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10 Attorneys for Defendants  
11 **GINA M. AUSTIN and AUSTIN LEGAL GROUP**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/21/2022** at 04:08:00 PM  
Clerk of the Superior Court  
By Regina Chanez, Deputy Clerk

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

14 AMY SHERLOCK, an individual and on  
15 behalf of her minor children, T.S. and S.S.,  
16 ANDREW FLORES, an individual,

17 Plaintiffs,

18 v.

19 GINA M. AUSTIN, an individual; AUSTIN  
20 LEGAL GROUP, a professional corporation,  
21 LARRY GERACI, an individual, REBECCA  
22 BERRY, an individual; JESSICA  
23 MCELFFRESH, an individual; SALAM  
24 RAZUKI, an individual; NINUS MALAN,  
25 an individual; FINCH, THORTON, AND  
26 BARID, a limited liability partnership;  
27 ABHAY SCHWEITZER, an individual and  
28 dba TECHNE; JAMES (AKA JIM)  
BARTELL, an individual; NATALIE  
TRANG-MY NGUYEN, an individual,  
AARON MAGAGNA, an individual;  
BRADFORD HARCOURT, an individual;  
SHAWN MILLER, an individual; LOGAN  
STELLMACHER, an individual;  
EULENTIAS DUANE ALEXANDER, an  
individual; STEPHEN LAKE, an individual,  
ALLIED SPECTRUM, INC. a California  
corporation, PRODIGIOUS  
COLLECTIVES, LLC, a limited liability  
company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND  
AUSTIN LEGAL GROUP'S NOTICE OF  
MOTION AND MOTION FOR  
ATTORNEYS' FEES AND COSTS**

**Date: November 18, 2022**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

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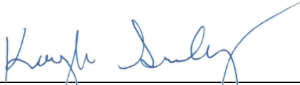
**TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on November 18, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department C-75 of the above-entitled court, located at 330 West Broadway, San Diego California 92101, the Honorable James A. Mangione presiding, Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Defendants”) will move this Court for an order awarding Defendants reasonable attorneys’ fees in the amount of \$23,707.50 (or such other amount as may be determined by the Court) as the prevailing parties in this litigation, pursuant to Code of Civil Procedure section 425.16.

This motion will be based on this notice of motion, the accompanying memorandum of points and authorities, the declaration of Douglas A. Pettit, the evidence and exhibits lodge in support of the motion, as well as the pleadings, records, and files herein, such matters of which the court may take judicial notice, and any evidence or argument presented at the hearing on this motion.

**PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

Dated: September 21, 2022

By:   
\_\_\_\_\_  
Douglas A. Pettit, Esq.  
Kayla R. Sealey, Esq.  
Attorneys for Defendants  
**GINA M. AUSTIN and  
AUSTIN LEGAL GROUP**

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5 [ksealey@pettitkohn.com](mailto:ksealey@pettitkohn.com)

6 Attorneys for Defendants  
**GINA M. AUSTIN and AUSTIN LEGAL GROUP**

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MCELFRESH, an individual; SALAM  
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ABHAY SCHWEITZER, an individual and  
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26 company, and DOES 1 through 50, inclusive,

27 Defendants.  
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CASE NO.: 37-2021-00050889-CU-AT-CTL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS GINA M. AUSTIN AND  
AUSTIN LEGAL GROUP'S MOTION  
FOR ATTORNEYS' FEES AND COSTS**

**Date: November 18, 2022**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively,  
2 “Defendants”), by and through their attorneys of record, Pettit Kohn Ingrassia Lutz & Dolin PC,  
3 hereby submit the following memorandum of points and authorities in support of their Motion for  
4 Attorneys’ Fees and Costs.

5 **I.**

6 **INTRODUCTION**

7 This fee motion relates to a special motion to strike pursuant to Code of Civil Procedure  
8 section 425.16 (“anti-SLAPP motion”) filed by Defendants in response to a First Amended  
9 Complaint (“FAC”) filed by Plaintiffs’ attacking Defendants’ exercise of the constitutionally  
10 protected rights of petition and free speech in their role as an attorney. On August 12, 2022, after  
11 full briefing and oral argument, the Court granted Defendants’ anti-SLAPP motion. The ruling  
12 resulted in a final adjudication of all claims asserted against Defendants and judgment was  
13 entered thereon. As the prevailing parties in the litigation, Defendants are entitled to recover their  
14 reasonable attorneys’ fees and costs under Code of Civil Procedure section 425.16(c)(1).

15 Therefore, Defendants now seek **\$23,707.50** in reasonable attorneys’ fees for **72.3 hours**  
16 of work which reflects all hours reasonably expended in connection with the anti-SLAPP motion  
17 and this motion for attorneys’ fees.

