TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, July 10, 2024 at 3:00 p.m.
Courtroom 18 –Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom**. Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV02437, VOMR, Inc. v. Doss

Defendants' unopposed motion for change of venue to Humbolt County is GRANTED. Defendants' request for judicial notice is GRANTED. Defendants' request for attorney's fees is GRANTED in the amount of $3,385. Counsel for Defendants shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

When a party contends that an action has been brought in the wrong court, *i.e.*, that venue is not proper in the court in which the action has been brought, the party may move to transfer venue to a proper court. (CCP § 396b(a).) If a party timely brings such a motion, the court must transfer the action if it finds that the court is not a proper court. (CCP §§ 396b(a), 397(a).) Importantly, the burden is on the moving party to show that venue is not proper in the county where the action was filed and that venue is proper in

the county to which defendant wishes to transfer the action. (*Mission Imports, Inc. v. Sup. Ct*. (1982) 31 Cal.3d 921, 929.) "When several causes of action are alleged in a complaint, a motion for change of venue must be granted on all causes if defendant is entitled to a change on any one." (*Johnson v. Superior Ct. of Fresno Cnty.* (1965) 232 Cal.App.2d 212, 217.)

The county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. (CCP § 395(a); see *Brown v. Sup.Ct. (C.C. Myers, Inc.)* (1984) 37 Cal. 3d 477, 483.) Actions against corporations are triable in the county where it has its principal place of business, where the contract was made or to be performed (whether specified in writing or not), or where the obligation or liability arose or the breach occurred. (CCP § 395.5.) In actions such as this that allege a cause of action for breach of contract, such actions are triable in the county where defendant resides OR where the contract was entered into OR where it was to be performed (if specified in writing). (CCP § 395(a).) "County where contract entered into" means the place where the acceptance occurred (e.g., where it was mailed, or where words of acceptance spoken). (See *Wilson v. Scannavino* (1958) 159 Cal. App. 2d 369, 370–371.)

Here, the facts alleged in the Complaint make it clear that this matter should have been filed in Humbolt County. As alleged in the Complaint, Defendant Ming Tree, Inc. has its principal place of business in Humbolt County and the two individual defendants reside in Humbolt County. (Complaint, ¶¶ 2-4.) Though the Complaint generally alleges in paragraph 8 that the contract was entered into in Sonoma County, there are no facts alleged to support this. Rather, Defendants have submitted evidence that the contract was entered into in Eureka, California, which is in Humbolt County. As further alleged in the complaint, the contract involved taking over Ming Tree, Inc.'s business (the principal place of business of which is in Humbolt County) and the leases of Ming Tree's offices, which are also alleged to be in Humbolt County (Eureka and Fortuna). There are no facts alleged in the Complaint that would indicate that venue would be at all appropriate in this county. The only fact alleged relating to Sonoma County is that there was a non-compete provision providing that Defendants would not compete in nearby counties, including Sonoma, Mendocino, Napa, and Lake. This fact surely does not support the allegation that the contract was entered into in Sonoma County. Plaintiff has also failed to oppose this motion, so Plaintiff has failed to refute the evidence presented by Defendants that shows venue is proper in Humbolt County.

Attorney's Fees:

CCP § 396b(b) provides, "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action." "In determining whether that order for expenses and fees shall be made, the court shall take into consideration":

(1) whether an offer to stipulate to change of venue was reasonably made and rejected, and

(2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known.

"As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party."

This Court finds that Defendant's counsel made a reasonable offer to stipulate and granted Plaintiff's counsel sufficient time to respond, but Plaintiff's counsel refused to stipulate. The Court also finds that if Plaintiff's counsel did not know that selecting Sonoma County as the venue for this action was improper, Plaintiff's counsel should have known. In fact, the facts alleged by Plaintiff in the Complaint clearly demonstrate that venue is appropriate in Humbolt County. For these reasons, the Court finds it proper to order Plaintiff's counsel to pay Defendants' reasonable expenses incurred in having to make this motion.

Defendants' requests $4,750 for 10 hours of time at a rate of $475. The 10 hours of time was calculated anticipating time to respond to Plaintiff's opposition. However, Plaintiff did not file an opposition. As such, the Court will grant fees for the amount of time actually incurred on preparing the motion and attempting to meet and confer. Accordingly, Plaintiff's counsel shall pay Defendants $3,385 for 7 hours at $475 per hour ($3,325) plus $60 in costs incurred.

