

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 12-01496 JVS (ANx) Date July 19, 2016

Title Teun Van Riel Horse Supplements, et al. V. Juan Ayora, et al.

Present: The Honorable James V. Selna

Karla J. Tunis

Deputy Clerk

Not Present

Court Reporter

Attorneys Present for Plaintiffs:

Not Present

Attorneys Present for Defendants:

Not Present

Proceedings: (IN CHAMBERS)

Order GRANTING Plaintiff's Motion to Enforce Settlement

Plaintiffs Teun Van Riel Horse Supplements, Equine Industry BV, and Teun Van Riel (collectively, "Plaintiffs") filed a motion to enforce the settlement agreement between Plaintiffs and Defendants Rudolph Leone, Leone Equestrians, Inc., and Jill Humphrey (collectively, "Defendants"). Docket No. 227. The motion is unopposed.

The Court deems Defendants' failure to oppose the motion as consent to granting the motion. L.R. 7-12. Moreover, as explained below, enforcement of the settlement agreement is appropriate on the merits. The Court therefore **grants** Plaintiffs' motion.

1. Background

Plaintiffs are in the business of selling horse supplements. Compl., Docket Nos. 1 and 1-1. In September 2012, Plaintiffs sued Defendants in this Court for allegedly taking their merchandise without making payment, conspiring with other defendants to destroy their business in North America, and causing the termination of Plaintiffs' distributorship of a popular brand of equestrian clothing in North America. *Id.* After extensive litigation, Plaintiffs and Defendants reached a settlement agreement in June 2014, Docket No. 180, under which Defendants were dismissed from this action, Docket Nos. 182, 183.

Under the settlement agreement, Defendants were required to pay \$25,000 to Plaintiffs in four monthly installments: \$10,000 due on July 25, 2014, and \$5,000 due monthly until paid in full on October 25, 2014. Gaudet Decl., Docket No. 227-2, Ex. A at 8. The settlement agreement also provided that, if Defendants fail to make timely payment, interest on missed payments would accrue at a rate of 10% per month. *Id.*

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Plaintiffs allege that Defendants have failed to pay any amount due under the settlement agreement. Docket No. 227-1 at 4-5. To collect on the amounts due, Plaintiffs now move to enforce the terms of the settlement agreement. *Id.* Specifically, Plaintiffs seek to recover both the full amount of \$25,000 compounded with interest and their attorney's fees incurred in bringing the present motion. *Id.* at 11.

2. Legal Standards

2.1. Jurisdiction to enforce settlement agreements

A motion to enforce a settlement agreement requires its own independent basis for jurisdiction; district courts do not retain "inherent" or "ancillary" subject matter jurisdiction to enforce a settlement agreement simply because the dismissal of a federal action served as part of the consideration for the settlement agreement. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994). For a court to retain jurisdiction over the enforcement of a settlement agreement, the district court must explicitly "embody the settlement contract in its dismissal order . . . or, what has the same effect, retain jurisdiction over the settlement contract." *Id.* Mere reference to the settlement in the dismissal order or an expression of intent elsewhere in the record to retain jurisdiction is not sufficient for the court to retain jurisdiction over the settlement agreement. *Hagestad v. Tragesser*, 49 F.3d 1430 (9th Cir. 1995).

2.2. Judicial enforcement of settlement agreements

To be enforceable, the settlement agreement must be complete and both parties must have either agreed to the terms of the settlement or authorized their respective counsel to settle the dispute. *Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994); *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-45 (9th Cir. 1977). Upon evidence of breach, the district court may award damages or specific performance to the non-breaching party. *TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986) (per curiam).

3. Discussion

3.1. The Court reserved jurisdiction to enforce the settlement agreement between Plaintiffs and Defendants.

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The Court first addresses its jurisdiction to enforce the settlement agreement before addressing whether enforcement is appropriate. As explained in Section 2.1, *supra*, the Court must explicitly “embody the settlement contract in its dismissal order . . . or, what has the same effect, retain jurisdiction over the settlement contract” to enforce a settlement agreement. Kokkonen, 511 U.S. at 380. Here, the Court explicitly reserved jurisdiction to enforce the settlement agreement: the terms of the settlement agreement were expressly incorporated into both the parties’ stipulation, Docket No. 182, and the Court’s order dismissing Defendants from Plaintiffs’ action, Docket No. 183. Specifically, the dismissal order stated that “the Court reserve[d] jurisdiction to enforce the settlement between Plaintiffs and Defendants Rudolph Leone; Leone Equestrians, Inc.; and Jill Humphrey.” Docket No. 183. This statement is sufficient to retain jurisdiction over enforcement of the settlement agreement. Kokkonen, 511 U.S. at 380. Accordingly, the Court will exercise jurisdiction to determine whether to enforce the settlement agreement.

