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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADRIAN RISKIN, Petitioner, vs. LARCHMONT VILLAGE PROPERTY OWNERS ASSOCIATION, Respondent.	Case No.: BS172934 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS** DATE: November 21, 2019 TIME: 1:30 P.M. DEPT: 82 JUDGE: Hon. Mary H. Strobel

I. INTRODUCTION

This motion seeks an award of attorney's fees and costs to Petitioner Adrian Riskin and his counsel in this California Public Records Act ("CPRA") lawsuit. As per the June 17, 2019, ORDER GRANTING PETITION FOR WRIT OF MANDATE, Petitioner is the prevailing party. Thus, entitlement to fees is not in question.

Petitioner is seeking reasonable fees and costs in the amount of $56,892.04. That total consists of $39,740 for fees incurred on the underlying matter, $9,935 for a 1.25 multiplier to approximate full compensation in light of contingency risk, delay of payment, and other factors the Court deems appropriate, $5,080 in "fees on fees," and $2,137.04 in costs.

Despite Petitioner's repeated efforts to reach settlement on fee liability, Respondent had declined to engage in settlement negotiations, leaving Petitioner no choice but to seek fees via this motion.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner filed this action in March 2018 to enforce the CPRA requests which Respondent failed to respond to. Respondent did not file an Answer, or any other response, to the Petition. This action proceeded to hearing on the Petition for Writ of Mandate on May 16, 2019. Respondent contended that it had not been properly served and had not made a general appearance. The Court continued the hearing until June 4, 2019. At the June 4 hearing the Court adopted its tentative ruling finding that Respondent was properly served and had appeared, that the Petition for Writ was granted as to a number of requests, and that Petitioner is the prevailing party entitled to fees under Cal. Gov. Code § 6259(d). On June 17, 2019, the Court entered its ORDER GRANTING PETITION FOR WRIT OF MANDATE. Petitioner served the Notice of Entry of Order on Petitioner on June 18, 2019. On July 1, 2019, Petitioner served and filed a Memorandum of Costs in the amount of $1,387.20. Respondent did not file a Motion to Tax Costs. On August 2, 2019, the parties filed a stipulation to extend the time to file a motion for attorney's fees until September 16, 2019. Despite Petitioner's numerous attempts to negotiate a settlement, Respondent has declined to engage in negotiations. (Cisneros Decl. ¶¶ 9-10.)

III. ARGUMENT

A. Petitioner is the prevailing party entitled to attorney's fees and costs under Cal. Gov. Code § 6259(d).

In a CPRA action, "the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation files pursuant to this section." (Cal. Gov Code § 6259(d).) In its ORDER GRANTING PETITION FOR WRIT OF MANDATE, the Court found that "Petitioner is the prevailing party." Thus, Petitioner is entitled to recover costs and reasonable attorney's fees.

B. Petitioner seeks reasonable fees.

The fees Petitioner seeks are reasonable. To determine reasonable attorney's fees for prevailing CPRA petitioners, courts begin by calculating the "lodestar" amount – the number of hours reasonably expended multiplied by the reasonable hourly rate. *Bernardi v. County of Monterey* (2008) 167 Cal. App. 4th 1379, 1393. Attorney fee awards should be "fully compensatory" and, in the absence of circumstances rendering an award unjust, an attorney fee award should ordinarily include compensation for all of the hours reasonably spent, including those relating to the fee. *Id.* at 1394. Once the lodestar is established, courts can apply a lodestar enhancement–or "multiplier"–for factors such as contingent risk to ensure the award approximates market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorneys' fees. *Id*. at 1399.

Here, Petitioner seeks a lodestar of $39,740 for work performed prior to the fee motion, a multiplier of 1.25 resulting in an additional $9,935, $5,080 for time spent on the fee motion, and costs in the amount of $2,137.04, for a total award of $56,892,04.

1. Petitioner's Expended Hours are Reasonable

Petitioner is entitled to compensation for all time spent on this case. Compensable time includes all hours reasonably spent on a case. (emphasis added) *Serrano v. Unruh (Serrano IV)* 1982) 32. Cal.3d 621, 639. As stated by the Ninth Circuit, Courts should, by and large, defer to the winning lawyer's professional judgment as to how much time they were required to spend on the

case, "after all, [they] won, and might not have, had [they] been more of a slacker." *Moreno v City of Sacramento* (9th Cir 2008) 534 F3d 1106, 1111.[1] Further, in determining the amount of reasonable fees, the time required by the opposing party's tactics can be highly probative. *Serrano IV, supra*, at 634 fn18.

