

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO**

MINUTE ORDER

DATE: 08/17/2023 TIME: 11:30:00 AM DEPT:
JUDICIAL OFFICER PRESIDING: Ronald F. Frazier
CLERK: Sarah Doski
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2019-00032336-CU-OE-CTL** CASE INIT.DATE: 06/25/2019
CASE TITLE: **MAAS vs Mckinnon Broadcasting Co KUSI-TV 51 [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

APPEARANCES

The Court, having taken the above-entitled matter under submission on 08/07/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

MOTION FOR ATTORNEYS FEES AND COSTS

Plaintiff Sandra Maas's Motion for Attorneys Fees and Costs is **GRANTED**.

ATTORNEY FEES:

Plaintiff's Motion for Attorney fees is **GRANTED** in the amount of \$ 2,376,677.50. All objections are overruled. Judicial notice is taken as requested. The Court's analysis follows:

Statutory basis for Attorney Fees:

The Court awards reasonable fees and costs pursuant to two separate code provisions: Labor Code Sections 1102.5(j) and 1197.5(h). Plaintiff is entitled to reasonable fees and costs since she had a finding in her favor under both of these sections.

Reasonable Hourly Rate:

Plaintiff requests the following hourly rates for her attorneys:

Josh Gruenberg, Esq.:	\$ 800-1,000
Josh Pang, Esq.:	\$ 500-685
Pam Vallero, Esq.:	\$ 600-685
Daphne Delvaux, Esq.	\$ 500-600
Ben Silver, Esq.	\$ 600
Blanca Villegas(paralegal)	\$ 250-350
Jon Williams, Esq.:	\$ 650

David Brody, Esq.: \$ 450
Kenneth Shemwell, Esq. \$ 350

"The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom, and this includes the determination of the hourly rate that will be used in the lodestar calculus. In making its calculation, the court may rely on its own knowledge and familiarity with the legal market as well as the experience, skill and reputation of the attorney requesting fees, the difficulty or complexity of the litigation to which that skill was applied, and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases." *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal. App. 5th 426, 436-437.*

Plaintiff argues these rates are reasonable based on the experience of counsel, and comparable to rates for attorneys with comparable skill handling similar employment litigation. Defendant contests the rates provided by Plaintiff and submits evidence of what it contends are reasonable hourly rates in the form of an expert declaration.

Based on the Court's review of all of the evidence, and the Court's own knowledge and familiarity with the San Diego legal community, the Court finds the following hourly rates appropriate:

Josh Gruenberg, Esq.: \$ 800
Josh Pang, Esq.: \$ 575
Pam Vallero, Esq.: \$ 600
Daphne Delvaux, Esq. \$ 575
Ben Silver, Esq. \$ 575
Blanca Villegas(paralegal) \$ 150
Jon Williams, Esq.: \$ 650
David Brody, Esq.: \$ 450
Kenneth Shemwell, Esq. \$ 350

Reasonable Number of Hours:

Plaintiff submitted detailed billing statements. An attorney's billing statements "form the starting point for the 'hours reasonably expended' component of the lodestar calculation." *569 East County, supra, at 440.* The records are "entitled to credence in the absence of a clear indication the records are erroneous." *Horsford v. Board of Trustees of California State University (2005) 132 Cal. App. 4th 359, at 396.* "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicable, or unrelated do not suffice." *Premier Medical Mgmt. Sys., Inc. v. California Ins. Guarantee Assn. (2008) 163 Cal. App. 4th 550, at 564.*

Defendant presented numerous detailed objections as to entries of plaintiff's attorneys such as "duplicative, administrative, clerical, and questionable" among other objections. The Court has performed an extremely detailed analysis of the disputed hours and exercised its best judgment in agreeing with some objections, and disagreeing with others. The hours listed are net of the appropriate reduction found by the Court:

Joshua Gruenberg, Esq.: 785.1 (reduction of 16.9 hours);
Joshua Pang, Esq. 1529.7 (reduction of 9.1 hours);
Pamela Vallero, Esq.: 698.4 (addition of 15.2 hours per supplemental declaration, reduction of 11.0 hours);
Daphne Delvaux, Esq. 621 (reduction of 27.4 hours);
Benjamin Silver, Esq. 57.9 (no reduction);
Blanca Villegas(paralegal) 293.4 (reduction of 24.5 hours);
Jon Williams, Esq.: 17.5 hours(no reduction);
David Brody, Esq.: 2.5 hours(no reduction);
Kenneth Shemwell, Esq.: 8.9 hours(no reduction).

Defendant objects to the time spent by attorneys Williams, Brody & Shemwell on the grounds their services are premature since there is no evidence yet that Defendant will not pay the judgment. The Court disagrees. The plaintiff should be able to receive legal advice on the potential for an appeal and issues that may arise regarding collection, in the event the defendant fails to pay the judgment. She should not have to wait and see what the defendant chooses to do first. A "what if" analysis in this setting is entirely appropriate.

