

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
HONORABLE SUSAN GREENBERG  
Department 3

400 County Center, Redwood City  
Courtroom 2B

Wednesday, July 18, 2018

**NOTICE TO ALL COUNSEL**

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

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9:00

LINE: 1

16-CIV-02246 ERIKA FOX LANGE VS. FCA US LLC, ET AL.

ERIKA FOX LANGE  
FCA US LLC

LAUREN A. UNGS  
LYNN R. LEVITAN

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MOTION FOR ATTORNEY'S FEES, COSTS AND EXPENSES BY ERIKA FOX LANGE

**TENTATIVE RULING:**

The Motion of Plaintiff Erika Fox Lange ("Plaintiff") for Attorney's Fees, Costs and Expenses is GRANTED IN PART and DENIED IN PART. Plaintiff is awarded \$10,294.72 in fees and costs as follows:

Plaintiff's motion requests attorneys' fees of \$37,930.00 based on the lodestar method, along with a 1.5 lodestar enhancement, for a total of \$56,895.00. Of the \$37,930.00 attorneys' fees, Plaintiff seeks \$10,155.00 for work performed by the Knight Law Firm ("Knight firm") and \$27,775.00 for work performed by Hackler Daghian Martino & Novak, P.C. ("HDMN").

In opposition, Defendants FCA US LLC and KTP Cars, Inc. ("Defendants") object to both the hourly rates and the claimed time spent by the attorneys.

**1. THE KNIGHT FIRM**

**a. Hourly rate for attorneys**

The Court finds that the hourly rate for Steve Mikhov of \$500/hour is reasonable.

However, as to the hourly rates requested for Kristina Stephenson-Chang and Amy Morse, only Mr. Mikhov provides a declaration setting forth the claimed qualifications and time spent for these attorneys. Defendants object to Mr. Mikhov's declaration in this regard, which objection is SUSTAINED. (See Mihov Decl., ¶¶25-26; see Defendants' evidentiary objection no. 1; see Court's ruling on objection no. 1 below.) Thus, no competent and admissible evidence has been submitted to support the qualifications or hourly rate of \$350/hour for Kristina Stephenson-Chang and Amy Morse.

**b. Time spent**

Defendants also object that the time spent by the Knight firm after HDMN was retained is duplicative. After reviewing the billing statements, the Court agrees and reduces Mr. Mikhov's hours by 2.

Also, as discussed above, Defendants object to the time claimed by the remaining attorneys.

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Defendants object to Mr. Mikhov's declaration in this regard, which objections are SUSTAINED. (See Mihov Decl., ¶¶25-26; see Defendants' evidentiary objection no. 1; see Court's ruling on objection no. 1 below.) Thus, no competent and admissible evidence has been submitted to support the time spent by Kristina Stephenson-Chang and Amy Morse.

**c. Award**

Accordingly, the Knight firm's fees are GRANTED IN PART in the amount of \$2,750.00 for 5.5 hours of time for Steve Mikhov at \$500/hour.

**2. HDMN**

HDMN requested \$27,775.00 in attorneys' fees, to which Defendants objected that HDMN's billing statements only supported an amount of \$23,337.50. In reply, HDMN provided another billing statement to support the claimed \$27,775.00. Because this is new evidence to which Defendants did not have an opportunity to object, the Court has not considered it and limited its analysis to only the \$23,337.50 in HDMN's billing statement provided with its moving papers.

**a. Hourly rate for attorneys**

The Court finds that an hourly rate for Sepehr Daghighian of \$400/hour is reasonable.

However, as to the hourly rates requested for Larry Castruita, Erik Schmitt, Kevin Yaghoubzadeh and Andrea Plata, only Mr. Daghighian provides a declaration setting forth the claimed qualifications for these attorneys and paralegal. Defendants object to Mr. Daghighian's declaration in this regard, which objections are SUSTAINED. (See Daghighian Decl., ¶¶4-7; see Defendants' evidentiary objection no. 52; see Court's ruling on objection no. 52 below.) Thus, no competent and admissible evidence has been submitted in support of their qualifications or hourly rate.

**b. Time spent**

Based on Defendants' arguments, the Court finds, in determining a reasonable amount of hours expended, a reduction in time is warranted based on the time claimed and HDMN's practice of billing in .25 increments. After reviewing the billing statement, the Court reduces Mr. Daghighian's hours by 4.

