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8 **United States District Court**
9 **Central District of California**
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11 ITN FLIX, LLC, et al.,
12 Plaintiffs,
13 v.
14 GLORIA HINOJOSA, et al.,
15 Defendants.

Case No.: 2:14-CV-08797-ODW (AGRx)

**ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND COSTS
[143]**

16
17 **I. INTRODUCTION**

18 Following the Court's Order Granting, In Part, Defendants Robert Rodriguez,
19 Machete Kills, LLC, El Chingon, Inc., Troublemaker Studios, L.P., and Quick Draw
20 Productions, LLC's (collectively, "Defendants") Special Motion to Strike Pursuant to
21 California's Anti-SLAPP Statute ("Anti-SLAPP Order," ECF No. 136), Defendants
22 moved to recover their attorneys' fees and costs (Mot. for Att'y's Fees ("Mot."), ECF
23 No. 143.) Defendants seek an award of \$341,778.19 in attorneys' fees and \$1595.54
24 in costs as the prevailing party under California Code of Civil Procedure section
25 425.16. (Mot. 1.) For the following reasons, the Court **GRANTS IN PART** and
26 **DENIES IN PART** Defendants' Motion.¹

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28 ¹ After considering the papers filed in connection with this Motion, the Court deemed this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 **III. LEGAL STANDARD**

2 California’s anti-SLAPP (Strategic Lawsuit against Public Participation) statute
3 allows defendants to make a special motion to strike a claim if that claim arises from
4 an act by the defendants to further their right of petition or free speech in connection
5 with a public issue. Cal. Civ. Proc. Code § 425.16(b)(1); *see also Newsham v.*
6 *Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) (concluding that
7 the twin aims of the *Erie* doctrine “favor application of California’s anti-SLAPP
8 statute in federal cases”). “[A] prevailing defendant on a special motion to strike shall
9 be entitled to recover [its] attorney’s fees and costs.” Cal. Civ. Proc. Code
10 § 425.16(c)(1); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001) (“[A]ny SLAPP
11 defendant who brings a successful motion to strike is entitled to mandatory attorney
12 fees.”).

13 **A. Prevailing Party**

14 A party that partially prevails on an anti-SLAPP motion “must generally be
15 considered a prevailing party unless the results of the motion were so insignificant that
16 the party did not achieve any practical benefit from bringing the motion.” *Mann v.*
17 *Quality Old Time Serv., Inc.*, 139 Cal. App. 4th 328, 340 (2006). Here, Plaintiffs
18 expressly concede that Defendants partially prevailed on their Anti-SLAPP Motion
19 and are entitled to an award of fees and costs. (*See* Opp’n to Mot. (“Opp’n”) 1, ECF
20 No. 144.) Defendants are therefore entitled to reasonable attorneys’ fees and costs.

21 **B. Reasonableness of Hours**

22 The party seeking attorneys’ fees and costs bears “the burden of establishing
23 entitlement to an award and documenting the appropriate hours expended and hourly
24 rates.” *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1020 (2001) (internal
25 quotation marks omitted). A reasonable fee is determined by the lodestar figure,
26 which is calculated by multiplying the number of hours reasonably expended by a
27 reasonable hourly rate. *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992).
28 Additionally, a party who prevails on an anti-SLAPP motion is entitled to recover

1 attorneys’ fees “to establish and defend the fee claim,” also known as “fees on fees.”
 2 *Ketchum*, 24 Cal. 4th at 1141. “A prevailing defendant is also entitled to appellate
 3 attorney fees and costs.” *Metabolife Int’l, Inc. v. Wornick*, 213 F. Supp. 2d 1220,
 4 1222 (S.D. Cal. 2002).

5 Here, Plaintiffs concede the “reasonableness of the hourly billing rates” of
 6 Defendants’ counsel and that “lodestar can be an appropriate calculation
 7 methodology.” (Opp’n 1.) In fact, Plaintiffs admit that Defendants are entitled to at
 8 least \$166,995.02 in fees, rather than the \$343,373.73 Defendants request.
 9 (Opp’n 21.) Hence, the only inquiry before the Court is the reasonableness of the
 10 hours expended by Defendants’ counsel on the relevant motions and appellate
 11 proceedings.

