Tentative Rulings for December 21, 2023
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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Cordoba v. American Honda Motor Co., Inc.***
Superior Court Case No. 22CECG02890

Hearing Date: December 21, 2023 (Dept. 501)

Motion: by Plaintiff for an Order Compelling Further Responses to Request for Production of Documents, Set One

Tentative Ruling:

To deny plaintiff's motion to compel further responses to request for production of documents, set one.

Explanation:

Defendant American Honda Motor Co., Inc. ("Honda") served its responses to Request for Production of Documents, Set One, on January 18, 2023. Plaintiff initiated meet and confer efforts with regard to the sufficiency of responses to request numbers 4, 5, 8-10, 12-13, 18-20, 22 and 27-66 with two written letters on January 31, 2023, and March 8, 2023. (Tran Decl., Exhs. C and D.) Defendant responded by letter on March 9, 2023, with the indication that further responses to some of the requests would be provided.

On April 19, 2023, plaintiff filed her Request for Pretrial Discovery Conference regarding request numbers 18, 28, 43-44 and 48-66. On May 22, 2023, defendant filed its Opposition to Request for Pretrial Discovery Conference addressing request numbers 18, 28, 43-44 and 44-66. On May 23, 2023, the court issued its Order on Request for Pretrial Discovery Conference, finding the dispute would not benefit from a conference and granting plaintiff the ability to file her discovery motion **limited to the dispute set out in the Request for Pretrial Discovery Conference**.

On May 30, 2023, defendant served further responses to request numbers 18, 28, 43 and 44. (Raue Decl. ¶ 12, Exh. H.)

On August 14, 2023, plaintiff filed her motion to compel further responses to request numbers 18, 26-27 and 29-31. Of the requests at issue *only one*, request number 18, was included in the plaintiff's April 19, 2023, Request for Pretrial Discovery Conference.

On December 7, 2023, defendant Honda filed its opposition to the motion to compel indicating further responses had been served to request numbers 27, 29, 30 and 31. (Raue Decl., ¶ 15, Exh. I.)

The motion to compel a further response to request numbers 26-27 and 29-31 is denied, as defendant's responses to these requests were not within the scope of plaintiff's April 19, 2023, Request for Pretrial Discovery Conference. (Super. Ct. Fresno County, Local Rules, rule 2.1.17(A).) Additionally, as to the responses to request numbers 27 and 29-31, any motion for further response would have been moot after defendant's service of a

further response. The court further notes the moving papers fail to provide evidence of meet and confer efforts regarding the response to request number 26 to comply with Code of Civil Procedure section 2031.310, subdivision (b)(2), which additionally requires the denial of plaintiff's motion for a further response.

As to plaintiff's motion for a further response to request number 18, a further response was served on May 30, 2023, after the court issued its order granting plaintiff permission to file her motion to compel. Plaintiff has provided no evidence of the parties having met and conferred as to the adequacy of the further response provided and plaintiff's April 19, 2023, Request for Pretrial Discovery Conference does not, and could not, include the May 30, 2023, further response. Accordingly, the court intends to deny the motion to compel a further response for failure to comply with the meet and confer requirements prerequisite to filing such a motion. (Code Civ. Proc. § 2031.310, subd. (b)(2).)

The court intends to deny both party's respective requests for sanctions.

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 12/18/2023.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Osborn v. Osborn, et al.***
Superior Court Case No. 22CECG03938

Osborn v. Osborn, et al.
Superior Court Case No. 23CECL08578

Hearing Date: December 21, 2023 (Dept. 501)

Motion: by Plaintiffs to Consolidate Actions

Tentative Ruling:

To grant, consolidating for all purposes Case No. 22CECG03938 with Case No. 23CECL08578, with Case No. 22CECG03938 being designated as the master file. The January 2, 2024, trial date in Case. No. 22CECL08578 is vacated.

Explanation:

Plaintiffs Julie Osborn and Carolyn Michalle Barnes, individually and as Trustee of the Homer R. Osborn Living Trust, UTD December 4, 2008, seek an order consolidating the unlawful detainer action (case number 23CECL08578) with the civil action (case number 22CECG03938) since otherwise the unlawful detainer action would proceed to trial before plaintiffs' claim to own title to the property could be decided, and could result in the forfeiture of plaintiffs' own property.