Defendants also object to the time claimed by the remaining attorneys. Defendants object to Mr. Daghighian's declaration in this regard, which objection is SUSTAINED. (See Daghighian Decl. ¶¶4-7; see Defendants' evidentiary objection no. 52; see Court's ruling on objection no. 52 below.) Thus, no competent and admissible evidence has been submitted to support the time spent by Larry Castruita, Erik Schmitt, Kevin Yaghoubzadeh and Andrea Plata.

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**c. Award**

Accordingly, HDMN's fees are GRANTED IN PART in the amount of \$3,200.00 for 8 hours of Mr. Daghighian's time at \$400/hour.

**3. MULTIPLIER**

Plaintiff asks for a 1.5 multiplier. The Court finds that a lodestar multiplier is not warranted here.

**4. COSTS AND EXPENSES**

Plaintiff seeks \$4,344.72 in the Memorandum of Costs. In opposition, Defendants state only that the Memorandum of Costs is not specific enough to allow a calculation without addressing any particular cost. Accordingly, Plaintiff is GRANTED costs and expenses of \$4,344.72.

**5. DEFENDANTS' OBJECTIONS**

Objection no. 1 is SUSTAINED as to paragraphs 4-9, 25 and 26 and OVERRULED as to paragraph 28.

Objection nos. 2-17, 19-31, 33-36, 38-40, 43-51 and 53 are OVERRULED.

Objection no. 52 is SUSTAINED.

Objection nos. 18, 32, 37, 41 and 42 are SUSTAINED.

**6. PLAINTIFF'S OBJECTIONS**

Objection no. 1 is SUSTAINED only as to "As before, Plaintiff ignored it" and the remainder is OVERRULED.

Objection nos. 2 and 3 are OVERRULED.

Objection no. 4 is SUSTAINED only from "that were identical to those Plaintiff's counsel...vehicle type changes." The remainder of the objection is OVERRULED.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 2

17-CIV-04008 YOSHIKO YAMADA VS. WILLOW/GRAND NORTH CONDOMINIUM  
ASSOCIATION, ET AL.

YOSHIKO YAMADA  
WILLOW/GRAND NORTH CONDOMINIUM ASSOCIATION

STEVEN C. WILLIAMS  
EMILY D. BERGSTROM

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DEMURRER TO FIRST AMENDED COMPLAINT BY THE MANOR ASSOCIATION, INC.  
**TENTATIVE RULING:**

Defendant The Manor Association, Inc.'s ("Defendant" or "Manor") Demurrer to Plaintiff Yoshiko Yamada's First Amended Complaint (FAC), filed 02-02-18, is ruled upon as follows:

The Demurrer to the First Cause of Action for breach of contract is **SUSTAINED WITH LEAVE TO AMEND**. Code Civ. Proc. §430.10(e). Separate and apart from Plaintiff's third-party beneficiary claim (see Second Cause of Action), the FAC does not properly allege the existence of any written or oral contract between Plaintiff and Manor. Plaintiff argues the HOA's CCRs and/or Bylaws constitute a "three-party contract" between Plaintiff, the HOA and Manor because they reference the HOA's right to retain a property management company. Plaintiff cites no authority providing that such language renders Manor *a party* to the CCRs and/or Bylaws. There is no indication Manor signed either the CCRs or Bylaws, which apparently existed before Manor's involvement in the property. Plaintiff appears to argue in the alternative that she is "an unnamed party" to the HOA-Manor property management contract. This argument appears duplicative of the Second Cause of Action, which asserts a third-party beneficiary theory. Nor is an oral contract properly alleged. The First Cause of Action makes no reference to an oral contract and does not allege any oral communications between Plaintiff and Manor that could form the basis of an oral contract, even assuming arguendo Plaintiff's HOA dues could constitute valid consideration for an oral agreement. The Court grants leave to amend this claim consistent with the Court's liberal stance with respect to amended pleadings, although it does not appear Plaintiff can amend this claim to state a cause of action.

The Demurrer to the Second Cause of Action for breach of contract-third party beneficiary is **OVERRULED**. Plaintiff argues she is a third-party beneficiary of a HOA-Manor property management contract, which Manor notes is not attached to the FAC. Although not attached to the FAC or described verbatim (which Plaintiff cannot do because she does not have a copy), a party may assert breach of contract by alleging the "substance of its relevant terms." *Heritage Pacific Financial v. Monroy* (2013) 215 Cal.App.4th 972, 993. Plaintiff alleges the HOA-Manor contract mirrors the CCRs and Bylaws and provides that Manor has a duty to maintain, repair and restore the property for the homeowners' benefit. FAC, ¶¶77-79. "Whether a third party is an intended beneficiary or merely an incidental beneficiary to the contract involves construction of the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered." *Jones v. Aetna Casualty & Surety Co.* (1994) 26 Cal.App.4th 171,

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1725. Without the contract, the Court cannot determine whether it mentions Plaintiff by name or otherwise manifests a clear intention to confer a benefit upon Plaintiff. Plaintiff ultimately has the burden to prove her status as an intended beneficiary. This issue cannot be resolved on Demurrer.