18 **II.**

19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 **A. Plaintiffs’ Complaint**

21 Plaintiffs filed their original Complaint on December 3, 2021. The Complaint alleged  
22 three causes of action against Defendants: Conspiracy to Monopolize in Violation of the  
23 Cartwright Act, Deceit and Fraud, and Unfair Competition. (Complaint, ¶¶ 268-272, 288-317.)

24 **B. Plaintiffs’ First Amended Complaint**

25 Before effectuating service, on December 22, 2021, Plaintiffs filed a First Amended  
26 Complaint (“FAC”). The FAC still alleged three causes of action against Defendants, although it  
27 removed the cause of action for Fraud and Deceit and added a cause of action for Civil  
28 Conspiracy. (FAC, ¶¶ 280-284, 310-323, 333-337.)

1 **C. Defendants’ Special Motion to Strike**

2 On June 16, 2022, Defendants filed a special motion to strike Plaintiffs’ FAC pursuant to  
3 Code of Civil Procedure section 425.16 (“anti-SLAPP motion”). In support of the anti-SLAPP  
4 motion, Defendants submitted a Memorandum, two separate declarations and three exhibits.  
5 (Declaration of Douglas A. Pettit [“Pettit Decl.”], ¶ 2.)

6 On July 25, 2022, Plaintiffs filed their Opposition to the anti-SLAPP motion. Plaintiffs  
7 offered no evidence, of any kind, in support. (*Id.*, ¶ 3.)

8 On July 29, 2022, Defendants filed their Reply. (*Id.*, ¶ 4.)

9 The Court issued a tentative ruling in favor of granting Defendants’ anti-SLAPP motion  
10 on August 11, 2022. (*Id.*, ¶ 5.)

11 On August 12, 2022, the parties appeared for the hearing on Defendants’ anti-SLAPP  
12 motion. Following oral argument, the Court confirmed its tentative ruling and granted  
13 Defendants’ anti-SLAPP motion. The ruling resulted in a final adjudication of all claims asserted  
14 against Defendants. (*Id.*, ¶ 6.)

15 On August 19, 2022, Defendants submitted a Proposed Judgment granting their special  
16 motion to strike and dismissing Plaintiffs FAC. (*Id.*, ¶ 7.)

17 **IV.**

18 **ARGUMENT**

19 Defendants are entitled to reasonable attorneys’ fees as the prevailing party under the anti-  
20 SLAPP statute. “One purpose of the SLAPP statute is to reimburse ‘the prevailing defendant for  
21 expenses incurred in extricating [herself or itself] from a baseless lawsuit.’ [Citation omitted].”  
22 (*GeneThera, Inc. v. Troy & Gould Professional Corp.* (2009) 171 Cal.App.4th 901, 910.)

23 Defendants are entitled to a mandatory award in the amount of \$23,707.50 in reasonable  
24 attorneys’ fees reflecting all hours reasonably expended in connection with the anti-SLAPP  
25 motion and this fee motion. Based on the years of experience and expertise of Defendants’  
26 counsel, Douglas A. Pettit, Matthew C. Smith, and Kayla R. Sealey, hourly rates of \$550 - \$295  
27 are appropriate for the value of the services rendered. Defendants’ attorneys reasonably expended

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1 a total of **62.3 hours** in connection with their anti-SLAPP motion, and Defendants estimate  
2 another **10.0 hours** has been, and will be, expended in connection with this fee motion.

3 **A. An Award of Reasonable Attorneys’ Fees is Mandatory**

4 Pursuant to Code of Civil Procedure section 425.16, subdivision (c), any SLAPP  
5 defendant who brings a successful motion to strike is entitled to a mandatory award of attorneys’  
6 fees. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (“*Ketchum*”) (emphasis added).) The  
7 Legislature intended to “[place] the financial burden of defending against so-called SLAPP  
8 actions on the party abusing the judicial system...” (*Id.* at p. 1136.) Thus, the provision for fees  
9 “is broadly construed so as to effectuate the legislative purpose of reimbursing the prevailing  
10 defendant for expenses incurred in extricating [himself or itself] from a baseless lawsuit.”  
11 (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446.) In addition to fees related to the anti-  
12 SLAPP motion, prevailing parties are also entitled to fees for pursuit of fee claims. (*Graham v.*  
13 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 580; *Ketchum, supra*, at p. 1131.)

14 Here, since Defendants prevailed on a special motion to strike, they are entitled to an  
15 award of reasonable attorneys’ fees incurred in connection with the special motion to strike and  
16 the motion for attorneys’ fees. As set forth in the accompanying Declaration of Douglas A. Pettit,  
17 defense counsel expended a total of **62.3 hours** in connection with the defense of this matter. It is  
18 anticipated that an additional **10.0 hours** will be expended analyzing Plaintiffs’ opposition,  
19 preparing a reply, and attending the hearing on the motion.