12 Defendants’ counsel claim they collectively spent more than 741 hours on the
 13 initial Anti-SLAPP Motion, the appellate proceedings, the Renewed Anti-SLAPP
 14 Motion, and the instant fee Motion (as shown below). (Mot. 1; *see* Decl. of Joel R.
 15 Weiner (“Weiner Decl.”), ECF No. 143.) “As a further gesture to simplify this Fee
 16 Motion” Defendants’ counsel “reduc[ed] the amounts requested by another five
 17 percent (5%), as indicated in the calculations below.” (Weiner Decl. ¶ 9).

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Anti-SLAPP Motion			
Name	Rate	Hours	Lodestar
Joel Weiner	\$495	49.4	\$24,453.00
Ryan Larsen	\$495	115.7	\$57,271.50
Courtnee Draper	\$400	46.9	\$18,760.00
	Totals	212	\$100,484.50
Requested After 5% Reduction			\$95,460.28

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Appellate Proceedings			
Name	Rate	Hours	Lodestar
Joel Weiner	\$495	102.4	\$50,688.00
Ryan Larsen	\$495	226.8	\$112,266.00
Courtnee Draper	\$400	80.9	\$32,360.00
Lindsey Smith	\$400	15.5	\$6200.00
	Totals	425.6	\$201,514.00
Requested After 5% Reduction			\$191,438.30

Renewed Anti-SLAPP Motion ²			
Name	Rate	Hours	Lodestar
Joel Weiner	\$495	1.6	\$792.00
Ryan Larsen	\$495	16.2	\$6480.00
Joel Weiner	\$535	36.9	\$19,741.50
Ryan Larsen	\$535	12.1	\$6473.50
Katherine Motsinger	\$415	5.1	\$2116.50
	Totals	54.1	\$35,603.50
Requested After 5% Reduction			\$33,823.33

Fee Motion			
Name	Rate	Hours	Lodestar
Joel Weiner	\$535	14.9	\$7971.50
Katherine Motsinger	\$415	34.2	\$14,193.00
	Totals	49.1	\$22,164.50
Requested After 5% Reduction			\$21,056.28

Defendants' counsel attach copies of billing records detailing hours worked on the Anti-SLAPP Motion, appellate proceedings, Renewed Anti-SLAPP Motion, and

² During this time, Defendants' billing rates increased. (See Weiner Decl. ¶ 14.)

1 the instant fee Motion. (See Weiner Decl. ¶¶ 12–15, Exs. 1–4.) Counsel further
2 delineates the tasks performed as to each motion and the appeal and generally attests
3 to the necessity of work performed. (See generally Weiner Decl.)

4 Plaintiffs, in turn, ask the Court to reduce the total award to \$166,995.02.
5 (Opp’n 21.) Plaintiffs primarily argue that Defendants should have limited the
6 Anti-SLAPP Motion to a challenge on the legal sufficiency of the pleadings, thereby
7 “efficiently” avoiding the relatively expensive evidentiary disputes inherent in a
8 factual challenge. (Opp’n 1, 15–16.) But Plaintiffs do not and cannot cite authority
9 requiring a party to limit an anti-SLAPP motion to the sufficiency of the pleadings to
10 recover fees associated with that motion, nor do Plaintiffs cite authority justifying a
11 reduced award based on the alleged “inefficiency” of a successful litigation strategy
12 based on well-grounded, alternative legal theories (as opposed to inefficient execution
13 of that strategy). On the contrary, courts regularly award full attorneys’ fees
14 associated with an anti-SLAPP motion challenging the legal *and* factual sufficiency of
15 a complaint, even where either such challenge could have been independently
16 successful. See *Wornick*, 213 F. Supp. 2d at 1228. The Court therefore rejects
17 Plaintiffs’ unfounded invitation to reduce a fee award based on second-guessing
18 Defendants’ decision to assert both a legal and factual challenge to Plaintiffs’
19 complaint.

20 The Court instead considers the reasonableness of the hours expended on each
21 motion and the appeal by employing a global view of reasonableness:

22 [T]rial courts need not, and indeed should not, become green-eyeshade
23 accountants. The essential goal in shifting fees (to either party) is to do
24 rough justice, not to achieve auditing perfection. So trial courts may take
25 into account their overall sense of a suit, and may use estimates in
26 calculating and allocating an attorney’s time. And appellate courts must
give substantial deference to these determinations, in light of “the district
court’s superior understanding of the litigation.

