

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 10, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 23CV01557, Pioneer Apartments, LP v. Santiago

Defendant Sandra Santiago’s unopposed motion to set aside the default judgment entered against her is **CONTINUED** to July 31, 2024, at 3:00 P.M. in Department 17.

C.C.P. section 473(b) allows the court to relieve a party from judgment entered against that party due to that party’s mistake, inadvertence, surprise, or excusable neglect. The application must be

made no more than six months after the entry of judgment and shall be filed with a copy of the proposed answer or other pleading the moving party seeks to file. (C.C.P. § 473(b).)

Although Plaintiff Pioneer Apartments, LP, filed a notice of non-opposition to the motion and the Court finds good reason to grant the motion, Defendant did not submit a proposed answer with her application for the Court to consider. If Defendant corrects the defect prior to the next hearing date, the Court is likely to grant the motion. Otherwise, the Court will deny the motion for not complying with the procedure as required per C.C.P. section 473(b).

2. 24FL01055, Petition of Goulding

APPEARANCES REQUIRED.

3. SCV-267181, Anabi Oil Corporation, a California corporation v. Petersen

APPEARANCES REQUIRED. Plaintiff Anabi Oil Corporation moves for a hearing regarding the remaining issues post settlement. The Court entered an order on May 15, 2024, outlining the enforcement order for the parties' settlement. On June 14, 2024, the Court noted in its order regarding matters under submission that the only item remaining to be addressed is the issue of rent. The Court set evidentiary hearings on July 9 and 10 to hear testimony and rule on the matter. The Court orders the parties to appear and provide testimony regarding rent.

4. SCV-270482, Barton v. General Motors LLC

Plaintiff Barton moves for attorneys' fees in the total amount of \$147,967.50 for attorney fees per Civil Code section 1794(d). The motion is **GRANTED** for the reduced amount of \$82,000.00.

PROCEDURAL HISTORY

Plaintiff filed this action against GM asserting three causes of action under the Song-Beverly Act regarding a vehicle Plaintiff bought from GM. Ultimately, the parties settled their claims. Plaintiff filed two memorandum of costs to support their motion for fees after the settlement. GM requested the Court to strike or tax a majority of the costs requested by Wirtz Law. The Court entered an order striking a portion of the fees and costs requested in counsel Wirtz Law's memorandum of costs so that the total award of costs was \$8,816.22. Plaintiff now brings this motion for attorney's fees for representation by Plaintiff's two counsels, Wirtz Law ("WL") and Quill and Arrow LLP ("QA"). GM opposes the motion.

EVIDENTIARY OBJECTIONS

The Court rules as follows to Plaintiff's objection to the Declaration of Kyle Roybal:

1. Objection to Paragraph 4 as inadmissible hearsay, argumentative, inadmissible opinion, lacking foundation, and irrelevant is **OVERRULED**.
2. Objection to Paragraph 5 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
3. Objection to Paragraph 6 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
4. Objection to Paragraph 8 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
5. Objection to Paragraph 9 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
6. Objection to Paragraph 15 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
7. Objection to Paragraph 21 as in inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **SUSTAINED**.
8. Objection to Paragraph 22 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **OVERRULED**.
9. Objection to Paragraph 23 as inadmissible hearsay, inadmissible opinion, lacking foundation, and irrelevant is **OVERRULED**.

ANALYSIS

Legal Standard

Under Code of Civil Procedure section 1032, attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10)(B).) In general, the “prevailing party” is entitled as a matter of right to recover costs of suit in any action or proceeding. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.)

The Song-Beverly Act allows for additional recovery by a buyer who prevails in an action per Civil Code section 1794(d), for reasonably incurred costs including attorney’s fees based on actual time expended expenses and other costs in connection with the commencement and prosecution of such action.

Moving Papers

Plaintiff broke down the fees incurred for each counsel in the motion.

Plaintiff incurred \$21,600.00 for QA’s legal representation. QA requests approval of rates of \$500.00 for managing attorney and \$350 to \$425 for associate attorneys.

Plaintiff incurred \$77,045.00 for WL’s legal representation. WL’s fees are broken down based on various attorney, paralegal, and “non-attorney” rates on page 16 of Exhibit 1 to the Declaration of Richard Wirtz. WL requests approval of an increased rate of \$750.00 for the managing attorney, \$550.00 for senior attorneys, \$450.00 for associate attorneys, and \$250.00 to \$300.00 for paralegal rates.

Counsels also request a multiplier of 1.5 to the lodestar fees requested so that the total attorney’s fees amount requested is \$147,967.50.

GM argues that Counsel’s work in the matter warrants a fee award of only one quarter of the \$147,967.50 requested. GM argues that the billing was excessive and requests that the multiplier be denied because this is a routine Song-Beverly matter of many that counsels work on regularly.

Application

Based on the moving papers, the Court finds Plaintiff is entitled to attorney’s fees per Civil Code section 1794(d). The Court finds the hours worked by counsels to be reasonable, with multiple attorneys assisting at the two separate firms. The Court will reduce WL’s rates to the amounts reasonable in the local area. As WL did not sufficiently show that Plaintiff attempted to find local counsel, but were unsuccessful, the Court will not award rates acceptable in the Los Angeles area. The Court will award QA’s requested rates as reasonable per local standards. The Court also does not find that a multiplier of 1.5 is warranted in this matter as counsel has not shown sufficient justification for the enhancement.