20 **B. The Court Should Use the “Lodestar Method” in Calculating Attorneys’ Fees**

21 In *Ketchum*, the California Supreme Court endorsed the lodestar formula for  
22 determining the reasonableness of an attorney’s fee application in the anti-SLAPP context.  
23 (*Ketchum, supra*, 24 Cal.4th at p. 1131–1132.) Under the lodestar methodology, the court first  
24 determines the number of hours the attorney worked on matters related to the anti-SLAPP motion.  
25 (*Id.* at p. 1134.) The Court then multiplies the number of hours the attorney has worked by a  
26 “reasonable” per hour fee rate. (*Ibid.*) The reasonable hourly rate is based on the “market value”  
27 of particular services—in other words the rate “prevailing in the community for similar work.”  
28 (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (“*PLCM*”).) The product of that

1 multiplication equals the fee award. (*Ketchum, supra*, 24 Cal.4th at p. 1132.) The lodestar method  
 2 is employed even though the party held liable for fees may be required to pay an amount greater  
 3 than that actually paid or incurred. (*Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651-  
 4 52; *PLCM, supra*, at p. 1097.)

5 In determining the reasonable value of the services rendered, courts should consider “the  
 6 nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the  
 7 skill employed, the attention given, the success or failure, and other circumstances in the case.”  
 8 (*Id.* at p. 1096.) Consequently, “[a] more difficult legal question typically requires more attorney  
 9 hours, and a more skillful and experienced attorney will command a higher hourly rate.”  
 10 (*Ketchum, supra*, 24 Cal.4th at pp. 1138-1139.)

11 Accordingly, Defendants respectfully request an attorneys’ fee award of \$23,707.50,  
 12 which is calculated as follows:<sup>1</sup>

<b>ATTORNEYS’ FEES CALCULATION</b>			
<b>Description</b>	<b>Hours Billed</b>	<b>Hourly Rate</b>	<b>Fees</b>
Total hours expended in connection with the Special Motion to Strike Plaintiffs’ First Amended Complaint	KRS: 51	\$295	\$15,045.00
	MCS: 10.1	\$475	\$4,797.50
	DAP: 1.2	\$550	\$ 660.00
Total hours expended on the Motion for Attorneys’ Fees	KRS: 9	\$295	\$2,655.00
	DAP: 1	\$550	\$ 550.00
<b>TOTAL FEES</b>			<b>\$23,707.50</b>

23 **1. The Number of Hours Expended by Counsel is Reasonable and Supported by**  
 24 **Sufficient Evidence**

25 Generally, “[t]estimony of an attorney as to the number of hours worked on a particular  
 26 case is sufficient evidence to support an award of attorney fees.” (*Martino v. Denevi* (1986) 182

27 <sup>1</sup> See Declaration of Douglas A. Pettit and **Exhibit 1** to the NOL for an account of the fees and costs incurred and for  
 28 information relevant to Defendants’ lodestar calculation. Defense counsel’s billing entries have been provided with  
 minor modifications to protect the attorney-client privilege.

1 Cal.App.3d 553, 559; see also *PLCM, supra*, 22 Cal.4th at p. 1096 [there was “sufficient evidence  
2 to support the amount of the award” due to “the detailed documentation submitted”].) In support  
3 of this motion, Defendants submit the declaration of their counsel, Douglas A. Pettit, explaining  
4 the process by which the time spent on this matter was accurately recorded, as well as a detailed  
5 compilation of defense counsel’s time records. (See Pettit Decl., ¶¶ 8-9; **Exhibit 1**).

6 As detailed in the Declaration of Douglas A. Pettit, defense counsel reasonably expended  
7 a total of **62.3 hours** between January 7, 2022, through the filing of this motion for attorneys’  
8 fees. The number of hours spent was reasonable and necessary given the nature of the litigation. It  
9 is anticipated that an additional **10.0 hours** will be expended analyzing Plaintiffs’ opposition,  
10 preparing a reply and attending the hearing on the motion for attorneys’ fees.

11 **a. Complexity of the Legal and Factual Issues**

12 The Supreme Court has recognized anti-SLAPP motions are not routine motions, and this  
13 anti-SLAPP motion was no exception. (*Ketchum, supra*, 24 Cal.4th at p. 1139.) In order to  
14 prepare the special motion to strike, defense counsel spent a reasonable amount of hours  
15 reviewing and analyzing hundreds of pages of pleadings and exhibits. Counsel conducted legal  
16 research on the underlying claims and the legal standards to be applied on the special motion to  
17 strike. The evidence and legal authorities were analyzed and synthesized into a 20-page special  
18 motion to strike, which was supported by almost 100 pages of exhibits and declarations. Defense  
19 counsel also spent several hours researching and drafting this motion for attorneys’ fees and  
20 supporting documents.

