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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/27/2022 at 12:01:00 AM
Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

5 Attorney for Defendant Abhay Schweitzer, individually and doing business as TECHNE
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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

12 Plaintiffs,)

13 v.)

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

25 Defendants.)
26)
27)
28)

CASE NO.: 37-2021-00050889-CU-AT-CTL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ATTORNEY FEES SUBMITTED BY
DEFENDANT ABHAY SCHWEITZER,
INDIVIDUALLY AND DOING BUSINESS
AS TECHNE

IMAGED FILE

UNLIMITED CIVIL CASE

Complaint Filed: 12/3/2021

Date: April 7, 2023
Time: 9:00 a.m.
Dept.: C-75
Judge: Honorable James A Mangione

1 Defendant ABHAY SCHWEITZER, individually and doing business as TECHNE
2 (“Defendant Schweitzer”), hereby submits his Memorandum of Points and Authorities in Support of
3 Motion for Attorney Fees against Plaintiffs Amy Sherlock, an individual and on behalf of her minor
4 children, T.S. and S.S., and Andrew Flores, an individual.

5 I

6 **STATEMENT OF CASE**

7 On December 3, 2021, Plaintiffs filed their original Complaint (“Original Complaint”).

8 On December 22, 2021, Plaintiffs filed their First Amended Complaint (“FAC”). As against
9 moving Defendant Schweitzer, the FAC alleged three (3) causes of action: First Cause of Action for
10 Conspiracy to Monopolize in Violation of the Cartwright Act (Bus. & Prof. Code § §§ 16720 et seq.);
11 Fifth Cause of Action for Unfair Competition and Unlawful Business Practices (Bus. & Prof. Code
12 § 17200 et seq.); and, Seventh Cause of Action for Civil Conspiracy.

13 On September 29, 2022, Defendant Schweitzer filed a special motion to strike pursuant to
14 Code of Civil Procedure § 425.16 (“anti-SLAPP Motion”). The grounds for this motion were (a)
15 Plaintiffs’ claims alleged as against Defendant Schweitzer arose from constitutionally protected
16 activity, and (b) Plaintiffs could not establish a probability of prevailing on their claims as against
17 Defendant Schweitzer.

18 On December 1, 2022, the Court issued a tentative ruling in favor of granting Defendant
19 Schweitzer’s anti-SLAPP motion [ROA 223]. The Court found that (a) Plaintiffs’ claims alleged as
20 against Defendant Schweitzer arose from constitutionally protected activity, and (b) Plaintiffs could
21 not establish a probability of prevailing on their claims as against Defendant Schweitzer.

22 On December 2, 2022, after hearing and oral argument, the Court confirmed its tentative
23 ruling and granted Defendant Schweitzer’s anti-SLAPP Motion [ROA 229].¹ This ruling constituted
24 a final adjudication of all claims asserted by Plaintiffs against Defendant Schweitzer.

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26 ¹. Lodged concurrently as “EXHIBIT 1” is a true and accurate copy of the December 1,
27 2022, tentative ruling in this action in favor of granting Defendant Schweitzer’s anti-SLAPP motion
28 [ROA 223], confirmed on December 2, 2022 [ROA 229]; *see*, Notice of Lodgment of Exhibits in
Support of Motion for Attorney Fees (EXHIBIT 1), Request for Judicial Notice in Support of Motion
for Attorney Fees, and Declaration of George R. Najjar, Esq., in Support of Motion for Attorney Fees,
p.2, para.2 (“Najjar Declaration”).

1 Defendant Schweitzer now moves the Court for an order awarding him reasonable attorney
2 fees in the amount of ten thousand two hundred twenty dollars (\$10,220.00).

3 **II**

4 **DISCUSSION**

5 As the prevailing party in the litigation, Defendant Schweitzer is entitled to recover his
6 reasonable attorney fees and costs under Code of Civ. Proc. § 425.16, subd. (c)(1). Defendant
7 Schweitzer requests the court award ten thousand two hundred twenty dollars (\$10,220.00) in
8 reasonable attorney fees for all hours reasonably and necessarily expended in connection with the
9 anti-SLAPP motion and this motion for attorneys' fees.

