial experience litigating employment matters, is $450 per hour.

The court finds that the reasonable value of time billed by Lucas Rowe, an attorney allegedly admitted in Ohio before being admitted in California in 2014, and who worked on the case between January 2022 to March 2024, is $350

The court finds that the reasonable value of time billed by Sara Simmons, an attorney admitted in 2010, who worked on the case in 2024, is $350 per hour.

The court finds that the reasonable value of time billed by Eric Hahn, an attorney admitted in 2016, who worked on the case in 2023, is $325 per hour.

The court finds that the reasonable value of time billed by Edward "Ted" Wells, an attorney admitted in 2018, who worked on the case between June of 2021 and November of 2022, is $300 per hour.

The court finds that the reasonable value of time billed by Yaqi "Angela" Xie, an attorney admitted in 2021, who worked on this case between October of 2021 and January of 2023, is $200 per hour.

The court finds that the reasonable rate for certified paralegals is $150 per hour and the reasonable rate for law clerks and/or office assistants is $100 per hour.

Accordingly, the court sets the lodestar at $164,382.50.

3. Multiplier

Plaintiff seeks a multiplier of 2 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 whistleblower case of moderate complexity. Counsel was appropriately compensated through their time billed.

- *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 the pleadings filed in this case. The skill displayed by plaintiff's counsel was 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.) 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 practices in a small firm, but the total number of staff and attorney hours reasonably devoted to this matter (less than 500) did not substantially preclude other work.

Considering all of the lodestar factors, the court will impose a multiplier in favor of plaintiff, in the 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 not unusually legally or factually complex.

This 1.5 multiplier results in an additional $82,191.25 in fees. [Multiplier of .5 * $164,382.50 (lodestar) = $82,191.25.]

Total Attorney's Fees Awarded

The lodestar of $164,382.50, plus the multiplier enhancement of $82,191.25, bring the total attorney's fee award to $246,573.75.

Motion to Tax Costs

"The right to recover costs of suit is statutory. [Code of Civil Procedure] Section 1032, subdivision (b) 'guarantees prevailing parties in civil litigation awards of the costs expended in the litigation.'" (*Rozanova v. Uribe* (2021) 68 Cal.App.5th 392, 399, citations omitted.) Code of Civil Procedure Section 1033.5 sets forth a list of allowable costs, as well as a number of costs that are not allowed. The court also has discretion to award other costs not specifically listed under section 1033.5 if it determines that they are reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. (Code Civ. Proc. § 1033.5, subd. (c)(2).) "Finally, section 1033.5 requires that the costs awarded, whether expressly allowed under subdivision (a) or awardable in the court's discretion under subdivision (c), must be 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation' (§ 1033.5, subd. (c)(2)) and also be 'reasonable in amount.' (*Rozanova v. Uribe*, supra, at p. 399, citations omitted.)

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. However, because the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, 774, internal citations omitted.) Expenses that are "merely convenient or beneficial" to preparation for litigation are not recoverable. (*Id.* at p. 775.)

Item 1, Filing and Motion Fees:

Defendant challenges Item 1 of plaintiff's memo of costs, filing and motion fees, contending that the $10 charge for electronically filing each of the documents is not in fact a filing fee, but rather a fee charged by the filing service itself and thus is not a recoverable cost.

The invoices submitted with the memo of costs show that the filing service charged $10 for each set of documents that were electronically filed. While this was not a filing fee charged by the court, it was a fee that was necessary to electronically file the documents. The court requires the parties to electronically file their documents. Therefore, the court will not tax the costs charged to electronically file the documents, as the cost was reasonable and necessary to the litigation even if it was not strictly speaking a filing fee charged by the court.

Item 4, Deposition Costs:

Defendant moves to tax Item 4, deposition costs, in the amount of $167.98, contending that this cost is for preparing transcripts that were not ordered by the court, and thus the cost is not allowable. (Code Civ. Proc., § 1033.5, subd. (b)(5). Plaintiff has conceded that this cost is not allowable and that it should be taxed. Therefore, the court will tax Item 4 in the amount of $167.98.

Item 5, Service of Process:

Defendant moves to tax plaintiff's request for service of process costs for subpoenas served on a number of witnesses, most of whom did not appear at trial or for a deposition. One of the witnesses, Arnold Rugana, was served three times, but still never appeared for trial. Defendant alleges that the only witness who did appear at trial did so remotely from Texas by Zoom. Since he resides in Texas, defendant contends that the subpoena was ineffective to compel him to appear. Therefore, defendant concludes that these costs were not reasonable or necessary for the litigation.

In his opposition, plaintiff does not dispute that the witnesses did not appear with the exception of Mr. Blevins, who appeared remotely from Texas. He also does not explain why it was necessary to serve the witnesses if they were not called to testify, or why it was reasonable and necessary to serve Dr. Rugana three separate times even though he never appeared at trial. He also does not explain why it was reasonable and necessary to serve Mr. Blevins when he resides in Texas and service would not have been effective to compel him to appear. He argues that he is allowed to recover witness appearance fees even if the witness was not compelled to appear by a subpoena. (*City of Downey v. Gonzales* (1968) 262 Cal.App.2d 563, 569-570.) Here, however, plaintiff seeks recovery of service of process costs, not witness appearance fees, so his citation to *City of Downey* is inapposite.

Therefore, the court finds that plaintiff has not met his burden of showing that the requested service of process costs were reasonable or necessary to the conduct of the litigation. As a result, the court will grant the motion to tax the service costs in the amount of $2,335.60.