2. MSC-192506, Romano v. Golden State Lumber

Defendant's unopposed Anti-SLAPP motion is DENIED. Defendant's request for judicial notice is GRANTED. Due to the lack of opposition, the Court's minute order shall constitute the order of the Court.

The Court notes that the reply brief references an opposing brief, but there has been no opposing brief filed with the Court. Nonetheless, as explained in detail below, Defendant did not meet its burden of showing that the action arises out of protected activity.

I. Background

On January 17, 2023, Defendant Golden State Lumber filed a limited jurisdiction collections action in this Court against its customer Generator Joe, Inc. and its personal guarantor, Joseph Romano, (MCV-260730) due to an unpaid credit account balance. Defendant's complaint includes a mechanics lien foreclosure cause of action against Generator Joe, Inc.'s property. Generator Joe, Inc. did not file an answer to the complaint. However, Plaintiff Joseph Romano subsequently filed the instant small claims action on March 2, 2023. The small claims action was transferred to this court, but was not consolidated with MCV-260730.

Defendant Golden State Lumber, Inc. herein alleges that the small claims action was filed in retaliation for Golden State not abandoning its collections action and not abandoning its mechanics lien rights and remedies. Defendant contends that its lawsuit, service of preliminary notices in relation to the mechanics lien, and ultimate recordation of the mechanics lien is protected activity; thus, the entire small claims action should be stricken.

II. Analysis

A. Burdens on an Anti-SLAPP Motion

CCP § 425.16(b)(1) provides that a cause of action against a person "arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue" shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. CCP § 425.16(e)(1) defines the foregoing phrase to include "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (CCP § 425.16(b)(2).)

A defendant has the initial burden to make a prima facie showing that the complaint "arises from" her exercise of free speech or petition rights. (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61; *Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449 at 458-59.) "At the first step of the analysis, the defendant must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection. (See § 425.16, subd. (e).) And comparing that protected activity against the complaint, it must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887.) If defendant meets that initial burden, the burden shifts to the plaintiff to establish a "probability" that he will prevail on the claims which are based on protected activity. (CCP § 425.16(b).)

To establish a "probability" of prevailing on the merits, the plaintiff must demonstrate that the claim is both legally sufficient and supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navelier v. Sletten* (2002) 29 Cal.4th 82, 89.) The court does not weigh credibility or comparative strength of the evidence in making this summary judgment-like determination. (*See, e.g. Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) But to demonstrate a probability of prevailing on the merits, the plaintiff must produce

admissible evidence sufficient to overcome any privilege or defense that the defendant has asserted to the claim. (*See, e.g. Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.) In making its determination, the Court considers the pleadings, as well as supporting and opposing affidavits. (CCP § 425.16(b).) The court considers defendant's evidence only to determine if it defeats plaintiff's showing *as a matter of law.* (*Soukup v. Law Offices of Herbert Hafif*, *supra*, at 291.) The court must accept as true the evidence favorable to plaintiff. (*Ibid.)*

B. Defendant Has Not Met Its Burden to Show that Plaintiff's Allegations Arise Out of Protected Activity

"The defendant's burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity." (*Bonni v. St. Joseph Health Sys.* (2021) 11 Cal. 5th 995, 1009.) "'[T]he statutory phrase 'cause of action ... arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech.'" (*CKE Restaurants, Inc. v. Moore* (2008) 159 Cal.App.4th 262, 269–70. Italics in original.) "'In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech.'" (*Ibid*. Italics in original.)

Here, Plaintiff's allegations are as follows:

> Plaintiff ordered approx [sic] $38,000 in lumber which was specificed [sic] by Plaintiff to be redwood construction heart. Defendant delivered a large load of material, but not all that was ordered, and on inspection Plaintiff discovered that the lumber delivered did not meet the specifications of material ordered. Plaintiff contacted Defendant and Defendantgs [sic] management employee agree [sic] to take the materiasl [sic] back without charge. Defendant later claimed material was missing and demanded restocking fees and other charges. Plaintiff demanded labor reimbursemen [sic]" [The allegations end here.]

