**Tentative Rulings for July 25, 2024**
**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)**

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**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.***

**23CECG02302** ***HP Trans, Inc. v. Garha Transport Inc.***

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

**21CECG01008** ***John Doe v. Clovis Unified School District*** **is continued to Tuesday, August 27, 2024, at 3:30 p.m. in Department 503**

**22CECG02501** ***Dr. Ian Johnson, M.D. v. Renaissance Surgery*** **the motions for summary judgment/adjudication are continued to Tuesday, August 27, 2024, at 3:30 p.m. in Department 503. The motion to seal set for September 24, 2024 will also be heard on August 27, 2024 at 3:30 p.m. in Department 503.**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 503

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(34)

**Tentative Ruling**

Re: ***Guzman v. General Motors, LLC***
Superior Court Case No. 22CECG04081

Hearing Date: July 25, 2024 (Dept. 503)

Motion: by Plaintiff for Attorney's Fees

**Tentative Ruling:**

To grant Plaintiff Dolores Guzman's motion for attorney's fees in the amount of $36,620. Payment shall be made by defendant to The Barry Law Firm within 30 days of the clerk's service of this minute order.

To defer ruling on plaintiff's motion for an award of cost and expenses reflected in the memorandum of costs served July 8, 2024. Defendant has filed a Motion to Strike Costs to be heard September 26, 2024.

**Explanation:**

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

*Calculating the Fees*

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48; *Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 817 [lodestar applies to Song-Beverly litigation].) Here, plaintiff seeks a lodestar of $51,402.50. The lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler*, *supra*, 22 Cal.4th at p. 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*

In awarding attorney's fees, the law requires the court to first determine the actual amount of time expended by counsel, then, second, to determine if that time and fee was reasonable. (*Nightingale v. Hyundai Motor America*, supra, 31 Cal.App.4th at p. 104.) Factors effecting reasonableness may include, "the complexity of the case and procedural demands, the skill exhibited and the results achieved." (*Ibid*.)

Here, plaintiffs' attorneys spent 85.0 hours on this case, including anticipated time to review defendant's opposition to this motion, prepare the reply and appear at the hearing.

The opposition challenges the majority of identified entries on the basis that plaintiff's attorneys have billed excessive time for tasks related to reviewing and drafting of discovery, and meet and confer correspondence based on the use of templates or other documents that do not vary from case to case.

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

The court has reviewed the billing entries challenged as "padded" or excessive based on the use of templates and similarity of cases between the two law firms and does not find the hours billed to be excessive. Many of the entries challenged are less than one hour, likely due to the ability to use templates and counsel's familiarity with the discovery ordinarily exchanged between their firm and defendant General Motors, LLC.

Defendant challenges the inclusion of hours billed for prelitigation client communications and research and multiple entries of time billed for communicating with the clients regarding the status of the case. Defendant has provided no authority for disallowing attorneys to bill time before the lawsuit is filed. Client status communications are both reasonable and necessary to the litigation. The court will not discount the challenged billing entries from the lodestar.

Defendant challenges the hours billed to communicate with the plaintiff as excessive, arguing many of the communications could have been performed in half the time. The court finds no reasonable basis for discounting hours attributed to client communication and will not discount the challenged entries.

Defendant identifies and challenges multiple entries of time it characterizes as clerical task that should not be billed by the attorney. The court has reviewed the challenged entries and disagrees with the characterization of an attorney reviewing the file to prepare for a particular appearance or memorializing the outcome of that appearance to be a clerical task. The court will not discount the entries.

The parties were ordered by the court to appear for a Pretrial Discovery Conference on September 8, 2023. Defendant challenges plaintiff's inclusion of travel time as a billable event. The court notes counsel for plaintiff did submit a request to appear remotely which was denied by the court. As a result, the travel was necessary to comply with the court's order and will not be discounted.

