

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 55

BC600373

**YOUTH FOR ENVIRONMENTAL JUSTICE ET AL VS CITY
OF LOS ANGELES**

July 6, 2021

8:30 AM

Judge: Honorable Malcolm Mackey

CSR: LaWanna Walters Corson #7135
(Appearing by Court Connect)

Judicial Assistant: S. Ontiveros

ERM: None

Courtroom Assistant: M Kinney

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Kassia R. Siegel (Telephonic); Adam Brett Wolf (Telephonic)

For Defendant(s): Jeffrey David Dintzer and Jeffrey Carlin (x) (Telephonic); Jennifer Kathleen Tobkin (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Attorney Fees; Hearing on Motion for Attorney Fees; Hearing on Motion to Tax Costs

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, LaWanna Walters Corson #7135, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

Matter is called for hearing.

The Court has read and considered all documents filed hereto regarding the above-captioned Motion. A copy of the court's tentative ruling was published to the court's website.

Parties are given the opportunity to argue. After hearing from the parties, the Court adopts its tentative ruling set forth below as the Final Ruling:

The Motion for Attorney Fees filed by City of Los Angeles on 05/24/2021 is Granted.

The Motion for Attorney Fees filed by Youth for Environmental Justice, Center for Biological Diversity, South Central Youth Leadership Coalition on 05/24/2021 is Granted.

The Motion to Tax Costs filed by California Independent Petroleum Associat on 04/23/2021 is Denied.

Both motions for attorneys' fees are granted, as prayed.

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The Court awards to cross-defendants, CITY OF LOS ANGELES, THE CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING and MICHAEL J. LOGRANDE, attorneys' fees in the sum of \$1,002,816.00 (\$1,009,875.00 – 7,059) against Cross-Complainant CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION. The court amends this amount back to the original requested amount of \$1,032,750.00 which is awarded to moving party and against California Independent Petroleum Association.

The Court awards to cross-defendants, YOUTH FOR ENVIRONMENTAL JUSTICE, THE SOUTH CENTRAL YOUTH LEADERSHIP COALITION, and THE CENTER FOR BIOLOGICAL DIVERSITY, attorneys' fees in the sum of \$1,224,603.60, against Cross-Complainant CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION.

The motion to tax costs is denied.

The Court allows to cross-defendants, YOUTH FOR ENVIRONMENTAL JUSTICE, SOUTH CENTRAL YOUTH LEADERSHIP COALITION and CENTER FOR BIOLOGICAL DIVERSITY, costs in the total amount of \$8,642.46.

Attorneys' Fees

As to both motions for attorneys' fees, the Court finds that the sum of attorneys' fees are recoverable and reasonable, particularly considering that this case involves complex land-use and constitutional law, was vigorously litigated for about 5 years, and involved appellate and supreme court proceedings.

While the attorneys' fees rates are higher than the average case, the amounts above \$700 are justified by moving parties' declarations, and are the market rate as to uniquely skilled attorneys well experienced in the areas of land-use and constitutional law.

A multiplier is justified, including because of litigation skill needed to address complexity and vigorous litigation, while working at risk under a contingency agreement, and taking time away from other potential legal work.

While several attorneys worked on the case, the number was justified by the intense and complex nature, and unusually long duration of the case.

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Further, the opposing evidence does not meet the burden to disprove the above findings, it consisting mostly of a neutral procedural summary of this action, with a little of addressing attorneys' fees rates, as to which flexible Court discretion is involved.

In supporting attorneys' fees motions, " 'there is no required level of detail that counsel must achieve.' " Syers Properties III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 699.

