

Hearing Date: 06/02/2021

Department: 31

MOTION BY DAILY MAIL FOR ATTORNEY'S IS GRANTED.

Relevant Background

On December 22, 2020, Plaintiff Katherine Hill filed the instant action against Defendants Kenneth Heslep; Jennifer Van Laar; Joseph Messina; Mail Media, Inc. ("the Daily Mail"); Salem Media Group, Inc. ("Salem Media"); and Does 1 through 50. The Complaint asserts causes of action for:

- (1) Action Based on Civil Code Section 1708.85 (against Heslep, Van Laar, the Daily Mail; and Salem Media);
- (2) Civil Conspiracy to Violate Civil Code Section 1708.85;
- (3) Intentional Infliction of Emotional Distress (against Heslep); and
- (4) Action Based on Bus. Prof. Code Section 17200 (against the Daily Mail and Salem Media).

On April 7, 2021, the Court granted the Daily Mail's anti-SLAPP motion in its entirety, striking the first, second, and fourth causes of action as to the Daily Mail (hereinafter "Defendant").

Defendant now moves for \$85,826.00 in attorney fees in connection with the SLAPP motion, \$11,156.00 in fees in connection with moving papers for the instant motion, \$6,644.00 in fees in connection with the reply and hearing on the instant motion, and \$1,121.75 in costs, for a total of \$103,626.00 in attorney fees and \$1,121.75 in costs.

Legal Standard

Pursuant to Code of Civil Procedure section 425.16(c), a prevailing defendant is entitled to recover attorneys' fees and costs associated with the motion. Under CRC 3.1702 and CRC 8.104, a request for attorneys' fees must be made within 60 days of service of the notice of entry of judgment. A defendant may only recover fees and costs related to the motion to strike. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) This includes fees associated with bringing the motion for fees. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 ("an award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure section 425.16.")) Additionally, "[a]ny fee award must also include those incurred on appeal. [Citation.]" (*Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 122.)

"A trial court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.'" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The Court "need not simply award the sum requested. To the contrary, ascertaining the fee amount is left to the trial court's sound discretion." (*Id.*) "The reasonableness of attorney fees is within the discretion of the trial court, to be determined from a consideration of such factors as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel and the amount of time involved. The court may also consider whether the amount requested is based upon unnecessary or duplicative work." (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.)

Discussion

Defendant moves for \$85,826.00 in attorney fees in connection with the SLAPP motion, \$11,156.00 in fees in connection with the moving papers for the instant motion, \$6,644.00 in fees in connection with the reply and hearing on the instant motion, and \$1,121.75 in costs, for a total of \$103,626.00 in attorney fees and \$1,121.75 in costs.

Hourly Rate

“The reasonable hourly rate is that prevailing in the community for similar work.” (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) “The experienced trial judge is the best judge of the value of professional services rendered in [her] court.” (*Ibid.*)

Defendant seeks to recover fees for three attorneys and two paralegals that billed time in connection with Defendant’s anti-SLAPP and the instant motion. Their hourly rates are as follows:

- Kelli L. Sager: \$700/hour
- Dan Laidman: \$500/hour
- Abigail Zeitlin: \$368/hour
- Nicole Greene, paralegal: \$304/hour
- Ana Morales, paralegal: \$272/hour

For each attorney, attorney Dan Laidman attests to his or her experience and reasonableness of the rates. (Laidman Decl. ¶ 3, 5.) Defendant also asserts that the rates are significantly discounted from counsel’s standard 2021 billing rates, having applied a 20 percent across-the-board discount to its fees on each invoice. (Laidman Decl. ¶ 4.)

Plaintiff does not oppose the rates requested.

The Court finds that the rates requested by Defendant are reasonable and commensurate with or lower than rates charged by attorneys with comparable skill and expertise.

Recoverable Fees under Section 425.16(c)

“[O]nly those attorney fees and costs related to the special motion to strike, not the entire action, may be recovered under section 425.16, subdivision (c). [Citations.] [¶] In awarding fees the trial court is not constrained by the amount sought by the successful moving parties [citation], but is obligated to award “reasonable attorney fees under section 425.16 [that] adequately compensate [] them for the expense of responding to a baseless lawsuit.” [Citations.] The fees awarded should include services for all proceedings, including discovery initiated by the opposing party pursuant to section 425.16, subdivision (g), directly related to the special motion to strike. (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1248, 132 Cal.Rptr.2d 57 [affirming award of attorney fees including fees incurred in opposing discovery request and motion for reconsideration]; *American Humane Assn. v. Los Angeles Times Communications* (2001) 92 Cal.App.4th 1095, 1104, 112 Cal.Rptr.2d 488 [documentation for attorney fee motion should include “the total cost of the special motion to strike and any related discovery permitted by the court”]; see *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446, 121 Cal.Rptr.2d 275 [“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”].)” (*Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92–93.)

