2d Civil No. B311313

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1

CANYON VIEW LIMITED
Plaintiff and Appellant,
v.
LAKEVIEW LOAN SERVICING, LLC
Defendant and Respondent.

Appeal from Los Angeles Superior Court
Case No. PC057181
Honorable Stephen P. Pfahler

APPELLANT'S OPENING BRIEF

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Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Nos.: B311313

Case Name: *Canyon View Limited v. Lakeview Loan Servicing, LLC*

Please check the applicable box:

□ There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.

■ Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Canyon View Estates, Inc.	General Partner of Appellant
2. Kerry Seidenglanz	Limited Partner of Appellant
3. Mark Seidenglanz	Limited Partner of Appellant
4. Chris Seidenglanz	Limited Partner of Appellant

Please attach additional sheets with Entity or Person Information if necessary.

/s/ Jeffrey Gurrola
Signature of Attorney/Party
Submitting Form

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INTRODUCTION

California's Mobilehome Residency Law (MRL) guarantees reasonable attorney fees and costs to prevailing parties in any action arising out of that statute. Appellant Canyon View Limited (Canyon View) is one such successful plaintiff. Through a series of errors, however, the trial court has repeatedly denied Canyon View its statutory right to reasonable fees.

Canyon View sued respondent Lakeview Loan Servicing, LLC (Lakeview) in 2016 after Lakeview placed a cloud on Canyon View's title to a mobilehome. Lakeview fought tooth-and-nail at every step of the litigation. It refused to cooperate and instead insisted on a pattern of stonewalling. Only after Lakeview lost time and again in the trial court did it accede and give Canyon View exactly what it had requested from the outset: a judgment clearing its title to the mobilehome. Then it challenged Canyon View's entitlement to fees, and the trial court agreed.

This Court reversed. (*Canyon View Limited v. Lakeview Loan Servicing, LLC, et al.*, 2d District No. B285489, Dec. 4, 2019 (*Canyon View I*).) But then on remand, the trial court made a threshold error that affected the entire attorney fee award. Based on the fact that *Canyon View I* involved four consolidated appeals—in this case and in three factually unrelated actions—the trial court requested additional briefing to clarify whether Canyon View's attorney billing records related to Lakeview only. While Canyon View's original briefing and evidence made this clear, the supplemental briefing left no room for doubt.

But the trial court persisted in its misunderstanding of the evidence. It quartered the bulk of Canyon View's fee request, making a 75 percent reduction on the stated basis that it was accounting for the three other cases involved in *Canyon View I*. In so doing, the trial court abused its discretion and contravened this Court's earlier directive that it "examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work." (1-AA-72, citation omitted.)

The trial court separately erred in its fee award by wholly failing to address approximately $13,000 in attorney fees requested by the law firm that took over Canyon View's representation when its original counsel ceased operations. This apparent oversight, too, ran afoul of the trial court's statutory and law-of-the-case obligation to award reasonable attorney fees based on an analysis of the evidence.

The result was to award only $63,701.59 in attorney fees—depriving Canyon View of over $123,000 in fees that were actually incurred and thoroughly substantiated.

None of this involves second-guessing an exercise of discretion, because the trial court never undertook such an exercise. Instead, Canyon View seeks to ensure that the trial court evaluates the evidence presented and awards reasonable attorney fees based on that evidence. Because the trial court failed to do so, this Court should reverse and remand for a new determination of Canyon View's reasonable attorney fees.

STATEMENT OF FACTS

A. Canyon View's purchase of an abandoned mobilehome following the tenant's abandonment extinguishes all liens, including Lakeview's.

Appellant Canyon View Limited owns and operates Canyon View Estates, a mobilehome residence park in Santa Clarita. (1-AA-40.)[1] Canyon View owns the fee interest in the land and leases lots to owners of mobilehomes, which are installed on the lots. (*Ibid.*) In December 2004, Canyon View leased Lot 213 of Canyon View Estates to Blanca Shapiro. (1-AA-41.)

Shapiro obtained a loan from respondent Lakeview, secured by a deed of trust on the mobilehome Shapiro installed on Lot 213 (the Home). (1-AA-41.) In 2014, Shapiro defaulted on both her loan with Lakeview and her lease with Canyon View. (*Ibid.*) Both the MRL and Shapiro's lease required certain notices upon default. (1-AA-100, ¶ 8.) "Canyon View issued the requisite notices to Shapiro and all lienholders, but no one cured Shapiro's defaults under the lease." (1-AA-41.) Lakeview also recorded a notice of Shapiro's default under the loan. (*Ibid.*)

Canyon View initiated MRL abandonment proceedings to declare the home abandoned and authorize sale of the Home at public auction. (1-AA-17–18, ¶ 17.) In June 2014, Canyon View obtained a judgment declaring the Home abandoned. (1-AA-41.)

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[1] As the factual history of this case is not in dispute, we largely rely on this Court's recitation of facts from its prior opinion in *Canyon View I*.

As required by the MRL, Canyon View provided notice to Shapiro and all lienholders of the abandonment proceedings and the ensuing court-ordered public sale. (*Ibid.*) Canyon View purchased the Home at the public sale on July 2, 2014. (*Ibid.*) Under the MRL, that purchase extinguished all liens on and interests in the Home. (*Ibid.*, citing Civ. Code, § 798.61, subd. (e)(4).)[2] A grant deed conveying the Home to Canyon View was recorded on July 15, 2014. (*Ibid.*)

B. A year after its interest in the Home is extinguished, Lakeview clouds Canyon View's title.

On May 14, 2015, "Quality Loan Service Corporation (Quality), as trustee under Lakeview's deed of trust, recorded a rescission of the notice of default recorded in 2014."[3] (1-AA-42.) "The rescission notice stated that, although Quality was not electing to foreclose on the home, the deed of trust and all rights and obligations thereunder 'remain in force and effect,' and that this election 'shall in no way jeopardize or impair any right, remedy or privilege' under the deed of trust or 'alter in any respect' that deed." (*Ibid.*) In other words, despite the fact all liens and interests on the Home had been extinguished by the

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[2] All statutory citations are to the Civil Code unless otherwise stated.

[3] Quality later filed a Declaration of Non-Monetary Status pursuant to Civil Code section 2924*l* agreeing to be bound by any non-monetary Judgment entered by the Court with respect to the Property. (2-AA-1234.) As a result, only Lakeview remains as a defendant with respect to Canyon View's claim for fees.

sale a year earlier, Lakeview asserted the continuing effectiveness of its deed of trust.