Though Defendant claims that Plaintiff's small claim action arises out of activity protected by the litigation privilege, none of the allegations raised by Plaintiff involve protected activity. Defendant fails to identify which allegations implicate such protected activity. Plaintiff does not complain of Defendant's act of filing its own complaint nor of Defendant's acts in pursuing the mechanics lien. The mere timing of the filing of the small claims action alone is not sufficient to show that the complaint arises out of protected activity without more. The simple raising of counter allegations of breach is not sufficient to show that the claims arise out of protected activity. Furthermore, though defendant has submitted evidence that Plaintiff demanded in an email that the preliminary notice be dropped to avoid legal challenge, this does not show that this small claims action arose out of protected activity because Plaintiff

does not challenge the preliminary notice. The allegations raised by Plaintiff solely involve the underlying dispute and do not challenge Defendant's legal actions.

The cases cited by Defendant are inapposite. For example, in *CKE Restaurants, Inc. v. Moore* (2008) 159 Cal.App.4th 262, which involved a declaratory relief action seeking determination regarding compliance with Proposition 65, "CKE's action arose *entirely* from the filing of the Proposition 65 notice." (*Id*. at 271. Italics in original.) "'…[W]ithout the Notice, there would have been no actual, present controversy, and no controversy at all.'" That is not the case here as there does exist a controversy without Defendant's complaint and mechanic's lien and Plaintiff's small claims action makes no mention of either. The case of *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, involved statements made in anticipation of a lawsuit. Defendant has not identified any statements or writing made by it that Plaintiff challenges in this small claims action. The case of *Comstock v. Aber* (2012) 212 Cal.App.4th 931, involved the question of whether statements made to an HR manager could be considered statements made in anticipation of litigation. There are no similarities between the facts of that case and the facts of the present case.

While Defendant argues that the "gravamen" of Plaintiff's small claims action is that "Golden State never should have made demands on Generator Joe Inc. to satisfy its outstanding credit account balance" and that Plaintiff filed this action only after Defendant sued to foreclose on its mechanics lien, the California Supreme Court has "rejected the 'gravamen' approach in evaluating anti-SLAPP motions directed to an entire cause of action or complaint, holding that each allegation of protected activity must be evaluated separately." (Weil & Brown*, Cal. Prac. Guide Civ. Pro. Before Trial*, § 7:775 (2024); see also *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1010-1011.) If the Court were to adopt the "gravamen" approach, it would "risk saddling courts with an obligation to settle intractable, almost metaphysical problems about the 'essence' of a cause of action that encompasses multiple claims. (*Id.* at 1011.) Plaintiff has made no allegations of protected activity.

Since Defendant has failed to show that any of Plaintiff's claims arise out of protected activity, the Court need not move on to the second prong of its analysis to determine whether Plaintiff's claims have a likelihood of success on the merits.

3. MCV-231357, Unifund v. Hagstrom

Judgment Creditor, Unifund CCR, LLC's, unopposed Application for Order of Sale of Dwelling is GRANTED. Judgment Debtor, Steve E. Hagstrom, has failed to show cause why the property should not be sold to satisfy the judgment. A homestead declaration has not been recorded by Judgment Debtor. By failing to oppose the application and failing to respond to the Court's order to show cause, Judgment

Debtor has failed to meet his burden of showing that the homestead exemption applies here. (CCP § 704.780.) There is no evidence of any other exemption being applicable here. The property shall be sold in the manner provided in Article 6 (commencing with Section 701.510) of Chapter 3 of the Code of Civil Procedure, as required by CCP § 704.780.

Judgment Creditor shall submit a written order consistent with this tentative ruling. The proposed order currently lodged with the Court does not conform with the Court's ruling. It does not reference the correct hearing date. It refers to the Judgement Debtor as "Adam Seller" on the first page. Also, it states that no minimum bid shall be required, but this does not comply with CCP § 701.620, which states property shall not be sold without a minimum bid. Judgment Creditor shall submit a written order that complies with all of the requirements of Article 6 of Chapter 3 and of Article 4 of Chapter 4.

4. 23CV00186, Jooblay, Inc. v. Steven D. Skolnik

The Court awards Defendant $5,545 in fees and costs. Defendant's counsel shall prepare a written order consistent with this tentative ruling in compliance with California Rules of Court, rule 3.1312.

I. Background

On August 29, 2023, Plaintiff filed this action for (inter alia) wrongful foreclosure and quiet title. The subject properties are 1551 Laguna Road, Santa Rosa, and 9579 Ross Station Road, Sebastopol. On September 26, 2023, Plaintiff recorded Notices of Pending Action ("lis pendens") on both properties. The notices were filed with the Court on April 16, 2024. On the same day, Pacific Private Money ("Defendant") moved to expunge the lis pendens on the Laguna Road property only (the "Motion"). The Motion included a request for attorney's fees, but did not specify an amount.