" 'In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice.' " Lunada Biomedical v. Nunez (2014) 230 Cal.App.4th 459, 488. Parties opposing motions for attorneys' fees fail to show any abuse of discretion where they merely contend that amounts of attorneys' fees are excessive without providing a specific analysis or factual support. Mallard v. Progressive Choice Ins. Co. (2010) 188 Cal.App.4th 531, 545; Raining Data Corp. v. Barrenechea (2009) 175 Cal.App.4th 1363, 1376 (an "'assertion [that] is unaccompanied by any citation to the record or any explanation of which fees were unreasonable or duplicative' is insufficient to disturb the trial court's discretionary award of attorney fees."); Maughan v. Google Technology, Inc. (2006) 143 Cal. App. 4th 1242, 1250; Avikian v. Wtc Fin. Corp. (2002) 98 Cal. App. 4th 1108, 1119; Premier Medical Management Systems, Inc. v. California Insurance Guarantee Association (2008) 163 Cal.App.4th 550, 560 (emphasizing that opposing parties "submitted no evidence that the hours claimed by counsel were excessive," and declining to "declare as a matter of law that the hours were unreasonable"); Villanueva v. City of Colton (2008) 160 Cal.App.4th 1188, 1204 (opposing party "offered no evidence of any kind which might have warranted a reduced fee award.").

As to a determination of the amount of attorney fees, "an abuse of discretion transpires if 'the trial court exceeded the bounds of reason' in making its award of attorney fees." Maughan v. Google Technology, Inc. (2006) 143 Cal.App.4th 1242, 1250 (involving attorney fee award as to anti-SLAPP matter). However, the requirement of substantial evidence is inapposite as to attorney fee awards. *Id.* at 1249. A cited case in opposition repeatedly emphasized it was reviewing a court's exercise of discretion, as distinguished from confining trial judges to one result. See *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 441

The attorneys' fees and costs recoverable are only those incurred as to the special motion to

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strike, and not as to other litigation events. 569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (4th Dist. 2016) 6 Cal.App.5th 426, 433 (fees may not include matters unrelated to SLAPP motion, such as attacking service of process, answers, summary judgments, obtaining the docket and case-management conferences); Jackson v. Yarbray (2nd Dist. 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 (4th Dist. 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. (1st Dist. 1995) 39 Cal.App.4th 1379, 1383. But see Vargas v. City of Salinas (6th Dist. 2011) 200 Cal.App.4th 1331, 1351 (distinguishing Lafayette because only one of several claims was subject to the section 425.16 motion, whereas in Vargas all claims were dismissed, and thus all fees incurred post-judgment were incurred in connection with the section 425.16 motion.); Wilkerson v. Sullivan (4th Dist. 2002) 99 Cal.App.4th 443, 446 (“The 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.”); Dove Audio, Inc. v. Rosenfeld, Meyer & Susman (2nd Dist. 1996) 47 Cal.App.4th 777, 785 (“section authorizes the court to make an award of reasonable attorney fees to a prevailing defendant, which will adequately compensate the defendant for the expense of responding to a baseless lawsuit.”); Robertson v. Rodriguez (2nd Dist. 1995) 36 Cal.App.4th 347, 362 (“The right of prevailing defendants to recover their reasonable attorney fees under section 425.16 adequately compensates them for the expense of responding to a baseless lawsuit.”).

Attorneys’ fees incurred in motions enforcing the right to mandatory fees under Code of Civil Procedure Section 425.16, are recoverable. Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1141. The provisions for awarding attorney fees and costs under Code of Civil Procedure Section 425.16, subdivision (c), include the authority to award fees incurred in responding to an appeal of an order on a special motion to strike. City of Alhambra v. D’Ausilio (2011) 193 Cal. App. 4th 1301, 1309-10.

A court “ ‘indicated a fee reduction was warranted because it was unreasonable to have so many lawyers staffing a ... case that did not present complex or unique issues, did not involve discovery motions, and did not go to trial.’ ” Mikhaeilpoor v. BMW of North America, LLC (2020) 48 Cal.App.5th 240, 253. [Emphases added.]

Judges are not required to award the market rate of attorneys’ fees, and may have discretion to

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determine that the actual rate charged was reasonable. *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702. In setting the hourly rate for an attorney fees award, courts are entitled to consider the rate of “fees customarily charged by that attorney and others in the community for similar work.” *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, 997 (affirming rate of \$450 per hour), overruled on other grounds by *Lakin v. Watkins Associated Indus.* (1993) 6 Cal. 4th 644, 664.