In opposition to the instant motion, Plaintiff argues that the interests of justice support reducing Plaintiff’s fee burden. Plaintiff asserts that to award Defendant even a fraction of their attorney fees is to condone its conduct and greenlight the same humiliating treatment for the next unfortunate soul it sets its exploitive agenda upon. Plaintiff contends that this case is a matter of first impression and this was not a clear-cut matter before the court. Plaintiff contends that the court should take mercy on plaintiffs who already are saddled with their own legal fees.

In reply, Defendant argues that as the prevailing party, it is entitled to recover its attorney fees; the only issues that is before the Court is whether the amount of the fee request is reasonable.

Defendant asserts that Plaintiff misconstrues the legal standard by claiming that the Court has discretion to reduce Defendant's request based on so-called equitable considerations.

The Court finds that Defendant is entitled to its reasonable attorney fees in connection with its anti-SLAPP motion and the instant fee motion. While the Court has the discretion to reduce the fees based on whether or not the Court deems the fees reasonable, the Court is obligated to award reasonable attorney fees.

Reasonable Hours Incurred

"A trial court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.'" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) "The reasonableness of attorney fees is within the discretion of the trial court, to be determined from a consideration of such factors as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel and the amount of time involved. The court may also consider whether the amount requested is based upon unnecessary or duplicative work." (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.)

While not per se objectionable, block billing can exacerbate the vagueness of an attorney fee request and support a court's finding that time entries were inflated and non-compensable. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325-1326.)

Defendant provides billing records for the time billed in connection with the anti-SLAPP and the instant motion. (Laidman Decl., Exh. A.) Defendant also provides the declaration of attorney Laidman, who summarizes how time was spent and billed in this matter. (Laidman Decl. ¶¶ 7-8, 10.)

Defendant asserts that through April 2021, attorney Sager spent approximately 30.9 hours assessing the case and formulating Defendant's litigation strategy, communicating with the client, briefly editing all of the briefs and related documents, and preparing for and appearing at the hearing on Defendant's anti-SLAPP motion. (Laidman Decl. ¶ 8.) Defendant contends that attorney Laidman spent approximately 79.8 hours reviewing Plaintiff's pleadings, briefing, and evidentiary materials, researching and drafting the SLAPP motion, reply, and related documents, with a specific focus on Section 1708.85, and preparing the declarations and exhibits in support of the SLAPP motion. (Laidman Decl. ¶ 8.) As to attorney Zeitlin, Defendant argues that she spent approximately 56.8 hours reviewing Plaintiff's pleadings, briefing, and evidentiary materials, researching and drafting portions of the SLAPP motion, reply, and related documents, with a specific focus on the civil conspiracy cause of action, and preparing Defendant's evidentiary materials and objections. (Laidman Decl. ¶ 8.) Finally, Defendant contends that two paralegals spent approximately 8.9 and 3.2 hours, respectively, cite-checking briefs, preparing evidentiary submissions, and assisting with attorney Sager's oral argument preparation. (Laidman Decl. ¶ 8.)

With regard to the fee motion, Defendant argues that attorney Sager spent approximately 1.2 hours in April guiding Defendant's strategy and editing the fee motion. (Laidman Decl. ¶ 10.) Defendant asserts that attorney Laidman spent approximately 9 hours editing the fee motion and supporting declarations and exhibits, and analyzing the legal issues related to Defendant's submission of detailed billing records in support of the motion. (Laidman Decl. ¶ 10.) Defendant states that attorney Zeitlin spent approximately 12.7 hours researching and drafting portions of the fee motion and preparing the supporting declarations and exhibits. (Laidman Decl. ¶ 10.) Defendant finally argues that paralegal Morales spent approximately 4.2 hours preparing the evidentiary submissions in support of the fee motion. (Laidman Decl. ¶ 10.)

Defendant asserts that the attorney fees incurred in this action have been reasonable and necessary for the representation of Defendant in this litigation. Defendant states that Plaintiff's complaint raised novel legal issues by asserting a claim under Civil Code section 1708.85 as well as two additional causes of action against Defendant for civil conspiracy and a violation of Business and Professions

Code section 17200 that derived from the alleged Section 1708.85 violation. Defendant argues that the legislature enacted Section 1708.85 in 2015 and there is very little reported authority interpreting the law. Defendant asserts that consequently, although counsel have substantial experience in media and First Amendment matters that allowed them to litigate the matter efficiently, a significant amount of time was required for researching Plaintiff's novel attempt to apply a "revenge porn" statute to a media company, which included researching the legislative history of Section 1708.85. Defendant contends that additionally, Plaintiff's 193-paragraph complaint contained a multitude of allegations about various conduct and publications that it attributed to Defendant. Defendant argues that although most of those allegations were not bases for Plaintiff's causes of action against Defendant, Plaintiff's decision to include all of the accusations required Defendant to evaluate and investigate her wide-ranging allegations in the course of preparing Defendant's anti-SLAPP motion. Defendant asserts that that also contributed to the amount of time spent on this matter.

In opposition, Plaintiff argues that the request should be adjusted downwards because of block billing and duplicative work. Plaintiff asserts that defense counsel attached highly redacted billing records to its fee motion. Plaintiff contends that the records are so thoroughly redacted that they cannot be independently evaluated by Plaintiff. Plaintiff argues that it is impossible to know if counsel's legal time was spent efficiently.

Plaintiff further asserts that counsel spent an unreasonable amount of time on a simple fee motion. Plaintiff contends that the Court should not award counsel more than 12.8 hours of fees for their work on the instant motion, and it should be set at the hourly rate of the person responsible for the bulk of the motion, in this instance attorney Zeitlin.

Having reviewed the instant motion and the filings in this matter related to Defendant's anti-SLAPP, the Court finds that the amount of fees requested is reasonable.

"Parties who litigate with no holds barred in cases such as this, in which the prevailing party is entitled to a fee award, assume the risk they will have to reimburse the excessive expenses they force upon their adversaries." (*Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 653-654.) Here, it cannot be reasonably argued that the time spent by Defendant was excessive when Plaintiff necessitated counsel's work. Plaintiff herself concedes that the instant suit presents novel issues with far reaching ramifications. Accordingly, the instant action was one that necessitated extensive research and strategy.

The Court is familiar with the arguments set forth in Defendant's anti-SLAPP papers and advanced at the hearing. The arguments included novel application of case law and legislative history to a comparatively newly enacted statute. Defendant's papers and arguments were well reasoned and included extensive citation to persuasive and binding authority. The time Defendant claims counsel spent researching and drafting its anti-SLAPP papers, as well as the time spent preparing for oral argument, are entirely reasonable even without the detailed billing records provided here.

Moreover, it does not appear from the detailed billing records that any of the time billed by any one attorney was duplicative of another attorney's work. Each attorney was responsible for different tasks and sections of the motion to work on, aside from attorney Sager who billed minimal time for reviewing and editing the final versions of the documents submitted. Attorney Laidman focused his research and drafting on Section 1708.85 while attorney Zeitlin focused her research and drafting on the civil conspiracy cause of action. Given the lack of published authority related to Section 1708.85 and the novel arguments presented by Plaintiff, the amount of hours spent researching and drafting by attorney Laidman was reasonable and justified.

Contrary to Plaintiff's arguments otherwise, there are no instances of block billing, as counsel breaks down the amount of time attributed to each task in their billing records. While Plaintiff complains of redacted entries, the memorandum and declaration submitted in support of Defendant's fee motion indicate that Defendant does not seek reimbursement for any redacted entries. (Laidman Decl. ¶ 6.)

Finally, the amount of time sought for the instant motion is reasonable, as Defendant only seeks \$17,800.00 in fees, consisting of \$11,156.00 in fees related to the moving papers and \$6,644.00 in fees related to the reply and anticipated time spent at the hearing. Such a request is reasonable given the extensive redaction required, the amount of supporting documentation, and the allocation of work done on the motion. The bulk of the time was billed by the attorney with the lowest billing rate. The amount of time spent by the more experienced attorneys incrementally decreased as their experience and billing rates increased. Nothing before the Court indicates that such time spent on the motion was unreasonable, duplicative, or excessive.

Having analyzed the instant motion and the anti-SLAPP motion, and being familiar with the arguments and issues raised in this matter, Defendant's motion for attorney fees and costs is GRANTED in its entirety.

Conclusion

Defendant's motion for attorney fees is GRANTED. The Court awards Defendant \$103,626.00 in attorney fees and \$1,121.75 in costs.

Defendant is to give notice.

The parties are strongly encouraged to attend all scheduled hearings virtually or by audio. Effective July 20, 2020, all matters will be scheduled virtually and/or with audio through the Court's LACourtConnect technology. The parties are strongly encouraged to use LACourtConnect for all their matters. All social distancing protocols will be observed at the Courthouse and in the courtrooms.