C. Lakeview's refusal to remove the cloud compels Canyon View to sue.

For several months, Canyon View's counsel wrote letters, emailed, and made calls in an effort to cooperatively resolve the cloud on its title and avoid litigation, but "defendant[] refused to take any action at all to correct the offending documents." (1-AA-61; see 1-AA-102, ¶ 15; 1-AA-21–22, ¶¶ 35–39.) To the contrary, on May 11, 2016, Lakeview recorded a *second* rescission notice reasserting its supposed security rights in the Home created by the deed of trust. (1-AA-42; we refer to the two rescission notices as "clouding documents.")

Accordingly, "Canyon View had no choice but to sue Lakeview." (1-AA-62.) On July 14, 2016, Canyon View filed this action against Lakeview and Quality, seeking quiet title, declaratory relief, removal of the cloud, and relief under the unfair competition law. (1-AA-43; see 1-AA-14.)

D. Lakeview prolongs the litigation and drives up attorney fees.

On August 17, 2016, a month after forcing Canyon View to file this lawsuit, Lakeview recorded a full reconveyance of the deed of trust. (1-AA-43.) A month later it recorded a quitclaim deed in favor of Canyon View. (*Ibid.*)

But the reconveyance and quitclaim deed did not solve the problem Lakeview had created—first, because these recordings did not clear the cloud on Canyon View's title; and second,

because Lakeview refused to settle and instead sought a judgment in its own favor.

1. Neither Lakeview's reconveyance nor its quitclaim deed removes the cloud on Canyon View's title.

For a number of reasons, Lakeview's recordings were insufficient to remove the cloud on Canyon View's title.

Liens on mobilehomes are frequently assigned from one lienholder to another, usually in bundles of great numbers. (1-AA-99, ¶ 4.) Often the assignments are not recorded until some time afterward or, on occasion, not at all. (*Ibid.*) Yet Lakeview's full reconveyance was "without warranty," and its quitclaim deed only purported to transfer its own interest—if any. (*Ibid.*) As a result, Canyon View had no assurance that Lakeview's recordings eliminated all claims to the Property. (*Ibid.*)

Even more, the clouding documents were recorded with the Los Angeles County Recorder's office and had not been cancelled. (1-AA-19–20, ¶¶ 28–33; 1-AA-99–100, ¶ 5; 1-AA-1058, ¶ 13.) Without a judgment cancelling the clouding documents under section 3412 (1-AA-25–26, ¶¶ 65–72), the documents would continue to cloud Canyon View's title.

2. Lakeview litigates the case for over half a year longer before giving Canyon View the judgment it asked for in the first place.

Lakeview also refused to cooperatively end the lawsuit and instead took an aggressive litigation position.

Canyon View sought a collaborative solution from the outset. It proposed a stipulation to enter judgment clearing Canyon View's fee title and allowing Canyon View to make, and Lakeview to oppose, a motion for attorney's fees. Lakeview did not agree. (1-AA-87; 1-AA-102–103, ¶ 16.) Instead, it demurred based on its having recorded a quitclaim. (1-AA-102–103, ¶ 16.)[4] It took the position that "there is no basis for the claims for quiet title and declaratory relief" and "that Lakeview is not required to take any action to reconvey its deed of trust recorded on the subject property, because it was wiped out as a matter of law, thus the claim[s] that Lakeview is clouding title and engaged in unfair business practices have no legal support." (1-AA-1057, ¶ 11; 1-AA-1084–1085, ¶ 3.)

Canyon View had no choice but to oppose the demurrer. (1-AA-1058, ¶ 13; 1-AA-102–103, ¶ 16.) The trial court overruled Lakeview's demurrer on March 1, 2017, holding, as pertinent here, that "[t]he fact [Lakeview] may have recorded additional documents after this case was filed purportedly releasing any claim to title to the subject property does not establish as a

[4] Lakeview's demurrer actually preceded by a week the recording of the quitclaim deed. (1-AA-901, ¶¶ 7–8; 1-AA-1030.)

matter of law that [Canyon View] cannot obtain relief based on conduct and documents recorded prior thereto." (1-AA-1032.) Indeed, by this time, even Lakeview had reversed course and, in its reply in support of its demurrer, admitted it "agrees that judgment should be entered in Plaintiff's favor." (1-AA-1059, ¶ 19; 1-AA-1093.)

While the demurrer was pending, Lakeview also moved ex parte to stay discovery. (1-AA-1059, ¶ 17.) Canyon View successfully opposed this motion. (*Ibid*.) This generated more fees. Lakeview then failed to meet its discovery obligations, necessitating a successful motion to compel and earning Canyon View an award of monetary sanctions against Lakeview. (1-AA-102–103, ¶ 16 & fn. 9.) Still more fees.

Finally, after a year and a half of litigation, Lakeview agreed to exactly what Canyon View had requested from the outset: a stipulated judgment conclusively clearing Canyon View's title. (1-AA-102–103, ¶ 16; 1-AA-1060, ¶ 21.) The trial court entered the stipulated judgment on April 5, 2017—about a month after it overruled Lakeview's demurrer, but fifteen months after Canyon View initially demanded that Lakeview remove the cloud. (1-AA-455–460; 2-AA-1202.)

The judgment quieted Canyon View's title to the Home, ordered cancellation of documents recorded by defendants, and provided for recordation of a certified copy of the judgment. (1-AA-458–459.) This relief gave Canyon View clear title to the Home, enabling it to obtain title insurance and to sell the Home when and if it chooses. (1-AA-1060, ¶ 22.)

E. The trial court denies Canyon View's 2017 motion for fees and costs in this and three similar cases, but this Court reverses.

After obtaining its judgment against Lakeview, and as provided in the stipulated judgment, Canyon View brought a motion for attorney fees and costs as a prevailing party under the MRL. (§ 798.85 ["A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor . . . unless the parties otherwise agree in the settlement or compromise"]; see 1-AA-103, ¶ 17.)

The trial court denied the motion on the basis that Canyon View's lawsuit did not arise out of the MRL, reasoning that the MRL governs landlord-tenant relationships and "was not designed to cover disputes between mobilehome park owners and third party lienholders." (1-AA-55.)

