

1. GALIC v. GORDON, 21CV0279

Status Conference

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M.,
FRIDAY, MARCH 11, 2022, IN DEPARTMENT FOUR.**

2. SCHEIB v. TAHOE KEYS MARINA & YACHT CLUB, SC20200065

Motion for Leave to File Second Amended Complaint

TENTATIVE RULING # 2: PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT IS GRANTED. THE NEW COMPLAINT MUST BE FILED AND SERVED NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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. GETZ v. COUNTY OF EL DORADO, ET AL., PC20190335**Petitioner's Motion for Attorney Fees**

This action involved a petition for writ of mandate concerning the California Public Records Act (“CPRA”). (Gov. Code § 6250, et seq.) Petitioner appealed the trial court’s decision denying his petition. On appeal, the petition was granted in part and denied in part. The court of appeal ordered the County of El Dorado to pay petitioner’s “‘costs and reasonable attorney fees’ in an amount to be determined by the trial court.” (*Getz v. Superior Court* (2021) 287 Cal.Rptr.3d 722, 740.) Pending is petitioner’s motion for attorney fees and costs. (See Gov. Code § 6259(d).)

1. Preliminary Matters

Petitioner’s request for judicial notice of Exhibits 1, 3, and 4 is granted. (Evid. Code § 452(d)(1), (h).)

Petitioner’s objection numbers 1–6 to the Declaration of Lynn Garcia, counsel for respondent, are overruled.

2. Attorney Fees

Under the CPRA, “[t]he court shall award court costs and reasonable attorney’s fees to the requester should the requester prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official.” (Gov. Code § 6259(d).)

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.)

“After determining the lodestar, the trial court may adjust the lodestar figure based on factors including, but not limited to (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) success or failure, (4) the extent to which the nature of the litigation precluded other employment by the attorneys, (5) the contingent nature of the fee award, (6) that an award against the state would ultimately fall upon the taxpayers, (7) that the attorneys in question received public and charitable funding for the purpose of bringing lawsuits of the character here involved, and (8) that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed. [Citations.] The lodestar adjustment method ‘anchors the trial court’s analysis to an objective determination of the value of the attorney’s services, ensuring that the amount awarded is not arbitrary.’ [Citation.]” (*Glaviano v. Sacramento City Unified Sch. Dist.* (2018) 22 Cal.App.5th 744, 751.)

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].)

Petitioner moves for an order awarding attorney fees under the lodestar method in the amount of \$126,130, plus anticipated additional fees of \$3,200 through the hearing on this motion, and a lodestar enhancement of 1.5 (+ \$64,665), for a total request of \$193,995 in attorney fees. In support thereof, petitioner submitted a declaration from his lead attorney, Gregory Fayard, which includes his firm’s billing invoice as Exhibit 2. Mr. Fayard’s current hourly rate is \$400. Other attorneys with

his firm who also worked on this case have hourly rates ranging from \$300–\$400 for associate attorneys and partners/senior counsel, respectively. The hourly rates for paralegals and law clerks range from \$100–125 per hour. All entries were billed at a minimum increment of 0.1 hour. The firm put in the following hours of work into this case: 291.5 hours for partners/senior counsel; 27.3 hours for associate attorneys; 4.4 hours for paralegals; and 7.9 hours for law clerks, for a total of 331.1 hours of work.

Respondent argues that the hourly rates of \$400 for partners/senior counsel and \$300 for a relatively inexperienced associate attorney are unreasonable for this market region. Respondent also argues that the number of hours worked is excessive and unreasonable.

“The reasonable hourly rate is that prevailing for private attorneys in the community conducting non-contingent litigation of the same type. [Citations.] The prevailing hourly rates apply ‘ “ ‘regardless of whether the attorneys claiming fees charge[d] nothing for their services, charge[d] at below-market or discounted rates, represent[ed] the client on a straight contingent fee basis, or are in-house counsel. [Citations.]’ [Citation.]” ‘ [Citations.]’” (*Glaviano, supra*, 22 Cal.App.5th at p. 751.)

Based on the court’s knowledge—both on the bench and having been an attorney in private practice here for about 20 years—the court finds that attorney hourly rates of \$300–400 are within market range for private attorneys doing similar work (i.e., municipal law) in the Lake Tahoe region.

