

PROPOSED TENTATIVE

On April 30, 2025, petitioners Broadcast Music, Inc. (petitioner) filed a petition to confirm a contractual arbitration award on standard Judicial Council forms (ADR-108) against respondents Cristian Martinez, operating radio station KVSM-AM (respondents), pursuant to Code of Civil Procedures section 1285.¹ A notice of hearing was filed on May 8, 2025 (for hearing on July 9, 2025), and the petition is supplemented with the following: 1) Attachment 4(b)[“A Radio Station Blanket/Per Program License Agreement[.]” which contains the arbitration agreement in paragraph 11, as well as the “BMI 2017 Radio License Extension Agreement”]; 2) Attachment 8(c), which consists of two (2) documents: a) the original arbitration award dated February 7, 2025, issued by the “American Arbitration Association Commercial Arbitration Tribunal” and signed by Hon. Mark Mason, arbitrator, awarding petitioner \$29,878.92, including fees and costs for breach of the agreements above, as well as costs of \$1,325 (fees and compensation of arbitrator); and b) the modified award, dated March 13, 2025, also signed by Hon. Mark Mason, awarding petitioner \$11,999.59 in damages (consisting of \$8,357.80 in unpaid music license fees, \$1,847.22 in “Annual Financial Report Penalties,” \$1,794.56 in “Late Payment Charges (Interest),” plus (in addition) \$250 in attorney fees and \$47.22 in costs, for a total award of \$12,296.81. Petitioner in his petition describes the dispute as “related to unpaid license fees due under the BMI License for Internet and Mobile Audio-Visual services music performances, eating and drinking establishments, or broadcasters.” (Item 5 of the Petition.) It appears the arbitration hearings occurred on February 7, 2025, and March 13, 2025, in New York, before arbitrator Mark Mason. On June 10, 2025, petitioner personally served on respondents the “Petition to Confirm the Arbitrational Award,” with all attachments. No opposition or response has been filed. In addition to the judgment amount awarded by the arbitrator, petitioner asks the court to award prejudgment interest from March 13, 2025 to today (at the statutory rate, which is \$3.36 per day), as well as costs of \$495, without any gloss.

Pursuant to the statutory scheme, a petition to confirm an arbitration award and enter it as judgment must set forth the substance of the agreement to arbitrate, the name(s) of the arbitrator, and attach a copy of the written arbitration award(s). (Code Civ. Proc.,² § 1285.4, subd. (a)-(c); *Loeb v. Record* (2008) 162 Cal.App.4th 431, 4650.) The petition (and associated documents) must be served and filed at least 10 days after service of the signed copy of the award upon petitioner (§ 1288.4) and “not later than four years after the date of service of a signed copy of

¹ This provision provides as follows: “Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.”

² All further statutory references are to the Code of Civil Procedure.

the award on the petitioner. . . .” (§ 1288.)³ If these requirements are satisfied, the court must enter the arbitration award as a judgment. That is, unless a petition to correct or vacate the award has been timely filed, the court must render judgment confirming the arbitrator’s award. (§ 1286 [the court “shall confirm the award as made”]; see *Law Offices of David S. Karton v. Segreto* (2009) 176 Cal.App.4th 1, 9 [the strict limitations of § 1286 are seldom acknowledged in the case law; if the trial court does not dismiss or correct or vacate it must confirm the award, and entry of judgment in conformity therewith is required]; *Valsan Partners Limited Partnership v. Calcor Space Facility, Inc.* (1994) 25 Cal.App.4th 809, 818 [same].) Costs incurred in judicial proceedings to confirm an arbitration award are recoverable by the prevailing party as a matter of right. (§ 1293.2; *Austin v. Allstate Ins. Co.* (1993) 16 CA4th 1812, 1815-1816; see also *Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796, 805-808.) The prevailing party is also entitled to prejudgment interest of 10% from the “date certain,” pursuant to Civil Code sections 3287/3289, which in this case is March 13, 2025, at \$3.36 a day.⁴ (See, e.g., *Tenzera, Inc. v. Osterman* (2012) 205 Cal.App.4th 16, 21 [a prevailing party in arbitration is entitled to prejudgment interest as of the date of the final award to entry of judgment, meaning it is pre-judicial judgment but post-contractual judgment].) A judgment so entered has the same force and effect as, and is subject to the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification, and may be enforced like any other judgment. (§ 1287.4.)

One additional requirement should be noted (although not addressed by petitioner in its petition), as the arbitration agreement appears to be governed by the FAA. (9 U.S.C. §1) (although the arbitration agreement does not expressly state as much) Generally, an arbitration award under the FAA is confirmable only if the parties have agreed judgment may be entered on the award. (9 U.S.C § 9 (hereafter, section 9).) Paragraph 11 of the arbitration agreement expressly authorizes entry of judgment by a state court.

All statutory requirements appear to have been satisfied. Petitioner has submitted all documents, including the arbitration agreement, the arbitration award and its modification, and offered the name of the arbitrator. All submissions, including a notice of hearing, were personally served on respondents. The hearing is timely, and respondent has not filed a response of any kind. Further, even if the court assumes that section 9 applies to the present matter, the parties consented to a judicial confirmation of the arbitration award. Petitioner is entitled to prejudgment interest as requested, at \$3.36 a day between March 13, 2025, and today’s hearing. Petitioner is also entitled to reasonable costs incurred, pursuant to statute and the arbitration

³ Section 1290.4 provides that a copy of the petition and written notice of the time and place of the hearing and any other papers shall be served in a manner provided in the arbitration agreement. If the arbitration agreement is silent on this topic, and the person upon whom service is to be made has not previously appeared in the proceeding and has not previously been served in accordance with this subdivision, service within this state shall be made in the manner provided for service of a summons and complaint. (§ 1290.4, subds. (a), (b).)

⁴ This amount is calculated as follows: \$12,296.81 times 10%, which equals \$1,229.68. divided by 365 days, which equals \$3.36 between March 13, 2025, and July 9, 2025.

agreement, although petitioner has failed to explain why \$495 is appropriate, advancing the amount perfunctorily, without explanation. The court directs plaintiff at the hearing to explain why \$495 is appropriate, or to submit a declaration before the hearing explaining the amount. The court directs petitioner to provide a proposed order and judgment for signature with all final amounts.

In summary, the court grants the petition and enters the arbitration award as a judgment. The court will award prejudgment interest at \$3.36 a day between March 13, 2025, and today's hearing date. Petitioner is directed to justify the costs of \$495 orally at the hearing or in a declaration submitted at or before the hearing. The court directs petitioner to provide a proposed order and judgment (with all final amounts) for signature.

The parties are directed to appear at the hearing either in person or by Zoom.