Canyon View appealed. The appeal was consolidated with Canyon View's appeals from three separate actions that involved the same question of law—whether cases like this one "arise out of the MRL"—but were based on entirely distinct facts and litigated against different defendants.[5]

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[5] The three other sets of defendant-respondents involved in *Canyon View I* were: (1) Bank of America, N.A. and The Bank of New York Mellon (collectively, BONY) in appeal B286322; (2) Ocwen Loan Servicing, LLC and Power Default Services, Inc. (collectively, Ocwen) in appeal B286614; and (3) Household Finance Corporation of California and HSBC Mortgage Services Inc. (collectively, Household) in appeal B286686. (See 1-AA-31–32.)

In its *Canyon View I* opinion, this Court held that "an action arising out of the MRL 'includes all proceedings, at least to the time of judgment, which are required to perfect the rights [created by the MRL]'" (1-AA-60, quoting *Palmer v. Agee* (1978) 87 Cal.App.3d 377, 387) and that because "Canyon View was 'required' to sue to 'perfect' that right on the facts of the Lakeview" case, this case arises out of the MRL, entitling Canyon View to fees (1-AA-60–62, 68–69, citation omitted).

The Court therefore reversed the trial court's order denying fees and ordered the trial court to "determine, in a manner consistent with this opinion, the amount of reasonable attorney fees and costs to award Canyon View." (1-AA-77.)

F. On remand following this Court's opinion in *Canyon View I*, Canyon View seeks its reasonable attorney fees from Lakeview.

1. Canyon View's attorneys separately bill all trial court and appellate work relating to the Lakeview matter.

In its post-appeal fee motion, Canyon View sought attorney fees incurred for the entirety of the Lakeview litigation—prejudgment fees that the trial court had previously denied, and fees incurred for the appeal that corrected the trial court's error. The fees related to work performed by two firms: (1) Norminton, Wiita & Fuster (NWF), counsel of record for Canyon View in the Lakeview action (1-AA-90, 95; see 1-AA-98, ¶ 1); and (2) the Law Offices of Edward A. Hoffman, associate appellate

counsel who became lead counsel when NWF ceased operations (1-AA-114, ¶ 3).[6]

NWF was a small firm, comprising three lawyers, three paralegals, and two other administrative employees. (1-AA-98, ¶ 3.) "No one worked on a case, or a motion or any part of the case, without [Mr. Norminton's] instruction or direction." (*Ibid.*)

Mr. Norminton "supervised the preparation of every bill for every client." (1-AA-98, ¶ 3.) He described NWF's timekeeping and billing practices in detail: "At the time a task is performed in our firm, the attorney or paralegal either directly inputs into the computer or handwrites on a timesheet a description of the task together with the time consumed to perform it. An employee of the firm working under my supervision and control then inputs the handwritten timesheets into a computer. At the beginning of the following month, the employee prints the bills for my review. Before they are transmitted to the client, I review each bill line by line for accuracy. After my changes, if any, are next made, I review the invoice again, and only then is it transmitted to the client. Each of the Fee and Cost Statements attached as Exhibit 2 was prepared in this manner." (1-AA-110–111, ¶ 40.)

Before July 2016, fees incurred in this case were billed to a general matter number, but all Lakeview-related entries were

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[6] Only NWF's billing practices are relevant to this appeal. The trial court spoke approvingly of Mr. Hoffman's bills (1-AA-1036), and its failure to award any of Mr. Hoffman's fees appears to have been an oversight. (See § G.2. & Argument § II, *post*.)

explicitly identified as pertaining to the Lakeview matter. (1-AA-101–102, ¶ 12; see 1-AA-124–141.) All entries relating to cases other than Lakeview were excised prior to submitting the fee request: "Those entries have been redacted from the copies in Exhibit 2, and the associated fees and costs have been deducted from the total." (1-AA-102, ¶ 12.) Beginning July 2016, Canyon View's attorneys maintained a separate case file for the litigation with Lakeview and billed all Lakeview-related work to that matter. (1-AA-102, ¶ 13; see 1-AA-142–378.)

Indeed, while the lawsuit below against Lakeview was consolidated with separate lawsuits against BONY, Ocwen, and Household for appeal, these cases were at all times entirely separate at the trial court level. Each case involved entirely distinct facts: different loans by different banks to different mobilehome owners who defaulted. (1-AA-41–54.) In fact, the four cases were not even all before the same trial judge. (1-AA-32 [cases divided between Judges Stephen P. Pfahler and Melvin D. Sandvig].)

Thus, in the *Canyon View I* appeal, just as at the trial court level, "[t]he respondents in each case were different, and the properties, accused conduct, and procedural histories were also not the same." (1-AA-107, ¶ 30.) Accordingly, "[s]ome of the necessary tasks for each of the four matters also applied to the other three appeals, but much of the work was case-specific. For this reason, [Mr. Norminton] instructed the attorneys and paralegals in the firm to apportion their time among the four appeals for tasks on common issues and separately bill their time

to one case on matters not in common with the other three cases." (1-AA-107, ¶ 29.)

To preserve the separateness of the four cases, "[a]fter the consolidation, separate monthly Fee and Cost Statements were prepared for Canyon View on each of the four Consolidated Appeals, just as these Fee and Cost Statements had been prepared separately for each case in the litigation prior to the consolidation." (1-AA-107, ¶ 29.)

2. Canyon View's post-appeal fee motion.

a. Canyon View's fee motion seeks fees solely for work performed in the Lakeview litigation.

On remand, Canyon View requested fees relating solely to its litigation against Lakeview. (1-AA-101–102, ¶¶ 12–13; 1-AA-124–378.) NWF's billing practices, under Mr. Norminton's supervision, sought to ensure that Canyon View did not request attorney fees for work performed litigating against the BONY defendants, the Ocwen defendants, or the Household defendants. (1-AA-101–102, ¶¶ 12–13; 1-AA-124–378.)[7]

In its post-appeal fee motion, Canyon View requested fees beginning with its January 2016 prelitigation efforts to convince

[7] Some errors nevertheless did occur. In the course of litigating the instant fee motion, Canyon View's counsel became aware of a very small number of non-Lakeview billing entries inadvertently included in the supporting evidence. Counsel excised all such entries, totaling $2,116.45, from the final fee request. (1-AA-1055–1075, ¶¶ 5, 27, 31–33, 41, 46, 68, 79; see 1-AA-902, ¶¶ 10–12.)

Lakeview to remove the cloud and continuing through the *Canyon View I* appeal. (See generally 1-AA-84–97.) Canyon View also sought fees relating to the fee motion itself. (*Ibid.*) In support, Canyon View submitted new attorney declarations and documentary evidence, all of which covered the entire scope of the fee request.

