Tentative Rulings for June 25, 2024
Department 5

To request oral argument, you must notify Judicial Secretary Charmaine Ligon at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 5 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number:

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252, 1 (669) 216-1590, 1 (551) 285-1373, or 1 (646) 828-7666
- Meeting Number: 161 782 8254

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2304310	DUNCAN vs AMERICAN HONDA MOTOR CO., INC.	Motion for Attorney's Fees by CHRISTOPHER DUANE DUNCAN

Tentative Ruling: Granted in the reduced but reasonable amount of $15,310 and costs in the amount of $719.44 for a total of $16,029.44.

Factual and procedural background: Plaintiff filed the instant lawsuit on 8/9/23, alleging standard Song-Beverly claims against American Honda Motor Co., Inc. (Honda). Plaintiff served the Complaint on Honda on 10/24/23. Honda filed its Answer on 11/21/23. On 4/10/24, Plaintiff accepted a settlement of $13,000 of Plaintiff's claims with Plaintiff retaining possession of the vehicle. The settlement agreement provided that the parties were unable to agree upon Plaintiff's attorney fees and costs, the issue would be submitted to the Court on noticed motion.

Plaintiff asks the Court to award him attorney's fees of $19,563.50 and costs of $719.44. Defendants oppose the motion, contending the fees are excessive and Plaintiff's Lodestar is not justified by the results. It argues that fees by counsel have been deemed excessive by other courts. It contends that time spend on basic discovery, client communication, administrative works are duplicative entries are not recoverable. A Reply was filed and has been considered.

Legal authorities and analysis: Pursuant to Civil Codes §1794(d), "[i]f the buyer prevails in an action under [the Song-Beverly Act], the buyer 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." In the present case, there is no dispute that Plaintiffs are the prevailing parties in this action and is entitled to reasonable attorney fees and costs. Thus, the only question to be determined by this motion is the amount of the award.

The California Supreme Court has indicated that attorney fee awards "should be fully compensatory." (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1133.) Thus, in the absence of "circumstances rendering an award unjust, an attorney fee award should ordinarily include compensation for all of the hours reasonably spent, including those relating solely to the fee." (Id.) However, "[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (Serrano v. Unruh (1982) 32 Cal.3d 621, 635.)

The matter of reasonableness of a party's attorney fees is within the sound discretion of the trial court. (Bruckman v. Parliament Escrow Co. (1989) 190 Cal.App.3d 1051, 1062.) Fee motions should ordinarily be based upon detailed time records. (Crespin v. Shewry (2004) 125 Cal.App.4th 259, 271.) The records should detail crucial information as the types of issues involved, services performed, numbers of hours, billing rates, etc. (Martino v. Denevi (1986) 182 Cal.App.3d 553, 559.) In determining the reasonable amount of attorney fees, the court first determines a lodestar figure (time reasonably spent by each biller multiplied by an hourly rate that is reasonable for each biller). (Serrano, supra, at 48.) In exercising its discretion, the Court may consider all of the facts and the entire procedural history of the case in setting the amount of a reasonable attorney fee award. (Bernardi v. County of Monterey (2008) 167 Cal.App.4th 1379, 139.) In PLCM Grp. V. Drexler, (2000) 22 Cal.4th 1084, 1096, the court described the factors to be considered in determining the reasonableness of a party's attorney fees include the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given and the success or failure]. The court does not need expert testimony to determine the reasonable amount of a fee award. (PLCM Grp., supra, at 1095.)

In the present case, Plaintiff's counsel's billing records indicate a lodestar figure of $19,563.50 and costs of $719.44. (Decl. of Michael Saeedian at ¶ 32-33, Ex. A.) According to the billing records, the firm billed 38.3 hours using four attorneys at hourly rates of $350, $525, and $695.

The hourly rates of Michael Saeedian ($695), Adina Ostoia ($695) and Christopher Urner ($525) do not appear to be reasonable for Riverside County, especially for a simple lemon law case. “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” (Martino, supra, 182 Cal.App.3d at 559; see also Raining Data Corp. v. Barrenechea (2009) 175 Cal.App.4th 1363, 1375–76.) The court is then entitled to make its own evaluation of the reasonable worth of the work done in light of the nature of the case and the credibility of counsel’s declaration, unsubstantiated by time records and billing statements. (Weber v. Langholz (1995) 39 Cal.App.4th 1578, 1587.)

The rates of $695 and $525 are excessive for Riverside County. Thus, rates are reduced to the reasonable amount of Saeedian’s and Ostoia rates to $500 and Urner’s rate to $400 per hour. Defendant also challenges the billing rate of Mr. Acosta at $350 an hour, the rate is reasonable. As Saeedian billed 7.9 and Ostoia billed 10.9 hours at an hourly rate of $695, and Urner billed 4.7 hours at $525, applying the $500 and $400 rates to their billed hours results in a reduction of $4,253.50 from the lodestar identified by Plaintiff.

Additionally, Defendant challenges a few specific entries as prelitigation, administrative and/or block billing. These entries appear reasonable.