Next, respondent challenges the number of hours petitioner’s counsel worked on this case. Specifically, respondent notes that petitioner prevailed on one of two claims on appeal, but that he did not separate out on the billing invoice the work performed for each issue he raised on appeal.

Respondent’s argument is well taken. Petitioner did not prevail on the issue concerning records related to the El Dorado District Attorney’s review of a false police report investigation. With the exception of a handful of billing entries (amounting to

\$1,840), petitioner did not separate out the work performed in litigating the district attorney records issue versus the County emails issue. Having reviewed the parties' briefs in the trial court, the parties' appeal briefs, and the appellate court's decision, the court estimates that the district attorney records issue represented only about 10 percent of the work in this case. As such, the court finds that petitioner's request for attorney fees should be reduced by \$12,613 to reflect that petitioner did not prevail on the district attorney records issue on appeal.

Additionally, the court will also reduce the attorney fee request for work related to petitioner's request that the Third Appellate District publish its November 17, 2021, decision in this case. The court finds that those efforts were not reasonably necessary to the litigation. Accordingly, the court will further reduce the attorney fee request by \$4,920.

Furthermore, the court finds that this action does not warrant a lodestar enhancement. (See *Ketchum*, *supra*, 24 Cal.4th at pp. 1136–1137.)

Applying the above, the court finds that petitioner is entitled to reasonable attorney fees in the amount of \$111,797, which includes the anticipated additional fees of \$3,200.

3. Costs

A party's right to recover costs is governed by statute, and a prevailing party is entitled as a matter of right to recover their allowable costs. (Code of Civ. Proc. § 1032(b); *Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 241.)

Petitioner seeks costs in the amount of \$3,335.11. Respondent did not challenge any of the claimed costs. Accordingly, petitioner's costs are awarded as requested.

TENTATIVE RULING # 3: PETITIONER'S MOTION FOR ATTORNEY FEES AND COSTS IS GRANTED IN PART. PETITIONER IS ENTITLED TO

\$111,797 IN ATTORNEY FEES AND \$3,335.11 IN COSTS. 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.

4. KATZ v. GANNON, SC20210176**Motion to Compel Defendant's Responses to Discovery Requests**

On November 5, 2021, plaintiff served on defendant his first set of (1) Form Interrogatories, (2) Special Interrogatories, (3) Request for Production of Documents, and (4) Request for Admissions. (Mot., Declaration of Michael K. Johnson, ¶ 2 & Exs. A–D.) Defendant did not serve any responses by the deadline. (*Id.*, ¶ 3.) On December 20, 2021, plaintiff's counsel sent a meet and confer letter to defendant, but no response was received. (*Id.*, ¶ 4 & Ex. E.)

At the time this motion was filed, plaintiff still had not received any discovery responses from defendant. The court notes that defendant did not file an opposition to the instant motion. The proof of service to the motion declares that defendant was served by mail on January 5, 2022.

Having reviewed and considered plaintiff's moving papers, and good cause appearing, the motion is granted. The court finds that plaintiff's request for \$790.00 in sanctions (2 hours x \$350/hour + \$90 filing fee) is a reasonable sanction under the Discovery Act.

TENTATIVE RULING # 4: PLAINTIFF'S MOTION IS GRANTED. ALL MATTERS SPECIFIED IN PLAINTIFF'S REQUEST FOR ADMISSIONS (SET ONE) ARE DEEMED ADMITTED. DEFENDANT IS ORDERED TO SERVE VERIFIED RESPONSES, WITHOUT OBJECTIONS, TO PLAINTIFF'S FIRST SET OF (1) FORM INTERROGATORIES, (2) SPECIAL INTERROGATORIES, AND (3) REQUEST FOR PRODUCTION OF DOCUMENTS, AND PAY PLAINTIFF \$790.00 IN SANCTIONS NO LATER THAN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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. ALVARADO v. AMERICAN HONDA MOTOR CO., SC20210001

**Plaintiff's Motion to Compel Deposition Attendance of Folsom Lake Honda's
PMQ and Custodian of Records, Personnel, Documents, Sanctions**

On March 8, 2022, the moving party—plaintiffs—filed a notice of taking the motion to compel off calendar.

TENTATIVE RULING # 5: MATTER IS DROPPED FROM THE CALENDAR.