: Court's Ruling

SUPERIOR COURTS OF SAN BERNARDINO

KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP

v.

LA VONDA M-PEARSON; TOWN OF APPLE VALLEY

WRIT OF MANDATE

Ochoa, Hon. Gilbert

10/14/2016

KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP

v.

LA VONDA M-PEARSON; TOWN OF APPLE VALLEY; and Does 1-10

Motion: **Petition for Writ of Mandate**

Movant: Petitioner Krause, Kalfayan, Benink & Slavens, LLP

Respondent: Respondents La Vonda M-Pearson, in her official capacity as Town Clerk of the Town of Apple Valley, and Town of Apple Valley

PROCEDURAL/FACTUAL BACKGROUND

This is a California Public Records Act ("CPRA") action arising from the August 20, 2015 request of petitioner, Krause, Kalfayan, Benink & Slavens, LLP ("Law Firm"), to respondents, La Vonda M-Pearson ("Pearson") and Town of Apple Valley ("Town"), following an increase of waste collection rates by Town's waste hauler – Burrtec Industries ("Burrtec"). The request sought 24 categories of documents, from January 1, 2013 to the present, pertaining to the wastewater and solid waste collection services. [Pet. ¶8.] With four exceptions, which sought documents that the Town relied upon with respect to actions taken, Law Firm primarily sought the disclosure of clearly delineated items – e.g., "Proposition 218 Notices" published or mailed by the Town, ordinances, resolutions, etc. [Pet. ¶9.]

On August 24, 2015, the Town invoked its right to extend time to respond by up to two weeks, citing a voluminous amount of documents that created unusual circumstances. [Pet. ¶10.]

Beginning on September 14, 2015, the Town requested additional time, indicating some records would be made available on September 17, 2015, and others would be withheld under attorney-client and work product privileges. The first group of documents, consisting of 503

pages, was sent on September 21, 2015, for which Law Firm was charged, and paid, $110.20 for copies and postage. [Pet. ¶¶11-13.]

On October 7, 2015 the Town sent 178 pages of documents, withholding more privileged documents, and charged $43.14 – which again was paid by Law Firm. On October 20, 2015, the Town promised more documents (electronic) on a disk, and sought payment of $7.42 – which was paid as well. [Pet. ¶¶14-16.] On October 22, 2015, the Town sent to Law Firm the CD with 75 documents consisting of 261 pages, although there was no organization to the disk. The Town asked for more time to respond. [Pet. ¶17.]

On November 4, 2015, having received nothing further, Law Firm wrote asking for a status of the production. There was no response. On November 19, 2015, Law Firm sent another letter asking for a date by which the documents would be provided. The Town responded that a firm date could not be provided. Meanwhile, another CD was provided (and paid for - $7.42) which contained an additional 21 documents with 158 pages, many of which were non-responsive to the actual demand. [Pet. ¶¶18-21.]

On December 9, 2015, Law Firm filed the current Petition for Writ of Mandate alleging causes of action for Writ of Mandate and Declaratory Relief, and seeking an order to compel the Town and its Town Clerk, La Vonda M-Pearson ("M-Pearson"), to comply with the public records act request.

ANALYSIS

Under section 1085, "the petitioner bears the burden of pleading and proving the facts on which the claim for relief is based. [Citations.]" (*Cal. Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, 1153.) In a law and motion writ of mandate hearing, the trial court has broad discretion to decide a case on the basis of declarations and other

documents rather than live, oral testimony. (*California School Employees Assn. v. Del Norte County Unified Sch. Dist.* (1992) 2 Cal.App.4th 1396, 1405.) Facts are obtained through declarations, exhibits, and other evidence presented by the parties. (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 263.)

"Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter." (*Gov. C.*, § 6258.) "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (*Code Civ. Proc.*, § 1085, subd. (a).)

In a mandamus action, the Court confines itself to a determination of whether the agency's action is "arbitrary, capricious or entirely lacking in evidentiary support." (*Shapell Indus. Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230, *citing Strumsky v. San Diego County Employees Retirement Assn* (1974) 11 Cal.3d 506, 514-15.) Although "arbitrary and capricious" has no precise meaning, courts have indicated it includes conduct that is not supported by a fair or substantial reason or a stubborn insistence on following an unauthorized course of action. (*A.B.C. Federation of Teachers v. A.B.C. Unified School Dist.* (1977) 75 Cal.App.3d 332, 343; *Madonna v. County of San Louis Obispo* (1974) 39 Cal.App.3d 57, 61-62; *Stewart v. State Personnel Board* (1967) 250 Cal.App.2d 445, 447.)