Exhibit 2 to the July 27, 2020 Norminton Declaration in support of Canyon View's fee motion (Exhibit 2), which contains all invoices from January 2016 to the filing of the motion, clearly identifies all hours and fees as relating to "Shapiro Lot 213" or "Canyon View Estates v Lakeview (Shapiro)." (1-AA-124–378.) The following table summarizes Canyon View's request for $173,466.70 in fees billed by the NWF firm and $13,687.50 billed

by Mr. Hoffman relating to the Lakeview litigation (1-AA-1075, ¶ 86):

Litigation Phase	Requested Fees
First Demand Letter through April 5, 2017 Judgment	$63,935.97[8]
First Fee & Cost Motion	$27,252.19[9]
Canyon View I	$78,982.63[10]
Second Fee & Cost Motion	$5,412.38[11]
Downward adjustment for erroneous entries	($2,116.45)[12]
NWF Total	$173,466.70[13]
Edward A. Hoffman's Fees	$13,687.50[14]
Grand Total	$187,154.20[15]

[8] 1-AA-1061, 1070–1071, ¶¶ 29, 62–69; 1-AA-1106–1107.

[9] 1-AA-1071, ¶ 69; 1-AA-1107.

[10] 1-AA-1061, 1073, ¶¶ 29, 75–76; 1-AA-1107–1108.

[11] 1-AA-1061, 1075, ¶¶ 29, 80–84; 1-AA-1109. This amount includes $3,412.38 billed as of the motion date and $2,000 estimated after. (1-AA-1075, ¶ 82.) Though actual post-motion fees exceeded $2,000, NWF limited its request to the estimate. (1-AA-1075, ¶ 84.)

[12] 1-AA-1061, ¶ 27.

[13] 1-AA-1075, ¶ 86; see 1-AA-1099–1101. Using these figures, the total amount comes to $173,466.72. While we have not been able to discern the source of the two-cent disparity, it likely arose in the course of adjustments made during the eight-month fee motion proceedings to account for a small number of mistakenly included entries. (See fn. 7, *ante*.)

[14] 1-AA-117, ¶¶ 14–16; 1-AA-1075, ¶ 86.

[15] 1-AA-1075, ¶ 86; 1-AA-1106–1109.

b. The trial court rejects Lakeview's attempt to relitigate the fee entitlement issue decided in *Canyon View I.*

In opposing Canyon View's post-appeal fee motion, Lakeview argued that Canyon View should not be entitled to fees because its quiet title action does not arise under the MRL. (1-AA-1034.) Lakeview further challenged the "necessity" of the action, arguing that it was unnecessary in light of Lakeview's reconveyance of title. (*Ibid.*)

The trial court rejected these "argument[s] directly contradict[ing] the Appellate Court opinion" in *Canyon View I*. (1-AA-1035.)

c. The trial court orders supplemental briefing to address its concerns about possible duplicative billing.

In a November 4, 2020 order, the trial court approved the hourly rates claimed by Lakeview's trial and appellate counsel. (1-AA-1036.) With regard to NWF's fees, however, the trial court stated that it "remains unable to determine whether the fees requested seek duplicative recovery of attorney fee costs, and whether the entries pro rata separate the appellate brief costs." (1-AA-1037.) The trial court therefore continued the motion hearing originally scheduled for November 4, 2020 and "order[ed] further briefing addressing the cut-off date for the fees, the actual billable fees by partner, associate, and paralegal, accounting for both the denied and current fee motion, and a pro

rata accountability for the appellate work handled by moving counsel, not appellate counsel." (1-AA-1034, 1037–1038.)

The NWF firm complied with the court's order. It supplied a supplemental brief and evidence showing "the actual fees billed after discount by [NWF] professionals specifically for their work solely on the Lakeview action." (1-AA-1061, ¶ 29 [discussing Norminton Supp. Decl. Ex. 6 (1-AA-1106–1109), a breakdown of total fees by stages of litigation]; see also 1-AA-1060–1061, ¶ 26 [Norminton Supp. Decl. Ex. 4 (1-AA-1099–1101) is "the breakdown of amounts billed to Canyon View specifically for the Lakeview action by each" NWF professional]; 1-AA-1061, ¶ 28 [Norminton Supp. Decl. Ex. 5 (1-AA-1103–1104) is the "the breakdown of hours billed to Canyon View specifically for the Lakeview action by each" NWF professional].)

As the Supplemental Declaration also made clear, the appeal-related fees NWF sought in the motion were apportioned before being submitted to the court, and thus related to Lakeview alone. (1-AA-1073–1075, ¶¶ 75–79.)

Rather than addressing only the issues requested by the trial court, Lakeview used the supplemental briefing ordered by the trial court to again "reiterate[ ] its arguments" that the court had already rejected and to present "further challenge to the merits of the underlying action." (2-AA-1200.) As it did in the November order, the court rejected these arguments. (*Ibid*.)

G. The trial court's fee award.

Of the $187,154.20 in attorney fees actually incurred in the Lakeview litigation and requested by Canyon View, the trial court awarded just $63,701.59. (See 2-AA-1203.)[16]

Litigation Phase	Requested Fees[17]	Court Award[18]
First Demand Letter through April 5, 2017 Judgment	$63,935.97	$19,870.94[19]
First Fee & Cost Motion	$27,252.19	$18,000.00
Canyon View I	$78,982.63	$19,745.66
Second Fee & Cost Motion	$5,412.38	$6,241.38
Downward adjustment for erroneous entries	($2,116.45)	($156.39)
NWF Total	$173,466.70	$63,701.59
Edward A. Hoffman's Fees	$13,687.50	$0
Grand Total	$187,154.20	$63,701.59

1. The trial court cuts NWF's fee request by 75 percent in a stated effort to exclude fees that it believes pertain to the three other cases.

Despite NWF's supplemental declaration and other evidence in which NWF explicitly and repeatedly stated and demonstrated that the fee motion sought fees relating to Lakeview only, the trial court's tentative ruling treated the fee

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[16] The trial court also awarded $8,097.46 in costs. (2-AA-1203.)

[17] See table at p. 24, *ante*.

[18] 2-AA-1202–1203.

