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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JULIAN CASAS,

Plaintiff and Appellant,

v.

CITY OF BALDWIN PARK, et al.,

Defendants and Respondents.

B275535

(Los Angeles County Super. Ct. No. BS145297)

APPEAL from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Law Office of Paul Cook and Paul Cook for Plaintiff and Appellant.

Albright, Yee & Schmit, Clifton W. Albright and Jamie E. Wright, for Defendants and Respondents.

This appeal is an outgrowth of the same proceedings that resulted in our recent decision in *Casas v. City of Baldwin Park, et al.* (Mar. 28, 2017, B270313) [nonpub. opn.] (*Casas I*).[1] As noted in that opinion, the trial court awarded Paul Cook, counsel for plaintiff Julian Casas, nearly $40,000 in attorney fees for work that led to the issuance of a writ of mandate compelling the City of Baldwin Park (the City) to produce records pursuant to the California Public Records Act (CPRA). We now consider Casas's claim that the trial court erred in refusing to award additional attorney fees for work Cook performed in filing motions and an ex parte application to compel compliance with the writ the court issued.

I

The parties are familiar with our recitation of the relevant background facts and procedural history in *Casas I*, and we accordingly forego a full recounting here. Suffice it to say the trial court issued a writ of mandate compelling production of records in November 2014. Because Casas prevailed in the proceedings that led to the issuance of the writ, the trial court awarded Casas $38,500 in attorney fees, calculated at a rate of $350 an hour for 110 hours. Further litigation then ensued concerning whether the City had produced all the materials the court ordered. That litigation included Casas's motion to compel

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[1] On our own motion, we take judicial notice of the record on appeal filed in this court in *Casas I* and of our unpublished opinion in that case. (Evid. Code, §§ 451, subd. (a), 452, subd. (d), 459, subd. (a); see *People v. Vizcarra* (2015) 236 Cal.App.4th 422, 426, fn. 1.)

compliance with the writ of mandate, an ex parte application regarding the same, and a second motion to compel compliance with the order the trial court entered when deciding the first writ compliance motion (collectively, the "compliance litigation").

During the January 2016 hearing at which the trial court finally resolved the compliance litigation, Cook foreshadowed he might seek additional attorney fees for work undertaken in connection with that litigation. The trial court responded, "Let me tell you something. One thing I regret in this case was I awarded you too much in hourly rates, and I'm not giving you any more attorneys fees."

Undeterred, Cook filed a motion for an additional $62,440 in attorney fees (the Motion) just over three weeks later. The Motion specifically sought compensation for 178.4 hours of work at an "hourly rate, as upheld by the court already [of] . . . $350 an hour." Cook maintained Casas was a prevailing party, within the meaning of CPRA's attorney fees provision, and the Motion asserted the accrued 178.4 hours were "for two *ex partes*, two meet and confers, two writ compliance orders, and one attorneys fee motion . . . ."[2]

Attached to the Motion were two exhibits, the first of which was entitled "Law Office of Paul Cook['s] Attorney['s] Billing for *Casas v. The City of Baldwin Park*, Time Period From Feb. 2, 2014 to Feb. 11, 2016." Filed separately from the Motion was a

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[2] Cook later sought to increase the amount of fees demanded when he filed his reply to the City's opposition to the Motion. The new amount demanded was $66,465, which included fees for additional hours ostensibly worked in responding to the City's opposition to the Motion.

document captioned "Paul Cook's Declaration in Support of Attorney's Fees and Other Exhibits; Proof of Service." The declaration averred Cook had personal knowledge of "the billing statement introduced" and "personally recorded the time[ ] reflected in" the aforementioned Exhibit 1 to the Motion. The declaration further stated: "I have reasonably expended 175 hours in prosecuting this action. These hours are broken down more fully in the attached exhibit, which is hereby incorporated by reference." So far as we can discern from the record, however, no exhibit was attached to the declaration.

The City opposed Casas's Motion. The City argued Casas was not the prevailing party during the compliance litigation because he "switch[ed] and modif[ied] the documents he requested" and the documents he asked for were not within the scope of the writ the trial court issued.[3] The City also argued Cook's billing records had not been authenticated.

The trial court denied the Motion, giving what amount to three reasons for doing so. First, the court recognized CPRA requires an award of fees to a prevailing party, but the court found Casas did not prevail in undertaking the compliance litigation. The court explained that "[t]he first compliance order was at least arguably outside the CPRA request's scope and the court expressly stated that it was issuing the second order due to confusion over the scope of its . . . order [on Casas's ex parte application] and no additional attorneys' fees would be awarded."

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[3] The City also challenged the Motion's calculation of 178.4 hours as inflated and excessive. The City highlighted, for instance, the Motion's assertion that Cook spent 76.4 hours on preparing and filing one writ compliance motion.

Second, the court found Cook had "once again" failed to present a declaration authenticating the billing records for 178.4 hours of work. The court explained the billing records were not attached to the declaration and the declaration was not "proper authentication." Third, the court found that "the $38,500 already awarded is sufficient to compensate [Casas] for the entirety of his attorney's work on this case, including the motions to compel compliance with the writ." The court elaborated: "Had the court awarded a more appropriate hourly rate at the time . . . [Casas] would have received a significantly lower award. The court cannot und[o] the previous award, but it may take into account its excessive nature in evaluating the instant motion. At $200 per hour, [Casas's] counsel would have received $22,000 for 110 hours of work. Thus, the $38,500 award was excessive by at least $13,500. This $13,500 is more than adequate compensation for the work [Casas's] counsel has performed since the initial award ($200 x 67.5 hours). In fact, 67.5 hours for the two motions, meetings, and instant motion is excessive given the time spent on clerical matters, improper briefs, and procedural failures."

