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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

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

12 Plaintiffs,

13 vs.

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

24 Defendants.

Case No. 37-2021-00050889-CU-AT-CTL

Judge: Hon. James A. Mangione

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS LARRY GERACI AND
REBECCA BERRY'S MOTION FOR
ATTORNEYS' FEES**

[IMAGED FILE]

DATE: October 13, 2023
TIME: 9:00 am
DEPT: C-75

RESERVATION NO: 2948001

Action Filed: December 3, 2021
Judgement Entered: February 2, 2023

26 Plaintiffs Larry Geraci and Rebecca Berry ("Defendants" or "Geraci/Berry" submit the
27 following Memorandum of Points and Authorities in Support of their Motion for Attorneys' Fees.

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1 **INTRODUCTION**

2 This fee motion relates to a special motion to strike pursuant to Code of Civil Procedure section
3 425.16 (“anti-SLAPP motion”) filed by Defendants Geraci/Berry in response to a First Amended Complaint
4 (“FAC”) filed by Plaintiffs Amy Sherlock and Andrew Flores (“Plaintiffs” or “Sherlock/Flores”) attacking
5 the Defendants’ exercise of the constitutionally protected rights of petition and free speech in their capacity
6 as citizens petitioning their government. On December 2, 2022, after full briefing and oral argument, the
7 Court granted the Defendants’ anti-SLAPP motion. The ruling resulted in a final adjudication of all claims
8 asserted by Plaintiffs against Defendants and judgment was entered in favor of Defendants Geraci/Berry and
9 against Plaintiffs Sherlock/Flores on February 2, 2023. As the prevailing parties in the litigation,
10 Defendants are entitled to recover their reasonable attorneys’ fees and costs under Code of Civil Procedure
11 section 425.16(c)(1). Therefore, Defendants now seek **\$24,322.50** in reasonably attorneys’ fees for attorney
12 and paralegal work actually and reasonably expended in connection with the anti-SLAPP motion and this
13 motion for attorneys’ fees.

14 **I. FACTUAL AND PROCEDURAL BACKGROUND**

15 On December 22, 2021, Plaintiffs Sherlock/Flores filed the operative First Amended Complaint
16 (the “FAC,” ROA#11), alleging four causes of action against Defendants Geraci/Berry, namely: (1) the
17 First COA for Conspiracy to Monopolize in Violation of the Cartwright Act (the “Cartwright Act
18 Claim”); (2) the Fifth COA for Unfair Competition and Unlawful Business Practices (the “UCL
19 Claim”); (3) the Sixth COA for Declaratory Relief (the “Decl Relief Claim”), which was brought solely
20 by plaintiff Flores against defendant Geraci); and (4) the Seventh COA for Civil Conspiracy.
21 (Declaration of Michael R. Weinstein in Support of Defendants Larry Geraci and Rebecca Berry’s
22 Motion for Attorneys’ Fees (“Weinstein Decl.”), para. 2, p. 2, ll. 4-10.)

23 On July 22, 2022, Defendants Geraci/Berry filed a special motion to strike pursuant to Code of
24 Civil Procedure § 425.16 (“anti-SLAPP Motion”).¹ The grounds for this motion were: (a) the claims
25 alleged by Plaintiffs Sherlock/Flores against Defendants Geraci/Berry arose from constitutionally
26 protected activity; and (b) Plaintiffs Sherlock/Flores could not establish a probability of prevailing on
27

28 ¹ Said defendants also filed a Demurrer and Motion to Strike to be heard concurrently.

1 the merits of those claims. The matter was scheduled for hearing on October 21, 2022. (Weinstein
2 Decl., para. 3, ll. 11-16.)

3 On October 20, 2022, one day before the hearing, the Plaintiffs filed an “opposition” requesting
4 the Court stay or postpone the hearing based on the assertion that the Plaintiffs’ filing of a notice of
5 appeal challenging the Court’s granting of the anti-SLAPP motion of Defendants Gina Austin and
6 Austin Legal Group stayed the entire action. (Weinstein Decl.), para. 4, p. 2, ll. 17-20.)

7 At the October 21, 2022, hearing the Court rejected the Plaintiffs’ stay argument but continued
8 the hearing until December 2, 2022, to allow Plaintiffs to file a substantive opposition to the
9 Geraci/Berry anti-SLAPP motion. (Weinstein Decl., para. 5, p. 2, ll. 21-23.)

