

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 **PATRICIA MUGRAUER and WADE
MUGRAUER,**

5 **Plaintiffs**

6 v.

7 **CITY OF MODESTO, et al.,**

8 **Defendants**

CASE NO. 1:16-CV-0480 AWI SAB

**ORDER FOR CLERK TO ENTER
JUDGMENT PURSUANT TO
PLAINTIFF PATRICIA MUGRAUER'S
ACCEPTANCE OF A RULE 68 OFFER
OF JUDGMENT**

(Doc. No. 23)

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11 On January 15, 2017, Plaintiff Patricia Mugrauer filed a notice of acceptance of
12 Defendants' Rule 68 offer of judgment. Plaintiff requested that judgment be entered against the
13 City of Modesto pursuant to the terms of the Rule 68 offer, but that the matter of attorneys' fees
14 and costs be set by the Court if the parties cannot reach an agreement. See Doc. No. 23.

15 Federal Rule of Civil Procedure 68 provides in relevant part: "... a party defending
16 against a claim may serve on an opposing party an offer to allow judgment on specified terms,
17 with the costs then accrued. If . . . the opposing party serves written notice accepting the offer,
18 either party may then file the offer and notice of acceptance, plus proof of service. The clerk must
19 then enter judgment." Fed. R. Civ. P. 68(a). As Rule 68(a) provides, once an offer of judgment is
20 accepted, the clerk is under a duty to enter judgment. See id.; Nusom v. Comh Woodburn, Inc.,
21 122 F.3d 830, 834 (9th Cir. 1999).

22 Here, the terms of the Rule 68 offer are essentially that: (1) judgment be entered in favor
23 of Patricia Mugrauer and against the City of Modesto in the sum of \$745,651.01, plus reasonable
24 attorneys' fees and costs incurred up to the date of the offer; (2) all claims against all Defendants
25 by Patricia Mugrauer be dismissed with prejudice; and (3) the amount of accrued costs and
26 attorneys' fees are to be set by the Court in accordance with applicable law. See Doc. No. 23 at
27 Ex. A ¶¶ 1-3. The Rule 68(a) offer does not address the claims of Plaintiff Wade Mugrauer. See
28 id. at Ex. A. "Rule 68 offers and acceptances . . . are actively supported by courts." Latshaw v.

1 Trainer Wortham & Co., 452 F.3d 1097, 1103 (9th Cir. 2006). Therefore, the Court will direct the
2 Clerk to enter judgment in favor of Patricia Mugrauer and provide a mechanism for resolving the
3 issue of fees and costs.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Clerk shall enter judgment in favor of Patricia Mugrauer and against the City of
7 Modesto in the amount of \$745,651.01;
- 8 2. All claims by Patricia Mugrauer against all Defendants are DISMISSED with prejudice;
- 9 3. The Clerk shall note on the docket that Patricia Mugrauer was terminated as a party as of
10 the date of this order;
- 11 4. The parties shall meet and confer regarding the costs and attorneys' fees that Patricia
12 Mugrauer has accrued up to and including January 11, 2017;
 - 13 a. If the parties reach an agreement as to the amount of Patricia Mugrauer's costs
14 and attorney's fees, the parties shall submit a stipulation and proposed order to
15 the Court as soon as possible;
 - 16 b. If no agreement or stipulation can be reached by February 10, 2017, then
17 Patricia Mugrauer shall file a motion for costs and attorneys' fees on or by
18 February 16, 2017, Defendants shall file a response or opposition on or by
19 February 23, 2017, and Patricia Mugrauer shall file a reply on or by March 2,
20 2017; and
- 21 5. This case remains open with respect to the claims made by Plaintiff Wade
22 Mugrauer.

23 IT IS SO ORDERED.

24 Dated: January 19, 2017

25 
26 SENIOR DISTRICT JUDGE