Support services costs are includable in an award for attorneys’ fees. *City of Oakland v. McCullough* (1996) 46 Cal.App.4th 1, 7. Counsel’s disbursement costs, such as copying, telephone, expert fees and travel, are recoverable costs as a part of attorney fees, “if they represent expenses ordinarily billed to a client and are not included in the overhead component of counsel’s hourly rate.” *Bussey v. Affleck* (1st Dist. 1990) 225 Cal. App. 3d 1162, 1166-67. But see, e.g., *Benson v. Kwikset Corp.* (4th Dist. 2007) 152 Cal. App. 4th 1254, 1283 (recognizing great weight of a split of authority disagreeing with *Bussey*, and holding that attorney fees awards do not include expenses); *Fairchild v. Park* (2d Dist. 2001) 90 Cal. App. 4th 919, 930 (disagreeing with *Bussey* and following view that attorney fees and expenses are distinctly different by statute).

“Code of Civil Procedure section 425.16, allows a court awarding attorney fees to include a fee enhancement for the purpose, e.g., of compensating the attorney who agreed to undertake such representation at the risk of nonpayment or delayed payment, in an amount approaching the market rate for comparable legal services.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136. “The award of a multiplier is in the end a discretionary matter largely left to the trial court.” *Hogar v. Community Development Com’n of City of Escondido* (2007) 157 Cal.App.4th 1358, 1371. “[T]he trial court is not required to include a fee enhancement for exceptional skill, novelty of the questions involved, or other factors. Rather, applying a multiplier is discretionary.” *Rey v. Madera Unif. Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1242.

Costs

Costs authorized include those under the SLAPP statute, CCP Section 425.16(c), existing independently without limitations of other statutory bases, such as CCP Sections 1032 and 1033.5 addressed below.

Courts have discretion as to whether to disallow costs not reasonably incurred. *Michell v. Olick* (1996) 49 Cal.App.4th 1194, 1201; *Perko's Ent., Inc. v. RRNS Ent.* (1992) 4 Cal.App.4th 238,

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245; *El Dorado Meat Co. v. Yosemite Meat and Locker Service, Inc.* (2007) 150 Cal.App.4th 612, 616. "Whether a cost is 'reasonably necessary to the conduct of the litigation' is a question of fact for the trial court, whose decision will be reviewed for abuse of discretion." *Gibson v. Bobroff* (1996) 49 Cal. App. 4th 1202, 1209. *Accord Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1487. "[T]he burden is on the party challenging these costs to demonstrate that they were not reasonable or necessary." *Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1486.

Routine local travel expenses, including parking fees, cab fares and mileage, unrelated to attending depositions are recoverable if evidenced to be reasonably necessary to the conduct of litigation, as opposed to being convenient. *Ladas v. Cal. State Auto. Ass'n* (1993) 19 Cal. App. 4th 761, 775-76. But see *Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 72 (expenses for travel unrelated to depositions are not recoverable as costs).

"Messenger fees ... may be allowed in the discretion of the court." *Nelson v. Anderson* (1999) 72 Cal. App. 4th 111, 132. *Accord Benach v. County of L.A.* (2007) 149 Cal. App. 4th 836, 858. Costs for overnight messengers may be recoverable if reasonable and necessary. *Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 75.

"If a specific cost item is not identified in either section 1033.5, subdivision (a), or subdivision (b), it may be awarded in the trial court's discretion under section 1033.5, subdivision (c)(4), provided it satisfies the further requirement of section 1033.5, subdivision (c)(2), that it was reasonably necessary to the conduct of the litigation." *Seever v. Copley Press, Inc.* (2006) 141 Cal.App.4th 1550, 1558. *Accord Gibson v. Bobroff* (1996) 49 Cal. App. 4th 1202, 1207; *Michell v. Olick* (1996) 49 Cal. App. 4th 1194, 1200.

Counsel for California Independent Petroleum Association requests that the court order a 60 day stay of execution of the judgment. Request is granted. Execution of judgment is stayed for 60 days (9/7/21).

Counsel for moving parties are to prepare and submits orders and give notice.