27 *Fox v. Vice*, 563 U.S. 826, 838 (2011); see also *Universal Elecs., Inc. v. Universal*
28 *Remote Control, Inc.*, 130 F. Supp. 3d 1331, 1335 (C.D. Cal. 2015), *appeal dismissed*

1 (Feb. 18, 2016) (stating that this approach reflects the “growing trend that District
2 Court judges should award fees based on an overall global understanding and review
3 of a case, rather than on a tedious review of voluminous time entries and hourly
4 rates”).

5 *1. The Anti-SLAPP Motions*

6 Defendants request \$95,460.28 for 212 hours worked on their initial
7 Anti-SLAPP Motion, and Plaintiffs ask the Court to reduce this award by
8 approximately 60% to \$39,353.02. (Opp’n 17–18.) Plaintiffs further ask the Court to
9 reduce Defendants’ requested \$33,823.33 in fees for the Renewed Anti-SLAPP
10 Motion by 80%, to an award of \$6766.47. (Mot. 19–20.)

11 “[T]rial courts must carefully review attorney documentation of hours
12 expended; ‘padding’ in the form of inefficient or duplicative efforts is not subject to
13 compensation.” *Ketchum*, 24 Cal. 4th at 1132. In its review, the Court may consider
14 Defendants’ counsels’ expertise and “whether the case was overstaffed.” *Christian*
15 *Research Inst. v. Alnor*, 165 Cal. App. 4th 1315, 1320 (2008); *see also Wilkerson v.*
16 *Sullivan*, 99 Cal. App. 4th 443, 448 (2002) (“The reasonableness of attorney fees is
17 within the discretion of the trial court, to be determined from a consideration of such
18 factors as the nature of the litigation, the complexity of the issues, the experience and
19 expertise of counsel and the amount of time involved.”). Plaintiffs, as the
20 award-seeking party, bear the burden of producing “substantial evidence” to support
21 the amount sought. *Kearney v. Foley & Lardner*, 553 F. Supp. 2d 1178, 1185 (S.D.
22 Cal. 2008).

23 Defendants’ initial Anti-SLAPP Motion was twenty-five pages and filed with
24 two brief declarations. (*See* Anti-SLAPP Motion.) Defendants nevertheless request
25 compensation for far more than 100 hours collectively expended by three attorneys
26 before Defendants filed the Anti-SLAPP Motion on January 23, 2015. (*See* Weiner
27 Decl. Ex. 1.) These entries reveal duplicative billing practices and provide the Court
28 with little to no evidence to support the necessity of the hours expended, let alone

1 sufficient documentation to satisfy Defendants’ burden to set forth “substantial
2 evidence” justifying those hours. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th
3 Cir. 2000) (holding that a district court may reduce recovery of fees due to “poorly
4 documented” billing).

5 For example, Ryan Larsen purports to have spent 9.2 hours on January 20, 2015
6 to “[r]esearch and draft anti-SLAPP motion” while Courtnee Draper spent 3.2 hours
7 on the same day to “research issues for anti-SLAPP motion.” (*See* Weiner Decl. Ex. 1
8 at 7.) One day before Defendants filed the Anti-SLAPP Motion, Ryan Larsen and
9 Joel Weiner collectively spent 15.5 hours, in part, preparing to “meet and confer” with
10 Plaintiffs’ counsel (despite local rules requiring an earlier conference) and completing
11 “multiple strategy conferences with attorneys.” (Weiner Decl. Ex. 1 at 8.) Three
12 attorneys then spent 6.8, 7.2, and 7.7 hours, respectively, to revise the Anti-SLAPP
13 Motion on the day of filing but account for this time with vague entries that fail to
14 explain the work. (Weiner Decl. Ex. 1 at 8–9.) Most of Defendants’ remaining
15 entries for hours worked before filing the Anti-SLAPP Motion similarly reflect
16 unsubstantiated billing. (*See generally* Weiner Decl. Ex. 1.)

17 Moreover, while Plaintiffs’ opposition to Defendants’ Anti-SLAPP Motion was
18 extensive and perhaps unnecessarily so, Defendants’ entries reflecting time spent
19 analyzing that opposition and drafting a reply likewise suffer from the same duplicity
20 and lack of specificity plaguing the rest of Defendants’ block-billing documentation.
21 Indeed, the same three attorneys purport to have each spent immense time “analyzing”
22 Plaintiffs’ opposition and conducting ill-defined research on “issues related to” that
23 opposition. (Weiner Decl. Ex. 1 at 10–13.)