[19] The court erroneously based this portion of the award on a figure that included both attorney fees and costs and covered a period extending beyond April 5, 2017. (See fn. 20, *post*.)

request as including fees relating to all four defendant groups from *Canyon View I*—not only Lakeview, but also BONY, Household, and Ocwen:

- With regard to fees incurred through the April 5, 2017 judgment, the trial court "divide[d] the previously represented balance of $79,483.76 into quarters" in an attempt to "reduc[e] potential duplicative recovery on potential subsequent motions against the remaining three defendants as well." (2-AA-1197.)[20]
- Believing that the evidence showed "total appellate fees of $78,982.63 on the four consolidated cases," the trial court "split[] the appellate fees four ways." (2-AA-1196.)

Prior to issuing its tentative fee order on February 22, 2021 the trial court had never proposed quartering Canyon View's fee request. At the next day's hearing, Mr. Norminton's colleague, Kathleen Fuster, explained why the trial court was mistaken, and that the requested fees related solely to litigation against Lakeview: "Nothing that is presented to your Honor in this

[20] This finding reveals a related misunderstanding by the trial court. The "billing up to April 5, 2017" (2-AA-1203) was not $79,483.76 but rather $63,935.97. (See 1-AA-1106–1107; see also table at p. 24, *ante*.) "[T]he previously represented balance of $79,483.76" (2-AA-1203) included not only attorney fees but also costs. (1-AA-1070, ¶ 62.) Even more, it included *post*-April 5 fees and costs, including actual and estimated fees relating to the first fee motion. (1-AA-1070, ¶¶ 62–64.)

motion by the Exhibit 2 invoices and the accounting exhibits 4, 5, and 6 contain anything other than fees that were incurred by Canyon View and that were billed to Canyon View specifically for their work in the Lakeview action." (RT 6; see RT 3–8 [directing court to, among other things, Norminton Supplemental Declaration paragraphs 5, 26, 28, 29, 30, 77–79 (1-AA-1055–1075) and exhibits 4–6 (1-AA-1099–1109)].)

Ms. Fuster directly raised the trial court's error in reducing by 75 percent both the fees through judgment and appeal fees. (See RT 4 [court's statement "that plaintiff represented that the total amount of fees on the appeal was $78,982.63 for the four consolidated cases" was "simply a false premise or understanding"]; RT 5 ["[W]ith respect to the Court only awarding 25 percent of the $78,982.63 for the appeal fees—it's based on this, you know, misconception that that was the total for all four appeals. That's just not the case, and it's not supported by the record"]; RT 6 [regarding "fees that were incurred by Canyon View specifically on Lakeview, which was from the demand letters through the judgment, . . . there's simply no basis whatsoever for your Honor to slash those or just lob [*sic*] off three quarters of those fees"].)

Indeed, Lakeview itself never took the position that Canyon View's requested fees covered the other three defendants from *Canyon View I*. At most, Lakeview argued that the handful of mistakenly-included entries—which total $2,116.45 and were removed upon their discovery (see fn. 7, *ante*)—made the billing records "inherently unreliable." (RT 11.)

But the trial court persisted. Its final order reduced both the prejudgment fees and the appeal fees by 75 percent on the basis that it was eliminating work performed in the BONY, Household, and Ocwen cases. (2-AA-1201–1203.)

2. The trial court fails to award any fees for appellate counsel.

In September 2019, Edward A. Hoffman began assisting with the Lakeview matter in an advisory capacity after briefing was completed but before oral argument. (1-AA-115, ¶¶ 4–5.) Mr. Hoffman became sole appellate and trial counsel soon after argument, when the NWF firm ceased operations. (1-AA-114–115, ¶¶ 3–4.)

In its November 2020 order, the trial court approved Mr. Hoffman's hourly rate and acknowledged that the $13,982.10 sought by Mr. Hoffman—$13,687.50 in fees and $294.60 in related costs (1-AA-117, ¶¶ 16–17)—had already been apportioned so that it represented work performed solely relating to Lakeview. (1-AA-1036.) This is the last the trial court ever said regarding Mr. Hoffman.

In that same November order, the trial court ordered further briefing solely with regard to the request for the NWF firm's fees. (See § F.2.c., *ante*.) The trial court's tentative ruling issued after supplemental briefing omitted Mr. Hoffman's fees entirely. (See 2-AA-1194–1197.) At the hearing, Ms. Fuster noted this omission. (RT 5 [amount awarded "does not even account for the attorneys' fees that Mr. Hoffman indicated in the motion that he incurred when he came in as co-counsel on the

appeal"]; see also RT 6 ["[Y]our Honor also did not include the amounts that Mr. Hoffman incurred"].)

In the March 2021 fee order that followed, the trial court did not mention Mr. Hoffman at all. (See generally 2-AA-1200–1203.)

H. Statement of appealability.

Canyon View timely appealed from the March 4, 2021 order on March 15, 2021. (2-AA-1204; See Cal. Rules of Court, rule 8.104(a)(1)(B).) The March 4 order is appealable as an order after judgment. (Code Civ. Proc., § 904.1(a)(2); *Whiteside v. Tenet Healthcare Corp.* (2002) 101 Cal.App.4th 693, 706 ["An order awarding attorney fees is separately appealable as an order after judgment"].)

STANDARD OF REVIEW

"Where, as here, a statute provides for an award of attorney fees, [the Court] review[s] the trial court's award of attorney fees for abuse of discretion." (*Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234.) "Although this standard is deferential, a court abuses its discretion where no reasonable basis for the action is shown." (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 519.)

Review for abuse of discretion is a two-step process: The court "first determine[s] whether substantial evidence supports the factual basis on which the trial court acted, and then determine[s] whether the orders made by the trial court

were an abuse of discretion in light of those facts." (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 430.) It follows that "an abuse of discretion may be found when the court proceeds upon a mistaken premise or a factual finding not supported by substantial evidence." (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 693; see *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393 [abuse of discretion where the trial court begins from a "mistaken premise"].)

Thus, "'when the record affirmatively shows the trial court's discretionary determination of fees pivoted on a factual finding entirely lacking in evidentiary support, the matter must be reversed with instructions to redetermine the award.'" (*Hanna v. Mercedes-Benz USA, LLC* (2019) 36 Cal.App.5th 493, 507, quoting *Etcheson v. FCA US LLC* (2018) 30 Cal.App.5th 831, 841.)

ARGUMENT

I. The Trial Court Abused Its Discretion By Quartering Canyon View's Fee Request Based On The Mistaken Belief That Canyon View Sought Fees Incurred In All Four Cases.

The trial court's foundational error was its belief that the documentary evidence Canyon View submitted—declarations, billing records, and invoices—represented Canyon View's fees for litigating all four cases involved in *Canyon View I*.