The trial court is to presume the decisions of the agency or public official which are subject to traditional mandamus review are correct. (*Lee v. Board of Civil Service Comrs.* (1990) 221 Cal.App.3d 103, 108; *Cosgrove v. County of Sacramento* (1967) 252 Cal.App.2d 45, 50-51; *California Teachers Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860, 865.) However, "[m]andamus will not lie to compel the performance of acts which are void, illegal, contrary to public policy, or which tend to aid in an unlawful purpose." (*Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308, 317.)

Law Firm is seeking the issuance of a writ of mandate directing Respondents to:

- Conduct a search of the records of every Town employee, agent, and attorney who was involved in: (a) the renegotiation and renewal of the Burrtec dba AVCO 2014 franchise agreement; or (b) the discussion, analysis, consideration, negotiation, or review of the decision to change the solid waste franchise fee from 6% to 18% in 2014;
- Prepare and deliver a privilege log to Law Firm within 30 days which identifies the document withheld, the author and recipient(s) of each document, type of document, date of creation, privilege asserted, and the nature of the communication; and
- Produce, within 30 days, all responsive, non-privileged documents that have not yet been produced.

In addition, Law Firm asks this Court to enter a declaratory judgment stating that Respondents failed to comply with their duties under the CPRA.

Law Firm contends Town exhibited bad faith in its handling of Law Firm's CPRA request. According to Law Firm, by the time it initiated this litigation, nearly four months had elapsed

since Law Firm submitted its CPRA request to town, and Town had not produced all the requested documents even though the requests were straightforward and discrete. Law Firm asserts that Town repeatedly represented that it was in the "final stages of examining and preparing records", but it continued to delay. [Pet., Exhs. D, H, N; Benink Decl., ¶ 3, Exh. 1.] Specifically, Law Firm contends more than two months after it submitted its CPRA request to Town, none of the documents had been produced, and as a result, Law Firm sent a letter on November 4, 2015, requesting that Town state a firm date for the production of all non-privileged documents. [Pet., Exh. 1.] Yet, Town did not respond during the following two weeks, thus causing Law Firm to send another letter to Town on November 19, 2015, wherein Law Firm advised Town that, unless it immediately produced the documents, Law Firm would initiate litigation. [Pet., Exh. J.]

Law Firm states that two categories of documents sought pertained to "Proposition 218 Notices" that Town had previously published or mailed to ratepayers, other categories sought ordinances and resolutions, and yet another sought the contracts between Town and Burrtec. Law Firm also sought expenditure reports in certain accounts, as well as documents relied upon by Town in taking certain actions. [*See*, Pet. Exh. A.] Law Firm contends that by the time it filed this Petition on December 9, 2015, Town had not produced: (1) any communications regarding Town's waste management franchise fees as requested in Category 11 of the CPRA request; (2) any communications regarding the proposed modification of Town's franchise agreement with Burrtec as requested in Category 12; or (3) any invoices or evidence of payments to Burrtec as requested in Category 13.

By February 2, 2016, Town had only delivered an additional 30 documents – only a handful of which related to the franchise agreement. [Benink Decl., ¶¶ 4, 5; Exhs. 2, 3.] Law

Firm notes that in February 2016, Town represented to this Court that all documents had been produced, yet on March 31, 2016 – seven months after the CPRA was submitted – Town served hundreds of pages of documents responsive to Category 13 on Law Firm. [Benink Decl., ¶ 6, Exh. 4.] Law Firm asks how is it possible that as of February 2016, Town did not know it had not produced any documents in Category 13, and postulates that it can only be attributable to Town's sloppy search efforts. In addition, Law Firm argues it is impossible that Town did not have any documents responsive to Categories 11 and 12, since the negotiation of a multi-million dollar franchise agreement with Burrtec had to leave a paper trail, and Town must have internally discussed the significant increase of the franchise fee from 6% to 18%.