10 **A. Defendant Schweitzer is Entitled to the Mandatory Award of**
11 **Reasonable Attorney Fees as the Prevailing Party under the**
anti-SLAPP Statute.

12 Code of Civ. Proc. § 425.16, subd. (c)(1), states, “ a prevailing defendant on a special motion
13 to strike shall be entitled to recover his or her attorney’s fees and costs.” “The provision for fees and
14 costs is broadly construed so as to effectuate the legislative purpose of reimbursing the prevailing
15 defendant for expenses incurred in extricating [himself or itself] from a baseless lawsuit.” *GeneThera,*
16 *Inc. v. Troy & Gould Professional Corporation* (2009) 171 Cal. App. 4th 901, 910.

17 Any SLAPP defendant who brings a successful motion to strike is entitled to a mandatory
18 award of attorneys’ fees. *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1131 (*Ketchum*). It is well
19 established that plaintiffs and their attorneys may recover attorney fees for fee-related matters.
20 *Graham v. DaimlerChrysler Corporation* (2004) 34 Cal. 4th 553, 580.

21 **B. The Lodestar Method is Appropriate in Calculating Attorney Fees.**

22 In *Ketchum*, the California Supreme Court approved the lodestar method for determining the
23 reasonableness of an attorney fee application in the anti-SLAPP context. *Ketchum, supra*, 24 Cal. 4th
24 at pp. 1131–1132. The fee setting inquiry in California ordinarily begins with the “lodestar,” i.e., the
25 number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc.*
26 *v. Drexler* (2000) 22 Cal. 4th 1084, 1095 (*PLCM*). The reasonable hourly rate is that prevailing in
27 the community for similar work. *Ibid.*

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1 **C. Defendant Schweitzer is Entitled to a Mandatory Attorney Fee**
2 **Award in the Amount of \$10,220.00 Based Upon Reasonable and**
3 **Necessary Attorney Hours Expended and Anticipated.**

4 Defendant Schweitzer is entitled to a mandatory attorney fee award in the amount of ten
5 thousand two hundred twenty dollars (\$10,220.00) in reasonable attorney fees reflecting all hours
6 reasonably expended and anticipated in connection with the anti-SLAPP motion and this fee motion.

7 “Testimony of an attorney as to the number of hours worked on a particular case is sufficient
8 evidence to support an award of attorney fees.” *Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.

9 Attorney Najjar has expended a total of 25.4 hours from August 17, 2022, through the filing
10 of this motion for attorney fees. This number of hours spent was reasonable and necessary given the
11 nature of the litigation. It is anticipated that an additional 3.8 hours will be expended analyzing
12 Plaintiffs’ opposition, preparing a reply and attending the hearing on the motion for attorney fees.
13 Therefore, 29.2 hours are the total expended and anticipated attorney hours sought by this motion.²

14 Defendant Schweitzer requests an hourly rate of \$350.00 per hour for the services of Attorney
15 Najjar in regard and related to Defendant Schweitzer’s Special Motion to Strike (anti-SLAPP) and
16 Motion for Attorney Fees. Attorney Najjar has been licensed to practice in California for
17 approximately thirty (30) years and has extensive trial and litigation experience. He has served as a
18 judge pro tempore in the Superior Court of California, County of San Diego, since 2000. He has also
19 served as an arbitrator for NASD/FINRA since 1997. Attorney Najjar has devoted the majority of his
20 practice to civil litigation, primarily in the area of business litigation defense. Based on his years of
21 experience, the lodestar rate of three hundred and fifty dollars per hour (\$350.00/hr.) is reasonable
22 and appropriate for the value of his services rendered in this type of litigation in San Diego.³

23 The courts repeatedly have stated that the trial court is in the best position to value the services
24 rendered by the attorneys in his or her courtroom, and this includes the determination of the hourly
25 rate that will be used in the lodestar calculus. In making its calculation, the court may rely on its own
26 knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of

27 ². See, Najjar Declaration, pp.2-3, paras.3-4.