No evidence of any kind supports that belief. But it was the explicit basis of the trial court's decision to cut the two most substantial components of Canyon View's fee request by 75 percent, representing the portion of the fee request that the court believed went toward litigating the other three cases rather than the present one.

A. In *Canyon View I*, this Court directed the trial court to "engag[e] in an explicit analysis of the specific work performed or fees requested."

"'The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void.'" (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859, quoting *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655; see *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530 [same].)

As this Court's opinion in *Canyon View I* made clear, the fee award analysis requires "engaging in an explicit analysis of the specific work performed or fees requested." (1-AA-71,

citing *Garcia v. Santana* (2009) 174 Cal.App.4th 464, 476–477; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 1001.) Thus, when determining the reasonableness of Canyon View's fee request below, "the court needed to examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work." (1-AA-72, citing *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 818–819.)

The trial court may have thought it was following this Court's directive, but it wasn't. Instead, it reduced fees relating to the Lakeview litigation based not on "examin[ing] the specific work described," but on an unsupported factual premise belied by the uncontroverted evidence.

B. No substantial evidence supports the trial court's belief that Canyon View requested fees relating to BONY, Household, or Ocwen.

The court found that Canyon View's lead counsel, NWF, reasonably incurred attorney fees spanning 2016 to the post-appeal fee motion. These fees fall into four time-frame categories: (1) fees beginning in January 2016, when Canyon View first reached out to Lakeview and asked it to remove the clouding documents, and continuing through judgment on April 5, 2017; (2) postjudgment fees from April 6 through September 13, 2017, mainly relating to the first fee motion; (3) fees thereafter relating to the *Canyon View I* appeal; and (4) post-appeal fees, for the second fee motion. (1-AA-1037; 2-AA-1201–1202; see table at p. 24, *ante*.) Canyon View does not challenge

the trial court's determination regarding these date ranges or categories of recoverable work.

But with regard to the first and third categories—fees through judgment and fees incurred in connection with the *Canyon View I* appeal—the trial court erroneously treated NWF's fees incurred litigating solely against Lakeview as though they were fees incurred litigating against *all* of the *Canyon View I* defendants. The uncontroverted evidence—which the trial court never gave any indication of or basis for disbelieving—says otherwise.

1. No substantial evidence supports the trial court's finding that Canyon View's fees through judgment related to all four cases from *Canyon View I*.

With regard to fees incurred from January 2016 through judgment on April 5, 2016, the trial court ruled: "While some of the discovery and demurrer work expressly applies to the Lakeview Loan Servicing, the court remains unable to determine how much crossover work actually applied to the other defendants. Given the similarities of the four actions and the inability to sufficiently parse out the required, unique work, the court divides the previously represented balance of $79,483.76 into quarters thereby reducing potential duplicative recovery on potential subsequent motions against the remaining three defendants as well." (2-AA-1203.)[21]

[21] The trial court's $79,483.76 figure erroneously included some post-April 5 fees. (See fn. 20, *ante*.)

But beginning with its June 2020 motion and supporting attorney declarations, Canyon View made abundantly clear that the fees it requested related only to litigation against Lakeview.

Because many of the matters NWF handled for Canyon View over the years resolved fairly quickly, NWF had a general billing number for nascent cases, and "only created individual billing numbers for cases once [NWF] believed a particular case would require substantial amounts of work." (1-AA-101, ¶ 12.) NWF "first assigned a separate case number to [the Lakeview] dispute in July 2016." (1-AA-101, ¶ 12.)

The earliest invoices from this case—dated from February through mid-July 2016—predate the creation of a Lakeview-specific matter number and thus "originally included entries related to other properties which are not involved in this case." (1-AA-101–102, ¶ 12.) But counsel addressed this fact *before* submitting all billing records to the trial court as Exhibit 2 to the Norminton Declaration: "Those entries have been redacted from the copies in Exhibit 2, and the associated fees and costs have been deducted from the total." (1-AA-102, ¶ 12.) A review of Exhibit 2 confirms this. For all of the invoices predating the creation of a Lakeview-specific matter number (1-AA-124–141) all of the non-redacted entries appear under the heading "Shapiro Lot 213"—the only lot at issue in this case (Statement of Facts (SOF), § A, *ante*).

And after that time, all billing on the Lakeview matter was billed to a Lakeview-specific matter number: "NWF invoiced Canyon View separately for this case beginning with the second

July 2016 invoice. These invoices, which are also included in Exhibit 2, have not been redacted." (1-AA-102, ¶ 13.) Once again, a review of Exhibit 2 confirms this. Beginning with the July 12, 2016 invoice, all invoices are clearly identified on *every page* as pertaining solely to the "Canyon View Estates v Lakeview (Shapiro)" matter. (See 1-AA-142–378 [all invoices marked as "Canyon View Estates v Lakeview (Shapiro)" on front page and heading of each subsequent page].)

Thus, Exhibit 2—which represents the total NWF attorney fees requested in the motion—contains *only* billing entries related to Lakeview.

At the trial court's request, Mr. Norminton included with his January 2017 Supplemental Declaration three charts representing an accounting of the attorney billing records previously submitted as Exhibit 2 to the initial July 2020 Norminton Declaration. (1-AA-1037–1038 [requesting accounting of "the actual billable fees by partner, associate, and paralegal, accounting for both the denied and current fee motion . . . relative to any and all work done as to Lakeview ONLY," original capitalization]; see 1-AA-1060–1061, ¶¶ 23–29; 1-AA-1099–1109.)

In complying with the court's order, Mr. Norminton once again made clear he "accounted for Lakeview services only." (1-AA-1055–1056, ¶ 5.) Accordingly, these supplemental exhibits summarize the previously submitted Exhibit 2 to show "the actual fees billed after discount by [NWF] professionals specifically for their work solely on the Lakeview action." (1-AA-1061, ¶ 29 [discussing Norminton Supp. Decl. Ex. 6 (1-AA-1106–

1109), a breakdown of total fees by stages of litigation]; see also 1-AA-1060–1061, ¶ 26 [Norminton Supp. Decl. Ex. 4 (1-AA-1099–1101) is "the breakdown of amounts billed to Canyon View specifically for the Lakeview action by each" NWF professional]; 1-AA-1061, ¶ 28 [Norminton Supp. Decl. Ex. 5 (1-AA-1103–1104) is the "the breakdown of hours billed to Canyon View specifically for the Lakeview action by each" NWF professional].)