On May 28, 2024, Plaintiff filed a different lawsuit, *Jooblay, Inc. v. Sanchez* (24CV03100), concerning the same two properties. The *Sanchez* complaint alleges causes of action that fundamentally duplicate six of the causes of action in the instant case, though against slightly different sets of defendants. The duplicated causes of action include two for quiet title, one related to the Ross Station property and the other to the Laguna property. On June 13, Plaintiff filed a Request for Dismissal in the instant case, dismissing the causes of action that had been duplicated in the *Sanchez* complaint, including the two quiet title claims. In summary, Plaintiff moved several causes of action, including two for quiet title, from the instant case into a different lawsuit. Thus, the instant case no longer has a quiet title component.

Plaintiff withdrew the lis pendens on the Laguna Road property on June 3. Plaintiff recorded a new lis pendens on the Laguna Road property, relating to the *Sanchez* matter, on or about June 6.

At the June 14 hearing, the Court denied the Motion as moot. Defendant argued that the motion is not moot because it is entitled to attorney's fees. The Court continued the matter and instructed Defendant to submit an itemization of its fees and costs. Defendant did so on June 24. This matter comes on calendar for consideration of Defendant's requests for fees and costs.

II. Analysis

CCP § 761.010(b) requires that "[i]mmediately upon commencement of [a quiet title] action, the plaintiff shall file a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located."

The complaints in both the instant case and *Sanchez* allege causes of action for quiet title. In the instant case, Plaintiff recorded a lis pendens just under a month after filing the complaint. In the *Sanchez* case, Plaintiff recorded it slightly over a week after filing the complaint. Both timeframes somewhat stretch the definition of "immediately," but the point is that Plaintiff was required to record the lis pendens in both cases. Plaintiff withdrew the lis pendens in the instant case ten days before dismissing the two quiet-title cause of action that had required it. In other words, as relevant here, Plaintiff has filed a lawsuit containing quiet-title allegations, recorded a lis pendens as required by statute, moved the quiet-title allegations to a different lawsuit, withdrawn the lis pendens in the first lawsuit because it was no longer required by statute, and recorded it in the second one because it *was* required by statute.

The party prevailing on any motion to expunge a lis pendens is entitled to "the reasonable attorney's fees and costs of making or opposing the motion." (CCP § 405.38.) If the Court had granted Defendant's motion and ordered Plaintiff to withdraw the lis pendens, there would be no question that Defendant was the prevailing party and entitled to attorney's fees. But the Court did not do that; the Court denied Defendant's Motion as moot because the lis pendens addressed by the Motion had already been withdrawn. The question, then, is whether Defendant is still the prevailing party.

Plaintiff argues that Defendant is not, noting that "California law defines the 'prevailing party' to include 'the party with a net recovery' or 'a defendant in whose favor a dismissal is entered.'" (Oppo at p. 6.) Plaintiff cites for this proposition to CCP § 1032(a)(4), which does begin with the passage Plaintiff quoted, but goes on to add that "[i]f any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not . . . ." Thus, CCP § 1032(a)(4), as applied to the situation presented here, simply says that the court has the discretion to determine which party is "prevailing," but provides no guidance on how to make that determination.

Significant guidance is provided by *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, which addresses this exact issue. *Castro* rejects any inflexible rule that the moving party either is or is not

entitled to attorney's fees when a lis pendens is withdrawn before the court has an opportunity to rule on a motion to expunge it. Instead, *Castro* calls for a "practical approach," under which "the trial court has the discretion to award attorney fees based on a determination of which party would have prevailed on the motion, and whether the lis pendens claimant acted with substantial justification in withdrawing the lis pendens, or whether, in light of all of the circumstances, the imposition of fees would otherwise be unjust." (*Id.* at pp. 1024-1025.)

A. Defendant would have prevailed on the Motion.

In the Motion, Defendant sets forth a variety of reasons why it should prevail. The reasons fall into two categories: procedural defects, and reasons Plaintiff cannot establish a likelihood of prevailing on a real property claim. (CCP § 405.32 [lis pendens to be expunged if claimant does not establish probable validity of claim].)

