

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/03/2019

TIME: 04:34:00 PM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Calvin Beutler

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00026134-CU-MC-CTL** CASE INIT.DATE: 07/17/2017

CASE TITLE: **Del Mar Alliance for the Preservation of Beach Access and Village vs. City of Del Mar [IMAGED]**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Misc Complaints - Other

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 4/19/19 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The motion for attorney's fees and costs, filed by Del Mar Alliance for the Preservation of Beach Access and Village ("Del Mar Alliance"), is granted. Del Mar Alliance is awarded \$55,699.60 in fees and \$655.68 in court costs.

*Preliminary Matters*

Del Mar Alliance's objection to the Declaration of Melissa A. Lewis and the attachment thereto is overruled as no evidentiary basis for the objection is stated. Whether or not the tentative ruling was adopted by the Court, it is certainly part of the file in this case. The Del Mar Alliance's hearsay and foundational objections to the information purportedly taken from Zillow (Oppo. p. 8) are sustained.

**Background and Discussion**

The circumstances giving rise to this lawsuit are set out in prior rulings. See, ROA ## 37, 45. In brief, in May 2017 Del Mar Alliance submitted a request under the Public Records Act ("PRA") to the City of Del Mar for 25 categories of documents regarding short-term rentals. When it did not receive any documents, Del Mar Alliance filed a complaint and petition for writ of mandate on July 17, alleging the City of Del Mar failed to comply the PRA. Del Mar Alliance sought declaratory, mandamus and injunctive relief under the PRA. The Court denied the petition on November 2, 2018. ROA # 45.

Del Mar Alliance seeks an award of \$55,699.60 in fees plus an "appropriate" enhancement and \$655.68 in costs.

The Court must award court costs and reasonable attorney fees to a requester who prevails in a PRA suit. Govt. Code, § 6259, subd. (d). The City argues that Del Mar Alliance is not the prevailing party.

"A plaintiff need not obtain a favorable final judgment to be a prevailing party in PRA litigation." *Pasadena Police Officers Association v. City of Pasadena* (2018) 22 Cal.App.5th 147, 168. A plaintiff prevails in litigation under the PRA if the litigation motivated the defendant to release a previously withheld document. *Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 463. This is true if the action compelled defendant to produce even one document. *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1391-1392.

The City argues that this lawsuit was unnecessary. As explained in prior rulings, after the suit was filed the City produced some attachments to emails that were not previously produced and legible copies of emails. ROA ## 32, 45. The hearing on the writ petition was heard September 28, 2018. City argued that all documents had been produced within 71 days of the PRA request. ROA # 27 [Oppo. Brief on Merits, p. 1]. At the merits hearing, Del Mar Alliance said the City recently produced another document (a text message). The Court continued the hearing so Del Mar Alliance's counsel could review the document. ROA # 37. According to Del Mar Alliance, that text message had not been previously produced by the City. Briggs Decl., ¶ 37. Further, the City claimed that two documents relevant to a coordinated action (Case No. 37-2017-00019864-CU-TT-CTL ("CEQA Action") were privileged. The Court ruled that one of those documents (the Closed Session Staff Report) was not protected. CEQA Action, ROA # 61. The City subsequently provided a copy of the report. Briggs Decl., ¶ 40 & Ex. 40. The Court finds that this lawsuit motivated the City to produce documents that would not otherwise have been released. Thus, Del Mar Alliance is entitled to recover its reasonable fees and costs.

Del Mar Alliance's counsel spent 69.15 hours on the case and 24 hours on the fee motion and hearing at an hourly rate of \$550. Briggs Fee Decl., ¶¶ 6, 9 & Ex. B. Del Mar Alliance also incurred 12.8 hours of paralegal time at an hourly rate of \$150. *Id.* Counsel incurred \$2,547.10 in Westlaw charges and \$655.68 in court costs. *Id.* at ¶ 9 & Ex. C. The unadorned lodestar amounts to \$55,699.60. The City does not argue that the lodestar is excessive; the lodestar appears reasonable.

Del Mar Alliance's counsel also requests a 1.5 multiplier for taking the case on a contingency fee basis. A multiplier may be used to compensate the attorney for the risk of nonpayment or delayed payment, extraordinary skill, and other factors so the award approaches the market rate for comparable legal services. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 and 1138. Here, the contingent risk was mitigated by the PRA's mandatory fee provision. Counsel's rate appears to be in line with the market rate. See Briggs Decl., ¶ 6 (noting that another court approved the same rate in September 2018). A multiplier is not warranted. Accordingly, Del Mar Alliance is awarded \$55,699.60 in fees and \$655.68 in court costs.

The minute order will be the order of the Court.



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Judge Katherine Bacal