In opposition, Respondents contend they fully complied with the requisites of the CPRA, and have fully responded to Law Firm's request for records under the Act. According to Respondents, they engaged in a methodical and comprehensive review of Town's records in response to the request, and they used the proper search terms in conducting a search of its records. [Thomas Decl., ¶¶ 4, 7, 9.] Respondents assert that they searched Town's emails using broader terms than those provided by Law Firm, and for other documents, they spoke with each department and collected responsive documents from them. [Thomas Decl., ¶ 7.] Town notes that it produced 516 responsive documents on September 21, 2015, along with a letter explaining that Town needed additional time to review other records to determine their responsiveness. [Thomas Decl., ¶ 12.] In addition, Town notes it produced additional responsive documents on October 7, 2015, October 22, 2015, and November 30, 2015, with an additional production occurring on February 2, 2016, and a supplemental and final production occurring on March 11, 2016, with the complete production consisting of over 1000 pages of documents. [Thomas Decl., ¶ 17.]

Respondents contend Law Firm requested information beyond what Town is required to produce under the CPRA, but nevertheless, Town provided several additional documents. [Pet. Exh. L.] In addition, Respondents argue that it properly withheld privileged and exempt documents from the production. According to Respondents, Town complied with all of its duties under CPRA, in that it provided a timely determination letter in response to Law Firm's request, performed a detailed and complete search of its records, and made rolling productions of responsive documents. Respondents note that they received the CPRA request on August 21, 2015, and on August 24, 2015, provided Law Firm with a letter acknowledging receipt of the request and informing Law Firm that Town would exercise its right to the 14-day extension due to the volume of documents that had to be reviewed. Respondents then provided Law Firm with a timely determination letter, and informed Law Firm the documents would be produced on a rolling basis. [Thomas Decl., ¶ 11; Exh. C.]

Respondents contend the CPRA does not dictate a deadline for the production of documents, and it allows the production of documents on a rolling basis. According to Respondents, as Town produced each batch of documents, it continued to advise Law Firm regarding the status of its continued search and review, and it informed Law Firm more documents would be forthcoming. [Thomas Decl., ¶¶ 12-17; Rice Decl., ¶¶ 3, 4.] Respondents argue that although they may have been overly optimistic in its ability to complete its review by the stated dates, this does not constitute a violation of the CPRA.

In addition, Respondents contend they conducted a detailed and comprehensive search of Town's records, and they used broader search terms than alleged to search Town's emails. According to Respondents, they pulled emails that contained the terms "VVRWA", "wastewater", "AVCO", "Burrtec", and "Burtec", and these searches resulted in over 5,000

responsive and nonresponsive emails. Respondents assert these emails were reviewed by an attorney for responsiveness, privilege, and exemption before they were released to Law Firm. [Thomas Decl., ¶ 6; Rice Decl., ¶ 5.] Respondents also contend they conducted a thorough search of documents from several of Town's departments. [Thomas Decl., ¶¶ 5, 7.] Regarding the rollout of documents, Respondents contend they thought they had produced all responsive documents as of February 2016, but realized shortly thereafter that there was a set of documents not included in the initial review. Respondents assert that upon discovering their oversight, they immediately reviewed and produced all responsive documents. [Thomas Decl., ¶ 17.] Yet, Respondents assert such a rolling production is not a violation of the CPRA, and note that all documents responsive to Law Firm's request have been provided.

Lastly, Respondents contend they are not required to categorize the documents, nor are they required to provide a privilege log.

The California Public Records Act, as codified in Government Code sections 6250 *et seq.*, provides that the Legislature, mindful of the right of individuals, "finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (*See also Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425 ["The CPRA ... was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies."].) Similarly, California Constitution, Art. I, §3(b)(1) provides, "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

Generally, all public records are subject to disclosure, unless the CPRA expressly provides otherwise. (*American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal. App. 4th 55, 66 ("Legislative policy favors disclosure").) Nothing in the CPRA "shall be construed to permit an agency to delay or obstruct the inspection or copying of records." (*Gov. C.* §6253, subd. (d).) Therefore, the public agency "shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request an exact copy shall be provided unless impracticable to do so." (*Gov. C.* § 6253, subd. (b).) "If a public agency fails to comply or claims an exemption, the requestor may institute a proceeding for injunction, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his/her right to inspect or to receive a copy of any public record. [Citation.] The government agency opposing disclosure under CPRA bears the burden of providing that one or more exemption applies." (*ACLU of Northern California, supra,* 202 Cal. App. 4th at 67.)