The Court finds all remaining hours billed to be both reasonable and necessary.

Multiplier:

Plaintiff requests a multiplier of 1.45 because of the difficulty and risk associated with the case along with the time spent and preclusion of other employment for plaintiff's counsel.

Whether to apply a fee enhancement to the basic lodestar figure rests in the trial court's discretion, and the burden is on the party seeking a multiplier.(*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1138.) A multiplier should not be awarded if it would amount to double counting" (See *Id.*, at pp 1138-1139).

After reviewing the moving, opposing, and reply points and authorities and all declarations submitted, the Court finds the rates charged by other counsel in employment actions are commensurate with those awarded to plaintiff's counsel in this matter. The Court finds the rates listed take into account the risk and delay in payment. The Court is also not persuaded that any other basis argued warrants Plaintiff's request for a multiplier. The request is denied.

Lodestar Calculation:

Based on the Court's findings, the Lodestar calculation is as follows:

Joshua Gruenberg, Esq.: \$628,080 (785.1 x 800.00);
Joshua Pang, Esq.: \$879,577.50 (1529.7 x 575.00);
Pamela Vallero, Esq.: \$419,040 (698.4 x 600.00) ;
Daphne Delvaux, Esq.: \$ 357,075 (621 x 575.00);
Benjamin Silver, Esq.: \$ 33,292.50 (57.9 x \$ 575.00) ;
Blanca Villegas(paralegal) \$ 44,010 (293.4 x 150.00) ;
Jon Williams, Esq.: \$ 11,375 (17.5 hours x 650.00;
David Brody, Esq.: \$ 1,112.50 (2.5 hours x\$ 450.00);
Kenneth Shemwell, Esq.: \$3,115. (8.9 x \$ 350.00).

TOTAL FEES: \$ 2,376,677.50. The court clerk is to interlineate this amount on the judgment.

COSTS:

Plaintiff's motion for costs is **GRANTED IN PART**. Plaintiff is awarded costs in the amount of \$ 69,595.93. Plaintiff sought the amount of \$ 151,228.20. The Court's analysis follows:

"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 (*Wagner Farms, Inc. v. Modesto Irrigation Dist.* (2006) 45 Cal. App. 4th 765, 773-774). In such event, the burden is on the objecting party to show the costs to be unnecessary or unreasonable. (*Litt v. Eisenhower Medical Center* (2015) 237 Cal. App. 4th 1217, 1224).

As an initial matter, Plaintiff's Memorandum of Costs Worksheet (form MC-011) requests \$50,288.83 in expert fees. However, the Plaintiff does not state an applicable legal basis for the Court to award those costs. CCP 998 clearly does not apply in this case; plaintiff submitted no evidence of a CCP 998 offer that was made and allowed to expire. Since the Court is unaware of any basis on which to award expert costs, it therefore declines to include those amounts in the costs awarded. Furthermore, CCP 1033.5 (b)(1) specifically excludes the awarding of expert costs not ordered by the court.

Similarly, the Court declines to award costs to the plaintiff for the following categories:

BIA Advisory Services \$ 5,000.00;
Mendoza & Co. LLC
Opening argument and witness preparation: \$ 11,550.00
News Exposure: \$2915.00
Trial Lunch: \$848.05
Parking \$123.00
Uber/Lyft: \$247.11
Register of Actions: \$116.50
Mileage: 158.8 mi. x .585= \$92.78

The Court does not find any of these costs are allowable items and not reasonable; they are therefore not allowed.(CCP, Sect. 1033.5 (c)(2).)

Item 11 seeks Court reporter fees in the amount of \$ 10,451. This cost is not allowed . "Transcripts of court proceedings not ordered by the court" are expressly not a permitted cost item. (CCP. Sect. 1033.5(b)(5).)

The remaining costs claimed are listed as follows:

Filing and recording fees: \$ 845.00
Deposition costs: \$ 42,146.05
Service of process: \$ 2,021.00
Models, enlargements, and photocopies of exhibits \$ 4,296.47
Costs for electronic filing or service \$ 1,250.33

As to these claimed items along with the remaining items in the "other" category of No. 16 (i.e. Crypto IT Solutions-Hardware for Trial- \$ 1,384.25, and Deposition Video Editing- \$ 15,136.57) the Court finds

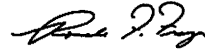
they were reasonable and necessary for the prosecution of the Plaintiff's case and awards them pursuant to CCP 1033.5 (b)(4) under the "catch all" provision.

For these reasons, the motion for costs is **GRANTED IN PART**.

The Court awards costs in the amount of \$ 69,595.93, and denies or taxes them in the amount of \$81,632.27.

TOTAL COSTS: \$ 69,595.93. The court clerk is to interlineate this amount on the judgment.

The minute order will be the final order of the Court. Defendant is ordered to serve written notice within five(5) court days of this ruling.



Judge Ronald F. Frazier