10 On November 17, 2022, Plaintiffs served and filed an Omnibus Opposition to multiple motions
11 by various parties, within which Plaintiffs set forth their opposition to Geraci/Berry’s anti-SLAPP
12 motion. (Weinstein Decl., para. 6, p. 2, l. 24 - p. 3, l.1.)

13 On November 21, 2022, Defendants Geraci and Berry served and filed their Reply
14 Memorandum in support of their anti-SLAP motion addressing Plaintiffs’ Omnibus Opposition.
15 (Weinstein Decl., para. 7, p. 3, ll. 2-4.)

16 On December 1, 2022, the Court issued a tentative ruling in favor of granting Geraci/Berry’s
17 anti-SLAPP motion. The Court found that (a) Plaintiffs’ claims alleged as against Defendants
18 Geraci/Berry arose from constitutionally protected activity, and (b) Plaintiffs could not establish a
19 probability of prevailing on those claims. (Weinstein Decl., para. 8, p.3, ll. 5-8.)

20 On December 2, 2022, after hearing and oral argument, the Court confirmed its tentative ruling
21 and granted Geraci/Berry’s anti-SLAPP motion. This ruling constituted a final adjudication of all
22 claims asserted by Plaintiffs against Defendants Geraci/Berry. (Weinstein Decl., para. 9, p. 3, ll. 9-14;
23 and Exhibit 1 to the Notice of Lodgment in Support of Defendants Larry Geraci and Rebecca Berry’s
24 Motion for Attorneys’ Fees (“Geraci/Berry NOL”).)

25 On December 5, 2022, Defendants Geraci/Berry filed a Notice of Ruling. (Weinstein Decl.,
26 para. 10, p. 3, ll. 15-17; and Exhibit 2 to Geraci/Berry NOL.)

27 On December 13, 2022, Defendants Geraci/Berry lodged a proposed Judgment. On February 2,
28 2023, the Court entered a Judgment in favor of Defendants Geraci/Berry and against Plaintiffs

1 Sherlock/Flores. (Weinstein Decl., para. 11, p.3, ll. 18-21; and Exhibit 3 to Geraci/Berry NOL.)

2 Defendants Geraci and Berry now move the Court for an order awarding them reasonable
3 attorney fees in the amount of \$24,322.50. The request is supported by the Weinstein Decl. as well as
4 the extracted billing entries referenced therein. (Weinstein Decl., paras. 12-17, p. 3, l. 22- p. 5, l. 16;
5 and Exhibit 4 to Geraci/Berry NOL.)

6 **II. ARGUMENT**

7 Under the anti-SLAPP statute, Defendants Geraci/Berry are entitled to reasonable attorney's
8 fees and costs as the prevailing party of an anti-SLAPP motion. (Code of Civil Procedure section
9 425.16(c)(1).)

10 A. Award of Reasonable Attorney's Fees is Mandatory

11 A SLAPP Defendant who succeeds on their special motion to strike is entitled to a **mandatory**
12 award of attorney's fees and costs. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 [emphasis
13 added].) The Legislature developed anti-SLAPP to "[place] the financial burden of defending against so-
14 called SLAPP actions on the party abusing the judicial system..." (*Id.* at p. 1136.) Therefore, the provision
15 for fees "is broadly construed so as to effectuate the legislative purpose of reimbursing the prevailing
16 defendant for expenses incurred in extricating [himself or itself] from a baseless lawsuit." (*Wilkerson v.*
17 *Sullivan* (2002) 99 Cal.App.4th 443, 446.) In addition to fees related to the anti-SLAPP motion, prevailing
18 parties are also entitled to fees for pursuit of fee claims. (*Graham v. DaimlerChrysler Corp.* (2004) 34
19 Cal.4th 553, 580; *Ketchum, supra*, 24 Cal.4th at 1131.)

20 B. The Lodestar Method is Appropriate in Calculating Attorney Fees.

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

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1 C. Defendants Geraci/Berry are Entitled to a Mandatory Attorney Fee
2 Award in the Amount of \$24,322.50 Based Upon Reasonable and
3 Necessary Attorney Hours Expended and Anticipated.

4 Because Defendants prevailed on a SLAPP motion, they are entitled to a mandatory attorney fee
5 award in the amount of \$24,322.50 reflecting all hours actually and reasonably expended or anticipated
6 in connection with the anti-SLAPP motion and the instant fee motion. As set forth in the accompanying
7 Declaration of Michael R. Weinstein, defense counsel expended a total of 56.4 attorney hours and 6.10
8 paralegal hours in connection with the anti-SLAPP motion and the instant fee motion. It is anticipated
9 that an additional 2.50 will be expended analyzing Plaintiffs' opposition, preparing a reply, and attending
10 the hearing on the motion.

