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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THOMAS J. ANTON,

Plaintiff and Appellant,

v.

LORRAINE PANTOJA et al.,

Defendants and Respondents.

F054504

(Super. Ct. No. S-1500-CV-258881)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Law Offices of Stephen P. Wainer and Stephen P. Wainer for Plaintiff and Appellant.

Rastegar & Matern, Farzad Rastegar and Paul J. Weiner for Defendant and Respondent Lorraine Pantoja.

Law Offices of Dennis P. Wilson and Dennis P. Wilson for Defendant and Respondent Rastegar & Matern.

Law Offices of Martin L. Horwitz and Martin L. Horwitz for Defendants and Respondents Matthew J. Matern and Susannah J. Monk.

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Plaintiff appeals from an order awarding defendants their attorney's fees incurred in presenting their successful special motion to strike the complaint (Code Civ. Proc., § 425.16, subd. (c))[1]. Plaintiff contends the trial court incorrectly determined it had no discretion to reduce the fees claimed by defendants below the amount set out in defendants' supporting declarations, and therefore it awarded defendants the full amount requested without exercising its discretion to reduce the fees sought, which plaintiff contends are excessive. We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In a prior action, Lorraine Pantoja sued Thomas J. Anton. Pantoja was represented by the law firm of Rastegar & Matern, and attorneys Matthew J. Matern (hereafter Matern) and Susannah Monk. The parties entered into a settlement, which was placed on the record in court. The parties agreed the terms of the settlement were to be confidential, and the reporter's transcript containing the agreement was marked "**CONFIDENTIAL**." Subsequently, Pantoja filed a motion to enforce the settlement agreement; the moving papers recited in detail the terms of the settlement and included a copy of the confidential reporter's transcript. The court denied the motion to enforce the settlement, finding Pantoja had breached the confidentiality agreement.

Anton subsequently filed this action against Pantoja and the attorneys who represented her in the prior action, alleging a breach of the settlement agreement by disclosure of its terms, in violation of the confidentiality clause and invasion of Anton's privacy by disclosure of private matters in the public record. Pantoja answered through her attorneys, Rastegar & Matern. Rastegar & Matern answered through their attorney,

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1 All further statutory references are to the Code of Civil Procedure unless otherwise noted.

Dennis P. Wilson. Attorneys Matern and Monk answered through their attorney, Martin Horwitz.

Defendants, through their respective attorneys, filed special motions to strike Anton's complaint pursuant to section 425.16 (anti-SLAPP motions).[2] Each motion included a substantially identical memorandum of points and authorities and declaration of Matthew J. Matern. Each defendant joined in the motions filed by the others. Plaintiff filed one opposition to all three motions. Defendants filed replies.[3]

The court heard and granted the three anti-SLAPP motions. Defendants then filed three motions for an award of attorney's fees pursuant to section 425.16, subdivision (c).[4] Plaintiff filed opposition, and defendants filed replies with supporting declarations.[5] After hearing, the court granted the motions, awarding attorney's fees of $21,717.50 to Pantoja, $11,537.50 to Matern and Monk, and $16,450 to Rastegar & Matern. Plaintiff appealed from the order awarding attorney's fees.

DISCUSSION

I. Standard of Review

An anti-SLAPP attorney fee award is reviewed under the deferential abuse of discretion standard. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research*).) "The '"experienced trial judge is the best judge of the value

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2 "SLAPP" is an acronym for "strategic lawsuit against public participation."

3 Rastegar & Matern and Matern and Monk filed two reply memoranda addressing different issues; their replies reflect that a third reply was to be filed by Pantoja, addressing another issue, but that reply is not part of the appellate record.

4 We note that, while the caption of Pantoja's notice of motion indicates the motion is supported by the declaration of Paul J. Weiner filed concurrently with the notice, that declaration has not been included in the record.

5 Only the reply memoranda of points and authorities filed by Rastegar & Matern and Matern and Monk appear in appellate record, although they both indicate that a third reply memorandum was to be filed by Pantoja.

of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" [Citation.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*).) "'The trial court, with declarations and supporting affidavits, [is] able to assess credibility and resolve any conflicts in the evidence. Its findings … are entitled to great weight.'" (*Christian Research, supra*, 165 Cal.App.4th at p. 1323.) """"While the concept "abuse of discretion" is not easily susceptible to precise definition, the appropriate test has been enunciated in terms of whether or not the trial court exceeded "'the bounds of reason, all of the circumstances before it being considered.…'" [Citations.]' [Citation.] 'A decision will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.]"""" (*Ibid*.)