Accordingly, the Court will award fees as follows:

<i>Name</i>	<i>Position & Experience</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Fees</i>
Wirtz Law				
Alana Mellgren	Associate Attorney	12.9	350.00	\$4,515.00
Amy Rotman	Senior Attorney	18.1	450.00	\$8,145.00
Jessica Underwood	Senior Attorney	50.6	450.00	\$22,770.00
Richard Wirtz	Managing Attorney	37.1	550.00	\$20,405.00
Rebecca Evans	Managing Paralegal	3.8	250.00	\$950.00
Florence Goldson	Senior Paralegal	2.3	250.00	\$575.00
Andrea Lizarraga	Paralegal	4.0	200.00	\$800.00
Amanda Vitanatchi	Paralegal	11.2	200.00	\$2,240.00
			TOTAL WL:	\$60,400.00
			TOTAL QA:	\$21,600.00
			TOTAL FEES:	\$82,000.00

CONCLUSION

Based on the foregoing, Plaintiff’s motion for attorneys’ fees is **GRANTED** in the amount of \$82,000.00. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. SCV-272115, Jane Doe K.D. v. Cotati-Rohnert Park Unified School District, a public entity

Counsel Babak Shirdel and Slater, Slater, Schulman, LLP’s unopposed motion to be relieved as counsel for Jane Doe K.D. is **GRANTED**, per Code of Civil Procedure section 284(2).

Counsel declares that it has been unreasonably difficult to carry out Plaintiff's representation due to breakdown in attorney-client relationship. (Counsel Declaration, ¶ 2.) Counsel served the papers at Plaintiff's last known address but has not been able to confirm by investigative databases or telephone if this remains Plaintiff's current address. (*Id.* at ¶ 3.) Counsel timely served notice of this motion to all parties. (Proof of Service dated May 7, 2024.) The next item scheduled in this matter is a case management conference on July 25, 2024. The Court will sign counsel's proposed order unless oral argument is requested.

6. SCV-273607, Mendoza-Lopez v. Filice

Defendants Ariana Lucia Filice, Charles Filice, and Vanessa Lind's motion for order compelling Plaintiffs Mendoza-Lopez and Saavedra-Aguilera's depositions is **DENIED as moot** because Plaintiffs' depositions already took place on June 26. However, requested sanctions are awarded in the amount of \$1,310.00 as it was only after four months of defense counsel's efforts to schedule the depositions and the filing of this motion that Plaintiffs agreed to a deposition date.

Defendants' unopposed motion to continue trial is **GRANTED**. The motion was made on the grounds that Plaintiffs' depositions were not taken despite over four months of attempts to schedule them with Plaintiffs objecting without offering alternate dates. Though the parties resolved the issues because the depositions already took place, Defendants argue that additional discovery is necessary after Plaintiffs depositions. As this is the first request by any party to continue trial and it does not appear to the Court that any party will be prejudiced by continuing the trial date, the Court will grant the unopposed motion to continue trial per California Rules of Court, rule 3.1337.

The trial date currently set for September 13, 2024, is hereby **VACATED**. A new trial date is now set for February 28, 2025, at 8:30 a.m. in Dept. 17.

Moving party shall submit a written order to the Court consistent with this tentative ruling on the two motions and in compliance with Rule of Court 3.1312(a) and (b).

7. SCV-273614, Filipiak v. Genesis Motor America LLC, a California Limited Liability Company

Plaintiff Filipiak moves for attorneys' fees in the total amount of \$48,063.52 for attorney fees per Civil Code section 1794(d). The motion is **GRANTED** for the reduced amount of \$24,300 plus costs of \$573.52.

PROCEDURAL HISTORY

Plaintiff filed this action against Genesis Motor America LLC ("Genesis") asserting breach of warranty under the Song-Beverly Act regarding a vehicle Plaintiff bought from Genesis. Ultimately, the parties settled their claims on February 1, 2024. The parties agreed as part of

their settlement that Plaintiff's attorney's fees would be decided by noticed motion. Plaintiff, as the prevailing party, now brings this motion for attorney's fees. Genesis opposes the motion.

ANALYSIS

Legal Standard

Under Code of Civil Procedure section 1032, attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10)(B).) In general, the "prevailing party" is entitled as a matter of right to recover costs of suit in any action or proceeding. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.)

The Song-Beverly Act allows for additional recovery by a buyer who prevails in an action per Civil Code section 1794(d), for reasonably incurred costs including attorney's fees based on actual time expended expenses and other costs in connection with the commencement and prosecution of such action.

Moving Papers

Plaintiff argues that he incurred \$29,160.00 in fees legal representation and \$573.52 in costs. Plaintiff requests an approval of a total of 48.6 hours of worked. Counsel is requesting an hourly rate of \$600 per hour for two attorneys that have 15 and 16 years of experience, respectively. Counsel has been previously rates of \$500 and \$550 in other matters in Sonoma County.

Counsels also request a multiplier of 1.5 to the lodestar fees requested so that the total attorney's fees amount requested is \$43,740. They represented their client on a contingent basis.

Genesis argues that Plaintiff has already obtained the relief demanded under the Song-Beverly Consumer Warranty Act, so Plaintiff's attorney's fees should be reduced significantly to only 28.9 hours of legal representation and a maximum rate of \$375 per hour. Genesis argues that a multiplier should not be applied.

Application

Based on the moving papers, the Court finds Plaintiff is entitled to costs and attorney's fees per Civil Code section 1794(d). The Court finds the hours worked by counsels to be reasonable. The Court will reduce counsels' requested rates to the amounts reasonable in the local area. The Court also does not find that a multiplier of 1.5 is warranted in this matter as counsel has not shown sufficient justification for the enhancement. As such, the Court will award fees in the amount of \$24,300 at a rate of \$500 per hour plus costs of \$573.52.

CONCLUSION

Based on the foregoing, Plaintiff's motion for attorneys' fees is **GRANTED** for the total amount of \$24,300 plus costs of \$573.52. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).