24 Despite this lack of documentation and explanation, Defendants ask this Court
25 to award them for 212 hours spent on the Anti-SLAPP Motion, a figure they claim is
26 greatly reduced. (*See* Mot. 1.) But aside from the conclusory Weiner Declaration,
27 Defendants offer little argument or evidence going to the reasonableness of the hours
28 expended; they instead offer the unsupported averment that all time spent was

1 necessary due to “the quality of the work, the defenses presented, and the end result.”
2 (Mot. 12.) This is insufficient to satisfy Defendants’ burden and warrants a significant
3 reduction. *Christian Research*, 165 Cal. App. 4th 1329 (noting that “counsel may not
4 submit a plethora of noncompensable, vague, blockbilled attorney time entries and
5 expect particularized, individual deletions as the only consequence”).

6 Defendants’ request of \$33,823.33 for 54.1 hours worked on their Renewed
7 Anti-SLAPP Motion is even more tenuous. The Renewed Anti-SLAPP Motion
8 amounts to a five-page memorandum detailing the Ninth Circuit’s rulings,
9 summarizing arguments and procedural history in the initial Anti-SLAPP Motion, and
10 requesting that the Court grant the Anti-SLAPP Motion. (Renewed Anti-SLAPP
11 Motion 1–5.) Defendants’ counsel submit documentation claiming that they spent
12 more than 50 hours on their Renewed Anti-SLAPP Motion before they filed it on
13 January 14, 2019, including hours purportedly preparing their reply brief *before*
14 *Defendants filed their moving papers*. (See Weiner Decl. Ex. 3 at 2–15.) One day
15 after Defendants filed their five-page memorandum, Ryan Larsen spent 1.8 hours to
16 “[r]eview and analyze new anti-SLAPP cases previously cited by Plaintiffs to research
17 new cases” and Joel Weiner reviewed “practice guide, motion for reply ideas.”
18 (Weiner Decl. Ex. 3 at 16.) These billing entries facially evidence wasteful,
19 duplicative, and inexplicable billing practices this Court cannot condone, let alone
20 compensate. *Serrano v. Unruh*, 32 Cal. 3d 621, 635 (1982) (“If . . . the Court were
21 required to award a reasonable fee when an outrageously unreasonable one has been
22 asked for, claimants would be encouraged to make unreasonable demands, knowing
23 that the only unfavorable consequence of such misconduct would be reduction of their
24 fee to what they should have asked for in the first place.”).

25 Based on review of Defendants’ billing entries, analogous case law reducing
26 awards due to excessive hours worked, and the Court’s global understanding of this
27 litigation, the Court finds that 266.1 hours spent by Defendants’ counsel on two
28 relatively straightforward motions is excessive and must be reduced. *Lee-Tzu Lin v.*

1 *Dignity Health-Methodist Hosp. of Sacramento*, No. CIV. S-14-0666 KJM (CKDx),
2 2014 WL 5698448, at *4 (E.D. Cal. Nov. 4, 2014) (“Given the non-complex nature of
3 the anti-SLAPP motion, the 211.25 hours sought by defendants is high.”) (collecting
4 cases). The Court therefore finds a 50% downward adjustment in Defendants’
5 requested fees in conjunction with the Anti-SLAPP Motion and the Renewed Anti-
6 SLAPP Motion is appropriate and awards Defendants **\$64,641.81** for their fees
7 incurred in connection with those motions. *Welch v. Metro. Life Ins. Co.*, 480 F.3d
8 942, 948 (9th Cir. 2007) (stating that the Ninth Circuit does “not quarrel with the
9 district court's authority to reduce hours that are billed in block format”).

10 2. *Appellate Proceedings*

11 Plaintiffs ask the Court to reduce Defendants’ request for \$191,438.30 for the
12 appellate proceedings by approximately 45%, to \$104,017.44. (*See* Opp’n 18–19.)
13 As in connection with the Anti-SLAPP Motions, the Court is concerned with
14 overstaffing, waste, and ambiguous documentation in connection with work on the
15 appellate proceedings.

