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Superior Court of California
County of Los Angeles
Department 31

FILED
Superior Court of California
County of Los Angeles

MAY 16 2018

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Lorena Albino

CLAUDIO PALMIERI, et al.,

Case No.: BC681889

Plaintiff,

Hearing Date: April 3, 2018

v.

MARGARET OSBORN, et al.,

Defendant(s).

~~THE FOLLOWING~~ ORDER RE:

DEFENDANT MARGARET OSBORN AKA
ALICE GLASS' MOTION FOR
ATTORNEY FEES AND COSTS IN THE
AMOUNT OF \$20,882.69

Defendant Margaret Osborn aka Alice Glass' Motion for Attorney Fees and Costs in the Amount of \$20,882.69 is GRANTED. Defendant Margaret Osborn is awarded attorneys' fees in the amount of \$20,149.50 and costs in the amount of \$733.19.

Ineffective Service of Opposition

On March 16, 2018, Plaintiffs filed their Opposition with a proof of service indicating that the Opposition was served via facsimile. However, the proof of service fails to comply with requirements of CRC Rule 2.306(h). The proof of service fails to comply with CRC Rule 2.306(h)(2) which mandates that the "[t]he name and fax machine telephone number of the person served must be used instead of the name and address of the person served as shown on the

1 envelope.” Defendant’s counsel’s fax number does not appear on the proof of service of the
2 Opposition.

3 The proof of service fails to comply with CRC Rule 2.306(h)(4), which provides that “[a]
4 copy of the transmission report must be attached to the proof of service and the proof of service
5 must declare that the transmission report was properly issued by the sending fax machine”
6 Pursuant to CRC Rule 2.306(h)(5), “service of papers by fax is ineffective if the transmission
7 does not fully conform to these provisions.” The proof of service dates, but does not check, the
8 section of the proof of service relating to service by U.S. Mail.

9 On March 26, 2018, Defendant filed a notice of non-opposition, indicating no opposition
10 had been received. Even considering the Opposition, Defendant is properly awarded all fees
11 and costs claimed as noted below.

12 ***Merits***

13 On February 23, 2018, the court granted Defendants’ special motion to strike pursuant to
14 CCP § 425.16 as to all claims asserted by Plaintiff Palmieri.

15 Pursuant to CCP § 425.16(c)(1), “a prevailing defendant on a special motion to strike
16 shall be entitled to recover his or her attorney's fees and costs.” Defendant Margaret Osborn
17 succeeded in striking the entirety of the complaint, and therefore is the prevailing party.
18 Plaintiffs’ argument in Opposition that Defendant was not the prevailing party lacks merit as
19 Plaintiffs rely on inapplicable authority from the United States Supreme Court. “[U]nder Code
20 of Civil Procedure section 425.16, subdivision (c), any SLAPP defendant who brings a
21 successful motion to strike is entitled to mandatory attorney fees.” (*Ketchum v. Moses* (2001) 24
22 Cal.4th 1122, 1131.)
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1 Defendant Margaret Osborn moves the court for attorneys' fees in the amount of
2 \$20,149.50 and costs in the amount of \$733.19.

3 ***Attorneys' Fees***

4 "The California Supreme Court has upheld the lodestar method for determining the
5 appropriate amount of attorney fees for a prevailing defendant on an anti-SLAPP motion. Under
6 this method, a court assesses attorney fees by first determining the time spent and the reasonable
7 hourly compensation of each attorney. The court next determines whether that lodestar figure
8 should be adjusted based on various relevant factors." (*Mann v. Quality Old Time Service, Inc.*
9 (2006) 139 Cal.App.4th 328, 342.) "In determining the lodestar amount, a prevailing party
10 generally may not recover for work on causes of action on which the party was unsuccessful."
11 (*Id.*) Moreover, a prevailing party may only recover for work on the motion, not the entire suit.
12 (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383
13 ("These reports clearly show the Legislature intended that a prevailing defendant on a motion to
14 strike be allowed to recover attorney fees and costs only on the motion to strike, not the entire
15 suit. We conclude the trial court erred when it awarded the Chronicle fees for the entire suit.");
16 *S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 381.)

17
18 A trial court assessing attorney fees begins with a touchstone or lodestar figure, based on
19 the 'careful compilation of the time spent and reasonable hourly compensation of each attorney
20 ... involved in the presentation of the case." (*Christian Research Institute v. Alnor* (2008) 165
21 Cal.App.4th 1315, 1321.) The court "need not simply award the sum requested. To the contrary,
22 ascertaining the fee amount is left to the trial court's sound discretion." (*Id.*) "The
23 reasonableness of attorney fees is within the discretion of the trial court, to be determined from a
24 consideration of such factors as the nature of the litigation, the complexity of the issues, the
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1 experience and expertise of counsel and the amount of time involved. The court may also
2 consider whether the amount requested is based upon unnecessary or duplicative work.”
3 (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.) “The basis for the trial court’s
4 calculation must be the actual hours counsel has devoted to the case, less those that result from
5 inefficient or duplicative use of time.” (*Horsford v. Board Of Trustees Of California State*
6 *University* (2005) 132 Cal.App.4th 359, 395.) “The law is clear, however, that an award of
7 attorney fees may be based on counsel’s declarations, without production of detailed time
8 records. (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.)

9 Defendant’s motion is supported by the declaration of her counsel, Vicki Greco, who
10 attests to an hourly rate of \$190.00, which the court finds reasonable. (Greco Decl. ¶12.) The
11 claimed paralegal rate of \$95.00 per hour is also reasonable. (Ibid.) “The reasonable hourly rate
12 is that prevailing in the community for similar work.” (*PLCM Group v. Drexler* (2000) 22
13 Cal.4th 1084, 1095.) “The experienced trial judge is the best judge of the value of professional
14 services rendered in [her] court.” (*Id.*) Defendant’s counsel attests to spending 103.9 hours
15 relating to the anti-SLAPP motion and the motion for fees. Defendant’s counsel’s paralegal
16 spent 4.3 hours related to the motions. Finally, Defendant’s counsel attests to incurring costs of
17 \$733.19 in connection with the motions. (Greco Decl. ¶ 21.) The court finds the hours and
18 costs claimed by Defendant reasonable. Plaintiffs’ contention that it would be “unfair and
19 unjust” to allow Defendant to recover her fees and costs, is not supported by any relevant
20 authority. Defendant was unequivocally the prevailing party and its entitled to the fees incurred
21 in bringing the motion. (CCP § 425.16(c)(1).)


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23 Finally, Plaintiffs contend the court should not rule on the motion to strike until the court
24 hears an unfiled and unreserved motion for relief pursuant to CCP § 473 Plaintiffs represent they
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1 intend to file. The court is not inclined to delay ruling upon a properly noticed motion on this
2 basis. The court will address the merits of any additional motions as they are scheduled.

3 The motion is GRANTED in its entirety. Defendant Margaret Osborn is awarded
4 attorneys' fees in the amount of \$20,149.50 and costs in the amount of \$733.19.

5 Moving party is ordered to give notice.

6 DATED: April 3, 2018

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8 Hon. Samantha P. Jessner
9 Los Angeles Superior Court
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