Here, in the current litigation, there are questions as to the search conducted by Respondents in response to Law Firm's CPRA request. As noted above, Respondents contend they engaged in a "rolling" production of documents from November 2015 through March 2016, and they purportedly used search terms such as "VVRWA", "wastewater", "AVCO", "Burrtec", and "Burtec" in conducting the search for responsive emails. [*See*, Opp. Brief, 6:15-16.] However, on March 21, 2016, in their verified responses to Law Firm's Special Interrogatories asking Respondents to "state all search terms" employed in searching for emails responsive to Categories 11 and 12, Respondents stated that they used the search terms "Franchise Fees for Solid Waste Collection", "AVCO Disposal Amendment(s)", "AVCO Disposal Modification", and "Cost Allocation Plan". [*See*, Benink Decl., ¶ 11; Exh. 9, pp. 9-10.]

Case law may be instructive in determining the scope of an agency's duty in conducting a CPRA search. In *Community Youth Athletic Center v. City of National City ("CYAC")* (2013) 220 Cal.App.4th 1385, the court examined issues regarding the CPRA and an agency's duties in complying with the Act. The case involved a landowner bringing a reverse validation action against the defendant city to assert a violation of due process related to, and to challenge the validity of, a city ordinance that amended a prior redevelopment plan. As part of the action, the landowner also submitted a CPRA request to the defendant city for some of the raw data underlying the enactment of the amendment, such as field surveys and crime data for the amendment area. The trial court found the CPRA requests were reasonably clear, but the defendant city had not responded with reasonable searches and was not justified in failing to require that the known custodians of the records should produce them. (*CYAC, supra,* 220 Cal.App.4th at p. 1417.)

On appeal, the city asserted that it produced numerous documents to the Center, and should not have been faulted for failing to additionally provide the crime data or the data discarded by its consultant. The appellate court disagreed with city's argument, and noted: "[T]he City has the duty to respond to requests for disclosure of the information in public records, including assisting the requester in formulating reasonable requests, because of the City's superior knowledge about the contents of its records." (*CYAC, supra,* 220 Cal.App.4th at p. 1417.) In addition, the court held: "'It is well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated under [CPRA] to search barring an undue burden. [Citations.]'" (*Id.* at p. 1425-1426.)

The court then turned to the CPRA request for certain crime data, and the defendant city's failure to provide the materials. The court noted: "Even without any bad faith showing,

the record disclosed that the City did not ask the right questions, even though it presumably had the ability to do so." (*CYAC, supra,* 220 Cal.App.4th at p. 1430.) The court went on to hold:

> Even though the City was not found to be intentionally obstructionist, neither was it sufficiently proactive or diligent in making a reasonable effort to identify and locate the raw crime data. The trial court was justified in concluding the City failed to meet its disclosure duties under the PRA. However, the trial court's ruling imposed more than a statutory obligation on the City.... [T]he City had the obligation to interpret the request, as made by a member of the public that was not presumably as familiar with the underlying data, and to facilitate a reasonable effort to locate and release the information. (*Id.*, citing to *Gov. C.*, § 6253.1.)

Similarly, in the current litigation, based on Respondents' verified discovery responses, it does not appear they engaged in a reasonable effort to identify all of the responsive documents. Indeed, although the CPRA request pertained to the Burrtec franchise agreement with Town, and the increase in franchise fees, Respondents apparently did not use the term "Burrtec" (or any reasonable spelling of that term) in conducting their search, nor did they use the term "franchise agreement." Moreover, the phrases admittedly used by Respondents are so specific that they inherently limit the scope of the documents searched and discovered. For instance, rather than simply search for "franchise fees" or "waste collection", Respondents purportedly used the specific phrase "Franchise Fees for Solid Waste Collection". Depending on how the search was conducted, only emails that contained that exact phrase would be found in doing a computerized search through Town's emails, and responsive emails that may have discussed the Burrtec franchise agreement or the increase in fees would have been missed.