21 **b. Results Achieved**

22 The requested attorneys’ fees are reasonable in light of the quality of the representation  
23 provided and the favorable result secured by defense counsel – a finding in favor of Defendants  
24 as to all claims. (See *PLCM, supra*, 22 Cal.App.4th at p. 1095-96 [including “success or failure”  
25 of the case as a factor to consider when determining the reasonableness of the attorneys’ fees  
26 sought].) Indeed, the success of the anti-SLAPP motion prevented Defendants from having to  
27 participate in burdensome and intrusive discovery and from incurring additional litigation costs.

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**c. Importance of Litigation**

The time spent is also reasonable in light of the “importance of the litigation” to Defendants. (*Church of Scientology c. Wollersheim* (1996) 42 Cal.App.4th 628, 658–59.) This lawsuit presented significant risk to Defendants and made serious and damaging allegations against them as an attorney. If the instant action were lost, it would have been extremely detrimental to Defendants’ practice and reputation in the legal community.

Defendants were falsely accused of “conspiring” with a small group of wealthy individuals “to create an unlawful monopoly in the cannabis market” in the City and County of San Diego. (See FAC, ¶ 1.) Though these allegations were completely bogus, they were serious and could have been extremely harmful to Defendants’ reputation as an attorney and standing if not resolved quickly and definitively. Thus, swift resolution of this action has been critical to Defendants, and it was necessary for counsel to vigorously defend against Plaintiffs’ claims and thoroughly defeat them to protect Defendants’ reputation.

**d. Defense was Managed Efficiently and Economically**

Defendants’ defense was managed efficiently and economically. Only three attorney timekeepers were assigned to this case (Mr. Pettit, Mr. Smith, and Ms. Sealey). Counsel made every effort to handle this matter efficiently and avoid duplicative efforts. Mr. Pettit only billed a total of 2.2 hours. Ms. Sealey handled most of the research, review, and drafting of the moving papers for the anti-SLAPP motion, including the reply brief and supporting documents. Mr. Smith attended the hearing on the anti-SLAPP motion. (Pettit Decl., ¶ 9; **Exhibit 1.**)

**2. The Hourly Rates Requested are Reasonable**

The lodestar rates requested are likewise reasonable, and as the Court is aware, are in line with the prevailing billing rates in the community for litigation work of this nature. (*PLCM, supra*, 22 Cal.App.4th at p. 1095 [“The reasonable hourly rate is that prevailing in the community for similar work”].) This Court is “in the best position to value the services rendered by the attorneys in his or her courtroom . . . the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting  
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1 fees.” (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6  
2 Cal.App.5th 426, 431.)

3 Defendants request an hourly rate of **\$550 per hour** for the services of Douglas A. Pettit  
4 (DAP). Mr. Pettit has been licensed to practice in California for approximately 31 years and has  
5 extensive trial and litigation experience throughout Southern California. (Pettit Decl., ¶ 10;  
6 **Exhibit 2**.) He is a founding shareholder of Pettit Kohn Ingrassia Lutz & Dolin and has served as  
7 Vice President of the firm since it was formed in 2006. (*Ibid.*) He has been recognized as one of  
8 the leading attorneys in the region by nearly every legal publication in San Diego. (*Ibid.*) He was  
9 also inducted into the American Board of Trial Advocates in June 2007. (*Ibid.*) For most of his  
10 career, he has devoted the vast majority of his practice to civil litigation, primarily in the areas of  
11 professional liability and business litigation. (*Ibid.*) He has prepared and/or worked on dozens of  
12 anti-SLAPP motions during that time. (*Ibid.*) The requested lodestar rate of \$550 per hour is  
13 reasonable for Mr. Pettit’s services in this type of complex litigation in San Diego. Indeed, this  
14 rate is on the low end of the range of market rates charged by San Diego attorneys of equivalent  
15 experience, skill, and expertise for comparable work.

16 Defendants also request an hourly rate of **\$475 per hour** for the services of Matthew C.  
17 Smith (MCS). Mr. Smith has been practicing law in California for more than 21 years and  
18 regularly defends lawyers in complex business litigation matters, including professional liability  
19 and legal malpractice defense. (Pettit Decl., ¶ 11; **Exhibit 3**.) Based on his expertise and success  
20 for his clients, Mr. Smith has been recognized in *Best Lawyers in America* for 2021 and 2022, and  
21 “San Diego Super Lawyers for 2021.” (*Ibid.*) Accordingly, the requested lodestar rate of \$475 per  
22 hour for Mr. Smith is reasonable for his services in this type of complex litigation in San Diego.

