

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/30/08

DEPT. 57

HONORABLE RALPH W. DAU

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE
#10

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. INNIS, C.A.

Deputy Sheriff

NONE

Reporter

BC369626

Plaintiff

Counsel

ACADEMIA SEMILLAS DEL PUEBLO ET

NO APPEARANCE

VS

Defendant

DOUG MCINTYRE ET AL

Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

The court having taken defendant's motion for attorney fees under submission on April 17, 2008 comes now and rules as indicated below and as more fully reflected in the Order on attorneys' fee, which is signed and filed this date and incorporated herein by reference to the court file.

IT IS ORDERED that defendants are entitled to recover from plaintiff attorneys' fees in the amount of \$193,822.50.

A conformed copy of the order is mailed to counsel as indicated below.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 05/30/2008 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

<p align="center">MINUTES ENTERED 05/30/08 COUNTY CLERK</p>
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Plaintiff

Counsel

ACADEMIA SEMILLAS DEL PUEBLO ET
VS

NO APPEARANCE

Defendant

DOUG MCINTYRE ET AL

Counsel

NATURE OF PROCEEDINGS:

Date: May 30, 2008

John A. Clarke, Executive Officer/Clerk

By:



DANIEL J. BRAMZON
LAW OFFICE OF DANIEL J. BRAMZON
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✓ SETH BERLIN
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1050 SEVENTEENTH STREE, N.W., STE. 800
WASHINGTON, D.C. 20036

MINUTES ENTERED
05/30/08
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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R. INNIS, C.A.

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Reporter

BC369626

Plaintiff

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ACADEMIA SEMILLAS DEL PUEBLO ET

NO APPEARANCE

VS

Defendant

DOUG MCINTYRE ET AL

Counsel

NATURE OF PROCEEDINGS:

ASHLEY I. KISSINGER
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1888 SHERMAN STREET, STE. 370
DENVER, CO 80203

Superior Court of California, County of Los Angeles
Case No. BC369626, Academia Semillas del Pueblo v. McIntyre MAY 30 2008
Department 57
Order on attorneys' fees

LOS ANGELES
SUPERIOR COURT

Defendants Douglas McIntyre, ABC Inc., American Broadcasting Companies Inc., ABC Radio Network Inc., and LA Radio LLC have moved for attorneys' fees as the prevailing parties on an anti-SLAPP motion. Defendants argue that the fees being requested are reasonable given the complex nature of the case and their complete victory on the motion.

In opposition, plaintiffs argue that the amount of fees requested is unreasonable. Plaintiffs claim that defendants unnecessarily had five attorneys working on the case, that there were only three contested issues, which were purely legal in nature, that the associates' billing rates and the amount of time that they spent on the case are excessive, that fee awards in similar cases have been much lower, that plaintiff's attorneys billed much less than the fees being sought, to prepare the opposition to the motion, and that the billing records are vague and show that much of the work done by defendants' counsel was duplicative.

In reply, defendants argue that the fees being requested are reasonable given the numerous and complex issues raised by the complaint and because of the aggressive way in which plaintiffs litigated the case. Defendants claim that only three lawyers did the vast majority of the work on the case and that the associates' billing rates are reasonable. Defendants also argue that the amount paid by plaintiffs to litigate the case and plaintiffs' financial condition are irrelevant in determining a proper fee award.

Evidentiary Issues

Plaintiff's objections

Kelli Sager declaration. Objections 1-2, 4-5, and 7-9 are overruled. Objection 3 is sustained on the ground of improper opinion. Objection 6 is sustained on the ground of lack of foundation as to the preeminence of declarant's organization. Objection 10 is sustained on the ground of relevance.

Ashley Kissinger declaration. Objections 1, 4-7, 9, and 17-20 are overruled. Objections 12-16 are overruled except as to the reasonableness of the fees which is sustained on the ground of improper lay witness testimony. Objections 2-3, 8, and 10-11 are sustained on the ground of lack of foundation.

Defendants' objections

Minnie Ferguson declaration. Objections 1-8 are sustained on the ground of relevance.

Daniel Bramzon declaration. Objections 2-3 are overruled. Objection 1 is sustained on the ground of relevance. Objection 4 is sustained as argument.

James Moneer declaration. Defendants' general objection is overruled. Objections 1-7, 13-14, 16-18, 26, 30, 32-33, 36, 46, 47, and 49 are overruled. Objections 8, 10-11, 20, 45, and 48 are sustained on the ground of relevance. Objections 12 and 15 are sustained on the ground of lack of personal knowledge. Objections 9, 19, 22-25, 29, 31, 37, and 41-44 are sustained as argument. Objections 21, 27-28, 34, and 40 are sustained on the ground of lack of foundation. Objections 35, 38, and 39 are sustained on the ground of misrepresenting the record.