In the first category, Defendant notes that the recording, service, and filing of the lis pendens failed to comply with statutory requirements. First, Defendant points out that the lis pendens bears the wrong caption in that it lists only Defendant, Pacific Private Money, as a defendant in the pending action, whereas the complaint in the instant case lists a number of other defendants. The Court does not find this point significant standing alone, in light of the fact that the actual complaint, with its full caption, was attached to the Notice of Pending Action. Defendant's second point in this category is that the lis pendens was not served on Defendant, and that it should have been because Defendant is "affected by the real property claim." (CCP § 405.22.) (Defendant also argues that the lis pendens was not filed with the Court, but in fact it was, on April 16, 2022, the same day the Motion was filed.)

In the second category, Defendant makes a series of arguments as to the prospective failure of every cause of action in the complaint. In light of Plaintiff's contention that its only reason for filing the lis pendens was to comply with a statutory requirement related to quiet-title actions, the most relevant cause of action is the eighth, the one to quiet title on the Laguna property. That cause of action states that the defendants against whom it is alleged have no interest in the Laguna Road property. Defendant argues that this claim will fail for two reasons: first, because it rests on the allegation that the loan upon which the defendants foreclosed was usurious, which is not a valid argument because Defendant is a licensed broker and therefore exempt from the usury laws (Fin. Code § 22002); and second, because Plaintiff cannot contest the foreclosure because he failed to tender the payment due (*Daniels v. Select Portfolio Servicing* (2016) 246 Cal.App.4th 1150, 1184-1185).

Plaintiff did not address any of these arguments in its opposition to the Motion; it rested on the point that the motion was moot because Plaintiff had withdrawn the lis pendens. Nor does Plaintiff address them in its opposition to the instant fee motion, with the exception of Plaintiff's explanation that

the quiet-title causes of action in the complaint are not alleged against Defendant. Plaintiff's point, presumably, is that Defendant is not "affected by the real property claim" and therefore service on Defendant was not required. (CCP § 405.22.) That argument would carry a great deal more weight if Defendant Pacific Private Money were not the only party mentioned in the caption of the lis pendens document. The fact that Plaintiff named Pacific Private Money, and no other defendant, in the caption of the Notice of Pending Action is at odds with the notion that Plaintiff did not consider Pacific Private Money to be sufficiently "affected by the real property claim" to require the lis pendens document to be served on them.

"[T]he court shall order that the [lis pendens] notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." (CCP § 405.32.) In light of Plaintiff's failure to address Defendant's contentions about why the claim will fail, the Court finds that Plaintiff has not established validity. Therefore, the court finds that Defendant would have prevailed on the Motion if it had gone forward.

B. Substantial justification

Plaintiff asserts that it,

> "acted in substantial justification in withdrawing the Laguna Road Property lis pendens when Plaintiff elected, as is its right, to voluntarily dismiss its causes of action for quiet title. Upon deciding to dismiss the quiet title causes of action – the only cause of action requiring the recording of a lis pendens, Plaintiff adopted the only practical approach to the dismissal by withdrawing the lis pendens no longer required because the quiet title cause of action are no longer part of this case. Plaintiff acted with substantial justification in withdrawing the lis pendens."

(Oppo at p. 6.) That is, Plaintiff argues that withdrawing the lis pendens that had been recorded in the instant case was justified and necessary and done in good faith because there ceased to be any need for it once the quiet-title causes of action were dismissed.

The Court acknowledges that Plaintiff had the legal right remove several causes of action from the instant case and re-allege them in a new case. The Court also acknowledges that when Plaintiff did that, withdrawing the lis pendens he had filed in the instant case was the right thing to do. However, Plaintiff never addresses the question of *why* he filed the new case. It is not at all obvious why the same thing could not have been accomplished more straightforwardly, without the need for a new $435 first-paper filing fee and without exposing Plaintiff to an additional case's worth of discovery demands, by moving to file a First Amended Complaint in the case at bar. Plaintiff cannot have reasonably been concerned that the Court would deny such a motion at this early stage of the proceedings.

What *is* obvious is that by taking the action it did, Plaintiff created a basis to oppose the Motion, which had been filed six weeks before Plaintiff filed *Sanchez* and which was set for hearing two weeks later, as moot. Whether or not that was Plaintiff's motivation for filing the new case and dismissing the corresponding causes of action in the instant one, the Court finds that doing so does not rise to substantial justification for withdrawing the lis pendens.