Here, the hours set forth in the declarations are reasonable. All drafting, filing, legal research, communication and other time accrued directly relate to the issue of Respondent's refusal to release records responsive to the CPRA request. Respondent's neglect and refusal to participate in this litigation required Petitioner to incur additional hours on this case. (Cisneros Decl. ¶ 9.) For example: Respondent's refusal to respond to Petitioner's CPRA requests required Petitioner's counsel to engage in extensive factual research to prove the existence of certain records; Respondent's failure to produce a disclosure letter with its post-litigation production identifying which requests the records were provided in response to required Petitioner's counsel to engage in close document review and to draft detailed follow-up letters regarding further production; Respondent's failure to resolve this matter via settlement –Respondent never made even a single settlement offer or counter-offer–required Petitioner to prepare for litigation by serving discovery and drafting a Merits brief; Respondent's argument at the Merits hearing that it never made a general appearance required Petitioner to travel to and attend a second hearing; Respondent's failure to produce any records whatsoever after the Court issued its order required Petitioner to file an Ex Parte Application to Show Cause re: Contempt in order to obtain records; and Respondent's failure to engage in settlement negotiations for fee liability–to date, Respondent had not made a single offer or counter-offer–required Petitioner to prepare this Motion for Attorney's Fees. (Cisneros Decl. ¶ 9.) The fees incurred in this matter are entirely a result of Respondent's failings and neglect.

Petitioner's counsel also proceeded conscientiously to ensure all hours were reasonable. Petitioner's counsel exercised billing judgement as he recorded his time. (Cisneros Decl. ¶ 13.) Cisneros has further reduced his time by an additional 5 hours as billing judgment in seeking this motion and is seeking compensation for travel time at a reduced 1/2 rate. (Cisneros Decl. ¶¶ 13-14;

[1] Cited favorably by the CA Court of Appeals in *Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88, 103.

Cisneros Decl. Exs. D, E.) The total hours sought on this matter–86.6 non-travel hours and 23.5 travel hours–are reasonable.

Additionally, the time sought for "fees on fees" are also reasonable. Petitioner is proceeding via this motion because Respondent declined engage in settlement discussions regarding fees. (Cisneros Decl. ¶ 9.) Petitioner's claim for "fees on fees" is based on the 12.7 hours incurred to date preparing this motion. (Cisneros Decl. ¶ 15; Cisneros Decl. Ex. F.) The time is documented and reasonable.

2. The Hourly Rates sought by Petitioner are Reasonable

The hourly rates sought by Petitioner's counsel are reasonable. The reasonable market value of the attorney's service is the measure of the reasonable hourly rate. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market rate or discounted rates, represent the client on a straight contingent fee basis, or are an in-house counsel. *Chacon v. Litke* (2010) 181 Cal. App. 4th 1234, 1260 (internal citations omitted). As detailed in the Declarations, both Mr. Cisneros and Ms. Von Herrmann (who performed work on this matter on a contingency contract basis) seek an hourly rate of $400.

Mr. Cisneros is a 5 year attorney with a solo practice focusing on California Public Records Act cases. (Cisneros Decl. ¶ 2.) Since 2017, Cisneros has represented clients in over 20 CPRA actions in jurisdictions across the state. (Cisneros Decl. ¶ 3.) In addition to representing clients in CPRA actions, Cisneros authored a guide to the CPRA for plaintiff's attorneys which was published in Trial Lawyer Magazine and Valley Lawyer Magazine and has conducted CPRA trainings for organizations across the state. (Cisneros Decl. ¶ 4.) The hourly rate of $400 is consistent with fee awards both in Los Angeles County Superior Court and Los Angeles-area Federal Court. (Cisneros Decl. ¶ 12; Cisneros Decl. Exs. B, C.) Further, attorney fee-expert Grant D. Stiefel attests to Mr. Cisneros sought-for rate as being "significantly lower than the median hourly rate for comparably-experienced litigation attorneys in the Los Angeles legal marketplace." (Stiefel Decl. ¶ 27.) Mr. Stiefel provided sources which indicate, respectively, that an hourly rate of $573 and $550 are

market-rate. (Stiefel Decl. ¶¶19-23.) As such, $400/hr rate is a reasonable rate in the Los Angeles-area for an attorney with Cisneros' experience and expertise and, thus, the amount is reasonable. Attorney von Herrmann is very similarly situated to Mr. Cisneros. Ms. von Herrmann is also a 5 year attorney and a significant portion of her practice consists of California Public Records Act matters (von Herrmann Decl. ¶ 2.) An hourly rate of $400 is reasonable as to both attorneys.

