

DEPARTMENT 34 LAW AND MOTION RULINGS

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Case Number: BC556600 **Hearing Date:** August 25, 2015 **Dept:** 34

SUBJECT: Motion for attorney's fees

Moving Party: Defendant City of Glendale ("defendant")

Resp. Party: Plaintiffs Michiko Shiota Gingery, Koichi Mera, Gaht-US Corporation, and Masatoshi Naoki ("plaintiffs")

The Court GRANTS defendant's motion and award attorney's fees in the total amount of \$150,046.58.

Defendant's Objections to the Knapton Declaration are OVERRULED.

Defendant's Request for Judicial Notice is DENIED; a declaration as to attorney's fees in a different action is not relevant to this motion. (See *Aguila Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 901, fn.3.)

BACKGROUND:

Plaintiffs commenced this action on 9/3/14 against defendant for declaratory and injunctive relief. On 9/18/14, plaintiffs filed a first amended complaint ("FAC") for: (1) violation of the Glendale Municipal Code; (2) violation of the Equal Protection Clause of the California Constitution; and (3) violation of the Privileges and Immunities Clause of the California Constitution. On 1/7/15, plaintiffs filed a second amended complaint ("SAC") against defendant for: (1) unconstitutional interference with foreign affairs power; (2) violation of the Glendale Municipal Code; (2) violation of the Equal Protection Clause of the California Constitution; and (4) violation of the Privileges and Immunities Clause of the California Constitution. Plaintiffs are seeking injunctive and declaratory relief relating to a monument authorized by defendant regarding individuals known as "Comfort Women."

On 3/13/15, the Court granted defendant's special motion to strike plaintiffs' second amended complaint and ordered the SAC dismissed without prejudice. Judgment was entered against plaintiffs and for defendant on 5/4/15.

ANALYSIS:

Defendant seeks attorney's fees and costs in the total amount of \$216,149.81. (See Supplemental Declaration of Ellis, ¶¶ 4-6.)

“Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.” (CCP § 425.16(c)(1).) Government entities are entitled to the mandatory fee award under the anti-SLAPP statute, and need not show that the action was frivolous, unreasonable, or 2-without foundation. (See *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 196-197.) “Because CCP § 425.16(c) says prevailing defendants are ‘entitled to recover’ attorney fees, they are entitled to such recovery even if their attorney represents them pro bono.” (Weil & Brown, *Civ. Proc. Before Trial* (The Rutter Group 2014) ¶ 7:1150 [citing *Rosenaur v. Scherer* (2001) 88 CA4th 260, 283].) Defendant here prevailed on its special motion to strike, and are therefore entitled to its attorney's fees and costs.

Plaintiffs make a somewhat confusing argument that fees should not be awarded because the Court found that plaintiffs had satisfied the elements of a “public interest exemption” to the anti-SLAPP statute under Code of Civil Procedure section 425.17. (See Opp., p. 4.) Plaintiffs provide absolutely no authority which holds that attorney's fees should not be awarded or must be reduced where the plaintiff brings the SLAPP action in the public's interest. (See *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284 [where discussion is “conclusory and fails to cite any authority to support the claim,” it “amounts to an abandonment of the issue”].) Moreover, as plaintiff acknowledges, the Court also found that an exception to the section 425.17(d)(2) public interest exemption existed. (See Opp., p. 4:25-26.)

Pursuant to California Code of Civil Procedure section 425.16, parties may use the “lodestar” adjustment method of determining attorney's fees. (*Ketchum*, 24 Cal.4th at 1131; Code Civ. Proc. § 425.16(c).) In setting the amount of attorney's fees under a “lodestar” standard,

‘[t]he first step involves the lodestar figure – a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. The lodestar figure may then be adjusted, based on consideration of facts specific to the case, in order to fix the fee at the fair market value for the legal services provided.’