II

The trial court did not err in denying Casas's motion for additional attorney fees. Two of the reasons given by the trial court, both independently sufficient, convince us this is so. First, the trial court's ruling that Casas's billing records had not been properly authenticated was not an abuse of discretion. Second, there is no reliable indication in the record before us that Casas prevailed in the compliance litigation. That is to say, we see no admissible evidence that demonstrates the litigation led the City

to produce additional documents as called for in the writ of mandate.

A

A trial court's ruling denying attorney fees is ordinarily subject to abuse of discretion review, unless the question on appeal reduces to one of law. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989; *Pacific Merchant Shipping Assn. v. Board of Pilot Commissioners* (2015) 242 Cal.App.4th 1043, 1054 (*Pacific Merchant*); *Law Offices of Marc Grossman v. Victor Elementary School Dist.* (2015) 238 Cal.App.4th 1010, 1013-1014 [attorney fee awards under CPRA reviewed for abuse of discretion, but de novo review appropriate where the propriety of the fee award turns on an issue of statutory construction].) We review for abuse of discretion a trial court's ruling that evidence is inadmissible because it has not been properly authenticated. (See *People v. Goldsmith* (2014) 59 Cal.4th 258, 266-267 [trial court's ruling on the admissibility of evidence reviewed for abuse of discretion].)

B

Government Code section 6259, subdivision (a) permits a person requesting public records to file a petition to compel disclosure of the records if they are being improperly withheld. Subdivision (d) of the statute, an attorney fees provision, provides in relevant part: "The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section." (Gov. Code, § 6259, subd. (d).) The standard test for determining whether a plaintiff has prevailed within the meaning of CPRA is whether

"'he or she files an action which results in defendant releasing a copy of a previously withheld document.'" (*Pacific Merchant*, *supra*, 242 Cal.App.4th at p. 1053, citing *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898.) In resolving this appeal, we assume for argument's sake that the compliance litigation qualifies as "litigation filed pursuant to" Government Code section 6259.

C

The trial court was well within its discretion to conclude Cook's declaration did not properly authenticate the ostensible records of hours worked on the compliance litigation. The second paragraph of Cook's declaration unmistakably refers to Exhibit 1 to the Motion, i.e., the spreadsheet of apparent time entries entitled "Law Office of Paul Cook's Attorney's Billing for *Casas v. The City of Baldwin Park*, / Time Period From Feb. 2, 2014 to Feb. 11, 2016." But all this paragraph says about the spreadsheet is that Cook "personally recorded the time[ ] reflected in" that document. By contrast, it is paragraph 11 of the declaration in which Cook states he "reasonably expended 175 hours in prosecuting this action" and avers "[t]hese hours are broken down more fully in the attached exhibit, which is hereby incorporated by reference." The problem, of course, is that there is no attached exhibit and paragraph 11 by its own terms makes no reference to Exhibit 1 to the Motion. That means the Motion was not supported by any properly authenticated evidence of the work Cook claimed to have performed in connection with the

compliance litigation.[4] (Evid. Code, §§ 1400, 1401.) And without such evidence, the Motion necessarily failed.

Even if there were admissible evidence of the amount of time Cook expended on the compliance litigation, the record before us does not demonstrate Casas was the prevailing party in that litigation.

So far as the record reveals, neither Casas's first writ compliance motion nor his later ex parte application prompted the production of any additional documents or a finding by the trial court that the City had failed to comply with the previously issued writ of mandate. During the first writ compliance hearing, the City maintained it had produced all responsive documents and the court ordered the City to produce, *or to identify for Casas's attorney where in the prior productions the documents were included*, three categories of documents. Similarly, as to Casas's ex parte application, the trial court did not find the City had failed to comply with the writ of mandate but merely notified the City that it would be sanctioned if it were later determined there had been non-compliance. Because Casas never submitted a declaration or other admissible evidence in the

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[4] Even the conclusory statement that Cook spent "175 hours in prosecuting this action" is insufficient to demonstrate any entitlement to additional attorney fees. (Compare *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559 ["Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"].) Casas had already been awarded $38,500 in attorney fees, and a statement concerning the total hours spent prosecuting "this action" does not identify hours related only to the compliance litigation.

trial court to describe the materials the City had and had not produced, we have no reliable means to determine whether additional documents were in fact produced. If anything, Casas's opening brief appears to concede the opposite, stating (without citation to the record) in a "chronology of events" table that "[n]o new records [we]re released" as a result of the trial court's first writ compliance order.

Casas does assert, however, that the City released "an incomplete set of towing records" sometime after the trial court issued its order on his *second* compliance motion. He cites no evidence in the record to support this assertion other than an observation by the trial court, during the hearing on the Motion at issue in this appeal, that he "did get more documents." The basis for that observation is unclear, but what is clear from the record is that the court tempered this observation by subsequently stating: "[T]he compliance, at best, issues are murky. Why, because it was a moving target for the City as to what you wanted, and so when I ordered the City to produce something, either in the first compliance hearing or the second compliance hearing, it's not at all clear that those items were actually requested in the initial CPRA request. [¶] The fact that I ordered it to be produced does not mean it was asked for initially. And you would not be entitled to attorneys fees unless it was part of the initial request and the subject of the writ." Even if we assume the City did produce some additional materials after the hearing on Casas's second compliance motion, the record is insufficient to demonstrate the production was within the scope of the previously issued writ such that Casas could be considered a prevailing party and entitled to additional

attorney fees. We accordingly have no basis to overturn the trial court's finding that Casas was not a prevailing party.

For either of the two independent reasons we have given, we hold the trial court correctly denied Casas's Motion.

DISPOSITION

The trial court's order is affirmed. Defendants are to recover their costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KUMAR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.