

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY & CASUALTY
INSURANCE COMPANY, ALLSTATE
INDEMNITY COMPANY, and ALLSTATE
FIRE & CASUALTY INSURANCE
COMPANY,

Case No. 2:15-cv-02265-MMD-CWH

ORDER

Plaintiffs,

v.

MARJORIE BELSKY, MD; MARIO TARQUINO, MD; MARJORIE BELSKY, MD, INC., doing business as INTEGRATED PAIN SPECIALISTS; and MARIO TARQUINO, MD, INC., DOES 1-100, and ROES 101-200.

Defendants.

MARJORIE BELSKY, MD, MARIO TARQUINO, MD, MARJORIE BELSKY, MD, INC. doing business as, INTEGRATED PAIN SPECIALISTS, and MARIO TARQUIN, MD, INC..

Counter-claimants.

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ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY & CASUALTY
INSURANCE COMPANY, ALLSTATE
INDEMNITY COMPANY, and ALLSTATE
FIRE & CASUALTY INSURANCE
COMPANY.

Counter-defendants.

I. SUMMARY

Before the Court is Counter-defendants Allstate Insurance Company, Allstate Property & Casualty Insurance Company, Allstate Indemnity Company, and Allstate Fire

1 & Casualty Insurance Company's ("Allstate") Motion for Fees Pursuant to NRS § 41.670
2 ("Motion") based on the Court's prior order (ECF No. 101) granting in part its anti-SLAPP
3 motion and dismissing four of six counterclaims asserted against it. (ECF No. 123.) The
4 Court has reviewed Counter-claimants Marjorie Belsky, MD; Mario Tarquino, MD; Marjorie
5 Belsky, MD, Inc. d/b/a Integrated Pain Specialists; and Mario Tarquino, MD, Inc.'s
6 ("Belsky/Tarquino Parties") response (ECF No. 130) and Allstate's reply (ECF No. 143).
7 For the following reasons, the Court denies Allstate's Motion without prejudice.

8 **II. DISCUSSION**

9 The Belsky/Tarquino Parties do not dispute that Allstate is entitled to reasonable
10 attorneys' fees as the prevailing party on a special motion to dismiss under NRS § 41.660.
11 (ECF No. 130 at 8.) However, the Belsky/Tarquino Parties argue that Allstate's Motion
12 should be denied for failure to comply with LR 54-14. (*Id.* at 9.) The Belsky/Tarquino
13 Parties further argue that any recovery should be reduced to account for Allstate's failure
14 to prevail on two of the counterclaims. (*Id.* at 15.) Finally, the Belsky/Tarquino Parties
15 request a stay. (*Id.* at 20.)

16 **A. Local Rules**

17 LR 54-14(b)(1) requires a motion for attorney's fees to include "[a] reasonable
18 itemization and description of the work performed." Allstate has provided the Court with
19 detailed billing records for *in camera* review¹ but has provided the Belsky/Tarquino Parties
20 only descriptions of the work performed. These descriptions are sufficient in part.
21 Attorneys Jared Green, Eron Cannon, Jennifer Koh, and paralegal Debbie Sizemore
22 performed relatively little work—each billed fewer than seven hours—and the descriptions
23 of their work accurately reflect the billing records the Court has reviewed *in camera*. These
24 descriptions are insufficient as to the work of attorneys Tom Baxter and Daniel Aquino,
25 however. Although Allstate seeks fees for 98.7 hours of work by Baxter, the only
26 description Allstate has provided to the Belsky/Tarquino Parties is this: "Mr. Baxter billed

27 ¹These records consist of two exhibits. Exhibit A contains billing records for
28 attorneys Eron Cannon and Jennifer Koh, and Exhibit B contains billing records for
attorneys Jared Green, Tom Baxter, Daniel Aquino, and paralegal Debbie Sizemore.

1 98.7 hours directly related to addressing the counterclaims raised by Counter-claimants
2 and the anti-SLAPP motion." (ECF No. 123 at 5.) And although Allstate seeks fees for
3 15.1 hours of work by Aquino, it has provided only the following description of Aquino's
4 work: "reviewing this Court's order and the relevant pleadings, preparing Allstate's Motion
5 for Attorney Fees and related declarations, and other tasks related to the motion." (*Id.* at
6 8.)

