

1. MATTER OF MORETSKY, 23CV1744

OSC Re: Name Change

TENTATIVE RULING # 1: PETITION GRANTED AS REQUESTED.

2. PIMOR, ET AL. v. VANHEE WOODWORKS, 23CV0578**Motion for Attorney Fees**

Pending before the court is plaintiffs Clement Pimor's and Emilie Cappella's motion for attorney fees pursuant to Code of Civil Procedure section 473, subdivision (b). Defendant did not file an opposition.

1. Background

The court clerk entered default against defendant on June 9, 2023, and default judgment on June 12, 2023. On September 28, 2023, the court granted defendant's request to set aside default and default judgment based on an attorney affidavit attesting to mistake, inadvertence, surprise, or neglect. Pending is plaintiffs' motion for an order awarding attorney fees in the amount of \$3,350.00.

2. Discussion

Code of Civil Procedure section 473, subdivision (b) provides in pertinent part: "The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." (Code Civ. Proc., § 473, subd. (b).) Therefore, the court will direct defense counsel to pay reasonable, compensatory legal fees and costs to plaintiffs.

Additionally, the court will deem defendant's non-opposition as an admission that the motion is meritorious. (Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C).)

A court assessing attorney fees begins with a lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method " 'is the only way of

approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney's services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson, supra*, 36 Cal.App.4th at p. 361.)

Here, plaintiffs move for an order awarding attorney fees under the lodestar method in the amount of \$3,350.00. In support thereof, plaintiffs submitted a declaration from their attorney, Alexis C. Holmes, which includes her billing log for this matter. Ms. Holme's current hourly rate is \$250.00. All entries were billed at a minimum increment of 0.1 hour.

Having reviewed and considered plaintiffs' moving papers, including counsel's declaration and the billing logs, and given defendant's non-opposition, the court finds that plaintiffs are entitled to \$3,350.00 in attorney fees.

TENTATIVE RULING # 2: PLAINTIFFS' MOTION FOR ATTORNEY FEES IS GRANTED. PLAINTIFFS ARE AWARDED \$3,350.00 IN ATTORNEY FEES. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS

ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. CURTIS JOHNSON, ET AL. v. KENT JOHNSON, SC20180141

(A) OSC Re: Failure to Comply

(B) Arraignment on Contempt of Court

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
DECEMBER 8, 2023, IN DEPARTMENT FOUR.**

4. DE LOIA, ET AL. v. JARS LINEN, INC., 23CV0839**Motion for Attorney Fees**

Pursuant to Corporations Code section 1604, petitioners Gina De Loia and Chris Cefalu move for an award of attorney fees as reasonable expenses related to their December 22, 2022, demand for the inspection of records of respondent JARS Linen, Inc. Petitioners claim that the attorney fees and costs incurred for performing legal research, preparing the verified petition for writ of mandate and reply brief, corresponding with opposing counsel, reviewing documents and pleadings, consulting with petitioners, and preparing the instant petition (including reviewing the opposition and preparing the reply) total \$18,277.00. (Mot. at 5:26–6:2; Reply at 10:6–13.)

1. Background

Respondent JARS Linen, Inc., is a California corporation. Petitioners each own an 18 percent share of respondent’s outstanding stock (De Loia Decl., May 31, 2023, ¶ 5) and sit on the board of directors. (*Id.* at ¶ 4.) Sometime in 2011, De Loia became concerned that Jonathon “Joby” Cefalu and John Cefalu—the Director and Chief Financial Officer of JARS, respectively—were mishandling company funds.¹ (*Id.* at ¶ 10.)

On December 22, 2022, petitioners issued a written demand to John and Joby for the inspection of various records pursuant to Corporations Code sections 1601 (providing shareholders a right to inspection) and 1602 (providing directors a right to inspection).² (De Loia Decl., May 31, 2023, ¶ 30 & Ex. B.) The demand letter states, “Please suggest some dates and times starting the week of January 16, 2023, during which we may inspect and copy the [subject] books and records.” (De Loia Decl., May 31, 2023, Ex. B.)