28 ³. See, Najjar Declaration, p.3, para.5.

1 the attorney requesting fees, the difficulty or complexity of the litigation to which that skill was
2 applied, and affidavits from other attorneys regarding prevailing fees in the community and rate
3 determinations in other cases. *569 East County Boulevard LLC v. Backcountry Against the Dump,*
4 *Inc.* (2016) 6 Cal. App. 5th 426, 437 (citations omitted). The three hundred and fifty dollars per hour
5 (\$350.00/hr.) lodestar rate requested is reasonably in line with the prevailing billing rates in the San
6 Diego legal community for litigation work of this nature. *PLCM, supra*, 22 Cal. App. 4th at p. 1095.

7 Accordingly, Defendant Schweitzer requests an attorney fee award in the amount of ten
8 thousand two hundred twenty dollars (\$10,220.00), calculated as follows:

9 Total Expended Attorney Hours To Date	25.4
10 Total Anticipated Attorney Hours	3.8
11 Total Expended and Anticipated Attorney Hours	29.2

12 Based upon the rate of \$350.00 per hour, 29.2 hours x \$350.00 per hour = \$10,220.00.

13 **D. Plaintiffs Were Provided the Opportunity to Dismiss This Action**
14 **Against Defendant Schweitzer Prior to the Filing of the Special**
Motion to Strike.

15 Lodged concurrently as EXHIBIT 2 is a true and accurate copy of the August 25, 2022,
16 correspondence from Attorney Najjar to Andrew Flores, Esq. The purpose of this letter was to request
17 entry of dismissal with prejudice in favor of Defendant Schweitzer since the allegations against him
18 were a textbook example of Plaintiffs abusing of the judicial process by filing a lawsuit primarily to
19 chill his valid exercise of the constitution rights of freedom of speech and petition pursuant to Code
20 Civ. Proc. § 425.16 subds. (a)(e)(1). Attorney Flores never responded to this correspondence,
21 necessitating the filing of the special motion to strike and this motion for attorney fees.⁴

22 **III**

23 **CONCLUSION**

24 Defendant Schweitzer is Entitled to the Mandatory Award of Reasonable Attorney Fees as
25 the Prevailing Party under the anti-SLAPP Statute. The reasonable and appropriate Lodestar rate for
26 the services provided by Defendant Schweitzer’s counsel, George R. Najjar, Esq., is three hundred
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28 ⁴. See, Najjar Declaration, pp.3-4, para.6.

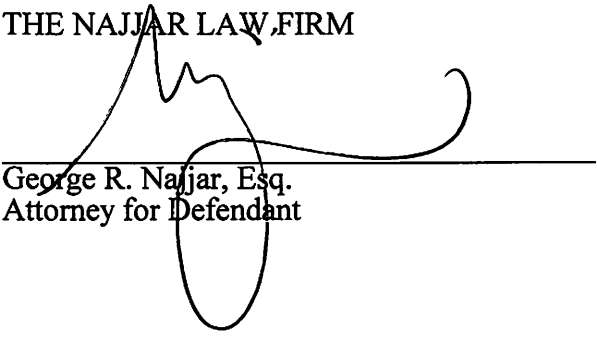
1 and fifty dollars per hour (\$350.00/hr.). The 29.2 attorney hours by Attorney Najjar were reasonably
2 and necessarily expended and anticipated in regard to Defendant Schweitzer's special motion to strike
3 and motion for attorney fees.

4 Therefore, based upon the above points and authorities, the Request for Judicial Notice, the
5 Declaration of George R. Najjar, Esq., the Notice of Lodgment of Exhibits, and the pleadings and
6 records on file in this action, Defendant Schweitzer requests the Court grant his motion for attorney
7 fees pursuant to Code of Civil Procedure § 425.16, subdivision (c)(1), in the amount of ten thousand
8 two hundred twenty dollars (\$10,220.00).

9 Respectfully submitted,

10 THE NAJJAR LAW FIRM

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12 Dated: December 23, 2022

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14 _____
15 George R. Najjar, Esq.
16 Attorney for Defendant
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