Given the summary nature of unlawful detainer proceedings, it is a rule of long standing that questions of title cannot be raised and litigated by cross-complaint or affirmative defense in an unlawful detainer case. (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159; *Martin-Bragg v. Moore* ("*Martin-Bragg*") (2013) 219 Cal.App.4th 367, 385 ["Ordinarily, issues respecting the title to the property cannot be adjudicated in an unlawful detainer action."].) However, where a civil action makes a claim of ownership concerning the property that is the subject of an unlawful detainer action, the additional issue is one of prejudice to the party making the ownership claim. In *Martin-Bragg,* the court held that in such situations the Civil Unlimited court has the power "to consolidate an unlawful detainer proceeding with a simultaneously pending action in which title to the property is in issue," because a "successful claim of title by the tenant would defeat the landlord's right to possession." *(Id.* at 385.)

Here, an unlawful detainer proceeding and an unlimited civil action concerning title to the subject property are simultaneously pending. As was clearly established in *Martin-Bragg,* in such instances, "the trial court in which the unlimited action is pending may stay the unlawful detainer action until the issue of title is resolved in the unlimited action, or it may consolidate the actions." *(Ibid.*)

Defendants Mitchell Homer Osborn and Mitchell J. Osborn concede that the court has the authority to consolidate the two cases in which title to the property commonly

known as 33024 Black Mountain Road, Tollhouse, California 93667 is at issue. Defendants urge the court to exercise its discretion and deny the motion to consolidate on the basis that plaintiffs' claim to ownership has no merit. The court does not intend to allow a motion to consolidate to become a contested evidentiary hearing as to the merits of each parties' claims regarding title of the property.

To allow the trial of the unlawful detainer to go forward and potentially evict plaintiffs while their own action regarding ownership of the property is still pending is illustrative why the two actions *must* be consolidated. Should Plaintiffs' action succeed in establishing their ownership rights to the property defendants' eviction action would be defeated. Thus, the cases are ordered consolidated for all purposes and the trial date for case number 23CECL08578 is vacated.

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 12/19/2023.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Novella v. Hultquist***
Superior Court Case No. 19CECG00947

Hearing Date: December 21, 2023 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minors

Tentative Ruling:

To grant. Proposed Orders to be signed. No appearances necessary.

The court sets a status conference on Wednesday, March 20, 2024, at 3:30 p.m. in Department 501 for confirmation of creation of the accounts for each minor under the California Uniform Transfers to Minors Act (CUTMA) 529 Plan. If Petitioner files proof of this at least five court days before the hearing, the status conference will come off calendar.

Explanation:

The court approves the request to allow the minors' net settlements to be deposited into CUTMA accounts. Pursuant to Probate Code section 3612, subdivision (a), the court's jurisdiction over the property which is the subject of an order under section 3611, continues "until the minor reaches 18 years of age." Thus, while some CUTMA accounts can be created to last until age 21 or 25 (see Prob. Code, § 3920.5), this does not apply when the account is created under Probate Code section 3611. Therefore, the court has added language to the Orders to specify that each minor's account will terminate when the minor attains age 18.

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 12/19/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Cardamon v. The Dominion Courtyard Villas et al.***
Superior Court Case No. 16CECG01918

Hearing Date: December 21, 2023 (Dept. 501)

Motion: by Plaintiffs for Award of Attorney Fees

Tentative Ruling:

To grant and award $2,167,500 in attorney fees in favor of plaintiffs Terese Cardamon and Nicholas Cardamon.

Explanation:

Plaintiffs Terese Cardamon and Nicholas Cardamon (together "Plaintiffs") seek an order awarding attorney fees in connection with the settlement of the above matter. Defendants The Dominion Courtyard Villas, Scott Ellis Enterprises LLC, Scott Ellis Enterprises LP, Barcelona Apartments, Casa Del Rio Apartments, Dartmouth Tower Apartments, Oxford Park Apartments, Reef Apartments, Scottsmen Apartments, Scottsmen Too Apartments, and Villa Faria Apartments (collectively "Defendants") object to the hourly rates sought, and some of the basis of the lodestar sought.

