

1 Gerard A. Rose (CSB No. 058156)
2 Mailing Address:
3 808 Sheridan Road, Wilmette, IL 60091
4 Telephone: (831) 333-0200
5 E-Mail: Gerard@gerardroselaw.com

6 Attorneys for Respondent Carmel-by-the-Sea

7 Superior Court of the State of California
8 County of Monterey
9 Unlimited Jurisdiction

10 Royal Calkins,

Case No. 18 CV 002532

11 Petitioner,

12 vs.

Answer by Carmel-by-the-Sea to
Petition For Writ of Mandate

13 Carmel-by-the-Sea; and Does 1
14 through 10, inclusive,

Ex Parte Hearing:
July 12, 2018, 10:00 am
Department 13

15 Respondents.

16
17 Respondent Carmel-by-the-Sea ("Respondent") submits the
18 following response to the Petition for Writ of Mandate (the
19 "Petition") filed by Royal Calkins, and to each of the
20 allegations contained therein.

21 1. In response to the allegations contained in
22 paragraph 1, Respondent has no information or belief
23 sufficient to respond thereto, and grounding its response
24 on that basis, denies each and every allegation contained
25 therein.

26 2. In response to the allegations contained in
27 paragraph 2, Respondent admits said allegations.
28

1 3. In response to the allegations contained in
2 paragraph 3, Respondent has no information or belief
3 sufficient to respond thereto, and grounding its response
4 on that basis, denies each and every allegation contained
5 therein.

6 4. In response to the allegations contained in
7 paragraph 4, Respondent admits the allegations contained
8 therein.

9 5. In response to the allegations contained therein,
10 Respondent admits that it received responses from various
11 candidates for City Attorney, that Glen Mozingo ("Mr.
12 Mozingo") was one of the candidates who submitted a
13 response thereto, and that Mr. Mozingo entered a written
14 contract with Respondent for legal services as its City
15 attorney, and that the terms of that contract are as
16 contained therein, and not otherwise. Except as
17 specifically admitted herein, Respondent denies each and
18 every allegation contained therein, including but not
19 limited to Petitioner's false allegation that Mr. Mozingo
20 made untruthful allegations in his response to Respondent's
21 RFQ.

22 6. In response to the allegations contained in
23 paragraphs 6, 7 and 8, Respondent alleges that Mr.
24 Mozingo's response to Respondent's RFQ was as stated
25 therein, and not otherwise. Except as specifically alleged
26 herein, Respondent denies each and every allegation
27 contained therein, including but not limited to
28

1 Petitioner's false allegations that Mr. Mozingo made
2 untruthful statements in his response to Respondent's RFQ.

3 7. In response to the allegations contained in
4 paragraphs 9 and 10, Respondent alleges that Mr. Mozingo's
5 response to Respondent's RFQ was as stated therein, and not
6 otherwise. Except as specifically alleged herein,
7 Respondent denies each and every allegation contained
8 therein, including but not limited to Petitioner's false
9 allegations that Mr. Mozingo made untruthful statements in
10 his response to Respondent's RFQ.

11 8. In response to the allegations contained in
12 paragraph 11, Respondent admits those allegations, and
13 further alleges that Respondent fully and adequately
14 responded thereto to the full extent required by law.

15 9. In response to the allegations contained in
16 paragraph 12, Respondent alleges that it held a closed
17 session in which the members of the Carmel City Council met
18 with their legal counsel and Mr. Mozingo and addressed
19 litigation threatened by Petitioner. It also alleges that
20 in the course of that closed session, counsel for the City
21 asked Mr. Mozingo and its other legal counsel to address
22 the litigation threatened by Petitioner, and they did so in
23 conversations that were are privileged by the attorney
24 client and work product privileges, as well as by specific
25 provisions of the California Public Records Act. Except as
26 specifically admitted and alleged herein, Respondent denies
27 each and every allegation contained therein.

28

1 10. In response to the allegations contained in
2 paragraph 13 and 14, Respondent admits that the contents of
3 the e-mails and correspondence sent by or on behalf of
4 Petitioner were as stated therein, and not otherwise.
5 Except as specifically admitted, Respondent denies each and
6 every allegation contained therein.