Reversal of the trial court's decision is also appropriate where the trial court has applied the wrong test or standard in reaching its result. (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239.) "[J]udicial discretion must be measured against the general rules of law and, in the case of a statutory grant of discretion, against the specific law that grants the discretion. [Citations.]" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393 (*Horsford*).) "'Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion.' [Citation.]" (*Ibid*.)

Plaintiff failed to request a statement of decision and the trial court was not required to issue one. (*Christian Research, supra*, 165 Cal.App.4th at p. 1323.) Accordingly, """"All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown.'" [Citation.]"" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 557 (*Premier*).)

II. Misinterpretation or Misapplication of *Horsford*

In any action subject to an anti-SLAPP motion to strike, a defendant who prevails on the anti-SLAPP motion "shall be entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c).) The award of fees is mandatory. (*Ketchum, supra,* 24 Cal.4th at p. 1131.) The prevailing defendant may recover attorney's fees only for the motion to strike and the motion for fees, not for the entire litigation. (*Christian Research, supra,* 165 Cal.App.4th at p. 1320; *Ketchum, supra*, 24 Cal.4th at p. 1141.) "'[*A*]*bsent circumstances rendering the award unjust,* an attorney fee award should ordinarily include compensation for *all* the hours *reasonably spent*.'" (*Christian Research, supra*, 165 Cal.App.4th at p. 1321.)

"The prevailing party is entitled to a reasonable award [citation]; consequently, the trial court need not simply award the sum requested. [Citation.] To the contrary, ascertaining the fee amount is left to the trial court's sound discretion. [Citations.]" (*Christian Research, supra,* 165 Cal.App.4th at p. 1321.) In determining the amount of attorney's fees to award, the court begins with a "lodestar" figure, calculated by "multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work. [Citations.]" (*Ibid.*) The lodestar figure may be increased or decreased based on various factors, including "'(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action.'" (*Premier, supra,* 163 Cal.App.4th at p. 558.)

"'"[P]adding" in the form of inefficient or duplicative efforts is not subject to compensation.' [Citations.]" (*Premier, supra,* 163 Cal.App.4th at p. 556.) An unreasonably inflated fee request is a special circumstance that permits the trial court to

reduce the award or deny it entirely. (*Christian Research*, *supra*, 165 Cal.App.4th at p. 1322.)

In her motion, Pantoja presented evidence that her attorney spent 117.3 hours on the litigation, at a billing rate of $425 per hour, for a lodestar amount of $49,852.50; she requested the lodestar amount be increased by a multiplier of 2.0, and sought a total fee award of $99,705. Matern and Monk presented time records showing their attorney spent 57.3 hours on the matter, at a billing rate of $325 per hour, for a lodestar figure of $18,622.50; they requested that amount be increased by a multiplier of 2.0, and sought a total fee award of $37,245. Rastegar & Matern presented time records showing its attorney spent 78.6 hours on this litigation, at a billing rate of $350 per hour, for a lodestar figure of $27,510; it requested that amount be increased by a multiplier of 2.0, and sought a fee award of $55,020.

Plaintiff filed opposition to the motions, asserting that some of the work included in the attorneys' time records was not related to the anti-SLAPP motions, and therefore should not be part of the fee award. He set out in his opposition the items he contended should be disallowed on this basis and the total amount by which each attorney's lodestar should be reduced as a result.[6] Additionally, he argued that the fees requested were unreasonable and duplicative because the three attorneys all billed for preparation of the same virtually identical motions and the total number of hours billed by all the attorneys for their work was excessive in comparison with the work performed. Plaintiff did not challenge the hourly billing rates claimed by defendants' attorneys. He submitted no declarations or other evidence in opposition to the motions.

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6 The amounts plaintiff contended were unrelated to the anti-SLAPP motions were: $11,772.50 for Pantoja's attorney; $5,215 for Rastegar & Matern's attorney; and $4,095 for Matern and Monk's attorney.