Request for Judicial Notice

Plaintiffs request judicial notice of two fee award rulings and of two federal cases. Pursuant to Evidence Code section 452(a) and 452(d), the court takes judicial notice as requested.

Attorneys' Fees

A prevailing defendant on a special motion to strike pursuant to Code of Civil Procedure section 425.16 is entitled to recover its reasonable attorneys' fees and costs incurred on the motion to strike. Such an award is mandatory. "Courts generally apply a lodestar approach (i.e., number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar work) in setting a fee award under CCP §.425.16. [Citation.] [¶] The lodestar amount may be adjusted by such factors as the moving party's attorney's experience and abilities, and the novelty and difficulty of the issues involved in the motion. [Citation.]" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) § 7.263.1.)

Plaintiffs argue that the requested fees are unreasonable because the number of attorneys that defendants used on the case is grossly excessive. The time records show, however, that only three attorneys, Berlin, Kissinger, and Platt, billed the vast majority of the hours. Amanda Leith only billed for several specific tasks such as researching issues relating to the dismissal of three causes of action, preparing evidentiary objections, and assisting with the motion for fees.

Plaintiffs argue that the billing rates for Mr. Platt and Ms. Leith are excessive, given their level of experience in the relevant area of law. Defendants present evidence, however, that the rates of \$280 and \$295 per hour are reasonable considering the typical rate charged by media lawyers in the area with similar experience. (Decl. Kelli Sager ¶ 5.) Further, the court's own analysis is that the hourly rates charged were reasonable. (See *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154-156.)

Plaintiffs argue that the overall number of hours billed by defendants' counsel were excessive. The time records of defendants' counsel show that, between September 6 and September 21, 2007, counsel spent approximately 50 hours reviewing the amended complaint, preparing an outline of the anti-SLAPP motion and the research projects that would be required, investigating the background facts of the case, discussing the case with their client, and performing initial legal research. (Motion, Ex. A.) Between September 23 and October 14, counsel spent approximately 235 hours talking to witnesses, investigating the background of the case, conducting legal research on various issues raised by the complaint, and drafting the motion and Douglas McIntyre's declaration. (*Ibid.*) From October 15 to November 15, counsel spent approximately 240 hours conferring with plaintiff, reviewing the opposition, researching issues for the reply and preparing the reply brief, reviewing plaintiff's objections and preparing objections to plaintiff's evidence, and preparing for the hearing of the motion. (*Ibid.*) From November 15 to January 28, 2008, counsel spent approximately 21 hours reviewing the ruling on the anti-SLAPP motion and preparing the memorandum of costs. (*Ibid.*)

While counsel for defendants did spend a significant amount of time litigating the case, the court finds that the time spent was reasonable and necessary given the number and complexity of the issues presented and plaintiffs' aggressive opposition. The complaint contains five causes of action against five defendants arising from a series of statements made by defendant McIntyre over the course of the spring and summer of 2006. (FAC ¶ 15.) Defendants, in preparing their anti-SLAPP motion, had to research the factual background of the case which included statements made over the course of several months in 2006. Defendants also had to research and address a significant number of complex issues raised by the complaint including protected opinion and rhetorical hyperbole, privileged report of governmental information, plaintiffs' standing, incitement, and the appropriateness of naming certain defendants as well as other claims such as tortious interference with prospective business relations and negligence. Defendants' motion was thoroughly researched and contained an extensive analysis of the issues presented.

In opposition to the anti-SLAPP motion, plaintiffs filed a thorough opposition analyzing the relevant issues. They also filed ten declarations with hundreds of pages of exhibits and 38 evidentiary objections to defendants' evidence. Defendants then filed a reply, also containing a detailed analysis of the issues, with supplemental declarations and exhibits and dozens of their own evidentiary objections.

A review of the time logs submitted by counsel for defendants does not disclose, as argued by plaintiffs, any double billing or an attempt to recover fees incurred for settlement negotiations or other non-compensable activities. Moreover, the fee statements presented defendants' attorneys were reviewed by a sophisticated client and paid in full without any request for reduction. (Orr Decl. ¶ 6.) Although the court has made

its own review, this is an indicia of reasonableness. The court finds that the fees requested (including the hourly charges and the hours billed) are reasonable given the nature and difficulty of the litigation, the skill of defendants' counsel, the importance of the litigation, and the complete success of the anti-SLAPP motion. (See *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659.)

Disposition

IT IS ORDERED that defendants are entitled to recover from plaintiff attorneys' fees in the amount of \$193,822.50.

Dated: May 30, 2008

RALPH W. DAU

Ralph W. Dau, Judge