23 Defendants further request an hourly rate of **\$295 per hour** for the services of Kayla R.  
24 Sealey (KRS). Ms. Sealey, who performed most of the research and drafting, is a new attorney  
25 and has been licensed to practice in California since December 2021. (Pettit Decl., ¶ 12; **Exhibit**  
26 **4**.) Ms. Sealey obtained her law degree from California Western School of Law and since joining  
27 Pettit Kohn, she has devoted the majority of her practice to defending lawyers in complex  
28 business litigation matters, including professional liability and legal malpractice defense. (*Ibid.*)

1 The requested lodestar rate of \$295 per hour is reasonable for Ms. Sealey’s services in this type of  
2 complex litigation in San Diego.

3 The rates requested are substantially below the United States Attorney’s Office’s Producer  
4 Price Index-Office of Lawyers Index (“PPI-OL Index”), which sets forth market rates for  
5 attorneys in the Washington DC area. (Pettit Decl., ¶ 13; **Exhibit 5**.) The PPI-OL Index may be  
6 considered by a trial court as evidence of “reasonable” hourly rates for legal services. (*Syers*  
7 *Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702 [holding the predecessor to the  
8 PPI-OL Index, the Laffey Matrix, constituted evidence supporting trial court’s basis of reasonable  
9 market rates]; *Nemecek & Cole, supra*, 208 Cal.App.4th 641,650 [relying on the Laffey Matrix as  
10 support for an award of attorneys’ fees].)

11 Defendants respectfully submit that the above request for attorneys’ fees are fully justified  
12 given the circumstances of this case.

13 **V.**

14 **CONCLUSION**

15 The Supreme Court has noted anti-SLAPP motions are not routine motions. (*Ketchum,*  
16 *supra*, 24 Cal.4th at p. 1139.) Much work goes into preparing an anti-SLAPP motion and  
17 gathering, assimilating, and providing the evidence necessary to support it. Defendants’ counsel’s  
18 skill and attention to this matter resulted in Defendants ultimate success in resolving the entire  
19 litigation as to them. Given the significant amount of work and expertise required to defeat  
20 Plaintiffs’ claims, the time spent, and fees sought by the attorneys for Defendants in connection  
21 with the anti-SLAPP motion are reasonable. Accordingly, pursuant to Code of Civil Procedure  
22 section 425.16, subdivision (c), Defendants respectfully requests the court award their anti-  
23 SLAPP attorney’s fees of **\$23,707.50**.

24 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

25 Dated: September 21, 2022

26 By:



27 Douglas A. Pettit, Esq.  
28 Kayla R. Sealey, Esq.  
Attorneys for Defendants  
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CASE NO.: 37-2021-00050889-CU-AT-CTL

**DECLARATION OF DOUGLAS A.  
PETTIT IN SUPPORT OF DEFENDANTS  
GINA M. AUSTIN AND AUSTIN LEGAL  
GROUP'S MOTION FOR ATTORNEYS'  
FEES AND COSTS**

**Date: November 18, 2022**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 I, Douglas A. Pettit declare as follows:

2 1. I am an attorney duly licensed to practice law before all of the courts of the State  
3 of California. I am with the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC, attorneys of  
4 record for Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (“Defendants”) in the  
5 above-captioned case. I am familiar with the facts and proceedings of this case and if called as a  
6 witness, I could and would competently testify to the following facts of my own personal  
7 knowledge.

8 2. On June 16, 2022, Defendants filed a special motion to strike Plaintiffs’ FAC  
9 pursuant to Code of Civil Procedure section 425.16 (“anti-SLAPP motion”). In support of the  
10 anti-SLAPP motion, Defendants submitted a Memorandum, two separate declarations and three  
11 exhibits.

12 3. On July 25, 2022, Plaintiffs filed their Opposition to the anti-SLAPP motion.  
13 Plaintiffs offered no evidence, of any kind, in support.

14 4. On July 29, 2022, Defendants filed their Reply.

15 5. The Court issued a tentative ruling in favor of granting Defendants’ anti-SLAPP  
16 motion on August 11, 2022.

17 6. On August 12, 2022, the parties appeared for the hearing on Defendants’ anti-  
18 SLAPP motion. Following oral argument, the Court confirmed its tentative ruling and granted  
19 Defendants’ anti-SLAPP motion. The ruling resulted in a final adjudication of all claims asserted  
20 against Defendants.

21 7. On August 19, 2022, Defendants submitted a Proposed Judgment granting their  
22 special motion to strike and dismissing Plaintiffs FAC.

