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

FRANK URIARTE, RUDY ALARCON,
LUIS CASILLAS, STEVEN GARCIA,
GERMAN DURAN, GABRIEL
RODRIGUEZ, ISAIAS NAVARRO, and
STEPHEN FRAZIER,

Plaintiffs,

v.

MICHAEL BOSTIC, CITY OF
CALEXICO, RICHARD WARNE, and
GONZALO C. GERARDO,

Defendants.

Case No.: 15cv1606-MMA (PCL)

**ORDER DENYING DEFENDANTS’
REQUEST FOR ATTORNEYS’ FEES**

[Doc. No. 52]

On May 26, 2017, the Court granted in part and denied in part Defendants’ motion to dismiss Plaintiffs’ Second Amended Complaint (SAC), and granted Defendants’ motion to strike Plaintiffs’ remaining state law claims pursuant to California’s anti-SLAPP¹ statute, California Code of Civil Procedure § 425.16. *See* Doc. No. 50. Defendants requested an award of attorneys’ fees and costs pursuant to section

¹ “SLAPP stands for strategic lawsuits against public participation.” *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1573 (2005).

1 425.16(c)(1), and requested leave to file further briefing regarding the proper amount.
2 Pursuant to section 425.16, a prevailing defendant on a motion to strike “shall be entitled
3 to recover his or her attorney’s fees and costs.” Cal. Civ. Proc. Code § 425.16(c)(1).
4 Accordingly, the Court granted Defendants’ request, and ordered Defendants to file a
5 supporting declaration of counsel outlining the basis for the fees and costs incurred, and
6 further ordered that Defendants’ brief not exceed 15 pages, excluding exhibits. *See* Doc.
7 No. 50. The Court allowed Plaintiff to respond in no more than 8 pages. Defendants
8 have filed a declaration of counsel, which Plaintiffs oppose. For the reasons set forth
9 below, the Court **DENIES** Defendants’ request for fees.

10 PROCEDURAL BACKGROUND

11 On July 20, 2015, Plaintiffs filed this action against Defendants alleging numerous
12 causes of action. Defendants moved to dismiss the Complaint pursuant to Federal Rules
13 of Civil Procedure 12(b)(1) and 12(b)(6), and moved to strike the state law claims
14 pursuant to California Code of Civil Procedure § 425.16. Doc. Nos. 7, 8, 9. The Court
15 granted Defendants’ motion to dismiss, dismissing some claims with prejudice and
16 granting Plaintiffs leave to amend those claims dismissed without prejudice. Doc. No.
17 20. The Court denied Defendants’ motion to strike without prejudice based on its
18 dismissal of all claims. Doc. No. 20.

19 Plaintiffs then filed the First Amended Complaint (FAC), and Defendants filed a
20 motion to dismiss and a motion to strike the state law claims. Doc. No. 23. The Court
21 granted in part and denied in part Defendants’ motion to dismiss. Doc. No. 35.
22 Regarding Plaintiffs’ state law claims, the Court dismissed them all without prejudice and
23 with leave to amend. The Court also denied Defendants’ motion to strike the FAC’s state
24 law claims without prejudice, again based on the Court’s dismissal of all state law claims.
25 Doc. No. 35.

1 Subsequently, Plaintiffs filed the SAC.² Doc. No. 39. The SAC alleges First
2 Amendment retaliation pursuant to 42 U.S.C. § 1983, and state law claims for violations
3 of the Meyers-Milias-Brown Act (“MMBA”) pursuant to California Government Code
4 sections 3502 and 3506, and for defamation and false light. Defendants moved to dismiss
5 the SAC pursuant to Rule 12(b)(6), and moved to strike all state law claims pursuant to
6 California Code of Civil Procedure § 425.16. Doc. Nos. 42, 43. With respect to
7 Plaintiffs’ state law claims, the Court dismissed the MMBA claims with prejudice for
8 failure to state a claim, and granted Defendants’ motion to strike Plaintiffs’ defamation
9 and false light claims. *See* Doc. No. 50. Because the Court granted Defendants’ motion
10 to strike, the Court allowed Defendant to file the instant declaration supporting their
11 request for fees and costs. *See* Doc. Nos. 50, 52.