On January 16, 2023, Joby agreed to meet and supervise a document review at an unspecified future date. (De Loia Decl., May 31, 2023, ¶ 33.) On January 17, 2023,

¹ The court will use the Cefalus’ first names to avoid confusion, not out of disrespect.

² Petitioners’ motion is based solely on the December 22, 2022, demand. (Reply at 2:7.) However, it is undisputed that petitioners made prior informal requests on July 15, 2021, December 15, 2021, January 6, 2022, and sometime in December 2022.

petitioners suggested a meeting on January 18 or 19, 2023. (De Loia Decl., Sep. 8, 2023, Ex. A.) On January 18, 2023, Joby indicated he was not available that week and asked petitioners to suggest some future dates. (*Ibid.*) De Loia responded by asking Joby for his availability. (*Ibid.*) Apparently, the discussion ended there.

On May 31, 2023, petitioners filed a verified petition for writ of mandate against respondent. Prior to the court ruling on the merits, respondent fully complied with the inspection demand. Now, petitioners seek attorney fees, arguing that respondent's refusal to comply with the inspection demand absent court intervention was without justification.

2. Discussion

Corporations Code section 1604 provides that, in any action or proceeding to enforce a shareholder's inspection rights, "if the court finds the failure of the corporation to comply with a proper demand thereunder was without justification, the court may award an amount sufficient to reimburse the shareholder ... for the reasonable expenses incurred by such holder, including attorneys' fees, in connection with such action or proceeding." (Corp. Code, § 1604 [emphasis added].) As petitioners point out, "[Corporations Code] section 1601 can be violated by corporate action calculated to thwart the exercise of the rights it extends to shareholders, i.e., by a failure to respond to a proper request, a communication rendering further requests futile, or an action impeding the process of inspection." (Reply at 8:4–13 [quoting *Jara v. Suprema Meats, Inc.* (2004) 121 Cal.App.4th 1238, 1264].)

Petitioners claim they did not gain access to respondent's records until July 5, 2023, a month after the petition for writ of mandate was filed and five months after the demand for inspection was made. (De Loia Decl., Dec. 1, 2023, ¶ 3.)

Respondent opposes the requested attorney fees on the grounds that (1) it did not violate Corporations Code section 1601, subdivision (a)(1)³ (Opp. at 3:1–4); (2) petitioners did not take sufficient action to inspect the records (i.e., petitioners did not push to confirm an inspection date after Joby indicated he was unavailable the week of January 16, 2023) (Opp. at 3:11–13); and (3) Corporations Code section 1604 does not authorize attorney fees for actions brought by directors—just shareholders.⁴ (Opp. at 3:4–10.)

After reviewing the parties’ email correspondence of January 16, 17, and 18, 2023, the court finds that respondent violated Corporations Code section 1601 without justification by failing to respond to a proper request and impeding the process of inspection. Petitioners issued their demand on December 22, 2022, requesting to meet during the week of January 16, 2023. The evidence shows that Joby waited over three weeks, until January 16, 2023, to respond to the demand and to inform petitioners that he was unavailable. Instead of providing his availability, Joby turned it back on petitioners to “suggest” some future dates. (De Loia Decl., Sep. 8, 2023, Ex. A.) Based on the above, the court will order respondent to pay the reasonable attorney fees incurred by petitioners related to the December 22, 2022, inspection demand.

³ Corporations Code section 1601, subdivision (a)(1) provides: “The accounting books, records, and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation ... shall be open to inspection at the corporation's principal office in California ... upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder” (Corp. Code, § 1601, subd. (a)(1).)