23 8. From January 7, 2022, through the filing of this motion for attorneys’ fees, my  
24 firm reasonably expended a total of 62.3 attorney hours representing Defendants in this matter.  
25 The number of hours spent was reasonable and necessary given the nature of the litigation. In  
26 order to prepare the special motion to strike, my firm reviewed hundreds of pages of pleadings  
27 and exhibits. Counsel conducted legal research on the underlying claims and the legal standards  
28 to be applied on the special motion to strike. The evidence and legal authorities were analyzed

1 and synthesized into a 20-page special motion to strike, which was supported by almost 100  
2 pages of exhibits and declarations. Defense counsel also spent several hours researching and  
3 drafting this motion for attorneys' fees and supporting documents. It is anticipated that an  
4 additional 10.0 hours will be expended analyzing Plaintiffs' opposition, preparing a reply and  
5 attending the hearing on the motion for attorneys' fees. Finally, the fees incurred also include  
6 time spent communicating with Defendants and Plaintiffs. All of the time described herein was  
7 reasonably related to the special motion to strike and subsequent motion for attorneys' fees. As  
8 such, all hours worked should be awarded to Defendants under Code of Civil Procedure section  
9 425.16.

10 9. Only three attorney timekeepers were assigned to this case (myself, Mr. Smith and  
11 Ms. Sealey), and we made every effort to handle this matter efficiently and to avoid duplicative  
12 efforts. Counsel made every effort to handle this matter efficiently and avoid duplicative efforts. I  
13 only billed a total of 2.2 hours. Ms. Sealey handled most of the research, review, and drafting of  
14 the moving papers for the anti-SLAPP motion, including the reply brief and supporting  
15 documents. Mr. Smith attended the hearing on the anti-SLAPP motion. All counsel keeps daily  
16 time records, including descriptions of the work performed. These time records are entered into a  
17 computerized accounting system maintained by the Pettit Kohn accounting department. Attached  
18 to Defendants' Notice of Lodgment as **Exhibit 1** is a true and correct copy of the time entries  
19 from the computerized accounting system maintained by the Pettit Kohn. **Exhibit 1** covers the  
20 work performed and billed on this case from January 7, 2022, through the filing of this motion for  
21 attorneys' fees.

22 10. Defendants request an hourly rate of \$550 per hour for my services (identified as  
23 DAP in **Exhibit 1**). I have been licensed to practice in California for approximately 31 years and  
24 have extensive trial and litigation experience throughout Southern California. I am a founding  
25 shareholder of Pettit Kohn Ingrassia Lutz & Dolin and have served as Vice President of the firm  
26 since it was formed in 2006. I have been recognized as one of the leading attorneys in the region  
27 by nearly every legal publication in San Diego. I was also inducted into the American Board of  
28 Trial Advocates in June 2007. For most of my career, I have devoted the vast majority of my

1 practice to civil litigation, primarily in the areas of professional liability and business litigation. I  
2 have prepared and/or worked on dozens of anti-SLAPP motions during that time. (See **Exhibit 2**.)

3 11. Defendants also request an hourly rate of \$475 per hour for the services of  
4 Matthew C. Smith (identified as MCS in **Exhibit 1**). Mr. Smith has been practicing law in  
5 California for more than 21 years and regularly defends lawyers in complex business litigation  
6 matters, including professional liability and legal malpractice defense. Based on his expertise and  
7 success for his clients, Mr. Smith has been recognized in *Best Lawyers in America* for 2021 and  
8 2022, and “San Diego Super Lawyers for 2021.” (See **Exhibit 3**.)


9 12. Defendants further request an hourly rate of \$295 per hour for the services of  
10 Kayla R. Sealey (identified as KRS in **Exhibit 1**). Ms. Sealey, who performed most of the  
11 research and drafting, is a new attorney and has been licensed to practice in California since  
12 December 2021. Ms. Sealey obtained her law degree from California Western School of Law and  
13 since joining Pettit Kohn, she has devoted the majority of her practice to defending lawyers in  
14 complex business litigation matters, including professional liability and legal malpractice defense.  
15 (See **Exhibit 4**.)

16 13. Attached to Defendants’ Notice of Lodgment as **Exhibit 5** is a true and correct  
17 copy of the United States Attorney’s Office’s Producer Price Index-Office of Lawyers Index  
18 (“PPI-OL Index”) Matrix for 2015-2021. I downloaded this document from the U.S. Department  
19 of Justice’s website at the URL: <https://www.justice.gov/file/1461321/download>. I am informed  
20 and believe that the PPI-OL Index is used by the Department of Justice to determine the  
21 reasonable hourly rate in the District of Columbia for cases in which the prevailing party is  
22 entitled to recover “reasonable” attorney’s fees. (See explanatory notes 1–3 to the PPI-OL Index.)  
23 I have been practicing for more than 31 years and, under the PPI-OL Index, the reasonable hourly  
24 rate for my services would be \$665 per hour in the District of Columbia. Mr. Smith has been  
25 practicing for more than 21 years and Ms. Sealey for less than one year. Under the PPI-OL Index,  
26 the reasonable hourly rates for their services would be \$621 and \$333 per hour, respectively.  
27 Accordingly, **Exhibit 5** is offered to show that the requested rates of \$550 per hour for myself,  
28 \$475 per hour for Mr. Smith, and \$295 per hour for Ms. Sealey are reasonable.

