

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIE CRAWFORD,

No. C 16-1301 CW

Plaintiff,

ORDER GRANTING  
ATTORNEYS' FEES  
MOTION

v.

CITY AND COUNTY OF SAN FRANCISCO,  
et al.,

(Docket No. 34)

Defendants.

United States District Court  
For the Northern District of California

The City and County of San Francisco (the City) moves for attorneys' fees and costs against Plaintiff Willie Crawford (Crawford) following partial success on its motion to strike. The Court grants the City's motion.

BACKGROUND

Crawford's Second Amended Complaint (2AC) contains six causes of action: 1) racial discrimination in violation of the California Fair Employment and Housing Act (FEHA), 2) harassment in violation of FEHA, 3) retaliation in violation of FEHA, 4) violation of the federal Family Medical Leave Act, 5) intentional infliction of emotional distress and 6) wrongful termination in violation of public policy. Docket No. 1-1.

The Court granted in part the City's motion to strike Crawford's state law claims under California's anti-SLAPP statute. Docket No. 30, Order. It granted the motion as to Crawford's discrimination, harassment and emotional distress claims, with leave to amend. The Court also granted the motion as to Crawford's wrongful termination claim because "Crawford conceded

1 at oral argument that this claim is not viable." Id. at 17. The  
2 Court denied the motion as to Crawford's retaliation claim, which  
3 remains. Crawford did not file an amended complaint by its July  
4 12, 2016 deadline.

5 The City filed the instant motion for attorneys' fees on July  
6 26, 2016. The Court vacated the hearing and considers the motion  
7 on the papers.

8 LEGAL STANDARD

9 California law governs attorneys' fees based on California's  
10 anti-SLAPP statute. Graham-Sult v. Clainos, 756 F.3d 724, 751  
11 (9th Cir. 2013). The anti-SLAPP fee-shifting provision applies in  
12 federal court. United States v. Lockheed Missiles & Space Co.,  
13 Inc., 190 F.3d 963, 972-73 (9th Cir. 1999). It states that a  
14 "prevailing defendant on a special motion to strike shall be  
15 entitled to recover his or her attorney's fees and costs." Cal.  
16 Civ. Proc. Code § 425.16(c)(1); see also Ketchum v. Moses, 24 Cal.  
17 4th 1122, 1131 (2001) (characterizing these fees as "mandatory  
18 attorney fees"). The fee-shifting provision "is broadly construed  
19 so as to effectuate the legislative purpose of reimbursing the  
20 prevailing defendant for expenses incurred in extracting herself  
21 from a baseless lawsuit." Graham-Sult, 756 F.3d at 752 (quoting  
22 Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi, 141 Cal.  
23 App. 4th 15, 22 (2006)).

24 A "party who partially prevails on an anti-SLAPP motion must  
25 generally be considered a prevailing party unless the results of  
26 the motion were so insignificant that the party did not achieve  
27 any practical benefit from bringing the motion." Mann v. Quality  
28 Old Time Serv., Inc., 139 Cal. App. 4th 328, 340 (2006). A

1 successful defendant is also entitled to fees incurred in filing  
2 the motion for attorneys' fees. Ketchum, 24 Cal. 4th at 1141.  
3 Courts use the lodestar method for calculating fees under the  
4 anti-SLAPP fee-shifting provision. See id. at 1136.

5 DISCUSSION

6 I. Timeliness

7 Crawford first argues that the City's motion is untimely. He  
8 argues that the partial denial of the City's motion to strike was  
9 a judgment because it was appealable. Therefore, he argues, the  
10 City's motion was due on July 6, 2016 and was filed untimely under  
11 Civil Local Rule 54-5(a), which states that "motions for awards of  
12 attorney's fees by the Court must be served and filed within 14  
13 days of entry of judgment by the District Court." Crawford's  
14 analysis is incorrect.

15 Crawford relies on Federal Rule of Civil Procedure 54(a),  
16 which states that a judgment "includes a decree and any order from  
17 which an appeal lies." However, Crawford ignores Rule 54(b),  
18 which explains that, unless a court "expressly determines that  
19 there is no just reason for delay" for entering judgment on fewer  
20 than all claims, adjudication of "fewer than all the claims . . .  
21 does not end the action." Any order "may be revised at any time  
22 before the entry of a judgment adjudicating all the claims." Id.  
23 Because the order that granted in part the motion to strike did  
24 not adjudicate all claims, it is not a judgment.

25 Further, case law regarding a California anti-SLAPP motion's  
26 appealability in federal court does not mandate imposing the fee  
27 motion deadline under Civil Local Rule 54-5(a). The Ninth Circuit  
28 has held that denial of a California anti-SLAPP motion to strike

1 "remains among the class of orders for which an immediate appeal  
2 is available." DC Comics v. Pac. Pictures Corp., 706 F.3d 1009,  
3 1015 (9th Cir. 2013). However, the analysis is different for  
4 orders granting a motion to strike. The Ninth Circuit  
5 distinguished DC Comics, holding that an order granting a motion  
6 to strike is not subject to the collateral order doctrine. Hyan  
7 v. Hummer, 825 F.3d 1043, 1047 (9th Cir. 2016) (per curiam).  
8 Further, an order that grants a motion to strike but does not  
9 dispose of the whole litigation is not appealable as a final  
10 decision. See id. at 1046-47.

