

FILED

AUG 25 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____
DEPUTY CLERK 

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11 O'REILLY AUTOMOTIVE, INC.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 MILILANI GROUP, INC.,
15 Plaintiff,
16 v.
17 O'REILLY AUTOMOTIVE, INC.;
18 CSK AUTO, INC.,
19 Defendants.

20 Case No. 2:12-CV-00891-JAM-CKD
21 **O'REILLY AUTOMOTIVE, INC.'S
22 APPLICATION FOR SECOND AMENDED
23 JUDGMENT, TO INCORPORATE
24 AWARD OF ATTORNEYS' FEES, COSTS,
25 AND INTEREST INTO EXISTING
26 JUDGMENT**

27 Defendant O'Reilly Automotive, Inc., who obtained judgment in its favor after the Court
28 dismissed, with prejudice, all claims pled against it, now asks that the Court amend the existing
judgment to reflect the award of attorneys' fees and costs incurred on the appeal of this Court's
judgment, which fees were awarded by this Court on February 8, 2016. O'Reilly Automotive,
Inc. also seeks to include interest that has accrued up to and including the filing of this application
in the amended judgment.

APPLICATION FOR AMENDED JUDGMENT

Plaintiff's original complaint in this matter contained a single cause of action for breach of
contract against O'Reilly Automotive, Inc. ("O'Reilly") based on an alter-ego theory.¹ (Docket

¹ Plaintiff's claims arise from CSK Auto, Inc.'s long-term lease of a warehouse facility owned by Plaintiff, located in
Dixon, California.

1 No. 2.) Eventually Plaintiff filed a First Amended Complaint, to add CSK Auto, Inc. ("CSK") as
2 a defendant and also add a cause of action for waste against both CSK and O'Reilly. (Docket
3 No. 7.) Defendants' motion to dismiss the First Amended Complaint was granted with leave to
4 amend. Defendants' motion to dismiss Plaintiff's Second Amended Complaint (Docket No. 17)
5 was also granted. In its order granting that motion, the Court dismissed all claims pled by
6 Plaintiff against O'Reilly, with prejudice, and ordered that the case proceed only on Plaintiff's
7 cause of action for breach of lease against CSK. (Docket No. 29 at 7:10-13.) The Court granted
8 O'Reilly's request for entry of judgment (Docket No. 31) and entered judgment in O'Reilly's
9 favor on June 17, 2013. (Docket Nos. 37-38.)

10 After the Court entered judgment, O'Reilly filed a motion to recover the attorneys' fees
11 and costs it had incurred in defending this action. (Docket Nos. 39, 39-1, 43, 49, and 49-1.) The
12 Court granted the motion and awarded O'Reilly \$52,741.50. (Docket No. 50.) Plaintiff
13 subsequently appealed the judgment on August 15, 2013. (Docket No. 47.) On October 26,
14 2015, the judgment was affirmed. (Docket No. 58.) The Appellate Court transferred
15 consideration of O'Reilly's request for an award of the attorneys' fees and costs incurred on
16 appeal to this Court. (Docket No. 60.) On February 8, 2016, the Court awarded O'Reilly
17 \$30,029.00 in attorneys' fees. (Docket No. 66.) Thus, the outstanding principal amount of the
18 judgment is \$82,770.50. Pursuant to the contract Plaintiff sued upon, interest on the attorneys'
19 fees award accrues at the rate of 12% per annum. (Docket No. 17-3 at p. 13.)

20 O'Reilly now requests that the Court amend the existing judgment in its favor to reflect
21 the award of attorneys' fees and costs it obtained on February 8, 2016. (Docket No. 66.) These
22 fees represent those incurred by O'Reilly as a result of Plaintiff's appeal. The fee award has not
23 been paid by Plaintiff despite O'Reilly's repeated requests, and thus O'Reilly needs the award
24 incorporated into a judgment so it can proceed with enforcement/collection. O'Reilly is
25 concurrently submitting its proposed judgment.

26 The proposed judgment submitted by O'Reilly includes all amounts due up to and
27 including the date of the filing of this application, including interest, and contemplates that
28 interest will continue accrue at the rate stated in the contract until the date the judgment is

1 satisfied. As established above, the principal amount now due is \$82,770.50. Interest accrued at
2 the rate of 12% on the principal amount of \$52,741.50 from September 11, 2013 through
3 February 7, 2016, equaling \$15,259.20.² Interest started to accrue on the principal amount of
4 \$82,770.50 on February 8, 2016. Up to and including the date of this filing, interest on the
5 increased principal amount of \$82,770.50 totals \$5,387.58.³ O'Reilly seeks the entry of an
6 amended judgment reflecting the amount due as of the date of this filing, a total of \$103,417.28,
7 with recognition that interest continues to accrue at the contract rate of 12% per annum (\$27.21
8 per day) until the judgment is satisfied.

9
10 DATED: August 23, 2016

DOWNEY BRAND LLP

/s/ Adrian J. Webber

JANLYNN R. FLEENER

ADRIAN J. WEBBER

Attorney for Defendants

O'REILLY AUTOMOTIVE, INC. and CSK
AUTO, INC.

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27 ² The contract rate of 12% per annum on the principal amount of \$52,741.50 equals \$17.34 per day. The time period
of September 11, 2013 through and including February 7, 2016 equals 880 days.

28 ³ The contract rate of 12% per annum on the principal amount of \$82,770.50 equals \$27.21 per day. The time period
of February 8, 2016 through August 23, 2016 equals 198 days.

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14 MILILANI GROUP, INC.,

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17 O'REILLY AUTOMOTIVE, INC.;
18 CSK AUTO, INC.,

19 Defendants.

Case No. 2:12-CV-00891-JAM-CKD

JAM
~~PROPOSED~~ SECOND AMENDED
JUDGMENT

20 Pursuant to and in accordance with the Court's Order filed June 17, 2013 (Docket No. 38),
21 judgment has been entered in favor of Defendant O'Reilly Automotive, Inc., and against Plaintiff
22 Mililani Group, Inc.

23 IT IS NOW ORDERED AND ADJUDGED that judgment shall be and hereby is further
24 entered in favor of O'Reilly Automotive, Inc., and against Mililani Group, Inc., in the amount of
25 \$103,417.28. Interest shall accrue on the principal amount owed, \$82,770.50, at the rate specified
26 in the contract Plaintiff sued upon, 12% per annum - a daily rate of \$27.21 per day - from August
27 23, 2016, until the date the Second Amended Judgment is satisfied in full.

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The Clerk of the Court is directed to enter this Second Amended Judgment pursuant to Rules 54 and 58 of the Federal Rules of Civil Procedure.

Dated: 8.24.2016


United States District Judge