1           14.     By way of this motion, Defendants seek a total of **\$23,707.50** in attorneys' fees.  
2 This request is based on the total hours incurred in connection with the special motion to strike,  
3 combined with the total hours incurred (or to be incurred) in connection with the motion for  
4 attorneys' fees. Defendants respectfully submit that the above request for attorneys' fees is fully  
5 justified given the circumstances of this case.

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

8           Executed this 21st day of September, 2022, at San Diego, California.

9  
10   
11 \_\_\_\_\_  
12 Douglas A. Pettit, Esq.



1 Douglas A. Pettit, Esq., SBN 160371  
Kayla R. Sealey, Esq., SBN 341956  
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**  
11622 El Camino Real, Suite 300  
3 San Diego, CA 92130  
Telephone: (858) 755-8500  
4 Facsimile: (858) 755-8504  
E-mail: [dpettit@pettitkohn.com](mailto:dpettit@pettitkohn.com)  
5 [ksealey@pettitkohn.com](mailto:ksealey@pettitkohn.com)

6 Attorneys for Defendants  
**GINA M. AUSTIN and AUSTIN LEGAL GROUP**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

10  
11 AMY SHERLOCK, an individual and on  
12 behalf of her minor children, T.S. and S.S.,  
ANDREW FLORES, an individual,

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, an individual; AUSTIN  
16 LEGAL GROUP, a professional corporation,  
LARRY GERACI, an individual, REBECCA  
17 BERRY, an individual; JESSICA  
MCELFRESH, an individual; SALAM  
18 RAZUKI, an individual; NINUS MALAN,  
an individual; FINCH, THORTON, AND  
19 BARID, a limited liability partnership;  
ABHAY SCHWEITZER, an individual and  
20 dba TECHNE; JAMES (AKA JIM)  
BARTELL, an individual; NATALIE  
21 TRANG-MY NGUYEN, an individual,  
AARON MAGAGNA, an individual;  
22 BRADFORD HARCOURT, an individual;  
SHAWN MILLER, an individual; LOGAN  
23 STELLMACHER, an individual;  
EULENTIAS DUANE ALEXANDER, an  
24 individual; STEPHEN LAKE, an individual,  
ALLIED SPECTRUM, INC. a California  
25 corporation, PRODIGIOUS  
COLLECTIVES, LLC, a limited liability  
26 company, and DOES 1 through 50, inclusive,

27 Defendants.  
28

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND  
AUSTIN LEGAL GROUP'S NOTICE OF  
LODGMEN IN SUPPORT OF MOTION  
FOR ATTORNEYS' FEES AND COSTS**

**Date: November 18, 2022**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 Defendants GINA M. AUSTIN AND AUSTIN LEGAL GROUP (“Defendants”) hereby  
2 lodge the following exhibits in support of their Motion for Attorneys’ Fees pursuant to Code of  
3 Civil Procedure section 425.16(c).

4 1. Lodged as **Exhibit 1** is a spreadsheet detailing the dates of service, timekeeper,  
5 summary of descriptions, hourly rate and length of time for the services performed by Pettit Kohn  
6 Ingrassia Lutz & Dolin attorneys in this action on behalf of Defendants.

7 2. Lodged as **Exhibit 2** is Douglas A. Pettit’s website biography with additional  
8 information regarding his background and expertise.


9 3. Lodged as **Exhibit 3** is Matthew C. Smith’s website biography with additional  
10 information regarding his background and expertise.

11 4. Lodged as **Exhibit 4** is Kayla R. Sealey’s website biography with additional  
12 information regarding her background and expertise.

13 5. Lodged as **Exhibit 5** is the United States Attorney’s Office Producer Price Index-  
14 Office of Lawyers Index Matrix for 2015-2021 downloaded on August 24, 2022, from the U.S.  
15 Department of Justice’s website at the URL: <https://www.justice.gov/file/1461321/download>.

16 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

17  
18 Dated: September 21, 2022

19 By:   
20 Douglas A. Pettit, Esq.  
21 Kayla R. Sealey, Esq.  
22 Attorneys for Defendants  
23 **GINA M. AUSTIN and**  
24 **AUSTIN LEGAL GROUP**

1 Douglas A. Pettit, Esq., SBN 160371  
2 Kayla R. Sealey, Esq., SBN 341956  
3 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**  
4 11622 El Camino Real, Suite 300  
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8 E-mail: [dpettit@pettitkohn.com](mailto:dpettit@pettitkohn.com)  
9 [ksealey@pettitkohn.com](mailto:ksealey@pettitkohn.com)

10 Attorneys for Defendants  
11 **GINA M. AUSTIN and AUSTIN LEGAL GROUP**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

14 AMY SHERLOCK, an individual and on  
15 behalf of her minor children, T.S. and S.S.,  
16 ANDREW FLORES, an individual,

17 Plaintiffs,

18 v.

