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Nicole Burton

[REDACTED]

In Propria Persona

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO

NICOLE BURTON)	Case No. : FCS058454
Plaintiff/Petitioner)	
vs.)	RESPONSE TO MOTION FOR
)	ATTORNEY'S FEES
)	Cal. Code Civ. Proc. § 527.6
MELISSA [REDACTED])	
Defendant/Respondent)	DATE: July 10, 2023
)	TIME: 08:30AM
)	DEPT: 21
_____)	
_____)	

TO THE CLERK OF THE COURT AND ELENA MORGAN (SBN331119) [ATTORNEY FOR THE RESPONDENT]

PLEASE ACCEPT THIS RESPONSE IN OPPOSITION TO THE NOTICE AND MOTION FOR ATTORNEY'S FEES SIGNED JUNE 13, 2023.

IT IS THE POSITION OF THE PLAINTIFF FESS ARE NOT WARRANTED IN THIS MATTER BASED ON THE ARGUMENT WITHIN THIS DOCUMENT, TESTIMONY OF SUBPOENAED WITNESSES AND ORAL ARGUMENTS AS PRESENTED AT THE HEARING OF THIS MOTION.

Dated this 20TH DAY OF JUNE 2023

Nicole Burton

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STATEMENT:

On July 14, 2022 I filed a request for a Civil Harassment Restraining order against the respondent. It was determined by the Court sufficient evidence was present to issue a Temporary Restraining Order and set the matter for a hearing to determine need for an ongoing order.

At the initial hearing a continuance was granted by the Court to give space for the parties to reach settlement. I initiated settlement conversations three [3] times; August 11, 2022, October 18, 2022, January 22, 2023. The respondent refused each attempt to resolve this matter without the intervention of the Court.

An evidentiary hearing was held on May 2, 2023. The Court declined to allow testimony of a subpoenaed witness for the case. The Court declined to allow ongoing examination of witness Karl [REDACTED], called to establish a pattern of unreasonable behavior exhibited towards the petitioner by the respondent.

The Court declined to award an ongoing CHRO, but did not declare or define a prevailing party in the case. Counsel for the respondent requested the court award costs and fees. I objected.

The following is my argument in response to the motion of counsel and my objection to the Court to the potential award of fees in this case.

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ARGUMENT

1. COUNSEL FOR THE RESPONDENT HAS FAILED TO ESTABLISH MS. ██████████ HAS PAID ANY FEES. COUNSEL FOR THE RESPONDENT HAS FAILED TO ESTABLISH FINANCIAL OBLIGATION OF MS. ██████████. THE FEES REQUESTED ARE NOT ABLE TO BE AWARDED IN THIS FORUM OR TO MS. ██████████.

Counsel for the respondent submitted in their motion, exhibits supporting the 'expenses' incurred in defense of the matter before the Court. The documentation establishing representation and payment for services are **all** signed by third party, Karl ██████████.

Within the documents and referenced in the Declaration of Counsel, the retainer and fees paid were to defend Karl ██████████ in a matter not heard by this court. Mr. ██████████ gave permission to use the fees paid to defend him in case FFL161119 [Burton v ██████████] in the case argued today. [Respondent Exhibit B] In respondent's Exhibit A, the Legal Services Agreement is again signed only by Mr. ██████████, and for the defense of case FFL161119. Counsel for the Respondent states in their Declaration of Counsel (7) "**My firm is holding onto the retainer paid by Mr. ██████████**". [highlighted for emphasis]

It is clear from the submissions by counsel that Ms. ██████████ did not pay a separate retainer, or fees for Attorney Morgan's appearance on her behalf at the initial hearing on August 3, 2022. Ms. ██████████ has not paid any additional funds or retainer for Attorney Morgan's ongoing representation in this matter before the Court. The defense of Ms. ██████████ was **always** to come from the funds paid by Mr. Morris in defense of case FL161119. The respondent in this case, Ms. ██████████, does not have standing to claim these fees. They are not separate or unique from the retainer and/or other fees paid by Mr. ██████████. Opposing Counsel by their own exhibits and declarations agreed to utilize funds contributed **by** Mr. ██████████ for **both** cases; FFL161119 and FCS058454.

Further, the document submitted in Respondent Exhibit B, titled Authorization to use retainer for civil harassment restraining order case, is dated September 14, 2022, over one month after Attorney Morgan's appearance on behalf of the respondent at the first hearing in this case. No separate agreement or document or bill was submitted establishing a different retainer or up front fee was paid by Ms. ██████████ for this appearance.

1 In a separate hearing held January 20, 2023 case FFL161119 was
2 adjudicated after the parties reached agreement. In the
3 Findings and Order After Hearing [Plaintiff Exhibit A] Mr. [REDACTED]
4 abdicated his rights to these fees: "**Respondent (Karl [REDACTED])
agreed to not seek reimbursement for his attorney's fees**".
[emphasis added]

5 Neither party in Burton v [REDACTED] appealed the final order
6 causing it to be binding, valid and enforceable.

7 As no other costs or fees are presented to this court outside
8 those paid in defense of case FFL16119, the request of fees in
9 the motion to be argued on July 10, 2023 should be denied. The
10 FOAH should stand as issued, with the funds unrecoverable. I
11 request that denial include the sum of \$900.00 requested in the
12 form CH-120 item number 13 submitted by counsel on behalf of the
13 respondent July 29, 2022.