12 DISCUSSION

13 On June 12, 2017, defense counsel filed a brief declaration under penalty of
14 perjury in support of Defendants’ request for fees. Counsel requests a fee award in the
15 amount of \$16,100.00 for work that he and an associate completed. Counsel states that
16 the associate attorney “did the majority of the work related to this motion to strike.” *See*
17 Doc. No. 52, ¶ 3. Also, counsel declares that the “firm researched and prepared motions
18 to strike and motions to dismiss, as well as replies in support” as to each of the three
19 iterations of the complaint filed over the course of this litigation. *See* Doc. No. 52, ¶ 5.
20 Defense counsel states that the firm “has been paid more than \$70,000.00 for the work
21 done . . . after the complaint was filed.” *See* Doc. No. 52, ¶ 5. He states, “[w]e prepared
22 and submitted detailed and specific billing statements for our client, but we did not
23 allocate our time to each of the various counts alleged in each complaint.” *See* Doc. No.
24 52, ¶ 5. But, counsel states, “[i]t would be very difficult, if not impossible, to determine
25 exactly how much time was spent evaluating, researching, and addressing the specific
26 counts which have been stricken.” *See* Doc. No. 52, ¶ 6. Thus, counsel “account[s] for
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28 ² The SAC omitted Joseph Bielma as a plaintiff, and Maritza Hurtado as a defendant.

1 the time attributed to the stricken defamation/false light claim by virtue of the occurrence
2 and relationship of that stricken claim relative to the claims not stricken,” as follows:

3
4 The first two versions of plaintiffs’ complaint each listed five
5 counts, and the Second Amended Complaint listed three counts.
6 Accordingly, the defamation/false light claim appeared three
7 times and therefore accounts for 3/13 (or 23%) of the total
8 claims addressed through defendants’ several motions. 23% x
9 \$70,000.00 = \$16,100.00. To be clear, what I am proposing is
10 that it would be fair and reasonable to assume that 23% of the
11 attorneys [sic] time spent on this matter after the complaint was
12 filed has been devoted to addressing the defamation false light
13 [sic] claim which has been stricken, and it would be reasonable
14 for the court to require Plaintiffs to reimburse our clients for
15 those fees.

16 *See* Doc. No. 52, ¶ 6.

17 Counsel declares that he was admitted to the California Bar in 1977, and has
18 practiced law for 38 years. He attests that his associate has been practicing law since he
19 was admitted to the California Bar in 1995. Regarding their rates, counsel declares:

20 Prior to November of 2015, my billing rate on this file was
21 \$175 per hour, and after November 2015, my billing rate for
22 this file has been \$195 per hour. Prior to November of 2015,
23 Mr. Borgen’s billing rate on this file was \$155 per hour, and
24 after November 2015, his billing rate for this file has been \$165
25 per hour.

26 *See* Doc. No. 52, ¶ 3. Counsel urges that “[b]ased on [his] experience, these rates are
27 well within the range of reasonable for Southern California attorneys.” *See* Doc. No. 52,
28 ¶ 3.

29 Under California law, where California’s anti-SLAPP statute provides for the
30 attorneys’ fee award, courts use the lodestar method to determine the award. *Ketchum v.*
31 *Moses*, 17 P.3d 735, 744 (Cal. 2001). Under the lodestar method, courts first determine a
32 lodestar amount based on a “careful compilation of the time spent and reasonable hourly

1 compensation of each attorney . . . involved in the presentation of the case.” *See id.* at
2 741. Although the courts have discretion in determining fee awards, the determination of
3 the lodestar figure is “so fundamental to arriving at an objectively reasonable amount,”
4 that “the exercise of that discretion must be based on the lodestar adjustment method.”
5 *Id.* (citing *Press v. Lucky Stores Inc.*, 667 P.2d 704 (1983)). Courts calculate the lodestar
6 by multiplying the number of hours reasonably expended on the relevant matters by the
7 reasonable hourly rate for similar work in the same community. *PLCM Grp. v. Drexler*,
8 997 P.2d 511, 518 (2000), *as modified* (June 2, 2000). “The lodestar figure may then be
9 adjusted, based on consideration of factors specific to the case, in order to fix the fee at
10 the fair market value for the legal services provided.” *Id.* This procedure “ensur[es] that
11 the amount awarded is not arbitrary.” *Id.*

12 The party seeking fees bears the burden of demonstrating that the amount
13 requested is reasonable. *De La Riva Const., Inc. v. Marcon Eng’g, Inc.*, No. 11-CV-52-
14 MMA DHB, 2014 WL 794807, at *4 (S.D. Cal. Feb. 27, 2014). “[T]rial courts must
15 carefully review attorney documentation of hours expended; ‘padding’ in the form of
16 inefficient or duplicative efforts is not subject to compensation.” *See Ketchum*, 17 P.3d
17 at 741. “Although ‘a fee request ordinarily should be documented in great detail,’ the
18 amount of required evidence will depend on the nature of the case.” *See Computer*
19 *Econ., Inc. v. Gartner Grp., Inc.*, No. 98-CV-0312 TW (CGA), 1999 WL 33178020, at
20 *8 (S.D. Cal. Dec. 14, 1999) (quoting *Weber v. Langholz*, 39 Cal. App. 4th 1578, 1587
21 (1995)). While attorneys need not necessarily submit contemporaneous time records
22 under California law, attorneys must provide sufficiently detailed documentation of
23 services rendered and hours expended to ensure that trial courts are not “placed in the
24 position of simply guessing at the actual value of the attorney[s]’ services.” *See Martino*
25 *v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