11 Here, the City seeks fees for prevailing on the motion to  
12 strike. Therefore, the collateral appealability of a denial is  
13 irrelevant. Additionally, the Court's order is not appealable as  
14 a final decision because claims remained following the order.  
15 Because the order's collateral appealability is irrelevant and its  
16 final appealability is nonexistent, the fourteen-day deadline in  
17 Civil Local Rule 54-5(a) does not apply.

## 18 II. Meet and Confer

19 Crawford argues that the City did not properly meet and  
20 confer before filing this motion. The City argues that it filed  
21 its motion once it became apparent that Crawford was planning on  
22 opposing the motion based on timeliness.

23 On July 25, 2016, Kevin McLaughlin, counsel for the City,  
24 sent to Brian Soriano, Crawford's counsel, an email regarding the  
25 instant motion. The email's stated purpose was to request a meet  
26 and confer. It stated: "We intend to file the motion tomorrow.  
27 If you seek more time to confer, please let us know." Soriano  
28 Dec. Ex. A. Mr. Soriano requested more time and asked Mr.

1 McLaughlin to permit him to respond on July 27. Id. Ex. B. Mr.  
2 McLaughlin responded by requesting that Mr. Soriano agree to file  
3 a stipulation that would extend time to file the fee motion. Id.  
4 Mr. Soriano responded that the stipulation arguably waived any  
5 timeliness argument and suggested that there had been sufficient  
6 time to meet and confer. Id. The City filed its motion on July  
7 26. The following day, Mr. Soriano sent to Mr. McLaughlin a  
8 letter outlining several arguments against the instant motion,  
9 encouraging its withdrawal. Id. Ex. C. The City's counsel  
10 offered to hold the fee motion in abeyance pending mediation,  
11 which Crawford's counsel refused. Supp. Hartinger Dec. Ex. A.

12 "Counsel for the respective parties must meet and confer for  
13 the purpose of resolving all disputed issues relating to  
14 attorney's fees before making a motion for award of attorney's  
15 fees." Civ. L.R. 54-5(a). Unless otherwise ordered, a fee motion  
16 must be supported by declarations or affidavits stating "that  
17 counsel have met and conferred for the purpose of attempting to  
18 resolve any disputes with respect to the motion or a statement  
19 that no conference was held, with a certification that the  
20 applying attorney made a good faith effort to arrange such a  
21 conference, setting forth the reason the conference was not held."  
22 Id. 54-5(b)(1). Here, Mr. Soriano outlined his arguments in  
23 opposition to the motion, which the City did not withdraw. This  
24 sequence of events indicates that any further conferral would not  
25 have resolved the parties' disputes.

26 III. Reasonableness

27 The Court finds, and Crawford does not dispute, that the  
28 hourly rates attributed to each attorney are reasonable. Crawford

1 argues that the fees are not reasonable because the scope of the  
2 work exceeds the motion to strike and because the fee motion  
3 overstates what the City's counsel accomplished.

4 A. Scope of Work

5 Crawford argues that the submitted time descriptions exceed  
6 that spent preparing the anti-SLAPP motion. In particular,  
7 Crawford states that the City's timesheets include "time for  
8 reviewing the case file and getting up to speed," as well as  
9 "multiple defense attorneys meeting with witnesses." Response Br.  
10 at 5. The Court has reviewed the time entries and finds that all  
11 time entries submitted relate to the motion to strike.

12 B. Success for non-SLAPP reasons

13 Crawford argues that the City did not actually prevail under  
14 anti-SLAPP on two of the claims for which the City's motion to  
15 strike was granted. He characterizes the wrongful discharge claim  
16 as not properly before the Court on the anti-SLAPP motion and the  
17 intentional infliction of emotional distress claim as dismissed  
18 for insufficient offensiveness.

19 As the Court explained, the second step of an anti-SLAPP  
20 motion to strike requires the Court to determine whether the  
21 plaintiff demonstrates a probability of prevailing on the merits.  
22 Order at 6. The Court struck both claims because, at step two,  
23 Crawford did not meet that standard. Id. at 16-17.

24 The Court concludes that the number of hours requested is  
25 reasonable.

26 IV. Fee Calculation

27 The City is entitled to fees for prevailing on its motion to  
28 strike with a reduction to eighty percent to reflect partial

1 success, that is, \$34,128. See Hartinger Dec. Ex. H. The City is  
2 also entitled to the amount for fees submitted with its fee motion  
3 reply brief: \$3,535.00. Finally, the City is entitled to its  
4 costs: \$2,861.55. Id. Ex. G.

5 CONCLUSION

6 In sum, the City is entitled to \$37,663 in fees and \$2,861.55  
7 in costs.

8 IT IS SO ORDERED.

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10 Dated: September 6, 2016



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11 CLAUDIA WILKEN  
12 United States District Judge  
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