Lodestar

A court assessing attorney fees begins with a touchstone or lodestar figure, based on the careful compilation of the time spent and the reasonable hourly compensation of each attorney involved. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) The lodestar is calculated using the reasonable rate for comparable legal services in the local community for noncontingent litigation of the same type, multiplied by the reasonable number of hours spent on the case. (*Id.* at p. 1133.)

The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The rate is measured in the market place, and reflects several 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. (*Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002.) However, the court is not limited to the use of local hourly rates. (*Nichols v. Taft* (2007) 155 Cal.App.4th 1233, 1243.) Where there is reasonable necessity for out-of-town counsel based on a good faith effort to find a local counsel, the adequate compensation may be adjusted. (*Id. citing Horsford v. Bd. of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 398-399.)

Here, Plaintiffs assert the following hourly rates as reasonable: $550 for attorney Tyler Lester ("Lester"); $760 for attorney David Doyle ("Doyle"); $925 for attorney Mark Schallert ("Schallert"); $225 for paralegal Jennifer Kalt ("Kalt"); and $175 for paralegal Leia Montgomery ("Montgomery"). Though Plaintiffs submit the declaration of Michael

Hensley as an expert regarding legal fees, the court is independently well positioned to evaluate the reasonableness of legal fees in the community.[1]

This case originated through local counsel. Both Doyle and Lester are attorneys located and practicing in Fresno County. Their rates are facially demonstrative of rates in the local community. However, as counsel for Defendants notes, their rates are higher than the rates of the local bar. The court will nevertheless accept the rates of Doyle and Lester as reasonable, subject to review of their corresponding time entries. The time entries must be commensurate to Doyle's 40 years of experience and level of skill, including in class actions such as the present matter, to command an hourly rate of $760. Likewise, the time entries by Lester must reflect his 12 years of experience in the related issues of this case.

Plaintiffs further submit Schallert's rate of $900 as reasonable for the San Francisco area, where Schallert practices.[2] Defendants oppose, citing the presence of local appellate counsel. Plaintiffs submit that Schallert became involved when they contemplated appellate work, and sought Schallert's expertise. Plaintiffs argue on reply that no local counsel would be willing to take an appeal on contingency, and submit a supplemental declaration from Nicholas J.P. Wagner in support. Wagner's declaration on reply is generally inappropriate as it provides no opportunity to be opposed. The court finds that there is insufficient evidence to demonstrate a good faith effort to find local counsel. As with Doyle and Lester, the court will accept the proffered "local" rate of $795 and credit only those time entries that reflect Schallert's 40 years of experience and expertise.

No specific arguments were made in opposition to the hourly rates of Kalt or Montgomery. The court approves their rates at $225 and $175, respectively.

Plaintiffs submit time entries in the following sums: 333.2 hours for Lester; 1,428.70 hours for Doyle; approximately 1,150 hours for Schallert; 572.50 hours for Kalt; and 405.50 hours for Montgomery. In sum, Plaintiffs seek approval of 2,911.90 hours of attorney time and 978 hours of paralegal time, a combined total of 3,889.90 hours. Based on these hours, Plaintiffs seek to set the lodestar at $2,389,854.25.

After a substantial review of the entirety of the nearly 4,000 hours of time entries, the court sets the lodestar at $1,275,000.00. As Defendants argue, there are a significant amount of duplicative entries for work involving more than one attorney. (*E.g.*, Lester Decl., Ex. 1, p. 1 [multiple entries regarding communications with Doyle regarding the case]; *compare* Doyle Decl., Ex. A, pp. 1-6 [capturing the same communications].) While it is reasonable for multiple attorneys to confer and strategize, it is inappropriate to bill for the session more than once. The court credits these conflicts to the attorney with the higher billing rate. However, the quantity of conference between multiple attorneys is staggering. (*E.g.*, Doyle Decl., Ex. A, pp. 25-30 [capturing often daily conferences with co-counsel], 77 [billing for a telephone call with Lester, and then billing for a telephone call with Schallert about the telephone call with Lester].) Though Schallert described

[1] The court does not consider the opinions offered by Michael Hensley. The court issues no rulings on the objections to the declaration of Michael Hensley, as the declaration was not considered.
[2] Plaintiffs initially sought a rate of $925. On reply, Schallert reduced the rate to $900.

