

TENTATIVE RULINGS

FOR: August 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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Conservatorship of Michael John McCormick

18PR000092

APPEARANCE REQUIRED to discuss appointment of successor conservator.

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

In the Matter of Gertrude B. Edwards Testamentary Trust

18PR000135

FIRST AND FINAL ACCOUNT AND REPORT OF TRUSTEE AND PETITION TO APPROVE ACTIONS OF TRUSTEE, FOR DISTRIBUTION OF THE TRUST, AND FOR APPROVAL OF TRUSTEE FEES

TENTATIVE RULING: The petition is GRANTED IN PART AND DENIED IN PART. The petition is denied as to the request to pay the trust’s \$103,500 liability to Tsar Mulvana under the settlement agreement.¹ The San Francisco County Superior Court already ordered the parties “to comply with and carry out each of the terms of the settlement.” Since the Oakland property was sold, the successor trustee shall distribute the amount owed to Mulvana within 10 calendar days pursuant to the order from the San Francisco County Superior Court. The petition otherwise is granted, including fees as prayed. (Cal. Rules of Court, rule 7.776.) Petitioner shall file a revised proposed order.

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¹ The Court is unable to discern whether the amount owed is \$103,500 or \$103,750. The Court has adopted the amount Mulvana used in his objection.

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on August 4, 2020, at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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

**Raja Development Co., Inc. v.
Napa County Regional Open Space District, et al.**

17CV000211

DEFENDANT'S MOTION FOR ATTORNEY'S FEES

TENTATIVE RULING:

Defendant Napa County Regional Park and Open Space District moves for attorney's fees against plaintiff Raja Development Co., Inc. in the amount of \$41,510.50. Defendant is the prevailing party under Civil Code section 1717 and paragraph 25 of the third fence agreement after successfully demurring to plaintiff's third amended complaint. (Dooley Decl., Ex. B, ¶ 25.) Notice of entry of judgment was filed on April 30, 2018, in defendant's favor.

Because defendant is the prevailing party, the Court turns to the application of 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.*)

Defendant submits evidence regarding the number of hours reasonably expended by two attorneys and two legal secretaries who worked on this litigation: attorney Dylan Roy 71 hours, attorney Jason Dooley 46.5 hours, legal secretary Amy Garcia 0.5 hours, and legal secretary Nina Jack 4.75 hours. (Dooley Decl., ¶¶ 6, 8-10, 16, Ex. A; Cossen Decl., ¶¶ 4-7, Ex. 1.) Plaintiff does not maintain the hours worked are unreasonable. The Court finds the hours worked were reasonably related to defending against this action, including those incurred for this motion.

Defendant also presents evidence that \$350 per hour for Roy and Dooley, \$68 per hour for Garcia, and \$74 per hour for Jack are reasonable rates for the individuals who worked on this matter. (Dooley Decl., ¶¶ 11, 13-15, 17, Ex. A; Coosen Decl., ¶¶ 4-8, Ex. 1.) Defendant reached these rates by contacting local attorneys and researching prior court orders awarding attorney's fees. Plaintiff argues these rates are not reasonable. Plaintiff requests the Court reduce the hourly rates to the actual billing rates (i.e. in-house counsel's actual salary) instead of using the rates of private attorneys in the community. There is no requirement that the reasonable market

rate mirror the actual rate billed. (See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1098 [“Requiring trial courts in all instances to determine reasonable attorney fees based on actual costs and overhead rather than an objective standard of reasonableness, i.e., the prevailing market value of comparable legal services, is neither appropriate nor practical; it ‘would be an unwarranted burden and bad public policy.’ [Citation].”].) The reasonable market rate applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel. (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260; see *PLCM Group, Inc., supra*, 22 Cal.4th at p. 1097 [“[W]e conclude that the lodestar method, as applied to the calculation of attorney fees for in-house counsel is presumably reasonable”].) The Court adopts, as reasonable, the hourly rates defendant proposes.

Defendant’s motion for an award of attorney’s fees against plaintiff is GRANTED in the amount of \$41,510.50, payable to defendant’s counsel within 20 calendar days of service of notice of entry of order. This amount represents \$24,850 for Roy (71 hours x \$350 per hour), \$16,275 for Dooley (46.5 hours x \$350 per hour), \$34 for Garcia (0.5 hours x \$68 per hour), and \$351.50 for Jack (4.75 hours x \$74 per hour).