In its order granting defendants' fee motions, the trial court "agree[d] that only the fees for making the Motion etc. are recoverable." It did not specify how much of the claimed fee it disallowed on the ground the fees were unrelated to the anti-SLAPP motions. The court continued: "Although the Court does agree with the Plaintiff that the hours expended on the motions seems 'high', the Court, absent any evidence to the contrary, believes that it must follow the directions of the Fifth District Court of Appeals in *Horsford v. Board* (2005) 132 C.A.4th 359; in evaluating the [Defendants'] presentation of time sheets etc. as the starting, and in this case finishing, point for evaluating the reasonableness of the claimed fees. The fees awarded are based on that presentation." The court declined to apply a multiplier to the award.

Plaintiff contends the trial court misapplied the decision in *Horsford*. He asserts that, while the trial court thought the claimed hours seemed "high," it did not exercise its discretion to reduce them appropriately because it believed *Horsford* made the verified time records the "starting and finishing point" for determining the fee award. The record does not support plaintiff's contention the court misinterpreted *Horsford* or failed to exercise its discretion in awarding attorney's fees.

Horsford was an employment discrimination action brought under the California Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq. The plaintiffs prevailed, and the trial court made a discretionary award of attorney's fees to them, pursuant to the FEHA. The court noted that "the goal of an award of attorney fees 'is to fix a fee at the fair market value for the particular action,'" and that the award should fully compensate "'for *all* the hours *reasonably spent*' in litigating the action to a successful conclusion. [Citation.]" (*Horsford, supra,* 132 Cal.App.4th at p. 394.) The beginning point for the trial court's calculation must be the actual hours counsel spent on the case, less those that resulted from inefficient or duplicative use of time, multiplied by the prevailing hourly rate for attorneys in the community conducting noncontingent litigation of the same type. (*Ibid*.) "Then the court must adjust the resulting fee to fulfill

the statutory purpose of bringing 'the financial incentives for attorneys enforcing important constitutional rights … into line with incentives they have to undertake claims for which they are paid on a fee-for-service basis.' [Citation]" (*Id.* at p. 395.)

The court stated that the trial court's conclusion some of the hours billed were duplicative was not grounds for "rejecting wholesale counsels' verified time records." (*Horsford, supra,* 132 Cal.App.4th at p. 396.) Rather, "the verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Ibid.*) If the trial court believed some hours billed by multiple attorneys were overlapping, duplicative, or excessive, it could have exercised its discretion to reduce the award accordingly. (*Id.* at pp. 396-397.) The court concluded "the trial court abused its discretion in failing to use counsels' time records as the starting point for its lodestar determination." (*Id.* at p. 397.)

Thus, *Horsford* stands for the proposition that an attorney's verified time records, indicating the hours actually devoted to the particular litigation, are entitled to credence, and are the starting point to be used in calculating the lodestar for purposes of determining a fee award, in the absence of evidence indicating the records are erroneous or inaccurate. The trial court in this case began with the attorney's verified time statements. It noted that only fees incurred in making the anti-SLAPP motions were recoverable, and presumably reduced the hours reflected in the time records to exclude those not related to the anti-SLAPP motions.

In its order, the trial court stated that, based on *Horsford*, the time sheets were "the starting, and in this case finishing, point for evaluating the reasonableness of the claimed fees." In his discussion on this point, plaintiff omits from the court's statement the language "and in this case." He argues the trial court interpreted *Horsford* as making the time records the "starting and finishing point" for its fee determination and as requiring the trial court to award the amount requested by defendants and reflected in those records without reduction. From this plaintiff concludes the court believed it had no discretion to

reduce the fees by eliminating those charged for duplicative or excessive work, and so it did not exercise its discretion.

There was no discussion of *Horsford* in any of the moving or opposing papers that are included in the appellate record. There was no mention of it at oral argument. Thus, there is nothing in the record to indicate how the trial court interpreted *Horsford* except the single statement in the order. The fees the trial court ultimately awarded for each attorney were less than the lodestar amount claimed by that attorney, minus the fees for hours plaintiff identified as unrelated to the anti-SLAPP motions. Thus, the awards made reflect a reduction greater than the amount of the unrelated fees and indicate the court did exercise discretion to reduce the amounts requested by defendants.