(*Gorman v. Tassajara Development Corp.* (2008) 162 Cal.App.4th 770, 774 [internal citations omitted].) In determining whether to adjust the lodestar figure, the Court may consider the nature and difficulty of the litigation, the amount of money involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case. (*EnPalm LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

In California,

[t]he prevailing defendant seeking fees and costs “bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.’ [Citation.] To that end, the court may require [a] defendant[] to produce records sufficient to provide “a proper basis for determining how much time was spent on particular claims.” [Citation.] The court may also properly reduce compensation on account of any failure to maintain appropriate time records. [Citation.]

(*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320 [quoting *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020].) Additionally, “[t]he evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended.” (Ibid.)

The trial court is not bound by the amount of fees sought by the successful moving party. (*Robertson v. Rodriquez* (1995) 36 Cal.App.4th 347, 361.) The court is obligated to award “reasonable attorney fees under section 425.16 [that] adequately compensate[] them for the expense of responding to a baseless lawsuit.” (*Id.* at 362; accord., *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785.) “A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether.” (*Ketchum, supra*, 24 Cal.4th at p. 1138.)

Plaintiff argues that the fees and costs should be reduced because they are only recoverable for work on the anti-SLAPP motion. Fees are appropriate for proceedings, including discovery initiated by the opposing party, 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.) Fees are not appropriate to the entire litigation. (See *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92 [“only 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)”]; *Chambers v. Miller* (2006) 140 Cal.App.4th 821, 826 [“the anti-SLAPP statute's attorney fee provision is not designed to provide general monetary relief to SLAPP victims, but only reimbursement for the fees and costs actually incurred in obtaining the dismissal”]; *Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, 1383; *Weil & Brown, Civ. Pro. Before Trial* (The Rutter Group 2014) ¶7:1135 [“Section 425.16(c) is ambiguous as to what ‘fees and costs’ are recoverable. But legislative history shows it was intended to allow only fees and costs incurred on the motion to strike (not the entire litigation)”].) Though federal courts have called Lafayette’s holding into question, it has not been called into doubt by a published California opinion. (See *Kearney v. Foley and Lardner* (S.D.Cal. Mar 14, 2008) 553 F.Supp.2d 1178, 1183-1184.) Defendant does not provide published California authority calling Lafayette into question, and the cases cited by defendant reaffirm that a party may recover fees and costs that are connected to the anti-SLAPP motion. (See *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 21 [allowing fees and costs incurred in challenging an undertaking submitted to stay enforcement of an award of fees and costs under section 425.16(c) pending an appeal of the order awarding such fees and costs]; *Vargas v. City of Salinas* (2011) 200 Cal.App.4th 1331, 1351 [holding that fees incurred in opposing a post-judgment motion for attorney’s fees were “incurred in connection with the section 425.16 motion” when the case was dismissed pursuant to section 425.16].) Therefore, defendant may only recover costs incurred in connection with its anti-SLAPP motion, and not all costs incurred during the litigation.

Defendants request hourly rates as follows:

Bradley Ellis \$693.75
Frank Broccolo \$637.50
Christopher Munsey \$555.00
Alex Buese \$555.00
Laura Richardson \$438.75
Stan Molever \$393.75
Matt Light \$333.75
John Berry \$101.25
Eva Huber \$90.00

The above rates for the defendants’ attorneys represent a 25% discount from Sidelity & Austin’s normal rates. Defendant sufficiently supports the hourly rates of its attorneys. (See *Herbstman Decl.*, ¶¶ 1-10, Exh. A; *Broccolo Decl.*, ¶¶ 2-8, Exh. A; *Ellis Decl.*, ¶¶ 8-22.)

While these rates are, in absolute terms, certainly high, they are reasonable given both the complexity

of the case and the billing rates for comparable attorneys in the Los Angeles community. (This Court notes that the Court of Appeal, Second Appellate District has upheld a jury's finding that \$1,000 per hour was, in the circumstances of that case, a reasonable hourly rate. [See *Chodos v. Borman* (2014) 227 Cal.App.4th 76.]

However, the court finds that the requested lodestar needs to be reduced for three separate reasons.

