

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

**MINUTE ORDER**

DATE: 03/22/2012

TIME: 01:51:00 PM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: JCCP4041

CASE INIT.DATE: 06/19/1998

CASE TITLE: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

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**EVENT TYPE:** Motion Hearing (Civil)

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 03/21/12 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiff People of the State of California, ex rel. Kamala D. Harris, Attorney General of the State of California's ("Plaintiff") motion for attorneys' fees as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

As a preliminary matter, the Court grants defendant R.J. Reynolds Tobacco Co.'s ("Defendant") request for judicial notice. In addition, the Court overrules objection numbers 1-3, 5-7 to the Pearl Declaration. Objection No. 4 is sustained on the ground of lack of foundation.

Plaintiff requests \$2,943,920.63 in attorney fees based on the lodestar method. (See e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) The time records for the attorneys and paralegals who worked on this case were kept in a system known as ProLaw. (Finberg Dec., Exh. A.) Exhibit B to the Finberg Declaration summarizes the hours that have not been claimed. Finally, the time records for the law interns and other temporary workers kept their own time records since they do not use the ProLaw system.

Defendant mainly takes issue with the reasonableness of the hourly rates Plaintiff used to calculate the lodestar. More specifically, Defendant contends that local rates are much lower and should be applied here. Although local rates are generally used in determining statutory fee awards unless local counsel was unavailable to litigate the case (*Ctr. for Biological Diversity v. County of San Bernadino* (2010) 188 Cal.App.4<sup>th</sup> 603, 614), unavailability has been interpreted broadly and applies whenever it is

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"impracticable" to hire local counsel. (*Id.* at p. 618; *Horsford v. Bd. of Trustees* (2005) 132 Cal.App.4th 359, 398-399). According to Dennis Eckhart ("Eckhart"), the head of the Tobacco Section in 2007 when this litigation commenced, neither of the two Tobacco Section attorneys were appropriate or available to take primary responsibility for this case. (*Id.* at p. 6.) None of the other attorneys in the Attorney General's ("AG") office were available to handle this case. (*Id.* at p. 5.) Furthermore, each of the divisions and sections of the AG's office has specific duties and responsibilities; each has its own budget and staff. (*Ibid.*) In other words, attorneys in the AG's office are not interchangeable. Even if it could do so, the attorneys from the other sections would not have any familiarity with the tobacco industry, the MSA, the Consent Decree and the past conduct Defendant. That expertise was essential to this litigation. (*Id.* at p. 6.)

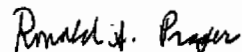
As to Defendant's argument that it should have utilized local outside counsel, Plaintiff presented evidence that the AG's office did not have funds budgeted to pay outside counsel at higher rates than it pays for its own attorneys. (Eckhart Dec.) It cannot create new positions and hire new lawyers at will: it operates under severe budget constraints, laws, and procedures in hiring. (*Id.* at p. 5.) Furthermore, the AG is required by law to represent the state with its own employees except in rare circumstances not present here. (See Cal. Const., art. VII, §5; Gov. Code §12520.) Private attorneys may be used when there is a conflict of interest, an emergency, or in an area where the office does not have expertise. (Gov. Code §19130(b)(3), (5), (7), 10; DOJ Administrative Manual, Ch. 5, §05250.) Here, there was no conflict or emergency and the Tobacco Section could not overlook its extensive expertise to hire outside counsel. Therefore, the use of market rates is appropriate in this case.

As to Defendant's contention that the lodestar should be adjusted downward due to Plaintiff's practice of quarter-hour billing, there is no evidence that Plaintiff's rates are padded. In fact, it submitted evidence that it took precautions to avoid overbilling. In addition, the document that Defendant's expert, James E. King ("King"), relies on to assert that Plaintiff's rates are padded i.e., 2003 Arbitration Advisory 03-01, states that it does "not constitute the official position or policy of the State Bar of California." On the other hand, the American Bar Association Section of Business Law Task Force on Lawyer Business Ethics approved quarter hour billing in its "Statement of Principles" at page 13. (Reply, Exh. A; see also ABA Comm. on Ethics and Prof. Resp., Formal Op. 93-379 (1993).) Finally, Plaintiff's expert, Richard M. Pearl stated that state attorneys do not have the same incentive to overcharge that can be found in the private sector. (Pearl Supp. Dec., ¶19.)

As to Defendant's partial success argument, the Court reiterates its previous determination that the 15 percent deduction by the Plaintiff was sufficient.

Based on the foregoing, the motion is granted. Plaintiff shall be awarded attorney fees of \$2,943,920.63.

**IT IS SO ORDERED.**



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Judge Ronald S. Prager

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE, SAN DIEGO, CA 92101-3294 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634	<p style="text-align: right;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">F I L E D  Clerk of the Superior Court  MAR 23 2012  By: LEE RYAN, Deputy</p>
PLAINTIFF(S)/PETITIONER(S) COORDINATION PROCEEDINGS TOBACCO LITIGATION	
DEFENDANT(S)/RESPONDENT(S)	JUDGE: RONALD S. PRAGER DEPT: 71
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL  (CCP 1013a(4))</b>	CASE NUMBER JCCP4041

I, **LEE RYAN**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s): **RULING AFTER ORAL ARGUMENT ON 3/21/12, MOTION FOR ATTORNEYS' FEES.**

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:  San Diego  Vista  El Cajon  Chula Vista  Ramona, California.

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CLERK OF THE SUPERIOR COURT

*Lee Ryan*  
Lee Ryan, Deputy

Date: 03/23/12

by \_\_\_\_\_, Deputy