

**Judge Mosbarger – Law & Motion – Wednesday, May 28, 2025 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV02114 BANEGAS, KIMBERLY V. WITTMEIER, INC ET AL

EVENT: Plaintiff's Motion for Attorney's Fees

Although the general rule is that the reasonable hourly rate is the prevailing rate for similar work in the community where the court is located, where local counsel was unavailable or hiring local counsel was impracticable, a trial court must consider out-of-area market rates in calculating the lodestar amount. *Caldera v. Department of Corrections & Rehabilitation* (2020) 48 Cal.App.5th 601, 605, 609-611 (Caldera); *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 608-609, 618-619 (Center for Biological Diversity); *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 397-399 (Horsford); see *Marshall v. Webster* (2020) 54 Cal.App.5th 275, 284-287; *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, 581-583; *Environmental Protection Information Center, supra*, 190 Cal.App.4th at p. 248. Here, the Court finds that Plaintiff has failed to provide any substantive argument or evidence that she made any attempt to determine whether qualified local counsel was unavailable to represent her in this action. Thus, the Court reduces the attorney fees requested by \$74,919.50, which represents the following reduction of the hourly rates:

<u>Timekeeper</u>	<u>Hours Billed</u>	<u>Hourly Rate</u>	<u>Reduced Hourly Rate</u>	<u>Amount Billed</u>	<u>Reduced Amount Billed</u>
Christopher P. Barry	39.6	\$715.00	\$475.00	\$28,314.00	\$18,810.00
Gregory T. Babbitt	2.2	\$635.00	\$425.00	\$1,397.00	\$850.00
Joseph Green	196.2	\$595.00	\$400.00	\$116,739.00	\$78,480.00
Robert Salgado	7.0	\$410.00	\$275.00	\$2,870.00	\$1,925.00
Michelle A. Cook	0.8	\$390.00	\$260.00	\$312.00	\$208.00
Carly Roman	50.5	\$370.00	\$245.00	\$18,685.00	\$12,299.00
Karla Gasca	121.0	\$295.00	\$195.00	\$35,695.00	\$23,595.00
Ashley Maxwell	9.4	\$285.00	\$190.00	\$2,679.00	\$1,786.00
Ahmed Yousef	21.7	\$280.00	\$185.00	\$6,076.00	\$500.00
Brandon Rodriguez	8.1	\$205.00	\$135.00	\$1,660.50	\$1,094.00
Laura Turner	0.6	\$195.00	\$130.00	\$117.00	\$78.00
Totals:	457.1			\$214,544.50	\$139,625.00

California courts have consistently held that detailed billing records are not strictly required to support an attorney's fee award. Instead, declarations or testimony from counsel regarding the hours worked and the nature of the services rendered can suffice. See, e.g., *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751 [the absence of time records and billing statements does not necessarily deprive the trial court of substantial evidence to support an award. Verified time statements of attorneys, as officers of the court, are entitled to credence unless there is a clear indication of error]; *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252 [an attorney's testimony regarding the number of hours worked is sufficient evidence to support a fee

award, even without detailed time records]; *Cruz v. Fusion Buffet, Inc.* (2020) 57 Cal.App.5th 221 [declarations of counsel setting forth the reasonable hourly rate, the number of hours worked, and the tasks performed may be sufficient evidence to support an attorney fee award]. The Court finds that the Declarations of Christopher Barry, Joseph S. Green, Karla Gasca, Gregory T. Babbitt, Michelle A. Cook, and Brandon Rodriguez sufficiently substantiate the requested fees.

While it is correct that “[w]hen a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action, such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not.” *Akins v. Enterprise Rent-A-Car Co. of San Francisco* (2000) 79 Cal.App.4th 1127, 1133 (internal citations omitted). Here, the Court finds that the issues relating to each of Plaintiff’s causes of action were so interrelated that it would have been impossible to separate them. As such, the requested reduction on this basis is denied.

The Court find that the eight factors relevant to determining the lodestar and either a positive or negative multiplier have not been established here and the requested multipliers (positive by Plaintiff and negative by Defendant) are denied. See, *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.

Based on the above, the Court awards attorney’s fees in the amount of \$139,625.00. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

2. 22CV02187 A, C V. COUNTY OF BUTTE

EVENT: Defendant County of Butte’s Motion to Seal its Motion for Summary Judgment, or in the Alternative, Summary Adjudication

The Motion is unopposed and is granted. The Court will sign the form of order submitted by counsel.