We believe the trial court's statement that the time records were "the starting, and in this case finishing, point for evaluating the reasonableness of the claimed fees" is consistent with *Horsford*, and merely indicates that, in this case, the trial court found no reason to discredit the time records submitted by defendants and it had no other evidence before it from which to determine the amount of fees that were reasonable in this case. Consequently, we find no basis for concluding the trial court misinterpreted *Horsford* or abused its discretion by applying the wrong rule of law in evaluating and ruling on defendants' fee requests.

We also find no abuse of discretion in the fees awarded. Plaintiff complains that the total fees awarded to the three attorneys are duplicative and unreasonable in light of the similarity of the motions filed and the relatively small number of pages in the moving and supporting papers filed with the court.

Defendants supported their fee motions with declarations and time records showing the work performed and the time spent on the various tasks. Plaintiff submitted no declarations or other evidence demonstrating the time sheets of the defense attorneys were inaccurate or erroneous. There was no evidence that any of the defense attorneys did not actually spend the amount of time reflected in their time records researching,

preparing and arguing the anti-SLAPP and attorney fee motions. Plaintiff presented no evidence of the unreasonableness of the fees, such as declarations or other evidence challenging the hourly rates being claimed by the attorneys. Plaintiff also did not challenge defendants' need to be represented by three separate attorneys.

In reply, defense counsel pointed out that, because of potentially conflicting interests, defendants were represented by three separate attorneys. The attorneys initially drafted separate anti-SLAPP motions, then one attorney combined and edited the drafts into one concise motion; thus, the nearly identical, relatively brief motions were the result of more work, rather than less. Defendants divided up the issues to cover in their anti-SLAPP replies, and each filed a reply that covered issues not covered by the others.

Work performed on an anti-SLAPP motion by multiple attorneys representing multiple defendants is not necessarily duplicative. In *Premier*, the plaintiffs appealed awards of attorney's fees made to three defendants who had prevailed in their anti-SLAPP motion, contending the awards were excessive and duplicative. Ten defendants had joined in the anti-SLAPP motion. The defendants' motions for attorney's fees were supported by declarations and time records, including a declaration explaining how counsel divided among themselves the work of preparing the joint anti-SLAPP motion. (*Premier, supra*, 163 Cal.App.4th at pp. 558-560.)

In opposition, the plaintiffs argued counsel for one defendant had taken the lead in the case, and the other defendants' requests for fees were therefore duplicative and excessive. The plaintiffs challenged the number of hours spent by multiple firms researching legal issues and drafting and revising the joint motion and briefs. The court noted the plaintiffs had presented no evidence contradicting the defendants' declaration regarding division of labor, and concluded the billings submitted reflected the division of labor described in the defendants' supporting declaration. (*Premier*, *supra*, 163 Cal.App.4th at pp. 560, 562.) Regarding time spent on communication among counsel and preparation for hearings, the court stated: "Ten of the 21 defendants joined in the

section 425.16 motion. This was more efficient than having 10 separate motions filed. Collaboration does not necessarily amount to duplication that is not compensable under section 425.16, subdivision (c)." (*Id.* at p. 562.) The court concluded: "Appellants have presented no evidence to refute the declarations by counsel for respondents explaining that the time spent on drafting the motion reflected the division of labor and the collaborative nature of the joint defense. We are presented with no evidentiary basis to second-guess the conclusion of the trial court that the collaboration on joint documents was not duplicative; we have no basis to reverse that decision as an abuse of discretion. [Citations.]" (*Ibid.*)

Similarly, in this case, defendants presented their verified billing records, along with evidence they coordinated their efforts in preparing and presenting their anti-SLAPP motions in the trial court. Plaintiff provided no contrary evidence. The amount awarded for each attorney was less than the lodestar amount claimed by that attorney reduced by the amounts plaintiff contended, and the trial court apparently agreed, were unrelated to the anti-SLAPP motions. Like the *Premier* court, we have been presented with no evidentiary basis to second-guess the trial court's determination as to the appropriate amount of fees to award, in light of the time spent by the attorneys and their collaboration on the anti-SLAPP motions. Plaintiff has not demonstrated that the trial court abused its discretion.

DISPOSITION

The order awarding attorney's fees to defendants is affirmed. Defendants are awarded their costs on appeal.

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HILL, J.

WE CONCUR:

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VARTABEDIAN, Acting P.J.

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WISEMAN, J.