Defendant challenges 3.5 hours of time related to the preparation of the parties' Joint Stipulation re: Discovery. Defendant argues these hours should be discounted because counsel has reviewed GM's protective order dozens of times. This summary mischaracterizes the task billed which was drafting the stipulation reached following the parties' Pretrial Discovery Conference with the court on September 8, 2023. The court will not discount the challenged entries.

Time entries with respect to two separate motions are challenged by defendant. The first is a motion to compel the deposition of defendant's person most knowledgeable. The court's filed does not reflect such a motion being file or heard. As such, it does not appear that this time was reasonably necessary to conduct the litigation. The 6.5 hours billed by Mr. Lara for this motion will be discounted from the lodestar. The second motion challenged by defendant is a motion for sanctions related to GM's failure to comply with the parties' Joint Stipulation re: Discovery. The court finds the preparation of the motion, although ultimately not heard, was necessary to the conduct of the litigation and the hours will not be discounted.

Defendant also challenges hours billed related to the deposition of defendant's person most knowledgeable arguing counsel should not be able to bill for an unnecessary motion to compel and for review of a file he is familiar with. In reviewing the challenged entries for November 16-17, 2023 the court notes these hours were billed to prepare for (2.0 hours) and appear at the deposition of defendant's person most knowledgeable (2.5 hours). It appears defendant is mischaracterizing the time entries. No discount to the lodestar will be taken for those hours attributed to this deposition.

Defendant challenges time entries for the preparation of trial documents on January 17, 2024 on the basis that the documents themselves do not vary from case to case and that plaintiff accepted GM's 998 Offer only days after these documents were prepared. The court has reviewed the challenged entries and finds the hours were reasonable.

Defendant argues the hours billed related to the May 1, 2024 Order to Show Cause hearing set by the court following the filing of the Notice of Settlement of the case. Defendant argues the appearance was necessitated by plaintiffs' delay in filing their fee motion. The court has reviewed the challenged entries and finds that the hours were reasonable.

As a final category of billing entries challenged are those related to the preparation and hearing of the motion at bench. This argument is not supported by case law that specifically allows the prevailing party to include fees related to the attorney fee award. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133-1134.)

*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 rates for out-of-town counsel are generally higher than Central California's going rates for comparable consumer litigators. Plaintiffs' counsel are out of Los Angeles. The rates charged by the attorney within The Barry Law Firm range from $675 billed by David N. Barry, Esq. to $350 for newer associate Richard Lara, Esq. The majority of hours billed to the case were from Mr. Lara.

Where a party is seeking out-of-town rates, he or she is required to make a "sufficient showing…that hiring local counsel was impractical." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) Plaintiffs have made a sufficient showing that local counsel practicing "Lemon Law" and Song-Beverly consumer litigation are not available.

On the whole, hourly rates of the attorneys within The Barry Law Firm reflect only a modest increase from those of the local plaintiffs' bar. The rates appear reasonable and will not be reduced.

<u>*Costs*</u>

A verified memorandum of costs generally satisfies the moving party's burden of establishing that costs were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) "If the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131; see also *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699; *Wilson v. Nichols* (1942) 55 Cal.App.2d 678, 682-683.)

Defendant has filed a separate motion to strike costs which is set to be heard on September 26, 2024. (Cal. Rules of Court, rule 3.1700.) Accordingly, the court will defer awarding costs until the motion to strike costs is heard.

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: jyh on 7/22/24.**
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***Moralez v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 23CECG05231

Hearing Date: July 9, 2024 (Dept. 503)

Motion: Motions by Defendants ASFC, LLC, doing business as Sierra Vista Healthcare, and Aspen Skilled Healthcare, Inc. to Compel Initial Responses to Form Interrogatories, Special Interrogatories, and Demand for Production of Documents and Things (all Set One), and for an Order Establishing Admissions as to Plaintiff Kaelyn Moralez and as to Plaintiff Kaelyn Moralez as Heir and Successor-in-Interest to Yolanda Moralez, and Request for Monetary Sanctions

**Tentative Ruling:**

To grant all motions. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280.) Within 20 days of service of the order by the clerk, plaintiff Kaelyn Moralez as heir and successor-in-interest to Yolanda Moralez, shall serve objection-free responses to Form Interrogatories, Set One, and Request for Production of Documents, Set One, and produce all responsive documents. The matters specified in defendants' Requests for Admissions, Set One are deemed admitted, unless plaintiff serves, before the hearing, a proposed response to each set of the requests for admissions that are in substantial compliance with Code of Civil Procedure section 2033.220.