⁴ Petitioners’ December 22, 2022, demand was made in petitioners’ capacities as both directors and shareholders pursuant to Corporations Code sections 1601 and 1602. However, attorney fees under Corporations Code section 1604 are available to shareholders only. (Corp. Code, § 1604; see *Jara v. Suprema Meats, Inc.* (2004) 121 Cal.App.4th 1238, 1263 [“The right of inspection by a director is enforceable only by court order under [Corporations Code] section 1603 without benefit of recovery of attorney fees under section 1604.”].)

A court assessing attorney fees begins with a lodestar figure, based on the “careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.” (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method “ ‘is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.’ ” (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney’s services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

Here, petitioners seek an award of \$18,277.00. (Mot. at 5:26–6:2; Reply at 10:6–13.) In support thereof, petitioners submitted a declaration from their attorney, Daniel S. Stouder, which includes his firm’s billing invoice as Exhibit A. Mr. Stouder’s current hourly rate is \$495.00. (Stouder Decl., ¶ 7.) Danielle Patterson’s current hourly rate is \$305.00. (Stouder Decl., ¶ 8.) All entries were billed at a minimum increment of 0.1 hour.

Having reviewed and considered the petition, including counsel’s declaration and the billing logs, the court finds that petitioners are entitled to a total of \$11,488.00 in attorney fees. The court notes that the attorney billing entries appear to include some task-padding, over-conferencing, and attorney stacking. (See *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272.) Additionally, some of the fees were unrelated to the December 22, 2022, inspection demand (e.g., preparation for Case Management Conference).

TENTATIVE RULING # 4: THE MOTION FOR ATTORNEY FEES IS GRANTED IN PART. PETITIONERS ARE AWARDED \$11,488.00 IN ATTORNEY FEES. NO HEARING ON THIS

MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. JACOBS v. PAPEZ, ET AL., 22CV0891**Motion to Dismiss**

This declaratory relief action concerns a legal fee dispute arising from a personal injury matter. Defendants Brian and Diane Friedland were represented by three different attorneys: first Bradley, Drendel and Jeanney; then defendant Papez; and finally, plaintiff Jeffrey Jacobs.

Papez contends that his motion to dismiss should be granted because plaintiff failed to provide mandatory notice to the Friedland defendants as required by the California Mandatory Fee Arbitration Act (“MFAA”), which covers fee disputes arising from attorney-client relationships, pursuant to California Business and Professions Code section 6200, *et seq.*

The MFAA provides that a system and procedure must be available which permits a client, regardless of the attorney’s preference, to compel arbitration of attorney-client fee disputes. (*Id.*, at § 6201.) Under this system, an attorney is required to notify a client of the right to demand arbitration under the MFAA for disputes involving “recovery of fees, costs, or both.” (*Id.*, at § 6201, subd. (a).) “Failure to give this notice [of the right to arbitrate] shall be a ground for the dismissal of the action or other proceeding.” (*Ibid.*) Although that provision uses the term “shall,” it is well established that dismissal of an action for an attorney’s failure to give notice to a client of the client’s right to arbitrate a fee dispute is discretionary, not mandatory. (*Richards, Watson & Gerson v. King* (1995) 39 Cal.App.4th 1176, 1177; *Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1091; *Wager v. Mirzayance* (1998) 67 Cal.App.4th 1187, 1191.)

Here, plaintiff filed the instant action for declaratory relief against defendant Papez and the former clients. Papez asserts there is no evidence that plaintiff complied with the MFAA’s notice requirement, and thus, plaintiff’s action should be dismissed. (Mtn. at 5:19–20.) The court disagrees. The MFAA’s purpose is to “alleviate the disparity in bargaining power in attorney fee matters ... by providing an effective inexpensive remedy

to **a client** which does not necessitate the hiring of a second attorney. [Citation.]” (*Manatt, Phelps, Rothenberg & Tunney v. Lawrence* (1984) 151 Cal.App.3d 1165, 1174 [emphasis added].) The court finds that dismissing attorney Jacobs’s case against Papez would not serve the purpose of the MFAA’s notice requirement to the Friedlands. Therefore, the motion to dismiss is denied on these grounds.