First, the court will not reimburse counsel for the time spent by their librarian, Eva Huber, or their Project Assistant, John Berry. (See Ellis Declaration, ¶ 17.) The Court believes the work of a librarian should be classified as normal overhead for a large lawfirm, and not reimbursable as attorneys fees under the statute. Further, the Court cannot determine from the pleadings the role played by the "Project Assistant" in this matter.

Thus, the court will reduce the lodestar by \$ 2124.38 for the time spent by Huber and Berry.

In addition, a review of the billing records provided by defendant shows that at least some of the requested costs and fees were not incurred in connection with the anti-SLAPP motion, or are vaguely described such that it cannot be determined whether they are related to the anti-SLAPP motion. (See Ellis Decl., Exh. E.) These fees and costs include:

- \$1,202.50 related to a TV interview;
- \$931.00 to review the amended complaint;
- \$962.00 to attend the hearing on the motion to amend;
- \$2,200.00 incurred in connection to the CMC;
- \$1,036.00 to attend and follow up on a status conference;
- \$1,275.00 related to e-mail correspondence with opposing counsel;
- \$262.50 telephonic meet and confer;
- \$462.50 response to Ms. Kerr;
- \$462.50 meet with team;
- \$1,387.50 related to the motion to amend;
- \$462.50 "attend to court tentative;"
- \$2,128.00 (\$1,064.00 x 2) related to the motion to amend;
- \$1,396.50 drafting a letter re motion to amend;
- \$598.50 re motion to amend;
- \$798.00 re settlement and mediation;
- \$1,463.00 re scheduling of CMC;
- \$332.50 re motion to amend;
- \$2,128.00 re CMC;
- \$2,194.50 re CMC;
- \$4,123.00 to draft opposition to motion to amend;
- \$2,460.00 to review and revise opposition to motion to amend;
- \$1,529.50 to review and revise opposition to motion to amend;
- \$1,862.00 to review and revise opposition to motion to amend;
- \$57.50 vague research;
- \$425.00 letter re motion to amend;
- \$425.00 vague e-mails;
- \$255.00 meeting re case status;
- \$255.00 re CMC;
- \$850.00 review opposition to motion to amend;
- \$396.00 review SAC;
- \$891.00 re motion for sanctions;

- \$495.00 re motion to amend;
- \$247.50 re CMC;
- \$247.50 re motion to amend;
- \$297.00 re CMC and federal mediation conference;
- \$990.00 re CMC ex parte;
- \$1,237.50 re CMC ex parte;
- \$297.00 re motion to amend;
- \$148.50 and \$247.50 re summary of CMC ex parte;
- \$891.00 appear at CMC ex parte;
- \$99.00 re motion to amend;
- \$2,326.50 drafting opposition to motion to amend;
- \$544.50 re motion to amend;
- \$1,435.50 drafting opposition to motion to amend;
- \$495.00 re motion to amend;
- \$148.50 re motion to amend;
- \$1,039.50 re motion to amend;
- \$2,385.00 (total) re motion to amend;
- \$222.50 re motion to amend;

Therefore, the Court will reduce the requested fees by an additional \$48,728.50. The Court finds that the remainder of the attorneys fees were reasonably incurred. (See Supp. Ellis Decl., ¶ 5.)

The Court declines to award the costs requested by defendant. The records for the costs are vague and it cannot be determined whether or to what extent the costs were incurred in connection with the anti-SLAPP motion. (See Ellis Decl., Exh. E.) Further, the Court believes that at least some of the expenses are more correctly categorized as overhead, and should not be the subject of an attorneys fees and costs motion. These include, inter alia, expenses for parking, messenger fees, legal research, word processing and duplicating charges – all of which are indicated as costs for which defendant is seeking reimbursement. (See Ellis Decl., Exh. E.) The court therefore will reduce the requested amount by \$15,250.35. (See id., ¶ 26.)

For the reasons indicated above, the Court GRANTS defendant's motion and award attorney's fees in the total amount of \$150,046.58 against plaintiffs Michiko Shiota Gingery, Koichi Mera, Gaht-US Corporation, and Masatoshi Naoki, jointly and severally.