3.2. Enforcement of the settlement agreement is appropriate.

Plaintiffs argue that the Court must enforce the settlement agreement because Defendants breached the agreement by failing to pay any of the \$25,000 owed under the agreement. Docket No. 227-1 at 6. The Court agrees.

First, as explained in Section 2.2, *supra*, to enforce a settlement agreement, the Court must find that (1) the agreement is complete and (2) both parties have either agreed to the terms of the settlement or authorized their respective counsel to settle the dispute. Maynard, 37 F.3d at 1401. Here, the settlement agreement is complete and all Plaintiffs and Defendants have agreed to its terms. Gaudet Decl., Docket No. 227-2, Ex. A at 8, 11. Furthermore, the relevant terms governing Plaintiffs’ remedies in the event of Defendants’ breach are clear. Paragraph one of the settlement agreement, which governs Defendants’ payment schedule, states in relevant part:

“Plaintiffs agree to dismiss with prejudice any and all claims . . . against Settling Defendants in exchange for payment in the amount of \$25,000 to be paid as follows: \$10,000 is due no later than July 25, 2014; \$5,000 is due no later than August 25, 2014; \$5,000 is due no later than September 25, 2014; and \$5,000 is due no later than October 25, 2014. . . . If any payments are missed, then interest shall

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accrue on missed payments at the compound interest rate of 10 percent per month.”

Id. at 8 (emphasis in original). Paragraph five of the settlement agreement, which governs Defendants’ failure to pay amounts owed under the settlement agreement, states in full:

“5. FAILURE TO PAY: Should any Settling Defendants fail to pay the settlement in full and on a timely basis, then their failure will constitute a default and Settling Defendants consent to judgment against them in the amount of the unpaid amounts and interest as well as judgment in the amount of any reasonable attorney’s fees that may be incurred by Plaintiffs in seeking default and enforcing judgment on any unpaid amounts.”

Id. at 9.

These terms clearly indicate that, in the event of breach, Plaintiffs are entitled to seek judgment for any unpaid amounts, compound interest, and reasonable attorney’s fees incurred in connection with enforcing the settlement. Because the agreement is complete and its terms are clear—and Plaintiffs and Defendants are parties to the agreement—the Court may enforce the settlement. Maynard, 37 F.3d at 1401; Harrop, 550 F.2d at 1144-45.

Second, Plaintiffs have sufficiently shown that Defendants breached the agreement. Paragraph one of the settlement agreement provides that Defendants must make payments “in the amount of \$25,000 to be paid as follows: \$10,000 is due no later than July 25, 2014; \$5,000 is due no later than August 25, 2014; \$5,000 is due no later than September 25, 2014; and \$5,000 is due no later than October 25, 2014.” Gaudet Decl., Docket No. 227-2, Ex. A at 8. However, Plaintiffs’ attorney Robert J. Gaudet, Jr. (“Gaudet”) states that none of the Defendants have made any payments due under the settlement agreement.¹ Id. at 2 ¶ 5. Defendants’ failure to make their settlement payments constituted a breach of the settlement agreement. Accordingly, the Court finds that Plaintiffs are entitled to the \$25,000 due under the agreement, plus compound interest

¹ As neither Defendants nor the record provide any basis to controvert this representation, the Court must take this allegation as true.

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and attorney's fees in connection with the present motion, as provided by the settlement agreements. TNT Marketing, Inc., 796 F.2d at 278. The Court thus grants Plaintiffs' motion.

After the hearing, Gaudet filed a chart calculating the total amount due under the settlement agreement including the \$25,000 principal and interest compounded monthly. Gaudet Suppl. Decl., Docket No. 233-2. As outlined in Gaudet's chart, Plaintiffs are entitled to \$208,182.39 under the settlement agreement. Id. Accordingly, the Court grants Plaintiffs \$208,182.39.

3.2.1. Reasonable attorney's fees

Plaintiffs also request that the Court award \$16,350 in attorney's fees in accordance with paragraph five of the settlement agreement. Docket No. 227-1 at 10-12. As explained below, the Court grants Plaintiffs' request for attorney's fees.

