

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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

ORDER

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

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,

v.

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* review<sup>1</sup> 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

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27 <sup>1</sup>These 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-eighths, 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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DATED THIS 26<sup>th</sup> day of March 2018.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE