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6 Attorneys for Defendants
7 LARRY GERACI and REBECCA BERRY

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

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 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; EULENTIAS
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

**DECLARATION OF MICHAEL R.
WEINSTEIN IN SUPPORT
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
Judgment Entered: February 2, 2023

25
26 I, MICHAEL R. WEINSTEIN, declare as follows:

27 1. I am an attorney with the law firm of Ferris & Britton, APC, attorneys of record herein
28 for defendants, Larry Geraci and Rebecca Berry ("Defendants Geraci/Berry") in this action. I am

1 licensed to practice before all Courts in the State of California. I make this declaration upon personal
2 knowledge except as to those matters stated upon information and belief, and as to those matters I
3 believe them to be true.

4 2. In the operative First Amended Complaint filed December 23, 2021 (the “FAC,”
5 ROA#11), plaintiffs, Amy Sherlock and Andrew Flores (“Plaintiffs Sherlock/Flores”) variously
6 asserted four causes of action against defendants, Larry Geraci and/or Rebecca Berry, namely: (1) the
7 First COA for Conspiracy to Monopolize in Violation of the Cartwright Act (the “Cartwright Act
8 Claim”); (2) the Fifth COA for Unfair Competition and Unlawful Business Practices (the “UCL
9 Claim”); (3) the Sixth COA for Declaratory Relief (the “Decl Relief Claim”), which was brought solely
10 by plaintiff Flores against defendant Geraci); and (4) the Seventh COA for Civil Conspiracy.

11 3. On July 22, 2022, Defendants Geraci/Berry filed a special motion to strike pursuant to
12 Code of Civil Procedure § 425.16 (the “anti-SLAPP Motion”).¹ (See ROA#s 67, 69, 71.) As grounds
13 for their motion, Defendants Geraci/Berry asserted that: (a) Plaintiffs' claims alleged as against
14 defendants Geraci and Berry arose from constitutionally protected activity; and (b) Plaintiffs could not
15 establish a probability of prevailing on the merits of those claims. The matter was scheduled for
16 hearing on October 21, 2022.

17 4. On October 20, 2022, one day before the hearing, the Plaintiffs filed an “opposition”
18 requesting the Court stay or postpone the hearing based on the assertion that the Plaintiffs’ filing of a
19 notice of appeal challenging the Court’s granting of the anti-SLAPP motion of defendants Gina Austin
20 and Austin Legal Group stayed the entire action. (See ROA#152)

21 5. At the October 21, 2022, hearing the Court rejected the Plaintiffs’ stay argument but
22 continued the hearing until December 2, 2022, to allow Plaintiffs’ to file a substantive opposition to the
23 Geraci and Berry anti-SLAPP motion. (See Minute Order, ROA#162)²

24 6. On November 17, 2022, Plaintiffs served and filed an Omnibus Opposition to multiple
25 motions by various parties, within which Plaintiffs set forth their opposition to defendant Geraci and
26

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

28 ² Plaintiffs also filed an Ex Parte Application seeking the same relief, which was heard on October 27, 2022. The Court denied the Ex Parte Application. (See ROA# 181)

1 Berry's anti-SLAPP motion. (See ROA#195)

2 7. On November 21, 2022, defendants Geraci and Berry served and filed their Reply
3 Memorandum in support of their anti-SLAPP motion addressing Plaintiffs' Omnibus Opposition. (See
4 ROA# 197)

5 8. On December 1, 2022, the Court issued a tentative ruling in favor of granting
6 Defendants Geraci/Berry's anti-SLAPP motion. (See ROA# 224.) The Court found that (a) Plaintiffs'
7 claims alleged as against defendants Geraci and Berry arose from constitutionally protected activity,
8 and (b) Plaintiffs could not establish a probability of prevailing on those claims.

9 9. On December 2, 2022, after hearing and oral argument, the Court confirmed its tentative
10 ruling and granted Defendants Geraci/Berry's anti-SLAPP motion. (See ROA# 229). This ruling
11 constituted a final adjudication of all claims asserted by Plaintiffs against defendant Geraci and Berry.
12 Lodged concurrently as Exhibit 1 to the Notice of Lodgment in Support of Defendants Larry Geraci
13 and Rebecca Berry's Motion for Attorneys' Fees ("Geraci/Berry NOL") is a true and accurate copy of
14 the Court's Minute Order dated December 2, 2022, granting the anti-SLAPP motion.

15 10. On December 5, 2022, defendants' Geraci and Berry filed a Notice of Ruling. (See
16 ROA# 230) Lodged concurrently as Exhibit 2 to the Geraci/Berry NOL is a true and accurate copy of
17 the Notice of Ruling.

18 11. On December 13, 2022, defendants Geraci and Berry lodged a proposed Judgment. On
19 February 2, 2023, the Court entered the Judgment in favor of Defendants Geraci/Berry and against
20 Plaintiffs Sherlock/Flores. (See ROA# 264) Lodged concurrently as Exhibit 3 to the Geraci/Berry
21 NOL is a true and accurate copy of the Judgment entered February 2, 2023.

22 12. Only three attorney timekeepers were assigned to this case (myself and Scott Toothacre)
23 and we made every effort to handle this matter efficiently and to avoid duplicative efforts. Mr.
24 Toothacre and I shared responsibility for the research, review, and drafting of the moving papers for the
25 anti-SLAPP motion, including the reply brief and supporting documents. I attended the hearing on the
26 anti-SLAPP motion. Each attorney and paralegal in our firm keep daily electronic time records,
27 including descriptions of the work performed. These billing entries are entered into a computerized
28 accounting system maintained by our firm's Office Administrator. I have personally reviewed all

1 billing entries pertaining to this matter entered into our computerized billing system and selected for
2 extraction into a Word document only those billing entries pertaining to work billed from the January 7,
3 2022, filing of this lawsuit that concern the preparation, filing and hearing of the Geraci/Berry anti-
4 SLAPP motion or the instant motion for attorneys' fees. Attached to Defendants' Notice of Lodgment
5 as Exhibit 4 is a true and correct copy of a Word document containing the time entries I reviewed and
6 had extracted pertaining to the work within our law firm billed from the January 7, 2022, filing of this
7 lawsuit *that were related to the preparation, filing and hearing of the Geraci/Berry anti-SLAPP motion*
8 *or the instant motion for attorneys' fees.* These extracted billing entries accurately reflect the actual
9 time spent by myself, attorney Toothacre, and paralegal Barker.

10 13. A review of the billing entries demonstrates that my attorney colleague and I and our
11 paralegal have expended the following hours to date in regard to Defendants Geraci/Berry's anti-
12 SLAPP motion and instant motion for attorneys' fees:

13	Attorney Michael R. Weinstein	26.30 hours
14	Attorney Scott H. Toothacre	30.10 hours
15	Paralegal Debra L. Barker	6.10 hours

16 14. I also anticipate expending the following additional hours in regard to the instant motion
17 for attorneys' fees:

18	Review Plaintiffs' opposition papers to Motion for Attorney Fees:	.50
19	Draft Reply Brief to opposition to Motion for Attorney Fees:	1.00
20	Attend hearing on Defendant Geraci/Berry's Motion for Attorney Fees:	1.00

21 Thus, the total fees for attorney and paralegal services sought by this motion total \$24,322.50,
22 calculated as follows:

23	Total Attorney Time: 58.90 hours x \$400.00 per hour = \$23,560.00
24	Total Paralegal Time: 6.60 hours x \$125.00 per hour = \$762.50
25	Total: <u>\$24,322.50</u>

26 15. Defendants Geraci/Berry request an hourly rate of \$400.00 per hour for the attorney
27 services of Michael Weinstein in connection with the anti-SLAPP motion. I have been licensed to
28 practice in California for more than 40 years and have substantial trial and litigation experience. I have

1 devoted the majority of my practice to civil litigation, primarily in the area of business litigation
2 defense. Based on my years of experience, the lodestar rate of \$400.00 per hour is reasonable and
3 appropriate for the value of my services rendered in this type of litigation in San Diego.

4 16. Defendants Geraci/Berry request an hourly rate of \$400.00 per hour for Mr. Toothacre's
5 attorney services in connection with the anti-SLAPP motion. Mr. Toothacre has been licensed to
6 practice in California for more than 35 years and has substantial trial and litigation experience. He has
7 devoted the majority of my practice to civil litigation, primarily in the areas of personal injury and
8 employment and other business litigation. Based on his years of experience, the lodestar rate of
9 \$400.00 per hour is reasonable and appropriate for the value of his services rendered in this type of
10 litigation in San Diego.

11 17. In summary, by way of this motion, Defendants Geraci/Berry seek a total of \$24,322.50
12 for attorneys' fees and paralegal fees related to the anti-SLAPP motion and the instant motion for
13 attorneys' fees. As noted above, this request is based on the total hours incurred in connection with the
14 anti-SLAPP motion to strike, combined with the total hours incurred (or to be incurred) in connection
15 with the motion for attorneys' fees. Defendants respectfully submit that the above request for
16 attorneys' fees is fully justified given the circumstances of this case.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct. Executed this 13th day of March, 2023, at San Diego, California.

19 
20 _____
21 MICHAEL R. WEINSTEIN