As noted by Law Firm, to the extent Respondents claimed they did not have any documents regarding Town's waste management franchise fees (as requested in Category 11 of the CPRA request), or any documents regarding the proposed modification of Town's franchise agreement with Burrtec (as requested in Category 12), such an assertion is unlikely. The franchise agreement contains several recitals regarding determinations purportedly made by

Town regarding Burrtec's ability to handle the processing and disposal of solid waste. [*See*, Benink Decl., Exh. 6, p. 1.] Moreover, the agreement also states that in consideration of the franchise given to Burrtec, the Town would receive an administration and franchise fee of 18%, and that the Town could adjust the franchise fee "from time to time, provided that if Town increases the Franchise Fee, [Burrtec] may increase its rates by the amount necessary to pass through the increase in the Franchise Fee." [Benink Decl., Exh. 6, p. 2.] In light of the terms of the agreement, the Town necessarily had to engage in some discussions and written communications regarding these provisions before the agreement was executed. Therefore, it seems unlikely that Respondents would not have documents responsive to these categories.

for Respondents' claims of attorney-client / attorney work product privilege, they are unavailing. It is well-settled that an analysis of the attorney-client privilege begins with the identification of the attorney, the client, and the communication sought to be protected.[1] (*Evid. C.*, §§ 950-952.) "The attorney-client privilege attaches only if the information is transmitted 'in the course of [the attorney-client] relationship.' (*Evid. C.*, § 952.) 'For example, the privilege is not applicable when the attorney acts merely as a negotiator for the client or is providing business advice [citation]; in that case, the relationship between the parties to the communication is not one of attorney-client.'" (*League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 989, citing to *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 735.)

In making an initial determination that a communication is subject to the claimed privilege, a court "must make an initial assessment of the facts, to determine whether the

[1] Similarly, documents privileged under the attorney work product doctrine are exempt from disclosure under the CPRA. (*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 64.) The doctrine, however, "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.) Yet, general work product, as defined by Code of Civil Procedure section 2018.030, subdivision (b), is entitled only to conditional or qualified protection, and therefore, application of the doctrine must be resolved on a case-by-case basis. (*League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 993.)

dominant purpose of the relationship was an attorney-client relationship." (*Costco,* 47 Cal.4th at pp. 749-740.) The court's conclusion must be supported by substantial evidence. (*People v. Gionis* (1995) 9 Cal.4th 1196, 1208.)

Here, in the current litigation, Respondents repeatedly asserted in its letters to Law Firm that certain documents and information would be withheld because they contained "attorney-client communications," or they were protected by "the attorney work product privilege." [*See*, Pet., Exhs. C, E, F, L, M.] The letters were signed by M-Pearson or Deputy Town Clerk Debra Thomas, and were copied to Town's attorney, manager, and assistant manager. [*Id.*] In their verified discovery responses, Respondents stated they withheld a total of 853 documents on the basis of these asserted privileges. [Benink Decl., Exh. 9, p. 12.] However, Respondents never provided Law Firm with a privilege log identifying the withheld documents and the legal objection for not producing said documents. [Benink Decl., ¶ 16.]

Regarding Respondents' claim of attorney-client / attorney work product privilege as to certain documents, the case of *League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, is instructive. In *League*, an open government organization brought an action against a city and the city attorney for declaratory, injunctive, and writ relief challenging the city's determination that the city attorney's e-mails were not public records. The city claimed the e-mails did not concern city business, were subject to the attorney-client privilege, or were otherwise privileged. The trial court directed the city to provide the organization with a privilege log identifying the documents not produced, along with the legal objection for not producing the documents. The city complied, and after the organization challenged some of the claimed exemptions, the city prepared an additional privilege log addressing these documents. Subsequently, the trial court found the city failed to meet its burden of demonstrating the e-mails

were privileged or exempt under the CPRA, and ordered their production. (*League, supra*, 241 Cal.App.4th at p. 982.)