Doyle as the "institutional knowledge" holder of the case, no further insight was provided as to why so many meetings were necessary so often throughout the entire history of the case, even after counsel became oriented to the case. (*E.g.*, Doyle Decl., Ex. A, pp. 64-67.) Additionally, for the reasons stated above regarding hourly rates, the court does not credit any entry regarding generic legal research. (*E.g.*, Doyle Decl., Ex. A, p. 8 [legal research regarding joint enterprises and alter egos], 12 [legal research regarding class certification], 18 [generic entry of a telephone call and "legal research"], 24 [research regarding injunctive relief], 37 [research regarding the 5-year litigation rule], 77 [research regarding Code of Civil Procedure section 998 offers]; Lester Decl., Ex. 1, p. 2 [research regarding class actions in general and in the context of security deposits], 5 [research regarding 998 offers in class actions]; Schallert Decl., Ex. 8, p. 9 [research regarding California complex litigation standards and guides regarding the need for a trial plan].) Further, the court does not credit entries between attorneys showing duplicative work. (*E.g.*, Doyle Decl., Ex. A, pp. 17-18 [preparing an opposition to a summary judgment motion]; *compare* Lester Decl., Ex. 1, pp. 2, 3.) The court does not credit entries that are completely undiscernible as to purpose. (*E.g.*, Doyle Decl., Ex. A, pp. 72, 73 ["Draft e-mail"; "Review e-mail."]) The court does not credit entries that are billed disproportionately with the description. (*E.g.*, Montgomery Decl., Ex. 1, p. 5 [7 hours for email correspondence].) All of Kalt's entries are block billed, shrouding the ability to discern the reasonableness of the time spent on the tasks described, which the court discounts. (*E.g.*, Kalt Decl., Ex. 1, p. 8 [entry for December 7, 2022, which includes unbillable training on software used for trial].) These examples are not exhaustive, and only exemplify entries that do not comport with a higher hourly rate or as reasonable time billed.

After careful consideration and based on the exemplar findings above, the court reduces Plaintiffs' proposed lodestar of $2,389,854.25 to $1,275,000.00, reflecting a 46.65 percent reduction across the entirety of the time submitted.[3] The lodestar is therefore set at $1,275,000.00.[4]

Lodestar Multiplier

As explained 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

[3] The court acknowledges Schallert's practices to write off time, particularly where a project runs a big bill, and the offers that certain time was intentionally not captured on the expectation that the hourly rates asserted would reflect those practices.

[4] Though Defendants submit that their defense of this action cost approximately $250,000 in comparison, Plaintiffs bore the burden of proving their case, and the burden on appeal.

> 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, 185 Cal.Rptr. 145.) 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 v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 49.)

Plaintiffs request a lodestar multiplier of at least 1.2, but estimate a reasonable multiplier to be between 1.25 and 1.75. Plaintiffs submit counsels' various declarations in support. Lester attested that the risk was great as the success of the case was subject to debate, and the risk of failure was borne over seven years of continuous representation. Lester submits that the results are outstanding as the class members will receive more than full restitution, and Defendants' practices will be brought into compliance with the law. Lester submits that the outcome was reached prior to trial based on the efforts of counsel involved. Defendants in opposition make no specific argument regarding a multiplier except to acknowledge the court's ability to apply a multiplier.

The court finds that a multiplier is warranted. As Plaintiffs submit, counsel bore significant risks taking this matter on contingency. The record reflects significant motion practice, and an appeal. The outcome is excellent. As Lester describes, the settlement will provide more than a full restitution to class members. Though the law affords the class a full restitution as a basis (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 745), counsel's efforts secured the full restitution without the need to take the matter to trial and without any discount to favor the settlement. Moreover, the fees of the litigation did not reduce the restitution to the class.

Based on the above, the court applies a multiplier of 1.7 to the lodestar. The court awards attorney fees in favor of Plaintiffs in the amount of $2,167,500.

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 12/20/2023.
(Judge's initials) (Date)