The Demurrer to the Third Cause of Action for Breach of Fiduciary Duty is SUSTAINED WITH LEAVE TO AMEND. Code Civ. Proc. §430.10(e). As with the original Complaint, the FAC does not allege facts supporting the existence of a fiduciary relationship between Plaintiff and Manor. Plaintiff cites no authority holding that a property management company retained by an HOA owes a fiduciary duty to a property owner in a common interest development. See CACI 4100. Unlike in the cases cited as authority for CACI 4100, the FAC does not allege a situation where a party to a transaction (Plaintiff) imposed trust in the other (Manor) to act in the utmost good faith. There is no alleged direct contract or “transaction” between Plaintiff and Manor. Nor is there a properly alleged agency relationship between Plaintiff and Manor. The fact that Manor may be the HOA’s agent does not create a fiduciary relationship between Plaintiff and Manor. As with the First Cause of Action, although the Court grants leave to amend, it does not appear the FAC can be amended to properly allege a fiduciary relationship between Plaintiff and Manor.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, DEMURRING PARTY is directed to prepare, circulate and submit a written order reflecting this Court’s ruling verbatim for the Court’s signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Susan L. Greenberg, Department 3.

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9:00

LINE: 3

17-CIV-04588 GRAY DUFFY, LLP VS. SUSAN M. GOLDBECK, ET AL.

GRAY DUFFY, LLP  
SUSAN M. GOLDBECK

RICHARD M. WILLIAMS  
SUSAN M. GOLDBECK

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MOTION TO COMPEL DISCOVERY RESPONSES AND FOR SANCTIONS BY CONSTANCE  
DUDLEY LAUB

**TENTATIVE RULING:**

The motion is denied.

A motion to compel further responses “shall” include a declaration under Code Civ. Proc. §2016.040, stating “facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (See Code of Civ. Proc. §§2030.300, subd. (b) [interrogatories], 2033.290, subd. (b) [admissions] and 2031.310, subd. (b)(2) [documents].) Failure to comply with this requirement constitutes a “misuse of discovery.” (Id. §2023.010, subd. (i).) Defendant’s motion fails to comply with this requirement.

The correspondence between Defendant Goldbeck and Plaintiff do not satisfy the meet-and-confer requirement because Defendant Goldbeck is not the party who propounded the discovery that is the subject of this motion.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiff shall prepare a written order consistent with the Court’s ruling for the Court’s signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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9:00

LINE: 4

18-UDL-00476      RONALD SMITH VS. STEPHANIE AGOSTINELLI, ET AL.

RONALD SMITH

PRO/PER

STEPHANIE AGOSTINELLI

PRO/PER

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MOTION TO SET ASIDE AND VACATE DEFAULT JUDGMENT BY STEPHANIE  
AGOSTINELLI

**TENTATIVE RULING:**

The motion is denied without prejudice for failure to provide proof that it was served on Plaintiff.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 5

CIV532927 TOP GAINS MINERALS MACAO COMMERCIAL OFFSHORE LIMITED  
VS. SONQUIANG CHEN, ET AL.

TOP GAINS MINERALS MACAO COMMERCIAL  
OFFSHORE LIMITED  
SONQUIANG CHEN

JONATHAN R. DOOLITTLE

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MOTION TO COMPEL RESPONSES TO JUDGMENT CREDITOR'S REQUESTS FOR  
PRODUCTION AND FOR MONETARY SANCTIONS BY TOP GAINS MINERALS MACAO  
COMMERCIAL OFFSHORE LIMITED

**TENTATIVE RULING:**

The motion is granted. Judgment Debtor Sonquiang Chen shall provide verified responses, without objection, to the requests for production of documents within 14 days. The request for sanctions is denied.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 6

CIV535902 REGINA MANANTAN VS. WELLS FARGO BANK, N.A., ET AL.

REGINA MANANTAN  
WELLS FARGO BANK, N.A.

TIMOTHY L. MCCANDLESS  
BRIAN S. WHITTEMORE

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MOTION FOR ATTORNEYS' FEES BY WELLS FARGO BANK, N.A. AND U.S. BANK,  
N.A.

**TENTATIVE RULING:**

The hearing on this motion is dropped from calendar at the moving party's request.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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POSTED: 3:00 PM