26 Here, Defendants do not provide sufficient information for the Court to calculate
27 the applicable lodestar figure. Specifically, the Court is unable to discern (1) the number
28 of hours reasonably expended, or (2) the reasonable hourly rate for similar work in the

1 community. Defendants do not specify the number of hours expended by counsel. In
2 order to fairly assess the fee request, the Court must determine the number of hours
3 expended by each attorney on the issues presented in Defendants’ motions to strike.
4 Regarding the reasonableness of the hourly rates provided, counsel states that the
5 proffered rates “are well within the range of reasonable for Southern California
6 attorneys.” *See* Doc. No. 52, ¶ 3. While the rates appear quite reasonable, under
7 California law, counsel must specify for what type of work those rates are reasonable,
8 and must demonstrate that those rates are reasonable in the relevant market, for the same
9 type of work. Defendants do not provide the Court with this information. For example,
10 counsel states that the rates are reasonable in “Southern California,” but the relevant
11 market is San Diego. *See De La Riva Const., Inc.*, 2014 WL 794807, at *5 (“Because
12 Plaintiff litigated this action in San Diego, the San Diego legal community is the relevant
13 market . . .”).

14 Further, the Court notes that Defendants “may recover fees and costs only for the
15 motion to strike, not the entire litigation.” *Christian Research Inst. v. Alnor*, 165 Cal.
16 App. 4th 1315, 1320 (2008). Here, in order to satisfy their burden on a motion to strike,
17 Defendants were required to make a “threshold showing” that the state law causes of
18 action arose from protected activities. *See Jarrow Formulas, Inc. v. LaMarche*, 31
19 Cal.4th 728, 733 (2003). Then, the burden shifted to Plaintiffs to show probability of
20 prevailing on the claims. *Id.* Accordingly, Defendants are only entitled to fees and costs
21 related to hours expended researching and briefing those issues. It can be difficult to
22 accurately apportion hours expended on relevant issues, but it appears that the \$16,100.00
23 requested by Defendants would necessarily include time spent on unrelated issues.

24 California law provides that a court cannot adequately determine the
25 reasonableness of a fee request where the “only evidence presented in support of [a]
26 motion for attorney fees [is] the attorney’s request for a flat fee for ‘services rendered,’”
27 and where no documentation, “such as billing or time records, were submitted to the
28 court, nor was an attempt made to explain, in more than general terms, the extent of

1 services rendered to the client.” *See Computer Econ., Inc.*, 1999 WL 33178020, at *8
2 (quoting *Martino*, 182 Cal. App. 3d at 559–60). As such, the Court cannot award fees for
3 “work unrelated to the anti-SLAPP motion,” or “work that was unnecessary or
4 duplicative or excessive in light of the issues fairly presented.” *See 569 E. Cty.*
5 *Boulevard LLC v. Backcountry Against the Dump, Inc.*, 6 Cal. App. 5th 426, 440 (2016),
6 *as modified on denial of reh’g* (Dec. 29, 2016). In this case, where the parties have
7 litigated several motions to dismiss and motions to strike, the risk of inefficient or
8 duplicative efforts is heightened, as is the need for thorough fee documentation.

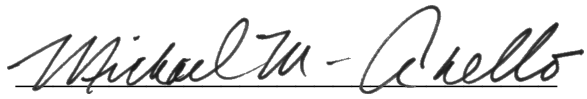
9 In sum, the Court is unable to determine the reasonableness of Defendants’ fee
10 request. Any award based on the information provided by Defendants would necessarily
11 be arbitrary. *See Martino*, 182 Cal. App. 3d at 558 (“[I]n the absence of such crucial
12 information as the number of hours worked, billing rates, types of issues dealt with and
13 appearances made on the client’s behalf, the trial court is placed in the position of simply
14 guessing at the actual value of the attorney’s services.”).

15 **CONCLUSION**

16 Based on the foregoing, the Court **DENIES** Defendants’ request for attorneys’
17 fees. *See* Doc. No. 52.

18 **IT IS SO ORDERED.**

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20 Dated: August 7, 2017


21 HON. MICHAEL M. ANELLO
22 United States District Judge
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