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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
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10 AARON FILLER, M.D., PHD, an individual;
AARON FILLER, M.D., PHD, APC, a
11 California Professional Corporation; IMAGE-
BASED SURGICENTER CORPORATION, a
12 California Corporation; and NEUROGRAHY
INSTITUTE MEDICAL ASSOCIATES, a
13 California Corporation;

14 Plaintiffs,

15 v.

16 SUSAN WALKER, an individual; and DOES
1 to 25, inclusive,

17 Defendants.
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CASE NO. BC 462605

**ORDER GRANTING DEFENDANT'S
MOTION FOR ATTORNEYS' FEES
AND COSTS PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §425.16**

Date: July 20, 2012
Time: 8:30 a.m.
Dept: 48

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21 The Motion of Defendant SUSAN WALKER for an Order Granting Defendant Attorneys'
22 Fees and Costs Pursuant to California Code of Civil Procedure Section 425.16 came on for
23 hearing on July 20, 2012 in Department 48 of the above-captioned Court. Niloo Savis, Esq.,
24 counsel of SAVIS LAW appeared for Defendant SUSAN WALKER. Aaron P. Morris, Esq. of
25 Morris & Stone appeared on behalf of Plaintiffs AARON FILLER, M.D., PHD; AARON
26 FILLER, M.D., PHD, APC; IMAGE-BASED SURGICENTER CORPORATION, and
27 NEUROGRAHY INSTITUTE MEDICAL ASSOCIATES.
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Having read the moving and opposing pleadings filed by the parties and having heard argument of counsel, the Court ruled as set forth in the Court's tentative ruling, a true and correct copy of which is attached hereto as Exhibit "A."

THEREFORE, IT IS ORDERED:

1. Defendant Susan Walker's Notice of Motion and Motion for Attorneys' Fees and Costs Pursuant to California Code of Civil Procedure Section 425.16(c) is granted in the amount of \$50,259.65.
2. Plaintiffs AARON FILLER, M.D., PHD; AARON FILLER, M.D., PHD, APC: IMAGE-BASED SURGICENTER CORPORATION, and NEUROGRAHY INSTITUTE MEDICAL ASSOCIATES are ordered to pay Defendant Susan Walker attorneys' fees and costs in the amount of Fifty Thousand Two Hundred Fifty Nine Dollars and Sixty-Five Cents (\$50,259.65) within twenty days of this Order.
3. Defendant Susan Walker's Evidentiary Objections to the Declaration of Aaron Morris, Esq. (Counsel for Plaintiffs) are granted with respect to objection number 2 and overruled with respect to objection number 1.

Date: _____, 2012 _____

The Honorable Elizabeth Allen White

EXHIBIT A

TENTATIVE RULING

HEARING DATE: **July 20, 2012**

DISMISSED: **May 8, 2012**

CASE: **Aaron Filler, M.D., et al. v. Susan Walker**

CASE NO.: **BC462605**

Opposed: **Yes.**

MOTION FOR ATTORNEYS FEES

MOVING PARTY: Defendant Susan Walker

RESPONDING PARTY(S): Plaintiffs Aaron Filler, MD, PHD, APC; Image Based Surgicenter Corporation; and Neurography Institute Medical Associates, Inc.

PROOF OF SERVICE:

- Correct Address: Yes.
- 16/21 (CCP § 1005(b)): (1), (2) & (3) OK. Served by personal service on June 27, 2012.

- **GRANT motion for attorney's fees and costs in the amount of \$50,259.65.**

ANALYSIS

Defendant's Evidentiary Objections

No. 1: OVERRULED.

No. 2: SUSTAINED.

Defendant Susan Walker brings a motion for attorneys fees as the prevailing party pursuant to CCP § 425.16(c)(1), seeking an award of \$68,689 against Plaintiffs.

[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). (See, e.g., S. B. Beach Properties v. Berti (2006) 39 Cal.4th 374, 381 [46 Cal. Rptr. 3d 380, 138 P.3d 713] ["the fee 'provision [under § 425.16] applies only to the motion to strike, and not to the entire action'"]; Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 39 Cal.App.4th 1379, 1383 [46 Cal. Rptr. 2d 542] [legislative history of § 425.16 "clearly show[s] the Legislature intended that a prevailing defendant on a motion to strike be allowed to recover attorney fees and costs only on the motion to strike, not the entire suit"].)

In awarding fees the trial court is not constrained by the amount sought by the successful moving parties (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361 [42 Cal. Rptr. 2d 464]), 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.” (Id. at p. 362; accord, *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785 [54 Cal. Rptr. 2d 830].) **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.**

([*93] *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”].)

In determining the fee award pursuant to section 425.16, the court may utilize the lodestar method addressed in *Serrano v. Priest* (1977) 20 Cal.3d 25 [141 Cal. Rptr. 315, 569 P.2d 1303] and in appropriate cases may include a fee enhancement for the purpose of compensating the attorney for contingent risk, exceptional skill or other factors. (*Ketchum v. Moses*, supra, 24 Cal.4th at pp. 1136, 1138.)

Jackson v. Yarbray (2009) 179 Cal.App.4th 75, 93 (bold emphasis and underlining added).

Reasonableness of Attorney’s Fees

“The California Supreme Court has upheld the lodestar method for determining the appropriate amount of attorney fees for a prevailing defendant on an anti-SLAPP motion.” *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 342.