To grant monetary sanctions against plaintiff Kaelyn Moralez in the amount of $1,755.00, payable within 20 calendar days from the date of service of the minute order by the clerk.

**Explanation:**

Defendants ASFC, LLC, doing business as Sierra Vista Healthcare, and Aspen Skilled Healthcare, Inc., propounded *identical* sets of discovery (including the 131 special interrogatories) on plaintiff Kaelyn Moralez individually, and on plaintiff Kaelyn Moralez as heir and successor-in-interest to Yolanda Moralez. Plaintiff has failed to timely respond to this discovery. All that needs to be established to support an order compelling initial responses to discovery is to show that the discovery was properly served, and that no responses were received by the due date. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and "work product" protection. (Code Civ. Proc., §§ 2030.290, Subd. (a) [interrogatories] and 2031.300, Subd. (a) [document demands]; see *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906.)

As for requests for admissions, the court must grant a motion to establish admissions "unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for

admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc., § 2033.280, subd. (c).) "If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion . . . . Everything, in short, depends on submitting responses prior to the hearing." (*Demyer v. Costa Mesa Mobile Homes Estates* (1995) 36 Cal. App. 4th 393, 395-396, disapproved on another point in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973.) No evidence has been submitted that plaintiff has served code-compliant responses to the two sets of requests for admissions served on her.

Therefore, all motions will be granted. However, the discovery at issue here was duplicative; it was served on plaintiff in her dual capacities as an individual (for the wrongful death cause of action) and as successor in interest to her now-deceased mother (as to the remaining causes of action). None of the discovery was tailored to any differences between plaintiff's two capacities, but instead were completely identical, and because of this, could be called confusing.[1]

While defendants are allowed to propound duplicative discovery, the court is not required to double the sanctions for these efforts. Thus, this impacts the court's consideration of defendants' request for monetary sanctions. The court may refuse to issue monetary sanctions if it finds there are circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, Subd. (c) [Interrogatories], 2031.300, Subd. (c) [Document demands].) Here, it would be unjust to grant sanctions in the amount requested. Defendants filed motions concerning four types of identical discovery propounded on plaintiff in each of her two capacities in this action. They divided these into two motions (so four motions total), one regarding the form and special interrogatories and document demands, and the other regarding the requests for admissions. So the attorney work was in drafting four motions. They asked for sanctions for one hour of legal research for *each* of the four motions, and three hours to prepare *each* of the substantially identical four motions, plus time for appearance at the hearing, plus filing fees. The court will allow a total of five hours for preparing these substantially identical motions at counsel's stated hourly rate of $255/hour ($1,275.00) plus $480 for the motion fees paid, for a total of $1,755.00.

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: jyh on 7/24/24.**
(Judge's initials) (Date)

[1] The 131 special interrogatories directed to plaintiff as an individual, in particular, were confusing and are arguably irrelevant if taken at face value (despite counsel's "declaration of necessity pursuant to Code Civ. Proc., § 2030.050) since they are written as if plaintiff, individually, alleged *she* was the victim of elder abuse, when she alleged her mother was the victim. These were not tailored to ask about plaintiff's contentions regarding her individual, i.e., *wrongful death* damages. Alternately, if she regarded these (or had been instructed to regard these) as asking for answers about *her mother's* injuries and damages, they would be simply duplicative of the special interrogatories propounded on her as decedent's successor-in-interest.