As to costs, Plaintiff claims she is entitled to $719.44, and Defendant does not challenge any of these costs. Plaintiff submitted a memorandum of costs to show the costs were actually incurred and reasonable. “If the items on a verified cost bill appear proper charges, they are prima facie evidence that the costs, expenses and services therein listed were necessarily incurred. Where the items are properly objected to, they are put in issue, and the burden of proof is upon the party claiming them as costs.” (Levy v. Toyota Motor Sales, U.S.A., Inc. (1992) 4 Cal.App.4th 807, 816.) These costs requested in Plaintiff’s memorandum of costs appear to be proper. Defendant did not raise any objections; Plaintiff is awarded $719.44 in costs.

2.

CVRI2305964	HICKS vs COUNTY OF RIVERSIDE	Motion for Change of Venue by WILL HICKS, JR.

Tentative Ruling: Denied.

Factual and procedural background: On 11/7/23, Plaintiff, in pro per, filed a Complaint for Damages Due to Gross Negligence and Breach of Legislative Statutory Duty" against Defendant, County of Riverside, erroneously named and served as County of Riverside Tax Assessor' s Office the "County"). On 1/25/24, Defendant filed a demurrer to the Complaint, and on 3/4/24, the Court sustained the demurrer with leave to amend. On 3/25/24, Plaintiff filed a First Amended Complaint (FAC") asserting causes of action for (1) breach of contract and statutory duty; (2) gross negligence; (3) unfair business practices; and (4) constructive fraud. The FAC alleges that the County improperly reassessed the property located at 850 North Florida Street, Banning, California, previously owned by his mother and now owned by him, and negligently, and in violation of statute, took a reassessed tax payment in the amount of $6,200 from him and refused to return it. (FAC at ¶¶ 6-18.) On 4/25/24, Defendant filed a demurrer to the FAC. On 5/29/24, the Court sustained the demurrer to the cause of action for unfair business practices without leave to amend and sustained the demurrer to the remaining causes of action with leave to amend.

Plaintiff now moves to change the venue of this action pursuant to CCP § 394. Plaintiff argues that because the Defendant is the County, and the Court is part of the County, the case should be transferred to a court in a neighboring county to promote impartiality and avoid the appearance of collusion. In opposition, the County argues that a request for a change of venue must be made in a reasonable time, but instead, Plaintiff waited to file the motion until he received an adverse decision on the County’s demurrer. The County also argues that Plaintiff has presented nothing

to support his claim that the Court favors the County because of its "close relationship," and nothing to support a change of venue.

Legal authorities and analysis: CCP § 394 provides for removal of a case against a county, city, or local agency that is pending in a proper county, and thus it is not a venue statute. Its purpose is to avoid local prejudice by authorizing transfer to a neutral county (a county other than one in which either the plaintiff or the defendant resides). (Colusa Air Pollution Control Dist. v. Superior Court (1991) 226 Cal. App. 3d 880.) Transfer of the action to a neutral county in accordance with CCP § 394 is not required when the action is not "brought by" a county agency within the meaning of the statute. (Transamerica Homefirst, Inc. v. Superior Court (1999) 69 Cal. App. 4th 577.) The section was it was not intended to give the right to a change from a neutral county to another neutral county for no other reason than a party's demand; and if so construed it would be unconstitutional as opposed to former Cal Const Art IV (see now Cal Const Art II § 11). Stockton v. Wilson (1926) 79 Cal. App. 422; Fitzpatrick v. Sonoma County (1929) 97 Cal. App. 588.) Additionally, the section does not give individual who sues county the absolute right to file and retain his action in a "neutral" county, but merely says that defendant county may move action to "neutral" county and is construed as a removal statute which applies only when action has been brought and is pending in a proper court. Still the moving party on such a request must provide that he cannot receive a fair trial in the county in which the action is originally filed. (Skidmore v. County of Solano (1954) 128 Cal. App. 2d 391.)

The burden is on the moving party to establish whatever facts are needed to justify transfer. (Mission Imports, Inc. v. Superior Court (1982) 31 Cal.3d 921, 929; Los Angeles v. Pac. Tel. & Tel. Co. (1958) 164 Cal.App.2d 253, 260.) Plaintiff's moving document specifically claims there is collusion between the Court and the County and that the two have a close relationship. He describes collusion as "when two or more parties secretly agree to defraud a third-party of their legal rights or accomplish an illegal objective." (Motion, Page 3, lines 1 – 2.) Plaintiff has provided no evidence of collusion, impartiality on the part of the Court, or other reason to show good cause for a change of venue. Plaintiff initiated this case in Riverside County. It has only been after Plaintiff received an unfavorable ruling on the demurrer, that he is now seeking to remove the case from the County.

Additionally, although not specifically requested, Plaintiff is also not entitled to a discretionary transfer pursuant to C§ 397. According to CCP § 397, "the court may, on motion, change the place of trial … [w]hen there is reason to believe that an impartial trial cannot be had therein." (CCP § 397(b).) As stated above, while Plaintiff argues that the close relationship between the County and the Court creates as appearance of collusion, he provides no evidence that the Court lacks impartiality. The burden is on the moving party to establish whatever facts are needed to justify transfer. Normally this requires declarations containing admissible evidence. (Mission Imports, supra, 31 Cal.3d at 929.) Plaintiff fails to provide any evidence justifying transfer under § 397.

3.

CVRI2400080	SONNENBERG vs CLOVERLEAF ENTERPRISES, INC.	Petition to Compel Arbitration and for Stay by CLOVERLEAF ENTERPRISES, INC.

Tentative Ruling: The unopposed motion is granted and the case stayed pending completion of arbitration.