The evidence therefore demonstrates that the bills submitted, and the fees requested, relate solely to Lakeview. Though a small number of entries were erroneously included in the motion—as can reasonably be expected to occur in a fee request for litigation spanning over four years—Canyon View's counsel removed those fees from the request. (1-AA-1055–1075, ¶¶ 5, 27, 31–33, 41, 46, 68, 79; see 1-AA-902, ¶¶ 10–12.) Those entries total $2,116.45, or roughly one percent of the total fee request, and were subtracted from the requested amount. (1-AA-1061, ¶ 27.) They provide no substantial evidence that Canyon View's fee request sought fees relating to all four trial court actions involved in *Canyon View I*.

There was accordingly no basis for the trial court's claimed inability "to determine how much crossover work actually applied to the other defendants." (2-AA-1203.) Its resulting decision to quarter the requested fees so as to apportion them between this case and three totally separate cases was an abuse of discretion. (See *Hanna*, *supra*, 36 Cal.App.5th at p. 507 [reversal required when the record affirmatively shows the trial court's fee determination lacks evidentiary support]; *569 East County*

Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 435, fn. 10 [same].)

2. The trial court erred again by cutting 75 percent of the *Canyon View I* fees on the same mistaken premise.

As with the fees through judgment, Canyon View requested only the fees incurred in litigating *Canyon View I* against Lakeview—not fees related to other defendants. Mistakenly believing otherwise, the trial court cut Canyon View's appeal-related fee request in fourths to account for the other defendants in *Canyon View I*.

Regarding the fees incurred litigating *Canyon View I*, the court stated: "Plaintiff once again represents total appellate fees of $78,982.63 on the four consolidated cases, as well as an admitted acknowledgment supporting apportionment." (2-AA-1201, citing 1-AA-1073–1075, ¶¶ 75–79.)

But the very portion of the record cited by the trial court says otherwise. There is no "admitted acknowledgement supporting apportionment." (2-AA-1201.) What Mr. Norminton actually said was that *the fees had already been apportioned*. (1-AA-1074, ¶ 77 ["there was an apportionment for fees and costs between the four consolidated appeals"], ¶ 78 ["With the apportionment between the four cases for issues and tasks in common . . . , Lakeview's fees were less than they would have been had the consolidation and apportionment not occurred"]; see also 1-AA-107, ¶ 29 ["I instructed the attorneys and paralegals in the firm to apportion their time among the four appeals for tasks

on common issues and separately bill their time to one case on matters not in common with the other three cases"].)

Based on its mistaken belief that the appeal fees needed to be apportioned, the court continued: "The court therefore splits the appellate fees four ways—$19,745.66 less $156.39 for a total of $19,589.27. The court therefore sets the appellate fees at this amount."[22] (2-AA-1201.)

The problem with the court's reasoning once again is that $78,982.63 did not represent total appellate fees for the four consolidated cases. It represented the appellate fees incurred in relation to Lakeview alone. (1-AA-107–108, ¶¶ 29–30; 1-AA-1073–1075, ¶¶ 75–79.)

Just as they had done before the consolidated appeal, Canyon View's counsel prepared separate monthly cost and fee statements relating to each of the four defendant groups. (1-AA-107, ¶ 29.) As Mr. Norminton declared: "Some of the necessary tasks for each of the four matters also applied to the other three appeals, but much of the work was case-specific. For this reason, I instructed the attorneys and paralegals in the firm to apportion their time among the four appeals for tasks on common issues and separately bill their time to one case on matters not in common with the other three cases." (*Ibid.*)

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[22] The subtraction of $156.39 accounts for fees that NWF acknowledged were erroneously included in the original request. (2-AA-1201; see fn. 7, *ante*.)

In other words, during the appeal, where tasks were specific to a single defendant group (e.g., Lakeview), the total time would be billed directly to that case file. Where the time was for tasks that benefitted all four appeals equally, the time was apportioned, with a quarter being billed to each case file.

And, indeed, the appeal-related billing entries are entirely consistent with this apportionment. (See 1-AA-250–363.) In the period spanning over two years from notice of appeal to this Court's decision, the largest appeal-related entry is a single 2.25-hour entry for revising the reply brief shortly before filing. (1-AA-336.) The reply brief was no small task: Though the appeals were consolidated, all four defendant groups filed—and thus Canyon View had to reply to—separate respondent's briefs. (See Docket, 2d Dist. No. B285489 [Respondents' briefs filed Nov. 13, 2018 (Ocwen); Dec. 28, 2018 (Lakeview); Jan. 14, 2019 (Household); and Jan. 15, 2019 (BONY)].)

Beyond that single 2.25-hour entry, there are just two 2.0-hour entries, six 1.75-hour entries, seven 1.5-hour entries, and sixteen 1.25-hour entries over this same two-plus-year period. (See generally 1-AA-250–363.) Virtually all of these entries relate to drafting or revising the opening and reply briefs. Nothing about NWF's appeal-related bills is inconsistent with what would reasonably be expected to account for the Lakeview-specific share of work performed in the four consolidated appeals.

As this evidence shows, Canyon View supplied the court with appeal-related billing records covering *only* time billed litigating against Lakeview and *excluding* time billed litigating

against other defendants. The trial court once again erred by cutting this portion of Canyon View's fee request by 75 percent to eliminate work that was never included in the request to begin with.

C. Because the trial court stated its reason for the 75 percent reduction, there is no basis for inferring that its reduction really was based on a proper lodestar analysis.

The trial court clearly stated its basis for reducing the attorney fees by 75 percent. (See § I.B., *ante*.) This erroneous ruling therefore cannot be upheld as a proper application of the required lodestar analysis.

It's true that, in some cases, the Court of Appeal may "presume the trial court considered the relevant lodestar adjustment factors to reach its fee award when confronted with a silent record." (*Hanna*, *supra*, 36 Cal.App.5th at p. 511, citation omitted.) "However, where, as here, the court expressly states a legally erroneous ground for its ruling, we cannot infer its exercise of discretion rested on a wholly different basis." (*Id.* at p. 512, citing *Etcheson*, *supra*, 30 Cal.App.5th at pp. 845–846 [where court based its drastic reduction of plaintiffs' fee request on its view that continuing to litigate the case following a settlement offer was unnecessary, "we cannot indulge an inference that the trial court's order . . . was based on a legitimate lodestar assessment of the overall reasonableness of counsel's fees based on rates, duplication of effort, or complexity"] & *McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695, 705 ["[w]hen the court states its reasons explicitly [for reducing the

fees requested], we cannot infer its exercise of discretion rested on a wholly different basis"].)

