

Defendant Witteles' Motion for Attorneys Fees incurred in connection with defending the SLAPP suit and filing the anti-SLAPP motion is unopposed and is ruled on as follows.

Plaintiff's claims in this action for defamation and libel against moving party arose from a few phrases contained in a single post by defendant on a website on the issue of plaintiff's alleged cheating at on line poker games. Defendant has established that Internet post and the phrases therein were not only fully protected by the First Amendment, but also concerned matters of public interest, including "consumer information affecting a large number of persons." *Carver v. Bonds* (2005) 135 Cal. App. 4th 328, 492-93 (issues pertaining to consumer protection are matters of "public interest.") Therefore, the allegations fall squarely within the definition of a SLAPP suit.

Defendant seeks \$43,314.50 for attorney's fees and costs associated with defending the SLAPP lawsuit file by plaintiff.

Plaintiff voluntarily dismissed his case on April 1, 2021, before the hearing on the anti-SLAPP motion. On April 20, 2021, the court dropped the anti-SLAPP motion, without prejudice to defendant filing a motion for attorneys fees incurred in defending this SLAPP suit, pursuant to CCP 425.16(c) .

Where the plaintiff voluntarily dismisses an alleged strategic lawsuit against public participation suit while a special motion to strike is pending, the trial court has discretion to determine whether the defendant is the prevailing party for purposes of attorney's fees under Cal. Civ. Proc. Code § 425.16(c). The voluntary dismissal of a complaint before the hearing on an anti-SLAPP motion creates a presumption that the defendant is the prevailing party on the anti-SLAPP motion. The defendant need not obtain a ruling from the court on the motion to strike in order to prevail for purposes of attorney's fees. *Coletrain v. Shewalter* (1998) 66 Cal.App.4th 94, 106-107.) The Court finds that defendant is the prevailing party in this action and is therefore entitled to attorneys fees pursuant to CCP 425.16(c). Plaintiff has filed no opposition to dispel the presumption that defendant is the prevailing party.

The anti-SLAPP statute provides: "In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Code Civ. Proc. § 425.16(c) (emphasis added) An award of attorney's fees to a prevailing defendant is mandatory. *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1131. ("[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees."); *Paulus v. Bob Lynch Ford, Inc* (2006) 139 Cal. App. 4th 659, 685. Defendant is entitled to recover attorney's fees and costs he reasonably incurred in extricating himself from this action. *Wilkerson v. Sullivan* (2002) 99 Cal. App.4th 443, 446, (The statute is broadly construed so as to effectuate the legislative purpose of reimbursing the prevailing defendant for expenses incurred in extricating herself from a baseless lawsuit.)

Under California law, in determining the amount of reasonable attorney fees to be awarded under a statutory attorney fees provision, the court begins by calculating the "lodestar" amount. (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1393; *Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270.) The "lodestar" is "the number of hours reasonably expended multiplied by the reasonable hourly rate." (*Bernardi*, supra, 167 Cal.App.4th 1379, 1393; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.) To determine the reasonable hourly rate, the court looks to the

"hourly rate prevailing in the community for similar work." (*Bernardi*, supra. 167 Cal.App.4th at 1394.) The California Supreme Court has further instructed that attorney fee awards "should be fully compensatory." Id., citing *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133. Thus, an attorney fee award should ordinarily include compensation for all of the hours reasonably spent, including those relating solely to the fee. *Bernardi*, supra, 167 Cal.App.4th 1379 at 1394. This lodestar fee may then be adjusted to account for "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." Id.

Fee award amounts are matters within the trial court's discretion: the "trial judge is the best judge of the value of professional services rendered in h[er] court, and while h[er] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Ketchum v. Moses*, supra, at p. 1132; accord *PLCM Group v Drexler*, (2000) 22 Cal.4th 1084, 1096.) The Court will reduce the hours it determines were excessive or not supported. (*Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816 (party seeking attorney fees has the "burden of showing that the fees incurred were 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount'). *Christian Research Institute v. Ahor* (2008) 165 Cal.App.4th 1315, 1326-1329.

The billing records that support this motion are attached as Exhibit B to the Declaration of Eric Bensamochan, the attorney who represented defendant in defending this SLAPP action. The billing records show a billing rate of \$695 per hour. The amount of time spent researching the anti-SLAPP motion and drafting the motion, alone, is approximately 43 hours, which the court finds excessive and unnecessary given the nature and complexity of the allegations of the FAC and the anti-slapp motion itself. The Court further finds that billing one half hour to reserve the hearing date (an administrative function) a rate of \$695/hr is clearly unreasonable.

The Court is limiting the fees for the research and drafting of the anti-slapp motion to 20 hours at the \$695 rate. Therefore, the Court is subtracting 23.5 hours of time (excessive hours for drafting and research (23 hours) plus .5 hour for reserving the hearing date) which equals \$16,332.50. Thus, instead of the requested fees in the amount of \$42,879.50, the court is awarding reasonable attorneys fees incurred in defending this SLAPP suit in the amount of **\$26,547.00, plus costs in the requested amount of \$435 for a total award of fees and costs of \$26,982.**

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

---

Item 15    **2021-00295661-CU-PT**

**In Re: 5542 Woodleigh Drive Carmichael, CA 95608**

Nature of Proceeding: Notice of Hearing - Re: Surplus Funds

Filed By: Harris, Lawrence D.