

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, March 27, 2026, 9:30 a.m.
Courtroom 22 –Hon. Robert M. LaForge
3055 Cleveland Avenue, Santa Rosa**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 161-646-8743

Passcode: 026215

<https://sonomacourt-org.zoomgov.com/j/1616468743>

TO JOIN “ZOOM” BY PHONE:

By Phone (same meeting ID and password as listed above):

(669) 254-5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, it will be necessary for you to contact the department’s Judicial Assistant by telephone at **(707) 521-6836 by 4:00 p.m.** on the day before the hearing. Any party requesting an appearance must notify all other opposing parties of their intent to appear.

PLEASE CALL THE COVERING JUDICIAL ASSISTANT AT 707 521 6729 FOR APPEARANCE/ARGUMENT REQUESTS.

1. 24FL02577, Abercrombie v Haber

Motion for Prevailing Party Fees under Family Code 6344 GRANTED in part, RESERVED in part for determination as to the amount of the award and the monthly payment amount. APPEARANCES REQUIRED to address the amount of attorney’s fees and costs. Petitioner must file and serve by the time of the hearing a brief supplemental declaration summarizing the billing entries and explaining the need for the amount of time and fees incurred. No other papers from either party are authorized. The court anticipates that it may need to take the matter under submission or continue it for a further hearing but at this time is unable to make a determination on that point.

Facts

Petitioner commenced this matter regarding domestic violence without minor children when she filed a Request for Domestic Violence Restraining Order (“DVRO”) against Respondent on December 20, 2024. Respondent, with attorney James Carroll (“Carroll”) representing her, filed a response on January 10, 2025.

The court denied the request for temporary DVRO and subsequently held an evidentiary hearing on the request on June 12, 2025, at which both parties and their respective attorneys were present, presented evidence, conducted witness examination, and presented arguments. The respective attorneys for both parties acted in behalf of their clients throughout the hearing. Following the hearing, the court granted the request and issued a three-year DVRO protecting Petitioner and restraining Respondent.

Respondent, acting on her own as a self-represented litigant, filed an appeal on June 16, 2025. Attorney Carroll filed a substitution of attorney on June 20, 2025, showing that Respondent and he had agreed to him withdrawing from the representation and leaving Respondent self-represented. The form shows that Carroll and Respondent signed it on June 19, 2025. The court of appeal issued a notice of default on the appeal on July 17, 2025.

Again, acting as a self-represented litigant, Respondent also filed ex parte applications challenging the DVRO. This court denied the ex-parte applications to terminate the DVRO. On July 11, 2025, Respondent also filed a motion to reconsider the DVRO ruling and the court set the matter for a hearing on that motion. The court in its order setting the hearing expressly explained that Respondent, the moving party, “must file a memorandum of points and authorities upon which she relies” to give notice to the court and other party “of the nature and substance of the present request.”

In her motion for reconsideration, Respondent asserted that ‘new evidence... shows my retained attorney admitted he “kept working on my case out of empathy” after I terminated him. I was never advised that he ceased representation or never turned in key evidence. I was left to navigate trial believing I had counsel when I did not.’ After Petitioner filed opposition to the motion, Respondent filed a memorandum in support of the opposition, which this court considered to be a reply under the circumstances. For the first time relying in Code of Civil Procedure (“CCP”) section 473(d), she asserted that the order was void because of “attorney abandonment” preventing a meaningful opportunity to be heard. In the end, she asserts that her attorney, Carroll, had failed to handle the hearing properly because Petitioner’s attorney “controlled approximately 91% of attorney participation,” Carroll made no objections on day 1 of Petitioner’s testimony and failed to cross-examine Petitioner, and conducted “[o]nly a few minutes of redirect.” Respondent subsequently filed an additional, untimely set of reply papers four calendar days before the hearing.

The court denied the motion for reconsideration, finding that Respondent had failed to demonstrate any basis for relief and that the motion was defective both procedurally and substantively. The court explained that, aside from the procedural defects, it was substantively wholly unpersuasive and lacking in support. Respondent had provided nothing which was “new” within the meaning of CCP section 1008, but only evidence which was already in her possession and known to her previously. It also explained that Respondent incorrectly relied on relief for void judgments pursuant to CCP section 473(d). It stated that nothing in the record showed the order to void and that the grounds cited, insufficient representation or “abandonment” by her attorney were not apparent on the face and were based on discretionary issues. The court that only discretionary relief under CCP section 473(b) was potentially available on this basis and that the evidence presented in any case failed to show insufficient representation or “abandonment” by her attorney. The evidence the court found merely showed that her attorney continued to represent her out of empathy for her while the record of the proceedings clearly demonstrated that Carroll, the attorney, acted at the hearing on her behalf and fully participated. The record further showed that Carroll withdrew only upon notice, and Respondent’s own written agreement, and after she filed her own appeal on her own, without Carroll. The court added that even if relief based upon an attorney affidavit of fault had been appropriate, Respondent provided no such affidavit and did not address the standards for such relief.