Papez also contends that plaintiff’s Complaint should be dismissed for lack of subject matter jurisdiction where plaintiff did not establish the value of his lien before commencing this lawsuit. (Mtn. at 6:12–26 (citing *Carroll v. Interstate Brand Corp.* (2002) 99 Cal.App.4th 1168, 1172; *Brown v. Superior Court* (2004) 116 Cal.App.4th 320, 328.) The court rejects this argument. The *Brown* opinion states: “ ‘Appellate courts have consistently held that the trial court in the **underlying action** has no jurisdiction to determine the existence or validity of an attorney lien on the judgment. [Citations.] The trial court does have fundamental jurisdiction over the subject matter and parties. Nevertheless, because the attorney is not a party to the underlying action and has no right to intervene, the trial court acts in excess of its jurisdiction when it purports to determine whether the attorney is entitled to foreclose a lien on the judgment. [Citations.]” (*Brown, supra*, 116 Cal.App.4th at p. 328 [quoting *Carroll, supra*, 99 Cal.App.4th at p.1173.]

Here, the underlying action was the personal injury action. The instant declaratory relief action is a separate, independent action against Papez and the Friedlands to establish the existence of the lien, to determine the amount of the lien, and to enforce it. Therefore, Papez’s motion to dismiss on subject matter jurisdiction grounds is also denied.

TENTATIVE RULING # 5: THE MOTION TO DISMISS IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS

TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

6. MASSARWEH v. CAMP RICHARDSON RESORT, INC., ET AL., SC20200086**Petition for Minor's Compromise**

On July 9, 2018, the minor, age 11 at the time, was injured in a boating accident allegedly caused by defendants Camp Richardson, Inc., and LT Leasing, Inc. Presently before the court is a Petition to Approve Compromise of Disputed Claim, filed on behalf of the minor by her parent and guardian ad litem, Munther Massarweh.

The Petition states that, as a result of the collision, the minor suffered injury to her left leg. Following the incident, the minor underwent x-rays and was evaluated by a sports medicine doctor, as well as a plastic surgeon. The Petition states that the minor anticipates further treatment, including scar tissue revision surgery.

The amount offered by defendant is \$95,000.00. Medical expenses to be paid from the settlement proceeds is \$576.00. The total amount of requested attorney fees (\$38,000.00) and costs (\$4,189.49) is \$42,189.49, which the court finds is a reasonable fee. (El Dorado County Superior Court Local Rules, Rule 7.10.12.A(8); Cal. Rules of Ct., Rule 7.955.) The proposed disposition is to deposit the net proceeds of \$52,810.51 in insured accounts in one or more financial institutions in this state, subject to withdrawal only upon the authorization of the court. Of the \$52,810.51, petitioner requests that \$20,000.00 be deposited into a blocked back account for the minor, to be withdrawn only by authorization of the court when the minor has reached the age of 18.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED—INCLUDING THE PERSONAL APPEARANCE OF PETITIONER AND THE MINOR UNLESS, PRIOR TO THE HEARING, THEIR PERSONAL APPEARANCES ARE EXCUSED—AT 1:30 P.M., FRIDAY, DECEMBER 8, 2023, IN DEPARTMENT FOUR.

7. MATTER OF JERRELL, 23CV1713

OSC Re: Name Change

TENTATIVE RULING # 7: PETITION IS GRANTED AS REQUESTED.

8. FLANAGAN, ET AL. v. ROCCA, 23CV0768

(A) Plaintiff's Demurrer to Defendant's Second Amended Cross-Complaint

(B) Motion to Strike Portions of Defendant's Second Amended Cross-Complaint

On the court's own motion, this matter is continued to January 12, 2024. The court apologizes to the parties for any inconvenience.

TENTATIVE RULING # 8: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JANUARY 12, 2024, IN DEPARTMENT FOUR.