In determining the amount of reasonable attorney fees to be awarded under a statutory attorney fees provision, the trial court begins by calculating the “lodestar” amount. (Citations omitted.) The “lodestar” is “the number of hours reasonably expended multiplied by the reasonable hourly rate.” (Citation omitted.) To determine the reasonable hourly rate, the court looks to the “hourly rate ... prevailing in the community for similar work.” (Ibid.) Using the lodestar as the basis for the attorney fees award “anchors the trial court’s analysis to an objective determination of the value of an attorney’s services, ensuring that the amount awarded is not arbitrary. [Citation.]” (Ibid.)

The California Supreme Court has further instructed that attorney fees awards "should be fully compensatory." (Citation omitted.) Thus, in the absence of "circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee. [Citation.]" (Ibid.) However, "[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (Citation omitted.)

As this court has previously observed, "California courts have long held that trial courts have broad discretion in determining the amount of a reasonable attorney's fee award. This determination is necessarily ad hoc and must be resolved on the particular circumstances of each case." (Citation omitted.) In exercising its discretion, the trial court may accordingly "consider all of the facts and the entire procedural history of the case in setting the amount of a reasonable attorney's fee award." (Ibid.) . . .

Bernardi v. County of Monterey (2008) 167 Cal.App.4th 1379, 1393-94 (bold emphasis added).

The Court will discuss its billing reductions on an exhibit-by-exhibit basis. The Court notes that it will not allow Defendant to recover attorney's fees for time spent analyzing litigating in federal court, and other time which was related to the general action, such as discussing defense strategy, or which otherwise would have been incurred regardless of whether an anti-SLAPP special motion to strike had been filed. Per Jackson, supra, there must be a direct relation to the special motion to strike, which would include discovery to support the motion. Recovery for time spent on the demurrer and regular motion to strike will not be allowed.

Re: Exhibit 5: The Court is reducing fees billed in the total amount of \$3,395.

Re: Exhibit 6: The Court is reducing fees billed in the total amount of \$2,805.

Re: Exhibit 7: The Court is reducing fees billed in the total amount of \$2,625. Costs reflected in the amount of \$7.94 will be allowed.

Re: Exhibit 8: The Court is reducing fees billed in the total amount of \$875.

Re: Exhibit 9: The Court is reducing fees billed in the total amount of \$840.

Re: Exhibit 10: The Court is reducing fees billed in the total amount of \$1,470. Costs reflected in the amount of \$24 will be allowed.

TOTAL REDUCTION IN ATTORNEYS FEES BILLED IN CONNECTION WITH THE SPECIAL MOTION TO STRIKE = \$12,010

Re: Costs

The language in Jackson, supra, recognizing that a defendant may recover costs of discovery related to the anti-SLAPP motion is an indication that the recovery of costs permitted under CCP § 425.16(c)(1) is not limited by the categories set forth in CCP § 1033.5, which does not permit the costs of discovery to be recovered by a prevailing party as a matter of right. As such, Plaintiff's recovery of costs is not limited by the categories set forth in CCP § 1033.5.

The court has reviewed the costs set forth in Exhibit 11: The Court is disallowing the costs incurred from June to September 2011 for general litigation costs. Defendant had the opportunity to demonstrate which portion of these costs was attributable to the anti-SLAPP motion, but did not. However, the Court will allow the expert costs (see Declaration of Niloo Savis, ¶¶ 34, 35) and litigation costs reflected in Exhibits 7 and 10.

TOTAL REDUCTION IN COSTS SOUGHT IN CONNECTION WITH THE SPECIAL MOTION TO STRIKE = \$1,134.35.

Additional Fees Incurred in Bringing the Instant Motion for Attorney's Fees

Per the Declaration of Niloo Savis, ¶ 37, Plaintiff incurred \$13,425 in attorney's fees for 37.5 hours and \$300 in costs in connection with this motion for fees. The Court finds that 24 hours is a reasonable number of hours in this regard. At \$350 per hour, the Court will allow \$8,400 and reduce the request by \$5,025.

The Court will allow a \$40 filing fee for the instant attorney's fees motion. The remaining \$260 in claimed costs are not sufficiently explained and will be disallowed.

TOTAL REDUCTION IN ATTORNEY'S FEES SOUGHT IN BRINGING THE ATTORNEYS FEES MOTION = \$5,025.

TOTAL REDUCTION IN COSTS SOUGHT IN BRINGING THE ATTORNEY'S FEES MOTION = \$260.

Conclusion:

Defendant requested \$68,689 in total attorney's fees and costs. The total amount of reductions based on the Court's disallowance totals \$18,429.35. The remaining sum of \$50,259.65 will be awarded for attorney's fees and costs.

Defendant Susan Walker's motion for attorney's fees and costs is GRANTED in the amount of \$50,259.65.

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

On July 24, 2012, I served the foregoing document(s) described as:

DEFENDANT SUSAN WALKER'S REPLY TO PLAINTIFFS' OPPOSITION TO NOTICE OF MOTION TO STRIKE COMPLAINT PURSUANT TO C.C.P. §425.16

on the interested parties in this action:

by placing / the original a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

(BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service, postage pre-paid, this same day in the ordinary course of business at our office's address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery. I placed true copies of the foregoing document in a sealed envelope or package designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

(BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed on July 24, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Monika Vogl

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SERVICE LIST

<p>Aaron P. Morris, Esq. Deanna Stone Killeen, Esq. MORRIS & STONE, LLP 17852 E. 17th St., Suite 201 Tustin, CA 92780 Tel: (714) 954-0700</p>	<p>Attorneys for Plaintiffs AARON FILLER, M.D., NEUROGRAHY INSTITUTE MEDICAL ASSOCIATES, INC.; IMAGE- BASED SURGICENTER CORPORATION; INSTITUTE FOR NERVE MEDICINE MEDICAL GROUP, INC.</p>
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