Item 14, Fees for Electronic Filing or Service:

Defendant challenges the entire amount claimed for this item of costs, $1,037.21. Defendant contends that this cost is not actually an electronic filing or service fee, and actually appears to be a charge for delivery of documents to the court, or fees for a legal support service. The invoices attached to the memo of costs do not clarify what the charges are for, other than that they are labeled "courtesy copy delivery" for various documents filed with the court. (Attachment 14 to Memo of Costs.) Plaintiff has not offered any explanation for these costs in his opposition or attempted to show that they were reasonable and necessary to the litigation. Therefore, the court will grant the motion to tax item 14, in the amount of $1,037.21, as plaintiff has failed to meet his burden of showing that the requested costs are reasonable and necessary.

Accordingly, the court intends to tax the memo of costs in the total amount of $3,540.29.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (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: JS on 4/29/2025 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Misael Espinoza Perez v. Saber Liquor Market***
Superior Court Case No. 24CECG01384

Hearing Date: May 1, 2025 (Dept. 503)

Motion: by Defendants to Strike Portions of Plaintiff's Complaint

Tentative Ruling:

To grant the motion to strike from the complaint those items specified in the Notice of Motion: (1) Paragraph 14 (a)(2) [prayer for punitive damages]; (2) Exemplary Damages Attachment – Ex-1 [allegations of malice and oppression]; and (3) Exemplary Damages Attachment – Ex-2 [allegations in support of finding malice and oppression].

Plaintiff is granted 10 days leave to filed the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Legal Standard

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 CalApp.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

Vague and conclusory allegations are not enough to justify a prayer for punitive damages. The plaintiffs must allege facts showing fraud, malice or oppression. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.) The plaintiff must also allege that defendant acted despicably. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719-720.)

Civil Code section 3294, subdivision (a) provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Civil Code section 3294 was amended in 1987 to require a showing of despicable conduct as a predicate to the recovery of punitive damages. "Despicable conduct" is defined as conduct that is so vile, base or contemptible that it would be looked down on and despised by reasonable people."

> Used in its ordinary sense, the adjective "despicable" is a powerful term that refers to circumstances that are "base," "vile," or "contemptible." (4 Oxford English Diet. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, "malice" requires more than a "willful and conscious" disregard of the plaintiffs' interests. The additional component of "despicable conduct" must be found. (Accord, BAJJ No. 14.72.1 (1992 Re-Rev.)); *Mock v. Michigan Miliers Mutual ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

(*College Hospital, Inc., v. Superior Court of Orange County*, *supra,* 8 Cal.4th at p. 725.)

The addition of the criterial adjective "despicable" was a significant substantive limitation on the recovery of punitive damages (along with the elevation of the burden of proof), as it is a "powerful term." (*College Hospital, Inc. v. Superior Court, supra,* 8 Cal.4th 725.) On the continuum of conduct, it is toward the extreme, eliciting adjectives such as vile or base and rousing the contempt or outrage of reasonable people. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.)

Application

Here, defendants move to strike the following[2] from the complaint filed on March 28, 2024:

- Paragraph 14 (a)(2) – page 3 of 3 – "punitive damages"
- Exemplary Damages Attachment – Ex-1, page 9 – "malice" and "oppression"
- Exemplary Damages Attachment – Ex-2, page 9

Defendants argue that the complaint does not set forth sufficient facts that defendants acted with "willful" and "despicable" conduct as is required by statute. None of the allegations contained in the complaint demonstrate conduct that is base, vile or contemptible. It is defendants' position that the allegations of the complaint are conclusory and do not prove or disprove a material fact, and a prayer for punitive damages cannot be sustained on conclusory allegations.

Upon review of the filed complaint in this case, of which the court grants defendants' request for judicial notice pursuant to Evidence Code section 452 subdivision (d), the court should find that plaintiff did not show by clear and convincing evidence that defendants acted intentionally or despicably. Throughout the complaint, plaintiff alleges the incident using terms including: "physically assaulted," "assaulted and

[2] Although the defendants' Memorandum of Points and Authorities identifies one other matter they intended to move to strike, the court will only consider those items identified in the Notice of Motion.

battered," "touching, striking, hitting, and inflicting great pain," "reasonably threatened to cause harm…and subsequently carried out harmful conduct," "intentionally, knowingly, willfully and maliciously intended to cause harm," "maliciously intended to cause severe harm to [plaintiff]," "violent and offensive contact," and "offensive physical contact." These words and phrases are conclusory and unsupported. No specific facts demonstrating or effecting these words and phrases are described.

Plaintiff's contention that the allegations of the complaint are "intentional in nature" is insufficient to support an evidentiary burden of clear and convincing evidence and fails to support the claim for punitive and exemplary damages. Therefore, the court intends to grant the motion to strike the items set forth in the Notice of Motion.

Leave to Amend

To obtain leave to amend, "plaintiff[s] must show in what manner [they] can amend [their] complaint and how that amendment will change the legal effect of [their] pleading." (*Bergeron v. Boyd* (2014) 223 Cal.App.4th 877, 881.)

Plaintiff in his opposition presents facts not alleged in the initial complaint. While not considered when ruling on the motion to strike, as these allegations do not appear on the face of the complaint, the court is presented with enough to support granting plaintiff leave to amend.

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: JS on 4/29/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Sukhpreet Singh v. Jocelyn Berry***
Superior Court Case No. 25CECG01633

Hearing Date: May 1, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Sukhpreet Singh

Tentative Ruling:

To grant petition. Order signed. No appearance necessary.

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: JS on 4/29/2025.
(Judge's initials) (Date)