14 I present that this request is timely and actionable by the
15 Court. Due to the nature of the attorney/client relationship,
16 payment for services is beyond availability to me, the plaintiff
17 until a motion, such as the one argued is presented. There was
18 no opportunity to raise objection or file motion prior to now.

19 **2. MS. [REDACTED] AVOIDED REASONABLE OFFERS OF SETTLEMENT OF THE
20 MATTER BEFORE THIS COURT IN A DELIBERATE VINDICTIVE MANNER TO
21 MAKE THE COSTS FINANCIALLY DEBILITATING TO THE PLAINTIFF.**

22 The request for the TRO was done in good faith based on the
23 state of mind of me, the plaintiff, in July of 2022. In cross
24 examination of the respondent at the evidentiary hearing for
25 this matter on May 2, 2023 it was established the respondent did
26 issue a threat of physical violence via telephone to me. The
27 nature of the dispute between the plaintiff and respondent
28 revolves around a shared intimate partner, Karl [REDACTED]. Prior
to the acrimonious separation of myself and Mr. [REDACTED] I'd
refrained from engaging with the respondent. Although the Court
declined to hear testimony and evidence related to the
respondent's unreasonable antipathy towards me, I still
expressed to counsel representing Ms. [REDACTED] that I would
agree to a settlement in this matter. On three occasions; August
11, 2022, October 18, 2022, January 22, 2023, I suggested a
mutual agreement of no contact and that Ms. [REDACTED] withdraw
the request for payment of legal fees. Ms. [REDACTED] denied each
offer.

The denial of each settlement offer served to continue this
matter unnecessarily, accrue additional costs and extend
continued intimidation towards me. In the hearing on May 2,
counsel for the respondent asked if Ms. [REDACTED] had continued

1 her harassment of me after the TRO was served. I countered that
2 it was only the TRO, and the legal consequences of violating it
3 which prevented the respondent and her significant other from
4 continuing their campaign of harassment towards me. The refusal
5 to settle this matter before the Court, is part of a continued
6 campaign from Ms. [REDACTED] and Mr. [REDACTED] to castigate me for
7 refusing to capitulate to demands from Mr. [REDACTED] I found to be
8 unreasonable.

9 The intention of Ms. [REDACTED] was shared online via a document
10 created by Mr. [REDACTED] on May 4, 2023. [Plaintiff Exhibit B] The
11 libelous document contains hyperlinks which share my location,
12 effectively doxxing me, and contains erroneous claims regarding
13 my criminal history. The document states; "Our attorney thought
14 that settling might be a good idea, **but we** insisted that we
15 would see this all the way through".

16 This continues a pattern of behavior from Ms. [REDACTED] and Mr.
17 [REDACTED] that when no longer legally enjoined they revert to
18 intimidation, name calling, and attacks of my reputation and
19 character. [Plaintiff Exhibit C] Ms. [REDACTED] and Mr. [REDACTED] are
20 aware my household income is well below their combined household
21 income and are attempting to chaotically destroy my ability to
22 remain financially solvent, via fallacious threats of lawsuits
23 [Plaintiff Exhibit D] and this motion to request fees and costs
24 Ms. [REDACTED] did not extend personally, were placed in trust for
25 a different case, and which there is a valid order issued which
26 prevents me from being sued for those fees and costs.

27 **3. THE AWARD OF FEES AND COSTS AS DEFINED DEFINED IN THE**
28 **CALIFORNIA CODE OF CIVIL PRODECURE CAN BE AWARDED OR NOT AT**
THE DISCRETION OF THE JUDGE.

Section 527.6 of the California Code of Civil Procedure governs
temporary restraining orders.

"(a)(1) A person who has suffered harassment as defined in
subdivision (b) may seek a temporary restraining order and an
order after hearing prohibiting harassment as provided in this
section." Cal. Code Civ. Proc. § 527.6

(b) For purposes of this section, the following terms have the
following meanings:(1) "Course of conduct" is a pattern of
conduct composed of a series of acts over a period of time,
however short, evidencing a continuity of purpose, including
following or stalking an individual, **making harassing telephone
calls to an individual,**
Cal. Code Civ. Proc. § 527.6

In the evidentiary hearing it was established the behavior of
the respondent met this definition. The Court utilized its

1 discretion to not issue an ongoing order. That is the right and
2 duty of the Court and is not contested in this response.

3 The determination of the Court to not issue an ongoing order
4 does not make the prevailing party the Ms. [REDACTED]. The move
5 for fees was initiated by opposing counsel without the
6 declaration of a prevailing party in this matter.