Accordingly, Defendant is the "prevailing party" under the *Castro* analysis described above.

C. Imposition of the fees is not unjust

The Court sees no reason to conclude that imposition of attorney's fees would be unjust, and will therefore impose them.

III. Computation of the fee award

The standard for calculating attorney fee awards under California law "ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate . . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, supra,* 22 Cal.4th at p. 1095.) "The general rule is '[t]he relevant "community" is that where the court is located,' unless the party claiming fees demonstrates that hiring local counsel was impracticable or local counsel was not available." (*Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285-286; see also *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26,72 ["fee awards generally should be based on reasonable local hourly rates"]; *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 398-399 [different rule where plaintiff demonstrated inability to hire local counsel].)

"[T]he trial court has broad authority to determine the amount of a reasonable fee." (*PLCM Group, supra,* 22 Cal.4th at p. 1095.) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court." (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240.)

A. Defendant's request

In the Supplemental Declaration of Brianna Milligan accompanying the request for attorney's fees, Defendant requests fees as follows, as well as $60 for the filing fee for the Motion:

Jacoby Perez

Researching and evaluating grounds for Motion: 5 hours

Preparing and finalizing Motion: 5 hours

Reviewing and revising reply: 1.2 hours

Total: 11.2 hours @ $525/hour

Brianna Milligan

Reviewing opposition and preparing reply and declaration: 4.2 hours

Reviewing billing charges and preparing declaration re. fees: 1.5 hours

Preparing supplemental brief re. fees: 2 hours

Anticipated time at hearing: 1 hour

Total: 8.7 hours @ $455/hour

B. Defendant's arithmetic is in error

Defendant requests a total of $17,773.35 in fees and costs. That figure is the sum of $13,755.00 for Mr. Perez's time, $3,503.35 for 7.7 hours of Ms. Milligan's time attributable to preparing the Reply and the fee request, an additional $455 for Ms. Milligan's anticipated time at the hearing on the fee request, and the $60 filing fee. Those figures do add up to $17,773.35.

However, there are two problems with the calculation. The first is very small: 7.7 hours at $455/hour is $3,503.50, not $3,503.35. Thus, Defendant presumably intends to request a total of $3,958.50 for 8.7 hours of Ms. Milligan's time, not $3,958.35.

The second is considerably larger. Mr. Perez, according to Ms. Milligan's declaration, has "spent 5 hours researching and evaluating the grounds for the Motion to Expunge the Lis Pendens, and an additional 5 hours preparing and finalizing the Motion to Expunge the Lis Pendens. Mr. Perez also reviewed and revised Defendant's Reply Brief to Plaintiff's Opposition to the Motion to Expunge the Lis Pendens and spent 1.2 hours doing so." (Milligan Dec., ¶ 6.) That is a total of 11.2 hours. Mr. Perez's billing rate is $525/hour. (Milligan Dec., ¶ 7.) 11.2 hours at $525/hour is $5,880. It is not $13,755, the amount claimed for Mr. Perez's time. $13,775 divided by $525 is 26.2. The claimed amount, therefore, appears to be based on an additional 15 hours of Mr. Perez's time that are not accounted for in the declaration.

The Court will interpret Defendant's request as being for 11.2 hours of Mr. Perez's time at $525/hour ($5,880), 8.7 hours of Ms. Milligan's time at $455/hour ($3,958.50), and $60 in filing fees, for a total of $9,898.50.

D. Time

1. Motion to expunge

Defendant claims a total of 10 hours of Mr. Perez's time in connection with the researching and drafting the Motion. The memorandum of points and authority is detailed and fact-intensive, and includes extensive citation to authority. Its complexity is tied to the complexity of the complaint in this matter: it argues, inter alia, that Plaintiff is unlikely to succeed on eight separate causes of action. However, the Court notes that in his declaration accompanying the Reply, Mr. Perez declares that he spent only 6.5 hours on the motion: "2 hours doing preliminary research to form the basis for this expungement motion," and "4.5 hours preparing the motion to expunge." Mr. Perez was clearly referring to the motion itself, not to the reply memorandum, as he claims an additional 4.3 hours for that.

Ms. Milligan's declaration does not explain why Mr. Perez now appears to have spent 10 hours researching and drafting the motion. The Court will take Mr. Perez at his word, and award attorney's fees for 6.5 hours for preparing the Motion.

