

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - May 18, 2017

EVENT DATE: 05/19/2017

EVENT TIME: 08:30:00 AM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2015-00031738-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. CALIFORNIA GAMBLING CONTROL COMMISSION [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

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Defendant Chadd Everone's motion for attorney's fees is granted in part. CCP § 425.16(c)(1).

Pursuant to CCP § 425.16(c)

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 1130.5 or 54960.5, of the Government Code.

Following this court's order of January 27, 2017, granting Everone's special motion to strike the sixth and seventh causes of action alleged against Everone in Plaintiff's complaint (ROA 91), and following entry of judgment on February 22, 2017, in favor of Everone and against Plaintiff (ROA 93), the court finds Everone is a prevailing party for purposes of the award of attorney's fees under CCP § 425.16(c). As such, the award of attorney's fees is mandatory. See, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131. The court addresses Plaintiff's Supplemental Opposition. In this filing, Plaintiff, without analysis, cites to *Sungho Park v. Board of Trustees of California State University* (2017) 2017 WL 1737669 and states simply that in light of this case "Defendant Everone's Motion for Attorneys' Fees should be denied in its entirety." *Sungho Park* does not address the issue of the award of attorneys' fees to a prevailing defendant under CCP § 425.16(c). To the extent Plaintiff cites to *Sungho Park* with respect to the merits of the underlying special motion to strike, any such issues are beyond the scope of this attorneys' fees motion.

As to the amount of the fee award, *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084 explains,

the fee setting inquiry in California ordinarily begins with the "lodestar," i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. "California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award." (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004-1005 [185 Cal.Rptr. 145].) The reasonable hourly rate is that prevailing in the

community for similar work. (*Id.* at p. 1004; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002 [39 Cal.Rptr.2d 506].) 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. (*Serrano v. Priest, supra*, 20 Cal.3d at p. 49.)

*PLCM Group*, 22 Cal.4th at 1095. These factors include " ' the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' " *PLCM Group*, 22 Cal.4th at 1096 citing *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624.

While Plaintiff argues Everone's attorneys' fees are "unreasonably inflated" Plaintiff does not specifically challenge Everone's attorneys' hourly rates. Based on the evidence submitted, and the court's own experience, the court finds the rates charged by attorney McConnell and attorney Anderson are commensurate with counsels' skill and experience and are within the range of market rates charged by attorneys of equivalent experience, skill and expertise. *PLCM Group*, 22 Cal.4th at 1095 ["[t]he reasonable hourly rate is that prevailing in the community for similar work"]. The court finds the hourly rate of \$470.00-\$485.00 for attorney Mix high given attorney Mix's less than 5-years of experience at the time of the hearing on this motion. The court reduces the hourly rate for the hours spent by attorney Mix preparing the special motion to strike from \$470.00/hour to \$300.00/hour. The court reduces the hourly rate for the hours spent on the reply and the order to \$310.00/hour.

As to the hours spent, the court finds, 41.7 hours total to prepare the moving papers and 13.4 total hours to prepare the reply, combined with the involvement of three attorneys, reflects a duplicative effort. Therefore, the court reduces the hours spent by attorney McConnell to prepare the moving papers from 14.1 to 8.0, and reduces the hours spent by attorney Mix to prepare the moving papers from 26.2 to 16.0. The court reduces the hours spent by attorney McConnell to prepare the reply from 8.5 to 4.0, and reduces the hours spent by attorney Mix to prepare the reply from 4.9 to 2.0.

The court does not reduce the hours spent in preparation of the order, the moving papers on this motion and the reply papers on this motion.

The court calculates the attorney's fees award as follows:

Attorney	Hours	Rate	Total
McConnell	8.0 Moving	\$650.00	\$ 5,200.00
	4.0 Reply	\$660.00	\$ 2,640.00
	2.5 Fees Motion	\$660.00	\$ 1,650.00
	1.5 Fees Reply	\$660.00	\$ 990.00
Anderson	1.4 Moving	\$600.00	\$ 840.00
Mix	16.0 Moving	\$300.00	\$ 4,800.00
	2.0 Reply	\$310.00	\$ 620.00
	6.5 Fees Motion	\$310.00	\$ 2,015.00
	7.0 Fees Reply	\$310.00	\$ 2,170.00
<b>TOTAL</b>	<b>48.9 hours</b>		<b>\$20,925.00</b>

Considering the factors set forth above, considering the evidence presented, and in light of the court's familiarity with this matter, the court, exercising its discretion, finds attorneys' fees of \$20,925.00 reasonable and awards Everone attorneys' fees in this amount. CCP § 425.16(c).

The court directs the clerk to interlineate the February 22, 2017, Judgment (ROA 93) to reflect the award of attorney's fees of \$20,925.00 in favor of Defendant Chadd Everone and against Plaintiff California Valley Miwok Tribe.

If this tentative ruling is confirmed, the Minute Order will be the final order of the court, and the parties shall not submit any further order on this motion.