19 GINA M. AUSTIN, an individual; AUSTIN  
20 LEGAL GROUP, a professional corporation,  
21 LARRY GERACI, an individual, REBECCA  
22 BERRY, an individual; JESSICA  
23 MCELFRISH, an individual; SALAM  
24 RAZUKI, an individual; NINUS MALAN,  
25 an individual; FINCH, THORTON, AND  
26 BARID, a limited liability partnership;  
27 ABHAY SCHWEITZER, an individual and  
28 dba TECHNE; JAMES (AKA JIM)  
BARTELL, an individual; NATALIE  
TRANG-MY NGUYEN, an individual,  
AARON MAGAGNA, an individual;  
BRADFORD HARCOURT, an individual;  
SHAWN MILLER, an individual; LOGAN  
STELLMACHER, an individual;  
EULENTIAS DUANE ALEXANDER, an  
individual; STEPHEN LAKE, an individual,  
ALLIED SPECTRUM, INC. a California  
corporation, PRODIGIOUS  
COLLECTIVES, LLC, a limited liability  
company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**PROOF OF SERVICE**

**Date: November 18, 2022**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 I, the undersigned, declare that:

2 I am and was at the time of service of the papers herein, over the age of eighteen (18)  
3 years and am not a party to the action. I am employed in the County of San Diego, California,  
and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

4 On **September 21, 2022**, I caused to be served the following documents:

- 5 **1. DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S NOTICE OF**  
6 **MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS;**
- 7 **2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
8 **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S MOTION**  
9 **FOR ATTORNEYS' FEES AND COSTS;**
- 10 **3. DECLARATION OF DOUGLAS A. PETTIT IN SUPPORT OF DEFENDANTS**  
11 **GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S MOTION FOR**  
12 **ATTORNEYS' FEES AND COSTS; AND**
- 13 **4. DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S NOTICE OF**  
14 **LODGMEN IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS**

15  **BY MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to  
16 each addressee, respectively, as follows:

- 17  **BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**  
18  **BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**  
19  **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ.**  
20 **Proc. §§ 1013(a)-(b))**

21  **BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court,**  
22 **rule 2.251):** Based on an agreement between the parties to accept service by e-mail or  
23 electronic transmission, I caused such document(s) to be electronically served to those  
24 parties listed below from e-mail address [lzamora@pettitkohn.com](mailto:lzamora@pettitkohn.com). The file transmission  
25 was reported as complete and a copy of the Service Receipt will be maintained with the  
26 original document(s) in our office.

27  **BY ELECTRONIC SERVICE (California Rule of Court 2.251):** By submitting an  
28 electronic version of the document(s) via file transfer protocol (FTP) to OneLegal Online  
Court Services through the upload feature at [www.onelegal.com](http://www.onelegal.com).


Andrew Flores, Esq. Law Office of Andrew Flores 427 C Street, Suite 220 San Diego, CA 92101 Tel: (619) 356-1556 Fax: (619) 274-8053 Email: <a href="mailto:Andrew@FloresLegal.Pro">Andrew@FloresLegal.Pro</a> <b>Plaintiff in <i>Propria Persona</i></b> <b>and Attorney for Plaintiffs</b> <b>Amy Sherlock, Minors T.S.</b> <b>and S.S.</b>	James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: <a href="mailto:crosby@crosbyattorney.com">crosby@crosbyattorney.com</a> <b>Attorney for Defendants</b> <b>LARRY GERACI and REBECCA BERRY</b>
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<p>Scott H. Toothacre, Esq. Michael R. Weinstein, Esq. FERRIS &amp; BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Email: <a href="mailto:stoothacre@ferrisbritton.com">stoothacre@ferrisbritton.com</a> <a href="mailto:mweinstein@ferrisbritton.com">mweinstein@ferrisbritton.com</a> <a href="mailto:dbarker@ferrisbritton.com">dbarker@ferrisbritton.com</a> <b>Attorney for Defendants</b> <b>LARRY GERACI and REBECCA BERRY</b></p>	<p>Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: <a href="mailto:steve@blakelawca.com">steve@blakelawca.com</a> <a href="mailto:andrew@blakelawca.com">andrew@blakelawca.com</a> <a href="mailto:eservice@blakelawca.com">eservice@blakelawca.com</a> <b>Attorney for Defendant</b> <b>STEPHEN LAKE</b></p>
<p>Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: <a href="mailto:natalie@nguyenlawcorp.com">natalie@nguyenlawcorp.com</a> <b>Defendant NATALIE TRANG-MY</b> <b>NGUYEN <i>PRO SE</i></b></p>	

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **September 21, 2022**, at San Diego, California.

  
\_\_\_\_\_  
Luis Zamora