Respondent filed a Request for Order (“RFO”) and Motion to Set Aside June 12 order per 473(b), in which she again moved the court to set aside the DVRO. She asserted that her then-attorney, Carroll, had spent insufficient time preparing for the hearing and failed to use the evidence

which she provided to him, stipulated to some of Petitioner’s exhibits, declined to cross-examine Petitioner, and concluded that he had completed Respondent’s direct examination when she felt that he had not done so. The court denied the motion to set aside after the hearing of February 13, 2026.

Motion

In her RFO and Motion for Prevailing Party Fees under Family Code 6344, Petitioner moves the court to award her attorney’s fees and costs of \$25,436.80, for the litigation resulting in the DVRO and Respondent’s applications to end or modify the DVRO. On September 23, 2025, prior to Respondent’s opposition, Petitioner filed an amended declaration in support of the fees.

Respondent opposes the motion, claiming that Petitioner’s requested fees are unreasonable and improperly high, Petitioner has a substantially higher income than she, and that she feels that Petitioner and her attorney have been using this request as leverage against her in order to try to stop her from “accessing justice through the legal system.”

Applicable Authority

According to the Family Law Rules of the California Rules of Court (“CRC”) 5.2(d), and Family Code (“Fam. Code”) section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure (“CCP”). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022 (discovery); *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (discussing the applicability of Code of Civil Procedure section 473 when a party seeks relief from orders in family proceedings).

Fam. Code section 6344 governs requests for attorney’s fees and costs on petitions for domestic violence protective orders or restraining orders. It states, in pertinent part and with emphasis added,

(a) After notice and a hearing, a court, upon request, *shall* issue an order for the payment of attorney's fees and costs for a prevailing petitioner.

...

(c) Before a court awards attorney's fees and costs pursuant to this section, the court shall first determine pursuant to Section 270 that the party ordered to pay *has, or is reasonably likely to have, the ability to pay.*

The determination regarding the ability to pay under Fam.Code sections 270 and 6344 is within the sound discretion of the court. *In re Marriage of Greenberg* (2011) 194 Cal.App.4th 1095, 1100. The determination must take into account the obligor’s other expenses such as housing and basic living expenses, as well as legal fees. See, e.g., *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, at 867-868; *Marriage of Rosen* (2002) 105 Cal.App.4th 808, at 830.

Although primarily addressing the issue of whether the current language of section 6344 applies retroactively, the court in *Dragones v. Calkins* (2024) 98 Cal.App. 5th 1075, at 1085-1086, affirmed an award of \$6,000 in fees, payable in installments, against a party earning about \$3,082 per month and found that the award was not an abuse of discretion. The court also reiterated that the party seeking the fees and costs does not need to demonstrate an inability to pay for legal expenses, i.e., a need-based award.

In *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, the court affirmed an award of \$25,000 for legal expenses incurred in successfully defending against an application to terminate a DVRO. The appellate court pointed out that the trial court had reduced the requested fees by about half and that the party seeking the award had provided detailed billing records to support her claim of the legal expenses incurred. The court there addressed the prior version of section 6344, which generally made it more difficult for a prevailing petitioner to obtain such an award, and which required a determination of the parties' *respective* abilities to pay but did not specifically require the same analysis of the opposing party's ability to pay in accord with Fam. Code section 270. The analysis regarding the ability to pay was therefore similar, but slightly different than it is under the current statute.

Objections

Respondent objects to factual assertions in Petitioner's reply memorandum. However, this is not evidence, the court does not consider the facts presented therein as evidence, the objections are therefore unnecessary, and the objections address no actual evidence. The court disregards the objections on this basis. Even if the court were to sustain the objections, neither they nor the factual assertions they address have any impact on the outcome of this motion.

Discussion

Petitioner correctly argues that she is entitled to a mandatory award of fees and costs, unless Respondent demonstrate an inability to pay. She also contends that Respondent is able to pay.

Respondent in part argues that the court should reduce or deny the request because Petitioner's income of about \$17,211 a month, or \$206,532 a year, is "more than twice" what Respondent earns. The court notes that Respondent herself states in her opposition that her income is about \$8,575 per month, or \$102,900 per year. In any case, the standard in section 6344 does not take into account the difference in income or asserts between the parties but only whether the party against whom the award is to be made "has or is reasonably likely to have the ability to pay. The court therefore must take into account the assets, income, and expenses of Respondent in order to determine if Respondent may, in accord with the statutory provision, have sufficient ability to pay the requested fees and costs. However, there is no basis to compare her financial situation to that of Petitioner or to deny or reduce the fees and costs simply because Petitioner has a greater income.

With respect to Respondent's ability to pay, the evidence unequivocally shows that Respondent generally has sufficient income and ability to pay fees and costs. Petitioner relies on Respondent's own Income and Expense Declaration ("IED"), attached as Ed. B to the Smith Declaration. In this, Respondent stated that she had, as of June 6, 2025, an income of about \$7,200 per month, or \$86,400 per year. Petitioner notes that calculations based on Respondent's paystubs show gross income up to June 6, 2025, with overtime, of \$42,985, which would, if continued, result in an annual income of about that same amount.

