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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TARLA MAKAEFF, on Behalf of
Herself and All Others Similarly
Situated,

Plaintiffs,

vs.

TRUMP UNIVERSITY, LLC, (aka
Trump Entrepreneur Initiative) a New
York Limited Liability Company,
DONALD J. TRUMP, and DOES 1
through 50, inclusive,

Defendants.

Case No. 10cv0940 GPC (WVG)

**ORDER REQUIRING
SUPPLEMENTAL BRIEFING IN
SUPPORT OF
PLAINTIFF/COUNTER
DEFENDANT TARLA
MAKAEFF’S BILL OF FEES
AND COSTS**

[Dkt. No. 331.]

TRUMP UNIVERSITY, LLC,

Counterclaimant,

vs.

TARLA MAKAEFF, and DOES 1
through 10, inclusive,

Counter Defendant.

INTRODUCTION

Before the Court is Plaintiff/Counter Defendant Tarla Makaeff’s (“Makaeff”) Bill of Fees and Costs. (Dkt. No. 331.) Defendant/Counterclaimant Trump University,

1 LLC (“Trump University”) opposes Makaeff’s Bill of Fees and Costs. (Dkt. No. 335.)¹
2 Makaeff filed a notice of deficiency and intended non-response. (Dkt. No. 336.) Upon
3 review of the moving papers, admissible evidence, the applicable law, and for the
4 reasons set forth below, the Court hereby ORDERS Makaeff to submit supplemental
5 briefing further substantiating fees and costs.

6 **BACKGROUND**

7 Between August 2008 and June 2009, Makaeff attended approximately seven
8 real estate investing and finance seminars, workshops, and classes hosted by Trump
9 University and spent a total of approximately \$60,000 on the programs. (Dkt. Nos. 4
10 at 9; 14-1 at 11.) Makaeff alleges the programs were shorter than advertised, (Dkt. No.
11 14-1 at 10-11), she was provided only a toll-free telephone number instead of a one-
12 year mentorship of “expert, interactive support,” (Id.), and her Trump University
13 mentors were largely unavailable and offered no practical advice when she did speak
14 with them. (Id.)

15 Makaeff brought a class action lawsuit against Trump University on April 30,
16 2010. (Dkt. No. 1.) On May 26, 2010, Trump University filed a defamation
17 counterclaim against Makaeff, alleging Makaeff published statements to third parties
18 about Trump University that are per se defamatory. (Dkt. No. 4 at 3.)

19 On June 30, 2010, Makaeff filed a special motion to strike Trump University’s
20 counterclaim on the ground the counterclaim is a strategic lawsuit against public
21 participation, or “SLAPP suit,” with the purpose of intimidating Makaeff into dropping
22 her class action lawsuit. (Dkt. No. 14-1 at 8.)

23 On August 23, 2010, Judge Irma E. Gonzalez denied Makaeff’s special motion
24 to strike Trump University’s counterclaim. (Dkt. No. 24.) Makaeff’s subsequent motion
25

26
27 ¹ Trump University filed evidentiary objections to the Declarations of Rachel L. Jensen, Amber
28 L. Eck, Carol A. Sobel, Eric Alan Issacson, and Karl Olson in support of Makaeff’s Bill of Fees and
Costs. (Dkt. Nos. 335-2, 335-3, 335-4, 335-5 and 335-6.) The Court notes the objections. To the extent
that the evidence is proper under the Federal Rules of Evidence, the Court considered the evidence.
To the extent the evidence is not proper the Court did not consider it.

1 for reconsideration of her special motion to strike Trump University’s counterclaim
2 was denied by Judge Gonzalez on September 20, 2010. (Dkt. Nos. 31; 40 at 3.)

3 On January 3, 2011, Makaeff appealed Judge Gonzalez’s August 23, 2010 order
4 to the Ninth Circuit, (Dkt. No. 43), which reversed and remanded the order on April 17,
5 2013. Makaeff v. Trump Univ., LLC, 715 F.3d 254, 271 (9th Cir. 2013). In addition,
6 the court of appeals granted Makaeff’s unopposed request that the issue of appellate
7 attorney’s fees be transferred to the district court. (Dkt. No. 284.) In the interim, the
8 case was transferred to the undersigned judge. (Dkt. No. 190.) On June 16, 2014, this
9 Court granted Makaeff’s special motion to strike Trump University’s defamation
10 counterclaim. (Dkt. No. 328.)