The appellate court agreed. After discussing the legal underpinnings of the attorney-client privilege, the appellate court analyzed the challenged e-mails and found the city failed to explain who was the attorney and who was the client in the communications. Although it was argued that the communications were intended to be confidential, the court found there was no evidence the e-mails constituted confidential communications between an attorney and a client, and therefore, the attorney-client privilege did not apply. In addition, regarding e-mails purportedly sent by the legal assistant to the attorney, the court found there was no competent evidence showing the e-mails were actually sent by the legal assistant, that the person who sent the e-mails was acting as the attorney's agent when the e-mails were sent, or that the e-mails were actual communications between an attorney and client. As a result, the court concluded the attorney-client privilege did not apply. (*League, supra*, 241 Cal.App.4th at p. 992.)

Here, in the current litigation, absent the privilege log and stated objections, it is not known if the withheld documents are actually subject to the privileges asserted by Respondents. As noted above, Law Firm is seeking documents pertaining to Town's waste management franchise agreement with Burrtec, including all communications between Burrtec, Town's employees, Town's council members, and Town's attorneys related to the franchise agreement and the franchise fees provisions contained therein. [*See*, Pet., Exh. 1.] Although it is possible that the dominant purpose of the relationship between Town and its attorneys in some of the communications was one of attorney-client, it also seems very likely that in many of the communications, Town's attorneys were merely acting as negotiators or business advisors for Town in the drafting of the franchise agreement. In those instances, the dominant purpose of the

relationship between Town and its attorneys is not one of attorney-client, and therefore, the privilege would not attach. (See, e.g., *League, supra,* 241 Cal.App.4th at p. 989.)

Respondents purportedly asserted that a paralegal working for Town's attorney reviewed the documents and determined they were subject to the stated privileges. [Benink Decl., ¶ 13, Exh. 11, pp. 4-5.] Law Firm contends a paralegal cannot make such a determination because it constitutes the unlawful practice of law. [Opening Brief, 9:20-28.] However, this argument is inconsequential. The fact is that Town, as the party claiming the privileges, has the burden of establishing the preliminary facts necessary to support its exercise, i.e., communications made in the course of an attorney-client relationship. (*Costco, supra,* 47 Cal.App.4th at p. 733.) Yet, Town has not met its burden since it has not demonstrated that the dominant purpose of the relationship between it and its attorneys with regards to these communications was one of attorney-client. Therefore, Respondents' claims of attorney-client / attorney work product privilege must fail.

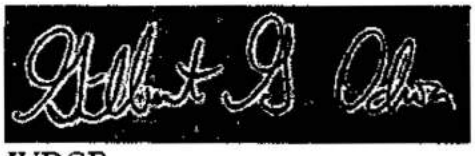
Since the Court cannot compel an *in camera* review of the documents claimed to be privileged, Respondents must provide a privilege log to aid the Court in making an initial determination whether the dominant purpose of the relationship in those communications was an attorney-client privilege, and therefore, that the withheld documents are subject to the claimed privileges. (*Gov. C.*, § 6259, subd. (a); *Evid. C.*, § 915, subd. (a); *Costco, supra,* 47 Cal.4th at p. 739; *League, supra,* 241 Cal.App.4th at p. 989.)

Respondents' arguments are not well taken, and thus, the writ should be granted in its entirety.

Court's Ruling-

1. **The Court grants Law Firm's Writ of Mandate in its entirety. Respondents are ordered to undertake a new search of the documents and emails of every Town employee, agent, attorney, and attorney staff members who were, in any respect, involved in (a) the renegotiation and renewal of the Burrtec / AVCO franchise agreement, or (b) the discussion, analysis, negotiation, or review of the changes in the solid waste franchise fee. Respondents and Law Firm is be ordered to meet and confer in order to formulate reasonable search terms to facilitate the search for documents responsive to Law Firm's CPRA request. Respondents are also ordered to produce within 30 days all responsive, non-privileged documents that have not yet been produced. In addition, Respondents are ordered to provide a detailed privilege log of the 853 documents withheld from production, and the stated objections thereto. The privilege log must be provided within 30 days. The Court also enters a declaratory judgment stating that Respondents failed to comply with their duties under the CPRA.**

2. **The Court grants Respondents' Request for Judicial Notice in its entirety, with the caveat that the Court is not judicially noticing the truth of the matters asserted in the documents.**
3. **Movant is Ordered to prepare Judgment and Order.**



JUDGE