To calculate attorney's fees, courts in the Ninth Circuit must use the "lodestar" method. McElwaine v. U.S. West, Inc., 176 F.3d 1167, 1173 (9th Cir. 1999). Under the lodestar method, the court must first multiply the number of hours that the attorney reasonably spent on the litigation by the reasonable hourly rate in the community for similar work. McElwaine, 176 F.3d at 1173. "[T]he burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 896 (1984). "Generally, the relevant community is the forum in which the district court sits." Barjon v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997).

Second, in rare and exceptional cases, the district court may adjust the lodestar upward or downward using a multiplier based on facts not subsumed in the initial lodestar calculation. Welch v. Metro. Life Ins. Co., 480 F.3d 942, 946 (9th Cir. 2007). There is a strong presumption that the lodestar amount is a reasonable fee. United Steelworkers of America v. Phelps Dodge Corp., 896 F.2d 403, 406 (9th Cir. 1990). The court may raise or lower the lodestar based on several factors, including: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the service properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is

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fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Fischel v. Equitable Life Assurance Society, 307 F.3d 997, 1007 n.7 (9th Cir. 2001).

Here, the Court deems the number of hours expended on Plaintiffs’ present issues and motion reasonable because Defendants’ recalcitrance clearly contributed to the hours expended. The Court further finds that Gaudet’s hourly rate was reasonable.

Number of hours. Plaintiffs base their \$16,350 figure “on an hourly rate of \$600 for Mr. Gaudet multiplied by 27.25 hours expended” on the present motion. Docket No. 227-1 at 10-12; Gaudet Decl., Docket No. 227-2 at 5-6 ¶ 15. 27.25 hours expended on the present issues is reasonable. For example, Gaudet’s declaration describes his extensive efforts at attempting to secure payment and obviate the need for the present motion, including his attempts to contact Rudolph Leone and Jill Humphrey, *id.* at 3 ¶ 7, his sending multiple emails and voicemails to Defendants’ attorneys, *id.* at 4 ¶ 10, and attempts to meet and confer in accordance with Local Rule 7-3, *id.* at 4 ¶ 11. Furthermore, Plaintiffs’ memorandum in support of their motion extensively discusses whether the 10% interest rate required by the settlement agreement is appropriate. Docket No. 227-1 at 6-9. This argument suggests that Gaudet drafted the motion in anticipation of Defendants’ possible counterargument that the settlement agreement is “illegal.” Gaudet Decl., Docket No. 227-2 at 3 ¶ 9. Defendants have engaged in obstructionist tactics from the start. Thus, based on Gaudet’s extensive efforts to communicate with Defendants, as well as the apparently thorough research into a potentially contested issue in this motion, the Court finds that Gaudet expended reasonable hours on this matter.

Hourly Rate. Gaudet’s \$600 hourly rate is adequately supported. In their motion, Plaintiffs offered no comparative data establishing hourly rates in the community for similar work to support Gaudet’s hourly rate request. Instead, Plaintiffs cited only to various district court cases that found appropriate hourly rates between \$600 and \$800. Docket No. 227-1 at 10. After oral argument, Gaudet filed a supplemental declaration providing comparative data of hourly rates in the community. Gaudet Suppl. Decl., Docket No. 233. This data sufficiently shows “that [Gaudet’s] requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” Blum, 465 U.S. at 896; See, e.g., Gaudet

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Suppl. Decl., Docket No. 233, Ex. G, H (declarations submitted in other Central District cases supporting hourly rates ranging from \$450 to \$750); *Id.*, Ex. C (Laffey Matrix noting hourly rates averaging \$661 based on similar years of experience). Additionally, Gaudet's rate is the median 2014 rate for partners practicing commercial litigation. See CEB and ELM Solutions, REAL RATE REPORT SNAPSHOT 2015 p. 74.² Accordingly, the Court finds that Gaudet's \$600 hourly rate was reasonable. Because Gaudet expended reasonable hours on this matter and because his hourly rate was reasonable, the Court grants Plaintiffs \$16,350 in attorney's fees.

4. Conclusion

For the foregoing reasons, the Court **grants** Plaintiffs' motion to enforce the settlement agreement as follows:

- (1) The Court **grants** Plaintiffs the amount due under the settlement agreement plus compounded interest in the amount of \$208,182.39; and
- (2) The Court **grants** Plaintiffs request for attorney's fees in the amount of \$16,350.

IT IS SO ORDERED.

Initials of Preparer

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kjt

² Although neither party cites to the Real Rate Report snapshot, it is a corroborative public source available to the Court.