7 Allstate argues that it cannot provide billing records to the Belsky/Tarquino Parties
8 because the billing records contain confidential, privileged information, including "the
9 specific nature of the services provided, such as researching particular areas of law." (ECF
10 No. 143 at 7 (quoting *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir.
11 1992).) While "submission of attorney billing records *in camera* is permissible to preserve
12 attorney client privilege," *Clarke*, 974 F.2d at 129, the Court must permit the
13 Belsky/Tarquino Parties an opportunity to challenge those parts of the billing record that
14 are not protected by lawyer-client privilege. See *MGIC Indem. Corp. v. Weisman*, 803 F.2d
15 500, 505 (9th Cir.1986) ("No reason appears why the timesheets should not have been
16 made available to MGIC and MGIC given the opportunity to challenge them. We remand
17 for the sole purpose of a hearing in which MGIC may challenge the reasonableness of the
18 fees awarded. The court may withhold from MGIC any information it finds protected by the
19 lawyer-client privilege."); see also *United States v. \$1,379,879.09 Seized From Bank of*
20 *Am.*, 374 F. App'x 709, 711 (9th Cir. 2010) ("The district court abused its discretion when
21 it reviewed the billing records *in camera* and denied the government the opportunity to
22 raise specific objections to the billing records.").

23 The billing records contain only some presumably privileged information. Allstate
24 must provide non-privileged information to the Belsky/Tarquino Parties to the extent
25 Allstate wishes to recover its fees. Without that information, the Belsky/Tarquino Parties
26 are unable to dispute with specificity the reasonableness of Allstate's fees. The Court will
27 therefore deny Allstate's Motion without prejudice and with leave to file a renewed motion
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1 including Exhibit B of the *in camera* documents. However, Allstate may redact the following
2 entries from Exhibit B to preserve attorney-client privilege:

- 3 1. All entries for attorneys or staff other than Baxter and Aquino;
- 4 2. Entry dated 6/20/16 for 4.4 hours;
- 5 3. Entry dated 6/21/16 for 0.9 hours; and
- 6 4. Entry dated 6/28/16 for 1.4 hours.

7 **B. Reduction of Fees**

8 The parties agree that the fee award should be reduced to account for Allstate's
9 failure to prevail on all of the counterclaims on anti-SLAPP grounds but disagree about
10 how to calculate the reduction. The Belsky/Tarquino Parties argue that fees should be
11 reduced by three-eights, or 37.5 percent, because there were actually eight distinct
12 counterclaims and Allstate prevailed on anti-SLAPP grounds on five them. (ECF No. 130
13 at 18.) Allstate argues that the fees should be reduced by only twenty percent because it
14 prevailed on four counterclaims on anti-SLAPP grounds and the two other counterclaims
15 were analyzed as one counterclaim in the Court's prior order. (ECF No. 143 at 10.) The
16 Belsky/Tarquino Parties' argument is predicated on the assumption that Allstate cannot
17 delineate its billing records by issue or counterclaim. (See ECF No. 130 at 18.) The Court
18 will permit Allstate to delineate its billing records by counterclaim in its renewed motion for
19 attorneys' fees. If Allstate is unable or unwilling to do so, the Court will reduce the fees by
20 an appropriate percentage to be determined.

21 **C. Stay**

22 The Belsky/Tarquino Parties further request that the Court stay the resolution of
23 this motion pending the outcome of their Motion for Sanctions, to Disqualify Plaintiffs'
24 Counsel, for Injunctive Relief, and/or for Other Appropriate Relief ("Motion for Sanctions").
25 (ECF No. 130 at 20 (citing ECF No. 107).) The Court will not issue a stay because the
26 Motion for Sanctions has been resolved. (ECF No. 263.)

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1 **III. CONCLUSION**

2 It is therefore ordered that Allstate's motion for fees (ECF No. 123) is denied without
3 prejudice. Allstate is given leave to file a renewed motion for fees within seven (7) days.

4 DATED THIS 26th day of March 2018.

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7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE

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