6 In Heather Farms Homeowners Assn. v. Robinson (1994) 21
7 Cal.App.4th 1568, the issue before the court concerned the award
8 of attorney fees and costs and the definition of prevailing
9 party.

9 The Court in reaching their decision examined similar cases:
10 Winick Corp. v. Safeco Insurance Co. (1986) 187 Cal.App.3d
11 1502 , Donald v. Cafe Royale, Inc. (1990) 218 Cal.App.3d 168 ,
12 Elster v. Friedman (1989) 211 Cal.App.3d 1439 to reach the
13 following conclusion: *"In each case, the court declined to adopt
14 a rigid interpretation of the term "prevailing party" Heather
15 Farms Homeowners Assn. v. Robinson (1994) 21 Cal.App.4th 1568,
16 1574*

13 Counsel is requesting a rigid application of the term prevailing
14 party where it is not warranted. Even if the Court *had* declared
15 the respondent the prevailing party, counsel fails to argue why
16 a different definition of prevailing party would not apply in
17 this case.

17 Counsel continues by referencing Section 1032 of the code which
18 states: (4) *"Prevailing party" includes the party with a net
19 monetary recovery, a defendant in whose favor a dismissal is
20 entered, a defendant where neither plaintiff nor defendant
21 obtains any relief, and a defendant as against those plaintiffs
22 who do not recover any relief against that defendant. If any
23 party recovers other than monetary relief and in situations
24 other than as specified, the "prevailing party" shall be as
25 determined by the court, and under those circumstances, the
26 court, in its discretion, may allow costs or not
27 Cal. Code Civ. Proc. § 1032*

23 As supported by the events in this document and corresponding
24 Exhibits Counsel needs to draft and defend a compelling argument
25 why the following portion of Section 1032 does not apply, and
26 the Plaintiff not considered the prevailing party: *"and a
27 defendant as against those plaintiffs who do not recover any
28 relief against that defendant."* Cal. Code Civ. Proc. § 1032

1 The Plaintiff in this matter, me, retained relief from time of
2 service of the TRO through the evidentiary hearing May 2. Within
3 a day after the hearing concluded Ms. [REDACTED] joined Mr. [REDACTED]
4 in resuming harassing behavior via social media. [Plaintiff's
Exhibit C] The TRO worked as intended and provided relief to
the plaintiff.

5 Further, in DeSaulles v. Community Hospital of Monterey
6 Peninsula (2016) 62 Cal.4th 1140 the Court addresses award of
7 costs and fees to the prevailing party saying: *"The definition
8 of "prevailing party" in section 1032 is particular to that
9 statute and does not necessarily apply to attorney fee statutes
10 or other statutes that use the prevailing party
11 concept" DeSaulles v. Community Hospital of Monterey
12 Peninsula (2016) 62 Cal.4th 1140, 114. Once more the Court
13 affirmed it is within the discretion of the Jurist to award fees
14 or not.*

15 Should the Court in this hearing determine Ms. [REDACTED] is the
16 prevailing party, that does not make the award of fees and costs
17 automatic. In Steele v. Holcomb, No. G057931 (Cal. Ct. App.
18 July 27, 2020), also a case who's origins were a CHRO, the Court
19 determined: **"because section 527.6 does not define the term
20 "prevailing party," Holcomb contends courts must adopt the
21 prevailing party definition in section 1032, which includes the
22 entry of a dismissal in a defendant's favor. (§ 1032, subd. (a)
23 (4).) Holcomb is simply wrong."** Steele v. Holcomb, No. G057931,
24 at *7 (Cal. Ct. App. July 27, 2020).

25 Counsel's invocation of Section 1032 is erroneous in it's
26 application for this case. The appropriate section of the code
27 in this matter is Section 527.6 which gives the court the
28 discretion to deny the motion of the respondent. I request the
Court use it's discretion and deny the motion of the respondent.

29 CONCLUSION

30 The fees and costs requested in this case were presented for
31 the defense of a separate matter. The fees were not paid by the
32 respondent Ms. [REDACTED]. The named party in the other case,
33 Karl [REDACTED] agreed to not sue the Plaintiff for said fees. There
34 is a valid court order preventing the plaintiff from being sued
35 for the fees. Ms. [REDACTED] does not have the standing to request
36 them, not does she have the standing to request them on behalf
37 of Mr. [REDACTED]. Counsel agreed to provide services for this case
38 using **only** the money provided to defend FFL161119.

1 The respondent Ms. [REDACTED] ignored reasonable offers of
2 settlement in this matter to create a higher financial exposure
3 for the Plaintiff. The refusal to settle was deliberate and
4 malicious in intent. Section 1032 of the California Code of
5 Civil Procedure is improperly referenced in the motion for fees.
6 The governing segment of the Code, 527.6, allows the award of
7 fees and costs to be awarded at the discretion of the Jurist.
8 Based on the behavior of the respondent, and the salacious
9 origins of the dispute, the plaintiff humbly requests the Court
10 to utilize it's discretion and deny the respondent's motion.

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13 Dated: June 20, 2023
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Nicole Burton
In Propria Persona