

Tentative Rulings for June 14, 2022
Department 502

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

20CECG01044 *Ferrua v. Campos Family Almonds, LLC* is continued to Wednesday, June 22, 2022, at 3:30 p.m. in Department 502

19CECG00845 *Ricardo Salcedo v. Porfirio Diaz Almonds, LLC* is continued to Tuesday, August 2, 2022, at 3:30 p.m. in Department 502

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Tentative Rulings for Department 502

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(17)

Tentative Ruling

Re: **River Park Properties II v. Kwatra**
Court Case No. 20CECG02239

Hearing Date: June 14, 2022 (Dept. 502)

Motion: Plaintiff's Motion for Attorney's Fees and Costs

Tentative Ruling:

To grant and award the sum of \$15,463.60 in attorney's fees and costs to plaintiff.

Explanation:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . ." (Code Civ. Proc., § 1021.) Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

Here, the lease agreement between the parties, attached as Exhibit 1 to the Complaint provides for attorney's fees:

18.16 Attorney Fees. If either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorney fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceedings.

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) If a party has an unqualified win, the trial court has no discretion to deny the party attorney fees as a prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

Plaintiff prevailed on the contract in an "unqualified win."

1. Amount of Fees

While defendant has not challenged the amount of fees to be awarded, the court may only award a reasonable fee. First, attorney's fees are costs, and, by statute, all costs must be reasonable in amount. (Code Civ. Proc., §§ 1032, 1033.5, subd. (c)(3).) Second, Civil Code section 1717 only provides for an award of "reasonable" attorney fees. (*Deane Gardenhome Assn. v. Denktas* (1993) 13 Cal.App.4th 1394, 1399.)

Accordingly, the court reviews the reasonableness of the fees requested.

The Lodestar

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, plaintiff seeks a loadstar of \$18,788.60.¹ 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.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) 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 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.)

Excessive Fees

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary . . ." (*Hensley v. Eckerhart, supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).) Here, four hours were billed to draft the five page complaint, which consists of a single cause of action for breach of contract. Review of the client's documents was separately billed on July 10, 2020 and July 27, 2020. Likewise, the motion for summary judgment based on the deemed admissions took 12 hours to draft. The instant motion for attorney's fees took four hours to prepare. The court has reviewed this work product. The documents are brief, simple, routine and substantially duplicative of counsel's work in the matters of *Campus Pointe Commercial, LP v. Kwatra*, Fresno Superior Court Case no. 20CECG02262 and *River Park Properties II v. Kwatra*, Fresno Superior Court Case no. 20CECG02263. The court therefore deducts 2.5 hours from the time spent drafting the complaint, 4 hours from the time drafting the motion for summary judgment, and 1 hour from the time preparing the motion for attorney's fees, for a total deduction of \$2,625 (7.5 hours at a rate of \$350 per hour.)

¹ This represents 53.5 hours of attorney time billed at \$350 per hour, plus fees of \$63.60 incurred after filing the Memorandum of Costs.

Clerical Tasks

Purely clerical or secretarial tasks should not be billed at a lawyer's usual rate. (*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.) Accordingly, the Court deducts 2 hours from the lodestar calculation for the time spent on October 16, 2021 to “[p]repare MSJ moving papers for e-filing and service.”

2. *Reasonable Hourly Compensation*

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

The hourly billing rate of \$350 for Gregory L. Altounian, an attorney with more than 30 years' experience in business litigation, is reasonable.

The court therefore awards attorney's fees and costs of \$15,463.60.

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: RTM on 6/10/2022.
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: **River Park Properties II v. Kwatra**
Court Case No. 20CECG02263

Hearing Date: June 14, 2022 (Dept. 502)

Motion: Plaintiff's Motion for Attorney's Fees and Costs

Tentative Ruling:

To grant and award the sum of \$16,268.60 in attorney's fees and costs to plaintiff.

Explanation:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . ." (Code Civ. Proc., § 1021.) Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

Here, the lease agreement between the parties, attached as Exhibit 1 to the Complaint provides for attorney's fees:

18.16 Attorney Fees. If either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorney fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceedings.

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) If a party has an unqualified win, the trial court has no discretion to deny the party attorney fees as a prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

Plaintiff prevailed on the contract in an "unqualified win."

3. *Amount of Fees*

While defendant has not challenged the amount of fees to be awarded, the court may only award a reasonable fee. First, attorney's fees are costs, and, by statute, all costs must be reasonable in amount. (Code Civ. Proc., §§ 1032, 1033.5, subd. (c)(3).) Second, Civil Code section 1717 only provides for an award of "reasonable" attorney fees. (*Deane Gardenhome Assn. v. Denktas* (1993) 13 Cal.App.4th 1394, 1399.)

Accordingly, the court reviews the reasonableness of the fees requested.

The Lodestar

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, plaintiff seeks a loadstar of \$19,593.60.² 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.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) 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 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.)