16 Ryan Larsen, for example, submits several large time entries with vague
17 descriptions such as 7.8 hours to “[r]esearch and draft Respondent’s Brief including
18 statement of case and facts record on appeal”; 7 hours to “[r]esearch and draft
19 respondent’s brief on appeal including introduction, statement of facts, standard of
20 review”; and 6 hours to “[r]esearch and draft respondent’s brief on appeal re
21 intentional interference claims under CA and Utah law.” (*See* Weiner Decl. Ex. 2 at
22 9–12.) Courtnee Draper likewise submits large, inexplicable time entries that appear
23 to duplicate work performed by other attorneys. (*See, e.g.*, Weiner Decl. Ex. 2 at 20–
24 21) (4.3 hours to “strengthen arguments, look for missing places to bolster case law,
25 and ensure free of typographical errors.”) In total, Defendants submit 38 pages of
26 such time entries equaling a “reduced” total of 425.6 hours spent in the appellate
27 proceedings. (*See* Weiner Decl. Ex. 2 at 2.)

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1 Similar to above, based on review of Defendants’ billing documentation and
2 their scant explanation for the exorbitant number of hours expended, the Court finds
3 that Plaintiffs’ requested 45% downward reduction in the hours worked on the
4 appellate proceedings is appropriate. The Court therefore awards Defendants
5 **\$105,291.07** for work performed in connection with those proceedings.

6 3. *The Fee Motion*

7 Plaintiffs ask the Court to reduce Defendants’ requested \$21,056.28 in fees for
8 hours worked on the instant fee Motion by approximately 20%, to an award of
9 \$16,854.92. (Opp’n 20–21). Like the motions and appellate proceedings discussed
10 above, the invoices submitted in support of the fee Motion do not constitute the
11 requisite “substantial evidence” to support the amount sought. *Kearney*, 553 F. Supp.
12 2d at 1185. For example, Joel Weiner and Katherine Motsinger purport to have
13 collectively spent dozens of hours “researching Ninth Circuit standards,” this Court’s
14 previous “rulings on attorneys’ fees motions,” and “attorney declarations in other
15 cases to serve as support for rates.” (*See* Weiner Decl. Ex. 4.)

16 Defendants provide no further details as to the 49.1 hours worked on the instant
17 Motion and the professed necessity of two highly capable attorneys at a distinguished
18 law firm spending excessive hours researching well-established legal standards. This
19 is particularly true where, as here, Defendants’ counsel is highly regarded and
20 admittedly experienced in the practice of such law. *Maughan v. Google Tech, Inc.*,
21 143 Cal. App. 4th 1242, 1251 (2006) (upholding finding that \$112,288.63 in fees and
22 costs was unreasonable where prevailing party’s counsel acknowledged they were
23 “old hats at [anti-]SLAPP” litigation). Moreover, given the record before it, the Court
24 cannot account for the apparent duplicity of the work performed by Joel Weiner and
25 Katherine Motsinger, as both attorneys are credited with the same tasks of “research,”
26 “drafting,” and “revision.” (*See* Weiner Decl. Ex. 4.)

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1 For these reasons, the Court finds that Plaintiffs' request for a 20% downward
2 reduction of Defendants' \$21,056.28 fee request is reasonable and awards Defendants
3 **\$16,854.02** for their fees incurred in conjunction with the instant Motion.

4 **C. Costs**

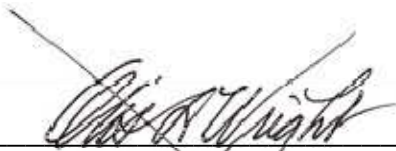
5 Defendants seek to recover \$1595.54 in costs for filing fees, printing, and other
6 expenses related to the appeal, which they substantiate with detailed records. (Weiner
7 Decl. ¶ 16, Ex. 5.) Plaintiffs agree to pay these costs. (Opp'n 21.) As such,
8 Defendants are entitled to recover their costs. *See* Cal. Civ. Proc. Code § 425.16(c)(1)
9 (“[A] prevailing defendant . . . shall be entitled to recover his or her attorney’s fees
10 and costs.”). The Court awards Defendants **\$1595.54** in costs.

11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN**
13 **PART** Defendants' Motion (ECF No. 143) and **awards Defendants \$186,777.90 in**
14 **attorneys' fees and \$1595.54 in costs.**

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16 **IT IS SO ORDERED.**

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18 March 2, 2020

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**