7 11. In response to the allegations contained in
8 paragraphs 15, 16, 17 and 18, Respondent admits that the
9 provisions of the Public Records Act are as stated in the
10 Act itself, and not otherwise. Except as specifically
11 admitted, Respondent denies each and every allegation
12 contained therein, and further denies that Petitioner has
13 legally or factually justified his demand for any of the
14 documents and things he demands in connection with his
15 Petition herein.

16 12. In response to the allegations contained in
17 paragraph 19, Respondent denies each and every allegation
18 contained therein.

19 13. In response to the allegations contained in
20 paragraph 20, Respondent admits that the provisions of the
21 Public Records Act are as stated in the Act itself, and not
22 otherwise. Except as specifically admitted, Respondent
23 denies each and every allegation contained therein, and
24 further denies that Petitioner has legally or factually
25 justified his demand for any of the documents and things he
26 demands in connection with his Petition herein.

27 14. In response to the allegations contained in
28 paragraph 21, Respondent admits that the provisions of the

1 Public Records Act are as stated in the Act itself, and not
2 otherwise. Respondent also alleges that the Public Records
3 Act provides that attorneys fees may be awarded to a Public
4 Entity which, as in this case, has been sued under the Act
5 in an action which is frivolous. Except as specifically
6 admitted and alleged herein, Respondent denies each and
7 every allegation contained therein, and further denies that
8 Petitioner has legally or factually justified his demand
9 for any of the documents and things he demands in
10 connection with his Petition herein.

11 Wherefore, Respondent prays for a Judgment in its
12 behalf as requested below.

13 Affirmative Defenses

14 1. The Petition fails to state facts sufficient to
15 support a legitimate claim for relief;

16 2. The Petition is barred by reason of false
17 allegations which have been asserted by Petitioner; and

18 3. Petitioner has failed to assert justifiable claims
19 for attorneys fees under Government Code section 6259(d).

20 Prayer for Relief

21 Respondent prays for a judgment in its favor as
22 follows:

23 1. That the Court reject the false and fraudulent
24 Petition asserted against Respondent, including its pendent
25 claim for a writ of mandate and/or order to show cause, in
26 its entirety, with prejudice;


27 2. For attorneys fees in favor of Respondent as
28 provided in the California Government Code;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. For its costs of suit incurred herein; and
- 4. For such other relief as the Court may deem appropriate.

Dated: July 10, 2018

The Law Office of Gerard A. Rose

by 

Gerard A. Rose
Attorneys for Respondent

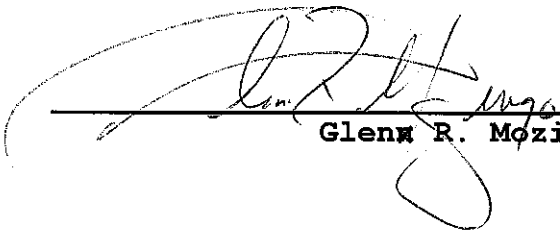
Verification

I, Glen Mozingo, declare as follows:

1. I am the contract City Attorney of Carmel-by-the-Sea, and I am authorized to and do hereby verify the Answer that is attached hereto.

2. I have read the Answer, I know the contents thereof, and I can and do assert that the Responses are true and correct, to the best of my knowledge, information and belief.

3. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that I executed this verification on this 10th day of July, 2018, in Carmel-by-the-Sea, California.



Glen R. Mozingo

1 Proof of Service

2 I, Gerard A. Rose, declare:

3 1. I am an active member of the State Bar of
4 California, I am admitted to practice in the State of
5 California, and I practice law in the City of Carmel-by-
6 the-Sea, California.

7 2. My mailing address is 808 Sheridan Road, Wilmette,
8 Illinois 60091.

9 3. On July 10, 2018 I electronically sent the
10 attached Answer to Plaintiff's counsel by e-mailing it to
11 nlshapiro@sbcglobal.net. I also mailed a copy of that
12 document by first class mail by depositing it in the
13 outgoing mail box in the Carmel Post Office addressed as
14 follows: Neil Shapiro, PO Box 4086, Carmel, CA 93921.

15 4. I declare under penalty of perjury, under the laws
16 of the State of California, that the forgoing is true and
17 correct, and that I executed this document on July 10,
18 2018, in Carmel-by-the-Sea, California.
19

20
21 

22
23

Gerard A. Rose
24 Attorney for Respondent