Excessive Fees

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary . . ." (*Hensley v. Eckerhart, supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).) Here, four hours were billed to draft the five page complaint, which consists of a single cause of action for breach of contract. Review of the client's documents was separately billed on July 10, 2020 and July 27, 2020. Likewise, the motion for summary judgment based on the deemed admissions took 10.8 hours to draft. The instant motion for attorney's fees took four hours to prepare. The court has reviewed this work product. The documents are brief, simple, routine and substantially duplicative of counsel's work in the matters of *River Park Properties II v. Kwatra*, Fresno Superior Court Case no. 20CECG02239 and *Campus Pointe Commercial, LP v. Kwatra*, Fresno Superior Court Case no. 20CECG02262. The court therefore deducts 2.5 hours from the time spent drafting the complaint, 4 hours from the time drafting the motion for summary judgment, and 1 hour from the time preparing the motion for attorney's fees, for a total deduction of \$2,625 (7.5 hours at a rate of \$350 per hour.)

² This represents 55.8 hours of attorney time billed at \$350 per hour, plus fees of \$63.60 incurred after filing the Memorandum of Costs.

Clerical Tasks

Purely clerical or secretarial tasks should not be billed at a lawyer's usual rate. (*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.) Accordingly, the Court deducts 2 hours from the lodestar calculation for the time spent on October 17, 2021 to “[p]repare MSJ moving papers for e-filing and service.”

4. Reasonable Hourly Compensation

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

The hourly billing rate of \$350 for Gregory L. Altounian, an attorney with more than 30 years' experience in business litigation, is reasonable.

The court therefore awards attorney's fees and costs of \$16,268.60.

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: RTM on 6/10/2022.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Boling Air Media, Inc. v. Panalpina, Inc.***
Superior Court Case No. 18CECG04534

Hearing Date: June 14, 2022 (Dept. 502)

Motion: Defendant Etchegoingberry Trucking's motion to strike plaintiff's first amended complaint, joined by defendant ZMac Transportation Solutions, LLC

Tentative Ruling:

To grant the motion to strike, without leave to amend. (Code Civ. Proc., §§ 435, 436.) Defendants Etchegoingberry Trucking and ZMac Transportation Solutions, LLC shall submit to the court orders of dismissal within five (5) days from service of this order.

Explanation:

"As a general rule, it is well-established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney." (*Caressa Camille v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101.) Accordingly, pleadings filed by a corporation without attorney representation are subject to a motion to strike. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1150.) Furthermore, an improperly filed complaint can be stricken at any time in the court's discretion. (Code Civ. Proc., § 436; *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 573.)

Plaintiff Boling Air Media is a corporation (see FAC, ¶ 1), yet, since September 2021, it has proceeded without counsel. (See Substitution of Counsel, filed Sept. 13, 2021.) Accordingly, the motion to strike by Etchegoingberry Trucking is granted. (Code of Civ. Proc., § 436 subd. (a); *Caressa Camille v. Alcoholic Beverage Control Appeals Bd.*, *supra*, 99 Cal.App.4th 1094, 1101.)

In addition, "[a] pleading may be stricken only upon terms the court deems proper, that is, terms that are just[.]" and leave to amend is generally permitted to allow an unrepresented corporation a "reasonable" amount of time to retain counsel. (*CLD Construction, Inc. v. City of San Ramon*, *supra*, 120 Cal.App.4th at pp. 1146-1147.) This motion has been pending since November, 2021 (over six months), but plaintiff has filed nothing to indicate that it is seeking representation or that it even intends to continue litigation. Consequently, granting leave to amend does not appear just or proper. Therefore, the motion to strike is granted.

Finally, defendant ZMac Transportation Solutions, LLC's notice of joinder in motion notes that its defenses are commensurate with those of Boling Air Media and that it joins

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Tentative Ruling

Re: **Lacome v. Martinez**
Superior Court Case No. 21CECG02914

Hearing Date: June 14, 2022 (Dept. 502)

Motion: Defendant Tabitha Loraine Lopez' Demurrer to the Complaint

Tentative Ruling:

To continue the motion to Tuesday, July 12, 2022, at 3:30 p.m. in Department 502, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendant shall call the court to take the motion off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before July 5, 2022, stating the efforts made.

Explanation:

Code of Civil Procedure section 435.5 makes it very clear that meet and confer must be conducted "in person or by telephone. (*Id.*, subd. (a).) Sending an email to plaintiff's counsel requesting a meet and confer session does not shift the burden for meeting and conferring to the plaintiff. Defense counsel apparently never even attempted a phone call, or attempted to set up a phone conference with plaintiff's office. The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) The evidence did not show a bad faith refusal to meet and confer on plaintiff's part that would excuse defendant from complying with the statute.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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: RTM on 6/13/2022.
(Judge's initials) (Date)