3-5. 23CV01130 NEHER, WYATT J V. ALAWAYS, GREG D ET AL

EVENTS: (1) Cross-Complainant’s Motion for Order that Matters in Request for Admissions be Deemed Admitted and Imposing Monetary Sanctions

(2) Cross-Complainant’s Motion for Imposing Issue and Terminating Sanctions Against Cross-Defendant Wyatt J. Neher for Failure to Obey Order Compelling Discovery Responses

Cross-Complainant’s Motion for Order that Matters in Request for Admissions be Deemed Admitted and Imposing Monetary Sanctions is unopposed and is granted. Sanctions are awarded against Cross-Defendant Wyatt J. Neher is the amount of

\$835.15. The Court will sign the form of order submitted by counsel with modification to the requested sanctions amount on page 4, Line 20.

Cross-Complainant's Motion for Imposing Issue and Terminating Sanctions Against Cross-Defendant Wyatt J. Neher for Failure to Obey Order Compelling Discovery Responses is unopposed and is granted in part. The Court finds that Cross-Defendant has failed to comply with this Court's March 12, 2025 Order and the Court orders that Cross-Defendant Wyatt J. Neher provide the previously ordered responses and payment of the previously issued sanctions no later than close of business on June 4, 2025. Cross-Complainant's request for further monetary sanctions is granted and the Court awards additional monetary sanctions to Cross-Complainant and against Cross-Defendant in the sum of \$985.15. However, the Court finds that there has been no showing of ongoing and willful disobedience of a Court's discovery order nor blatant and ongoing abuse of the discovery process that rises to the level of discovery abuse to support terminating sanctions. As such, terminating sanctions are not warranted on this record. See, *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093. Counsel for the Cross-Complainant shall prepare and submit a revised form of order consistent with this ruling within two weeks.

The Court continues the Case Management Conference to July 30, 2025 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.

6. 24CV02857 PLATTS, TOBIAS, II V. JOHNSON, MARK ET AL

EVENT: Demurrer to Complaint

As an initial matter, the Ninth Cause of Action for Violation of *Civil Code* §1942.4 was dismissed by the Plaintiff on May 13, 2025, so any argument in relation to the Ninth Cause of Action is moot and is overruled on that basis.

As to the Statute of Limitations, the relevant allegations in the Complaint are as follows: Plaintiff's wife began to have insect bites in or around May 2020, when they moved into the apartment, but did not the cause of the bites [Complaint at ¶16], then in June 2020, Plaintiff discovered a bed bug in the apartment [Complaint at ¶17]. The apartment was treated by a pest control company in July 2020 [Complaint at ¶18], and then on August 26, 2022, Plaintiff began getting bitten by bed bugs [Complaint at ¶20]. Therefore, it appears based on the allegations in the Complaint that there were bed bugs in 2020, the apartment was treated and the issue resolved for a time, only to resurface in August of 2022. These allegations are sufficient to establish a timeline that falls within the applicable two-year and three-year statute of limitations, and the demurrer to the First, Second, Third, Fourth, Fifth, Tenth, Twelfth, and Thirteenth Causes of Action is overruled on this basis. As to the Eighth Cause of Action, the Court finds that Plaintiff has failed to allege any facts to support finding compliance with the one-year statute of limitations set forth in *Code of Civil Procedure* §340(a), and the Demurrer is sustained as to the Eighth Cause of Action, with leave to amend.

"The elements of a cause of action for battery are: (1) the defendant touched the plaintiff, or caused the plaintiff to be touched, with the intent to harm or offend the plaintiff; (2) the plaintiff did not consent to the touching; (3) the plaintiff was harmed or offended by the defendant's conduct; and (4) a reasonable person in the plaintiff's position would have been offended by the touching." *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 890. The Court finds that Plaintiff has not alleged conduct by Defendants demonstrating an intent to cause harm or offensive contact, and Plaintiff appears to concede that fact. Instead, Plaintiff attempts to show intent by alleging reckless misconduct. Wanton, reckless, or willful misconduct is not marked by a mere absence of care. *Acosta v. Glenfed Development Corp.* (2005) 128 Cal.App.4th 1278, 1294. Willful misconduct "involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences." *Acosta v. Glenfed Development Corp.* (2005) 128 Cal.App.4th 1278, 1294. Additionally, the failure to inspect the apartment unit for bed bugs and failure to eradicate the bed bugs are not inherently dangerous activities or activities where serious injuries are probable. Here the allegations more properly sound in negligence and the Demurrer to the First Cause of Action for Battery is sustained with leave to amend.