11 On July 3, 2014, pursuant to this Court’s direction, (Dkt. No. 328), Makaeff filed
12 a bill of fees and costs to substantiate the amount of reasonable attorney’s fees and
13 costs associated with bringing the motion to strike, related appeal, and supplemental
14 briefing. (Dkt. No. 331.) On July 18, 2014, Trump University filed an opposition. (Dkt.
15 No. 335.)

16 LEGAL STANDARD

17 The “prevailing defendant on a special motion to strike shall be entitled to
18 recover his or her attorney’s fees and costs.” Cal. Civ. Proc. Code § 425.16(c)(1).
19 “[A]ny SLAPP defendant who brings a successful motion to strike is entitled to
20 mandatory attorney fees.” Ketchum v. Moses, 24 Cal. 4th 1122, 1131 (2001). “[A]
21 court assessing attorney fees begins with a touchstone or lodestar figure, based on the
22 careful compilation of the time spent and reasonable hourly compensation of each
23 attorney . . . involved in the presentation of the case.” Id. at 1131-32 (citation and
24 internal quotation marks omitted). To determine the reasonable number of hours billed,
25 courts are to evaluate the time expended, the nature of and need for the services
26 performed, and the relevant fee records. Hensley v. Eckerhart, 461 U.S. 424, 433-34
27 (1983). An award of fees and costs in an anti-SLAPP case must be reasonable, and
28

1 courts have broad discretion in determining what is reasonable. See Metabolife Int'l,
2 Inc. v. Wornick, 213 F. Supp. 2d 1220,1222 (S.D. Cal. 2002).

3 DISCUSSION

4 In the instant case, Makaeff requests an award of attorney's fees in the amount
5 of \$1,333,004.25, based on 2,226.35 hours incurred in the process of strategizing,
6 researching and briefing the anti-SLAPP motion, subsequent successful appeal and
7 opposing Trump University's petition for rehearing en banc, discovery, supplemental
8 briefing, and the fee brief. (Dkt. No. 331 at 12, 14.) Additionally, Makaeff requests cost
9 in the amount of \$9,812.11. (Id. at 14.) For the reasons stated below, the Court orders
10 Makaeff to provide additional billing information in order to determine the
11 reasonableness of the hours expended and costs incurred.

12 **A. Reasonable Hours Expended**

13 Trump University does not argue that Makaeff is not entitled to attorney's fees.
14 Instead, Trump University argues that the Court should deny the request in its entirety
15 or substantially reduce the award because Makaeff has failed to meet her burden to
16 establish the reasonableness of her attorney's fees, particularly the reasonableness of
17 the hours expended. (Dkt. No. 335 at 3, 5.) Among other things, Trump University
18 argues that Makaeff's fee request is unreasonable because she did not break out the
19 hours billed by specific attorneys on specific tasks. (Id. at 5.)

20 As the moving party, the prevailing party bears the "burden of establishing
21 entitlement to an award and documenting the appropriate hours expended and hourly
22 rates." ComputerXpress, Inc. v. Jackson, 93 Cal. App. 4th 993, 1020 (Ct. App. 2001).
23 Although "it is not necessary to provide detailed billing timesheets to support an award
24 of attorney fees under the lodestar method," Concepcion v. Amscan Holdings, Inc. 223
25 Cal. App. 4th 1309, 1324 (Ct. App. 2014), the "evidence should allow the court to
26 consider whether the case was overstaffed, how much time the attorneys spent on
27 particular claims and whether the hours were reasonably expended." Christian
28 Research Inst. v. Alnor, 165 Cal. App. 4th 1315, 1320 (Ct. App. 2008). To that end the

1 Court may require a prevailing party to produce records sufficient to provide “a proper
2 basis for determining how much time was spent on particular claims.”
3 ComputerXpress, Inc. 93 Cal. App. 4th at 1020.