The trial court never even intimated that it disbelieved Mr. Norminton's declarations or the supporting documentary evidence, and there is no reason to believe it did so. Even assuming that the trial court determined, sub silentio and without any basis, that it did not believe declarations and documentary evidence setting forth that the requested fees pertain to Lakeview alone, this does not provide any substantial evidence for a four-way apportionment. (See *Viner v. Sweet* (2004) 117 Cal.App.4th 1218, 1229, citing *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 48 [disbelief of evidence "does not constitute affirmative evidence of the contrary proposition"].)

And to reject those records without any stated basis would have been error. "[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford*, *supra*, 132 Cal.App.4th at p. 396.) Without any such kind of "clear indication," a "trial court abuse[s] its discretion in rejecting wholesale counsels' verified time records." (*Ibid.*) Even more, it's clear that the trial court *did* believe the evidence, because it based its fee order on that evidence—albeit on a mistaken and unsubstantiated interpretation of it.

Nor is the 75 percent reduction saved by the trial court's one-sentence remark at the end of the order that the four-way "division also reduces the questionable entries raised in the prior

order and by Defendant." (2-AA-1203.) The order establishes no rational relationship between a handful of supposedly "superfluous entries" (2-AA-1202) and a 75 percent reduction in fees requested. (See *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101 [there must be "a reasonable basis for the trial court's reduction of the lodestar amount"].) A percentage "reduction in hours claimed" based on supposed flawed entries, "without any correlation shown to the number of hours claimed on the flawed entries, is arbitrary." (*Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 280–281.) And any supposed unspoken correlation is belied by the trial court's explicit statements that it quartered the fee requests to account for work on the other three cases.

D. The trial court's failure to perform the required lodestar analysis prejudiced Canyon View.

Trial courts have great latitude in determining reasonable fees. But courts abuse their discretion when they disregard the evidence presented. (See *Hanna*, *supra*, 36 Cal.App.5th at p. 507; *569 East County Boulevard LLC*, *supra*, 6 Cal.App.5th at p. 435, fn. 10; § I.A., *ante*.) The failure to award 75 percent of both the fees through judgment and the appeal fees based on a mistaken view of the record was thus an abuse of discretion. (See, e.g., *Doppes*, *supra*, 174 Cal.App.4th at pp. 1000–1001 [cited in *Canyon View I* (1-AA-71); trial court abused its discretion by denying discovery motion-related fees based on mistaken belief the fees were accounted for elsewhere].)

Because of its mistaken belief, the trial court failed to follow this Court's directive from *Canyon View I* to assess the reasonableness of the fees requested. In applying an across-the-board 75% reduction on a demonstrably mistaken premise devoid of evidentiary support, the court failed to "take issue with or even address any of the specific tasks outlined in this documentation [or] the hours spent on them." (1-AA-72.) The trial court rejected 75 percent of Canyon View's fee request not because those fees were unreasonable, but because the trial court mistakenly believed those fees related to litigating against *entirely different defendants* in *entirely different lawsuits*.

It is impossible to know how the trial court would have awarded fees had it been fully aware that the fees requested related *solely* to the Lakeview litigation. This Court should therefore reverse and remand for the trial court to determine the reasonableness of the fees requested—*all* of which relate solely to Lakeview—in accordance with the legal standards articulated in *Canyon View I*. (1-AA-72–73; see also, e.g., *Doppes*, *supra*, 174 Cal.App.4th at p. 1001 [failure to award reasonable fees on mistaken premise "manifestly unjust"].)

II. The Trial Court Erred By Failing To Award Fees For Appellate Counsel.

In its November 2020 order, the trial court spoke approvingly of appellate counsel Edward A. Hoffman's rates and total fees. (1-AA-1036.) However, because the trial court desired further clarification regarding fees from the other firm, NWF, the trial court ordered further briefing regarding NWF alone and did not award any fees at that time.

In its March 2021 order following the supplemental briefing, the trial court awarded attorney fees. But in doing so, the trial court awarded fees relating only to the work performed by the NWF firm—i.e., the subject of the supplemental briefing. (2-AA-1203.) The trial court did not analyze or even mention the $13,687.50 incurred by Mr. Hoffman. (See generally 2-AA-1200–1203; see also 1-AA-1075, ¶ 86 [NWF's fee request "does not include Mr. Hoffman's fees of $13,687.50"].)

Through apparent inadvertence, the trial court wholly failed to "take issue with or even address any of the specific tasks outlined in [Mr. Hoffman's] documentation [or] the hours spent on them." (1-AA-72.) And it awarded zero dollars for the work performed. This was an abuse of discretion. (*Ibid.*; see also *Doppes*, *supra*, 174 Cal.App.4th at pp. 1000–1001.) Accordingly, this Court should remand to the trial court with instructions to award reasonable fees incurred by Mr. Hoffman.

CONCLUSION

The trial court's errors of conception and omission denied Canyon View its statutory right to reasonable attorney fees under section 798.85 and this Court's prior opinion in *Canyon View I*. This Court should reverse the order and remand to the trial court with the same instruction as before: Any reductions *must* come from "examin[ing] the specific work described, determin[ing] which work was unnecessary or unreasonable, and declin[ing] to award fees and costs for that specific work." (1-AA-72, citing *Robertson*, *supra*, 144 Cal.App.4th at pp. 818–819.)

Dated: December 16, 2021 Respectfully submitted,

GREINES, MARTIN, STEIN & RICHLAND LLP
Robin Meadow
Jeffrey Gurrola

By: */s/ Jeffrey Gurrola*

Attorneys for Appellant CANYON VIEW LIMITED

CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Appellant's Opening Brief contains **8,574 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: December 16, 2021 */s/ Jeffrey Gurrola*

Jeffrey Gurrola

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, my email address is vworrell@gmsr.com.

On December 16, 2021, I served the foregoing document(s) described as: **APPELLANT'S OPENING BRIEF** on the interested party(ies) in this action, addressed as follows:

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(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

Clerk - Hon. Stephen P. Pfahler
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(X) Mail: By placing a true copy thereof enclosed in a sealed envelope addressed as above and placing the envelope for collection and mailing following our ordinary business practices.

I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Executed this day December 16, 2021 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Valerie Worrell
Valerie Worrell