Moreover, as noted above, in her opposition, or Responsive Declaration, Respondent admits that her current income is actually higher, about \$8,575 per month or \$102,900 per year, and that this exceeds her expenses by a significant margin. Respondent contends that currently her “monthly expenses are approximately \$6,000,” she has had to stop tax withholding from her pay in order to ensure enough money right now to cover expenses, and she has debt of \$70,793 plus a debt to her attorney of \$6,256. Petitioner also claims that she has been paying for all automobile insurance since separation and that Respondent sold or gave away one of the automobiles without telling Petitioner, further calling into question Respondent’s claimed automobile expenses.

Petitioner’s attorney, Nicole Grae Smith (“Smith”) includes with the motion declaration (the “Smith Dec.”) explaining the fees and costs with billing records attached as Exhibit A. These records are detailed and set forth the various items and the work involved. She filed an amended declaration (the “Amended Smith Dec.”) on September 23, 2025. This primarily addresses Respondent’s ability to pay, and the additional fees and costs incurred since Petitioner filed the motion, largely related to Respondent’s efforts to terminate the DVRO.

Preliminarily, the calculations and assertions in the Smith Dec., at ¶¶3-5, are unclear. Petitioner requests a total of “\$25,436.80 in attorney’s fees and costs” but claims that she “has incurred and paid \$30,467.96 in attorney’s fees. \$20,548.30 [sic] in costs related to the Domestic Violence Restraining Order and \$2,888.50 in costs related to the subsequent Ex Parte Request to End/Modify Restraining Order.” These numbers clearly do not add up. The court interprets the number \$20,548.30 as likely intended to be either \$2,548.30 in costs or \$20,548.30 in fees and costs while the \$2,888.50 “in costs” may actually be fees and costs. Even then the numbers do not add up, the totals claimed are different, and the figure related to the ex parte application is called only costs but appears too large for just costs and the court views it as likely to include fees. The Amended Smith Dec. words it slightly differently and clears up an apparent typographical error but still leaves the terminology and calculations unclear. They also claim to have incurred an additional \$8,898.67 in fees and costs for addressing Respondent’s subsequent efforts to terminate or modify the DVRO. Ultimately, the court at this time finds Petitioner to be requesting a total of \$25,436.80 for everything, which is also the figure presented in the RFO itself, along with an additional \$8,898.67.

The court finds Petitioner is entitled to an award of fees and costs and that Respondent has the ability to pay some amount. First, as noted above, Petitioner is entitled to such an award and the court “shall” grant it, unless the court finds Respondent to be unable to pay. Second, Respondent has failed to persuade the court that she is unable to pay some amount. By her own account, Respondent’s monthly gross income exceeds her expenses by over \$2,000 a month and even her own admitted net income exceeds the expenses as well. There are fluctuations between the IED filed earlier and her latest numbers in her responsive declaration, but both indicate an income exceeding expenses by a significant amount while the more recent figures show a greater margin of income over expenses. She claims that she has the debt noted above, but her monthly expenses, as noted in her IED, already include monthly payments for debts, including student loans. Her IED expenses also include the full range of items, necessary or not, discretionary or not, which one may incur, including groceries, dining out, entertainment, and clothes, in addition to fixed items such as insurance and utilities. Under these circumstances, Respondent facially has a significant ability to pay, at least on a monthly installment basis. The court also notes that the 2024 decision in *Dragones, supra*, affirmed an award based on the same provision even though the obligor’s monthly income was only just over \$3,000, less than half of Respondent’s here.

The court is, however, not convinced that the full amount requested is reasonable. Trial here was 2 days, not a lengthy matter. There was litigation before and after the DVRO hearing or trial, however. The court also does agree with Petitioner that she entitled to some compensation for the post-DVRO litigation resulting from Respondent's failed efforts to terminate the DVRO, efforts which this court has already found to be frivolous and wholly unmeritorious. That additional litigation warrants a larger award than the short 2-day trial alone could justify but the court is not convinced that over \$25,000 is reasonable, especially since Petitioner now seeks almost \$9,000 more for the post-trial litigation. It is even larger than the award for similar litigation approved in *Loeffler*, and much more than the amount approved in *Dragones*. This and the discrepancies in Petitioner's information as noted above require clarification.

The court GRANTS the motion, finding that Petitioner is entitled to a mandatory award and that Respondent is able to pay something. However, the court REQUIRES APPEARANCES in order to determine the final amount and requires a further declaration from Petitioner both summarizing clearly and further explaining the need for the fees and costs requested. Because this further time and effort results from the insufficiencies in Petitioner's papers, the court excludes any additional work on this motion from the final award for fees and costs and therefore Petitioner is not to seek to include any compensation for such time.

The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.