

TENTATIVE RULINGS

FOR: May 2, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse) at 2:00 p.m.

Steven D Belmont v. Cynthia Y Hester, et al.

16CV001206

MOTION FOR RECONSIDERATION

TENTATIVE RULING:

Plaintiff Steven Belmont’s motion for reconsideration of the February 9, 2018 Order sustaining the demurrer without leave to amend as to the second amended complaint is DENIED. Judgment was entered on February 9, 2018. “It is well settled that entry of judgment divests the trial court of authority to rule on a motion for reconsideration.” (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) Because judgment was entered, the Court lacks jurisdiction to rule on Belmont’s motion for reconsideration or to reconsider its prior ruling. (See *APRI Ins. Co. v. Super. Ct.* (1999) 76 Cal.App.4th 176, 181 [explaining that a court lacks jurisdiction to rule on a motion for reconsideration after final judgment is entered in a case, even if the motion was filed before entry of judgment].)

Even if the Court had jurisdiction, the motion is untimely. “Motions for reconsideration are regulated by [Code of Civil Procedure] section 1008, subdivision (a), which requires that any such motion be (1) filed within 10 days after service upon the party of written notice of entry of the order of which reconsideration is sought” (*Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 885.) The Court issued its order on February 9, 2018. Notice of the order and judgment was sent to Belmont via mail on February 22, 2018. Belmont filed his motion on March 26, 2018, which is well after the 10 day limit permitted under the statute.

An OSC re: dismissal is set for May 31, 2018, at 2 p.m. in Dept. C.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

In The Matter of The Bernice Bettencourt Revocable Trust

18PR000078

VERIFIED PETITION FOR ORDER CONFIRMING TRUST ASSETS TO REVOCABLE TRUST (PROBATE CODE SECTION 850(a)(3))

TENTATIVE RULING: The Petition is GRANTED as prayed.

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In The Matter of the Andrew J. Lipnosky Irrevocable Trust

26-59329

PETITION FOR ORDER APPROVING SEVENTH ACCOUNT AND SIXTH REPORT OF TRUSTEES, APPROVING BENEFICIARY DISTRIBUTIONS, APPROVING PAYMENT OF ATTORNEY FEES, APPROVING TRUSTEES' FEES AND AUTHORIZING PAYMENT OF TRUSTEES' FEES (Trust B)

TENTATIVE RULING: The Petition is GRANTED as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Carolyn Butler v. Mercedes-Benz USA, LLC

26-67605

MOTION FOR PAYMENT OF ATTORNEY'S FEES AND REIMBURSEMENT OF COSTS AND EXPENSES

TENTATIVE RULING:

Plaintiff Carolyn Butler moves for payment of attorney's fees in the amount of \$38,251.85, including a .3 lodestar multiplier of \$8,827.35, and reimbursement of costs and expenses in the amount of \$1,929.90.¹ Butler is the prevailing party pursuant to the April 11, 2017 settlement agreement. (Wager Decl., ¶¶ 38-39, Ex. S, ¶ 3.) The only issue is the reasonableness of the fees and costs requested under the lodestar. Courts use the lodestar method for determining the amount of attorney's fees to be awarded to the prevailing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32.) The lodestar is arrived at by multiplying the number of hours reasonably expended by counsel, times a reasonable hourly rate. (*Id.*)

¹ The notice of motion is silent as to the amount Butler seeks. The information was obtained from the bottom of page 3 of the memorandum of points and authorities and exhibit B to Wager's declaration. Moreover, multiple hourly rates are listed in the supporting declaration. The Court used the highest rate provided.

Butler presents evidence that \$655 per hour for attorney Brian Bickel, \$515 per hour for attorney Erika Kavicky, \$325 per hour for attorney Kyle Fellenz, \$485 per hour for attorney Isaac Agyeman, \$425 per hour for attorney Jordan Wager, \$425 per hour for attorney C. Brian Wagner, \$285 per hour for attorney Marisa Mittelman, \$305 per hour for attorney Alexandra Byler, and \$195 per hour for paralegals are reasonable rates for the individuals who worked on this matter.² (Wager Decl., ¶ 43, Ex. B [hourly rates and hours worked by attorney and staff member].) Butler also contacted attorneys working on Song-Beverly cases regarding their hourly rates: \$675 in San Francisco County, \$650 in Los Angeles County, \$475-\$620 in San Diego County, \$600-\$650 in Orange County, \$505 in Santa Cruz County, and \$650 in Santa Clara County. (*Id.*, ¶ 46.)

Notably absent are reasonable rates in Napa County or from its surrounding counties. Butler instead focuses on the high rate legal markets in the San Francisco Bay Area, the Los Angeles area, and San Diego. As a result, the claimed rates are grossly over-inflated compared to rates seen in the Napa geographical area and legal community. The Court, therefore, reduces each claimed rate by 50% for the following hourly rates: \$327.50 Bickel, \$257.50 Kavicky, \$162.50 Fellenz, \$242.50 Agyeman, \$212.50 Wager, \$212.50 Wagner, \$142.50 Mittelman, \$152.50 Byler, and \$97.50 paralegals. These are reasonable rates in Napa County, and indeed, the rates could have been reduced further.

Butler also submits evidence regarding the number of hours reasonably expended by the attorneys and paralegals. (*Id.*, ¶ 4, Exs. A [billing records], B [hourly rates and hours worked by attorney and staff member].) Butler proposes the following hours for its attorneys and paralegals: .4 Bickel, 8.4 Kavicky, 26.1 Fellenz, 10.6 Agyeman, 29.1 Wager, 1.0 Wagner, .2 Mittelman, .1 Byler, and 11.1 paralegals. Despite defendant Mercedes-Benz USA, LLC's arguments to the contrary, the Court finds the hours worked, including those incurred for this motion, except for the anticipated hours, were reasonably related to this action.

Since the Court does not award fees for anticipated time, Wager's 15 hours of anticipated time reviewing the opposition, preparing the reply, and attending the hearing is not appropriate. (*Id.*, ¶ 52, Ex. A.) Wager's total time awardable time is 14.1 hours. The Court will not award any fee for attorney John Solis' .5 hours of work as Butler did not provide any evidence to support his hourly rate.

Applying the lodestar to the reasonable hourly rates and hours worked, the following fees are reasonable: \$131 Bickel ($\$327.50 \times .4$), \$2,163 Kavicky ($\257.50×8.4), \$4,241.25 Fellenz ($\162.50×26.1), \$2,570.50 Agyeman ($\242.50×10.6), \$2,996.25 Wager ($\212.50×14.1), \$212.50 Wagner ($\212.50×1.0), \$28.50 Mittelman ($\$142.50 \times .2$), \$15.25 Byler ($\$152.50 \times .1$), and \$1,082.25 paralegals ($\97.50×11.1). This amount represents \$13,440.50 in attorney's fees.

This case does not warrant a multiplier. The costs appear reasonable.

² Butler includes \$125 per hour for legal assistants, but no legal assistants worked on this matter. (*Id.*, ¶ 43, Ex. B.)

Butler's motion for an award of attorney's fees, costs, and expenses is GRANTED IN PART in the amount of \$15,370.40. This amount represents \$13,440.50 in attorney's fees and \$1,929.90 in costs.