2. Reply

Defendant claims a total of 5.4 hours in connection with drafting the Reply: 4.2 hours of Ms. Milligan's time and 1.2 of Mr. Perez's. The Reply was a well-justified response to Plaintiff's contention that the Motion was moot. The Court finds the 4.2 hours claimed by Ms. Milligan for preparing the reply to be reasonable. However, the Court will not award the 1.2 hours for Mr. Perez's time on the reply because 4.2 hours should have been sufficient to prepare the memorandum and no review should have been necessary.

As noted above, Mr. Perez states in his declaration accompanying the Reply that he "spent 4.3 hours reviewing and researching Plaintiff's Opposition and in preparing Defendant's Reply Brief and in making this Declaration." The Court finds the 4.3 hour figure unreasonable. The Opposition fundamentally says no more than that the motion is moot because the lis pendens was withdrawn; that takes no significant time to review. The declaration is one page long (exclusive of the jurat), much of which consists of the list of defendants; it also cannot have taken significant time. 4.3 hours is no less reasonable than the 4.2 hours claimed by Ms. Milligan for preparing the reply, but if Ms. Milligan spent 4.2 hours preparing it, it is unreasonable to award Mr. Perez an additional 4.3 hours for doing the same thing.

Accordingly, the Court will award attorney's fees for 4.2 hours of Ms. Milligan's time in connection with the reply.

3. Fee request

Defendant claims a total of 3.5 hours of Ms. Milligan's time in connection with the fee request, consisting of 1.5 hours for reviewing billing charges and preparing the declaration, and 2 hours for drafting the motion. The Court finds the 1.5 hour figure excessive. The Court again notes that Mr. Perez described the time he spent on the original motion in his declaration accompanying the reply; no further review was necessary to determine that figure. Ms. Milligan cannot reasonably have spent an hour and a half determining her own time in connection with the reply, and her time spent preparing the fee request cannot even have been entered into anything she could review while she was engaged in that exact task.

The Court will award 2.2 hours of attorney's fees in connection with the fee request, consisting of two hours to draft the memorandum and .2 hours to review billing records.

4. Anticipated time for hearing

The Court will not award attorney's fees for appearance at the hearing set for July 10 at this time. If the tentative ruling is contested and the hearing takes place, the Court will be amenable to a request to increase the fee award to cover the time spent by Defendant's counsel.

5. Total time

Thus, the Court will award attorney's fees for 6.5 hours of Mr. Perez's time and 6.4 hours of Ms. Milligan's time.

E. Hourly rates

As noted above, "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, supra,* 22 Cal.4th at p. 1095.) As noted above, the relevant "community" is the "forum district," here Sonoma county. (*Nishiki, supra,* 25 Cal.App.5th at p. 898.) Fees are limited to local hourly rates unless the party seeking fees has made a good-faith but unsuccessful effort to find local counsel. (*Horsford, sura,* 132 Cal.App.4th at pp. 398-399.)

Defendant's counsel is located in Irvine. Defendant has not suggested that it has attempted to hire local counsel instead. Therefore, the Court will adjust the hourly rates requested by counsel to reflect Sonoma County rates. Defendant has also not provided any information about Mr. Perez's and Ms. Milligan's level of skill and experience or their positions within the firm, but the Court takes judicial notice that the State Bar website indicates that Mr. Perez has seven years' practice experience and Ms. Milligan has three. On that basis, the Court will set Mr. Perez's rate, based on the reasonable rates generally awarded to counsel of similar skill and experience in Sonoma County, to $450/hour, and Ms. Milligan's to $400/hour.

IV. Conclusion

The Court awards Defendant $5,545 in fees and costs, consisting of $2,925 for 6.5 hours of Mr. Perez's time at $450/hour, $2,560 for 6.4 hours of Ms. Milligan's time at $400/hour, and the $60 filing fee.

5. SCV-265779, Bright v. Sutter Bay Hospitals

The parties are ordered to appear. As noted in the Court's June 20 order, Plaintiff's counsel should be prepared to explain to the Court their intention regarding the use at trial of any evidence of Dr. Wager's March and April examination of Plaintiff, including without restriction Dr. Wager's testimony or reports. Both parties should be prepared to discuss limitations on the length and scope of the proposed independent medical examination.

6. 24CV00705, Anthony v. Whitmire

The plaintiff called and informed the Court of a medical issue. The hearing on the Demurrer is CONTINUED to October 2, 2024, at 3:00 p.m.