"The elements of a cause of action for negligence are well established. They are "(a) a legal duty to use care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917. Here, the Court finds that Plaintiff has pled facts sufficient to constitute a cause of action for negligence [Complaint at ¶¶61-77] and the Demurrer to the Second Cause of Action for Negligence is overruled.

"The elements of a prima facie case for the tort of intentional infliction of emotional distress [are] . . . as follows: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard [for] the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. [Citation.] [Citation.]" *Wilkins v. National Broadcasting Co.* (1999) 71 Cal.App.4th 1066, 1087. Here, the Court concludes that the allegations do not support the element of extreme and outrageous conduct. "Liability for intentional infliction of emotional distress extends 'only to conduct so extreme and outrageous 'as to go beyond all possible bonds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.' [Citation.]" *Coleman v. Republic Indemnity Ins. Co.* (2005) 132 Cal.App.4th 403, 416, internal quotations omitted. "Generally, conduct will be found to be actionable where the 'recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " Rest.2d Torts, § 46, com. d." *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028. The conduct challenged here does not meet this standard. The Demurrer to the Third Cause of Action for Intentional Infliction of Emotional Distress is sustained with leave to amend. Additionally, as it relates to the argument proffered by Defendants that "[i]n fact, any Negligence or premises liability-based Cause of Action pled has failed for the same reasons. This includes Cause of Action (4), (5), (7), (8), (9), (10), (12), and (13)." [See Memorandum of Points and Authorities in Support of Defendant's Demurrer

at Page 8, Lines 24-27]. This argument lacks merit as each of the aforementioned causes of action have specific pleading requirements which are not discussed by Defendants. This argument is completely unsupported and the Demurrer on that basis is overruled.

Finally, the Court finds that the Complaint is not so incomprehensible that Defendants cannot reasonably respond. See, *Lickiss v Financial Indus. Regulatory Auth.* (2012) 208 Cal.App.4th 1125, 1135. Thus, the Demurrer on the grounds of uncertainty is overruled.

Plaintiff is granted leave to amend as indicated above. Any amended Complaint shall be filed within 10 days' notice of this ruling. Counsel for the Defendants shall submit a revised form of order within two weeks.

The Court on its own motion, consolidates this matter with *Kishaunte Platts v. Mark Johnson, et al*, Case No. 24CV03009, for all purposes including trial, with Case No. 24CV02857 being the lead case. Pursuant to California Rules of Court, Rule 3.350(c) and (d), any subsequent document must be filed only in the lead case, and all documents filed in the consolidated case must include the caption and case number of the lead case, followed by the case number of the consolidated case. The next hearing in the consolidated matters will be a Case Management Conference on July 30, 2025 at 10:30 a.m.

7. 24CV04222 IBANEZ, IVAN JR V. BISHOP, STEVEN DEAN

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted, effective upon the filing of the proof of service of the signed order upon the client. Additionally, the Court continues the Case Management Conference set for June 4, 2025 to July 30, 2025 at 10:30 a.m. The Court will sign the form of order submitted by counsel with modification to Paragraph 7 to indicate that the next scheduled hearing is a Case Management Conference on July 30, 2025 at 10:30 a.m.

8. 25CV00744 FISHER, JEFF V. FISHER, JENNIFER

EVENT: Defendant's Special Motion to Strike Complaint and for Attorney's Fees and Costs

Defendant's Request for Judicial Notice is granted.

Code of Civil Procedure §425.16 provides a two-step process for determining whether an action is a SLAPP. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88. First, the Court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. *Ibid*. Here, the Court finds that Defendant has done so. Plaintiff's claims arise from activity and speech protected under the Anti-SLAPP statute because the Plaintiff alleges defamation based solely on the Defendant's written declaration in the Domestic Violence Restraining Order action (a written

statement made before a judicial proceeding), which an activity protected by *Code of Civil Procedure* §425.16(e)(1).

If the Court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. *Navellier v. Sletten*, supra at 88. It is only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – that is a SLAPP, subject to being stricken under the statute. *Id.* at 89. Here, the Court finds that because the litigation privilege bars the Plaintiff's claims, Plaintiff has failed to satisfy his burden of demonstrating a probability of prevailing.

The Motion is granted. The Court awards attorney's fees to Defendant in the amount of \$4,200, which are to be paid within thirty days' notice of this ruling. The Court will sign the form of order submitted by counsel.

In regard to the "Motion to Disqualify" raised by Plaintiff in the Opposition to the instant Motion, Plaintiff argues extensively for the disqualification of Defendant's attorney, Leonard Hart Nibbrig. It is improper to include such a request as part of an opposition to a Special Motion to Strike, and the Motion to Disqualify is denied.