11 "Testimony of an attorney as to the number of hours worked on a particular case is sufficient
12 evidence to support an award of attorney fees." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)
13 Attorney Weinstein and his attorney colleagues have expended a total of 57.0 attorney hours and 6.60
14 paralegal hours from the December 22, 2021 filing of the operative FAC through the filing of this
15 motion for attorney fees in connection with the preparation, filing and hearings related to the anti-
16 SLAPP motion. No fees are sought for any activities in the lawsuit other than those reasonably related
17 to the anti-SLAPP motion. This number of hours spent was reasonable and necessary given the nature
18 of the litigation. It is anticipated that an additional 2.50 hours will be expended analyzing Plaintiffs'
19 opposition, preparing a reply and attending the hearing on the motion for attorney fees.

20 Defendants Geraci and Berry request an hourly rate of \$400.00 for the services of Attorney
21 Weinstein and Attorney Toothacre, and an hourly rate of \$125.00 per hour for Paralegal Barker related
22 to said Defendants anti-SLAPP motion and instant motion for attorneys' fees. Attorney Weinstein has
23 been licensed to practice in California for more than forty (40) years and has substantial trial and
24 litigation experience. Attorney Weinstein has devoted the majority of his practice to civil litigation,
25 primarily in the area of business litigation. Based on his years of experience, the lodestar rate of
26 \$400.00 per hour is reasonable and appropriate for the value of his services rendered in this type of
27 litigation in San Diego. (Weinstein Decl. para. 15, p. 4, l. 1.26 - p.5, l.3.)

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1 Attorney Toothacre has been licensed to practice in California for more than thirty-five (35)
2 years and has substantial trial and litigation experience. Attorney Toothacre has devoted the majority of
3 his practice to civil litigation, primarily in the area of personal injury, employment and other business
4 litigation. Based on his years of experience, the lodestar rate of \$400.00 per hour is reasonable and
5 appropriate for the value of his services rendered in this type of litigation in San Diego. (Weinstein
6 Decl. para. 16 p. 5, ll. 4-10.)

7 The courts repeatedly have stated that the trial court is in the best position to value the services
8 rendered by the attorneys in his or her courtroom, and this includes the determination of the hourly rate
9 that will be used in the lodestar calculus. In making its calculation, the court may rely on its own
10 knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the
11 attorney requesting fees, the difficulty or complexity of the litigation to which that skill was applied,
12 and affidavits from other attorneys regarding prevailing fees in the community and rate determinations
13 in other cases. (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.
14 App. 5th 426, 437 (citations omitted).) The requested hourly lodestar rate of \$400.00 for attorneys
15 Weinstein and Toothacre, respectively, are reasonably in line with the prevailing billing rates in the San
16 Diego legal community for litigation work of this nature. (*PLCM, supra*, 22 Cal. App. 4th at 1095.)

17 Accordingly, Defendants Geraci/Berry request an attorney fee award in the amount of
18 \$24,122.50, calculated as shown in the Weinstein Decl., paras. 12-14, p. 3, l.22 – p. 4, l.25, and
19 supported by the actual billing entries related to work on the anti-SLAPP motion and the instant motion
20 for attorneys' fees.

21 **III. CONCLUSION**

22 Anti-SLAPP motions are not routine motions. (*Ketchum, supra*, 24 Cal.4th at 1139.) As shown in
23 the referenced attorney time entries, substantial work goes into the preparation of an anti-SLAPP motion.
24 Skill and attention to this matter of counsel for Defendants Geraci/Berry counsel resulted in Defendants
25 ultimate success in resolving the entire litigation as to them. Given the significant amount of work and
26 expertise required to defeat Plaintiffs' claims, the time spent, and fees sought by the attorneys for
27 Geraci/Berry in connection with their anti-SLAPP motion are reasonable. Accordingly, pursuant to Code of
28 Civil Procedure section 425.16, subdivision (c), Defendants respectfully requests the court award their anti-

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SLAPP attorney's fees of **\$24,322.50**.

Dated: March 13, 2023

FERRIS & BRITTON,
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre
Attorneys for Defendant
LARRY GERACI and REBECCA BERRY