3. A 1.25 Multiplier is Necessary to Approximate Market Compensation

. Given public policy in favor of CPRA-enforcement, 1.25 multiplier is appropriate and necessary to account for contingency risk and delay of payment in order to approximate market rate. While the lodestar is the basic fee for comparable legal services in the community, it may be adjusted by the court based on factors including the extent to which the nature of the litigation precluded other employment by the attorneys and the contingent nature of the fee award. *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1399 citing *Ketchum, supra*, at 1132. A multiplier for contingent risk is "one of the most common" multipliers. *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 533, 579. The purpose of the multiplier for contingency risk is to bring the financial incentives for attorneys enforcing important rights into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis. *Ketchum, supra* at 1132. Thus, the multiplier is intended to approximate "market level compensation" for contingency cases enforcing statutory and constitutional rights, which typically includes a premium for the risk of nonpayment or delay in payment of attorney's fees. *Bernardi*, supra, at 1399. The Sixth District Court of Appeal approved of a "modest" 1.25 multiplier for contingency risk in a CPRA case. *Id.*

As such, a multiplier is not a "windfall," but a mechanism to incentivize contingency representation in CPRA cases. This case is precisely the type for which a multiplier is appropriate. Petitioner's counsel took this case entirely on contingency for fees. (Cisneros Decl. ¶ 8.) Petitioner's counsel also shared responsibility for costs. (Cisneros Decl. ¶ 8.). The CPRA is an important public right and the Legislature created a fee shifting provision in order to encourage enforcement. *Filarsky, supra*, 28 Cal.4th at 426-427. Despite the fact that fees are mandatory should requestors prevail, there is significant risk of not prevailing in any given CPRA case because the requestor has

incomplete information compared to the agency: whereas the agency knows the content of each record it is withholding, or whether responsive records exist, the requestor typically does not. This is particularly true in cases such as this one, where–rather than issue a clear denial as per its statutory obligations–an agency simply refuses to respond to a CPRA request altogether.

Without a multiplier in CPRA cases taken on contingency, attorneys are required to take CPRA cases at a "risk discount." Further, the nature of contingency representation means that attorneys must sometimes wait over a year for any compensation, and, as Petitioner's counsel has done in this case, the attorney may go out of pocket on costs in the meantime. Given those factors, declining to grant a multiplier in contingency CPRA cases undermines the statutory scheme meant to provide incentives to attorneys to represent members of the public to enforce the right to public records, regardless of the client's ability to pay.

Cisneros, to date, has only filed CPRA cases on contingency for fees. (Cisneros Decl. ¶ 5.) That practice has permitted him to represent students, journalists, and activists who were wrongfully denied records, but who would not have the ability to pay upfront to litigate. (Cisneros Dec. ¶ 5.) As discussed above, there is inherent risk in every CPRA case. Thus, the CPRA attorney taking cases on contingency–as counsel has done here–is assisting members of the public in vindicating important statutory and constitutional rights regardless of the client's ability to pay. The CPRA attorney working on contingency may invest hundreds of hours, wait a year or more for compensation, and can face an unknown amount of risk as to whether the client will prevail. Given those circumstances, where, as here, the requestor does prevail, a "modest" 1.25 multiplier is appropriate to incentivize contingency CPRA representation and to approximate market compensation when accounting for the risk discount and delay of payment.

C. Costs Should be Awarded

All costs should be awarded. Petitioner submitted a Memorandum of Costs in this matter seeking costs in the amount of $1,387.20. That Memorandum was unopposed. Since filing that Memorandum, Petitioner has incurred additional costs in the amount of $749.84. (Cisneros Decl. ¶ 16.) Those costs include being charged Respondent's first appearance fee when Petitioner filed the

stipulation to extend the date to file the fee motion, and fees associated with filing the Ex Parte Order to Show Cause re: Contempt. (Cisneros Decl. ¶ 16.) These costs are reasonable and should be awarded.

IV. CONCLUSION

The California Public Records Act's fee provision is a primary "protection[] and incentive[]"for requestor/petitioners, designed to encourage private enforcement of the "fundamental and necessary right of every person in this state" to public records. *Filarsky, supra*, 28 Cal.4th at 426-427; Cal. Gov. Code § 6250. Petitioner was forced to file this lawsuit to obtain documents that were unlawfully withheld and to force Respondent to conduct an adequate search for records. Respondent has refused to engage in settlement negotiation, forcing Petitioner to file this motion. All fees and costs sought are reasonable and should be awarded.

Dated: September 16, 2019

By: _____
Abenicio Cisneros
Attorney for Petitioner