4 In support of her bill of fees and costs, Makaeff provides the declarations of
5 Amber Eck, Rachel Jensen, and Eric Issacson, all of whom are counsel in this case.
6 The Court finds that these declarations fail to provide enough information to ascertain
7 if the hours expended on this case were reasonable.

8 In their declarations, Makaeff’s attorneys make vague statements about the
9 amount of time they spent on each task. For example, in Amber L. Eck’s declaration
10 in support of Makaeff’s Bill of Fees and Costs, she states that she “spent a substantial
11 amount of time preparing for the hearing” on the anti-SLAPP motion and that she
12 “spent a considerable amount of time researching for the motion for reconsideration.”
13 (Dkt. No. 331-2 at ¶¶ 26-27.) Similarly, Eric Allen Isaacson states that he devoted
14 “many hours” to preparing the brief and preparing for the oral argument before the
15 Ninth Circuit. (Dkt. No. 331-3 at ¶ 19.)

16 Additionally, Makaeff’s attorneys provide a block billing chart showing the
17 amount of hours each attorney spent on the case and their corresponding hourly rate.
18 (Dkt. No 331-1 at ¶ 60; Dkt. No. 331-2 at ¶ 58.) However, there is no showing or
19 explanation of the specific tasks and the time spent on each task by the various
20 attorneys and paralegals involved in this case.

21 It is apparent that all of the Makaeff’s attorneys involved have spent significant
22 time on the case. However, the 2,226.35 hours spent on the anti-SLAPP litigation
23 seems to be very high. There is nothing currently before the Court to assess whether
24 the time expended by Makaeff’s attorneys involved in this case was necessary and non-
25 duplicative. The vague statements of time spent and block entries provided in the
26 attorneys’ declarations do nothing to remedy this issue.

27 Trump University suggests that further briefing is unnecessary because it has
28 “undertaken the burden of reviewing each described task and ascribing a reasonable

1 time commitment for each task.” (Dkt. No. 335 at 10.) However, Trump University has
2 failed to cite to any authority that supports this approach. Therefore, the Court rejects
3 this approach and adopts the approach found in Kearney v. Foley & Lardner, 533 F.
4 Supp. 2d 1178, 1186 (S.D. Cal. 2008). The Court, therefore, orders Makaeff to submit
5 additional briefing detailing the amount of time each attorney spent on each task.

6 **B. Reasonable Costs**

7 In addition to attorney’s fees, Makaeff seeks \$9,812.11 in costs for successfully
8 litigating the anti-SLAPP motion. (Dkt. No. 331 at 14.) A prevailing defendant on an
9 anti-SLAPP motion is entitled to recover reasonable litigation expenses for which she
10 was billed. Cal. Civ. Proc. Code § 425.16(c)(1). Included in the costs sought here are
11 charges for: (1) meals, hotels and transportation; (2) photocopies; (3) facsimile; (4)
12 messenger, overnight delivery; (5) video deposition of Makaeff; (6) Lexis, Westlaw,
13 online library research; (7) publications; and (8) miscellaneous deposition costs. (Dkt.
14 No. 331-1 at 16.)

15 Trump University argues the costs should be denied in their entirety. Trump
16 University challenges the amount of costs requested under California and federal law
17 and argues that Makaeff has failed to explain in detail what the costs requested consist
18 of and should be disallowed. (Dkt. No. 335 at 20.)

19 The Court further orders Makaeff to submit additional information substantiating
20 the costs requested.

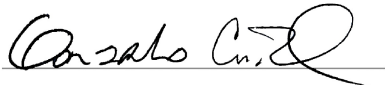
21 **CONCLUSION**

22 For the reasons set forth above, **IT IS HEREBY ORDERED** that Makaeff shall
23 submit supplemental briefing breaking down the attorney fees and costs in relation to
24 the Bill for Fees and Costs. As Makaeff failed to include a more detailed breakdown,
25 the breakdown in Makeeff’s supplemental brief shall not include any time spent on the
26 supplemental brief submitted pursuant to this order. Makaeff shall submit her
27 supplemental brief by **December 12, 2014**, and Trump University may file a
28 supplemental brief in opposition on or before **December 23, 2014**.

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IT IS SO ORDERED.

DATED: November 18, 2014


HON. GONZALO P. CURIEL
United States District Judge