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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO PUPPY, INC., a
California corporation; DAVID
SALINAS and VERONICA
SALINAS, husband and wife,
Plaintiffs,

Case No.: 13-cv-2783-BTM-DHB

**ORDER DENYING MOTION FOR
RECONSIDERATION AND
GRANTING MOTION FOR
ATTORNEY’S FEES**

v.

SAN DIEGO ANIMAL DEFENSE
TEAM, business entity of unknown
form; ANIMAL PROTECTION AND
RESCUE LEAGUE, a California
501(c)(3) corporation;
COMPANION ANIMAL
PROTECTION SOCIETY,
Delaware non-profit corporation;
BRYAN PEASE, a California
resident,
Defendants.

18 Plaintiffs have filed a motion for reconsideration of the Court’s Order granting
19 Defendants’ special motions to strike under Cal. Civ. Proc. Code § 425.16 and the
20 Court’s Order granting attorney’s fees related to the special motions to strike.

1 Plaintiffs argue that they are entitled to relief under Federal Rule of Civil Procedure
2 60(b)(6) because Plaintiffs' former attorney Carolyn Chan ("Chan") failed to oppose
3 Defendants' special motions to strike and failed to inform Plaintiffs of the risk posed
4 by the attorney's fee provision in Cal. Civ. Proc. Code § 425.16. Gross negligence
5 by counsel amounting to "virtual abandonment" can be an "extraordinary
6 circumstance" that justifies relief under Rule 60(b). Mackey v. Hoffman, 682 F.3d
7 1247, 1251 (9th Cir. 2012) (citation omitted). Gross negligence is defined as
8 "neglect so gross that it is inexcusable," and "vitiates the agency relationship that
9 underlies our general policy of attributing to the client the acts of his attorney." Id.
10 (citation omitted). Plaintiffs assert that Chan committed gross negligence and
11 abandoned Plaintiffs by not opposing the special motions to strike. The Court finds
12 that Plaintiffs have not made a requisite showing that they are entitled to relief
13 under the theory that Chan committed gross negligence because Plaintiffs were
14 on notice that Chan had withdrawn as their attorney of record and Plaintiffs chose
15 to move forward with the case pro se. Id. at 1252-53 (client typically bears risk of
16 attorney's negligent conduct unless attorney abandons client without notice).

17 Defendant Bryan Pease also filed a motion for reconsideration of the Court's
18 Order granting in part and denying in part motions for attorney's fees as it pertains
19 to attorney Gerald Singleton's hourly rate. The Court ordered the Singleton Law
20 Firm to supplement the record. Attorney Gerald Singleton provided the Court with

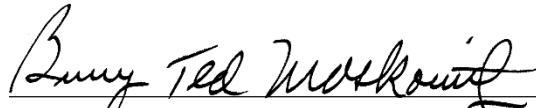
1 copies of standard retainer agreements that he uses, affidavits of other attorneys
2 regarding prevailing fees in the community, and rate determinations in other cases
3 in the Southern District of California. See United Steelworkers of Am. v. Phelps
4 Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990) (affidavits of attorneys regarding
5 prevailing fees in the community, and rate determinations in other cases are
6 satisfactory evidence of prevailing market rate). The Court finds that Singleton's
7 requested rate of \$650 per hour is in line with those prevailing in the community
8 for similar services by lawyers of reasonably comparable skill, experience and
9 reputation. Therefore, the Court amends its Order granting in part and denying in
10 part motions for attorney's fees only as it pertains to Singleton's hourly rate. The
11 Court allows the recovery of 8.65 hours worked by Singleton at \$650 per hour
12 (\$5622.50). This results in an additional fee recovery of \$1946.25.

13 For the reasons discussed above, Plaintiffs' motion for reconsideration is
14 **DENIED** and Defendant Bryan Pease's motion for reconsideration is **GRANTED**.
15 Defendants are entitled to attorney's fees under Cal. Civ. Proc. Code § 425.16 for
16 their oppositions to Plaintiffs' motion for reconsideration of the Court's Order
17 granting Defendants' special motions to strike. Christian Research Inst. v. Alnor,
18 165 Cal. App. 4th 1315, 1320 (2008) (appellate challenges concerning motion to
19 strike also subject to award of fees). The Court awards Defendant Companion
20 Animal Protection Society attorney's fees in the amount of \$4,250.00. Defendants

1 Bryan Pease and Animal Protection and Rescue League may each file a motion
2 for attorney's fees and costs within fourteen (14) days of the entry of this Order.
3 Failure to do so shall be deemed a waiver of fees and costs. Plaintiffs must file
4 their opposition within twenty-one (21) days of the entry of this Order.

5
6 **IT IS SO ORDERED.**

7
8 Dated: March 17, 2016

9 
10 Barry Ted Moskowitz, Chief Judge
United States District Court