

FILED
Superior Court of California
County of Los Angeles

NOV 13 2013

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya Deputy
Neli M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES DEMETRIADES,) Case No.: BC484055
)
Plaintiff,)
)
vs.)
) RULINGS/ORDERS
YELP, INC.,)
)
Defendant.)
)
)
)

Defendant's Motion for Attorney Fees and Costs is GRANTED.

Plaintiff shall pay Defendant \$221,886 in attorney fees
(\$217,442) and costs (\$4,444.63).

Plaintiff's Objections to the Hansen, Brill, and Shur
declarations are OVERRULED.

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1 I.

2 INTRODUCTION

3 James Demetriades ("Plaintiff") commenced action against
4 Yelp, Inc. ("Defendant"). Plaintiff's Complaint alleges causes
5 of action for: (1) untrue or misleading advertising (Bus. &
6 Prof. C. §§17500, et seq.); and (2) unfair business practices
7 (Bus. & Prof. C. §§17200, et seq.) Plaintiff alleges that
8 Defendant falsely represents the efficacy and ability of its
9 system for filtering comments and reviews.
10

11 Defendant responded with a Special Motion to Strike on July
12 9, 2012. On September 7, 2012, Plaintiff filed a First Amended
13 Complaint, and Defendant responded with a revised Special Motion
14 to Strike. On January 25, 2013, Defendant's motion was heard
15 and granted. Plaintiff is appealing the Court's order.

16 As a prevailing party, Yelp moved for a mandatory award of
17 attorney's fees pursuant to CCP §425.16(c)(1); Ketchum v. Moses
18 (2001) 24 Cal.4th 1122. Yelp seeks an award of \$230,590 in fees
19 through February, 2013 and \$3,675 in costs for work relating to
20 its anti-SLAPP motion. Yelp also seeks fees and costs incurred
21 with this fee motion, including \$42,310 in fees through March,
22 2013, that have not yet been billed, and additional fees that
23 will be incurred in reply and argument on this motion.

24 In opposition, Plaintiff argues that the hours spent and
25 hourly rates charged were excessive and the fees and costs

1 requested are unreasonable. Maughan v. Google Technology, Inc.
2 (2006) 143 Cal.App.4th 1242.

3 In reply, Defendant argues that the fees are reasonable and
4 well documented, including \$230,590 (for fees and costs relating
5 to the anti-SLAPP proceedings and excluding this motion) plus
6 \$64,339.63 for fees and costs incurred in connection with this
7 motion, for a total of \$294,929.63.

8 II.

9 DISCUSSION

10 A. Applicable Law

11 CCP §425.16(a) contains the Legislature's finding that
12 there has been a disturbing increase in lawsuits brought
13 primarily to chill the valid exercise of free speech.

14 Subsection (b) provides that a cause of action against a person
15 arising from any act of that person in furtherance of the
16 person's right of petition or free speech is subject to a
17 special motion to strike unless the court determines that the
18 plaintiff has established a probability of prevailing.

19 Subsection (c) provides that a prevailing defendant on a special
20 motion to strike shall be entitled to recover his or her
21 attorney's fees and costs. Case law has held that the statute
22 is to be broadly construed in order to effectuate its purpose of
23 reimbursing prevailing defendants for expenses incurred in
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1 extricating themselves from baseless lawsuit. Wilkerson v.
2 Sullivan (2002) 99 Cal.App.4th 443, 446.

3 Determining an appropriate fee award involves calculation
4 of the lode star: number of hours reasonably spent multiplied
5 by the reasonable hourly rate. PLCM Group, Inc. v. Drexler
6 (2000) 22 Cal.4th 1084, 1095. The reasonable hourly rate is the
7 prevailing rate in the community for similar work. Id. at 1095.
8 In evaluating the legal services provided, courts are to take
9 into consideration a number of factors including the nature of
10 the litigation and its difficulty, the amount involved, the
11 skill required and the skill employed, the attention given and
12 the success or failure. Id. at 1096.

14 B. Hourly Rates

15 The reasonableness of the hourly rates charged by attorneys
16 is measured by market rates in the community. Ketchum v. Moses
17 (2001) 24 Cal.4th 1122, 1133. In opposition to this motion,
18 Plaintiff offers the declaration of Michael Cassanego. While
19 Mr. Cassanego's credentials are sufficient to demonstrate some
20 expertise in the area, the opinion he offers regarding the
21 reasonableness of the fees charged is not useful since he
22 compared the rates billed to national rather than community
23 rates. Objections to the Cassanego declaration are sustained to
24 the extent he purports to opine on the reasonableness of the
25 attorneys' hourly rates. The information provided by Defendant

1 on pages 14-15 of its motion regarding billing rates charged by
2 attorneys with comparable experience in the Los Angeles area is
3 useful and relevant. Much of this information is provided in
4 the declaration of Ashlee Hansen, and objections to her
5 declaration are therefore overruled.

6 Ms. Laura Brill provided information regarding her
7 education and experience that warrants the hourly fee of \$660
8 per hour that she charged in this matter. Her declaration also
9 provides sufficient information to support the hourly rates
10 charged by Ahslee Hanson (\$460), Nicholas Dunn (\$535) and
11 William Jacobsen (\$310).
12

13 Ms. Brill's declaration also seeks to provide support for
14 the hourly rates charged by paralegals Patricia Perello and
15 [REDACTED]. However, there is nothing in the motion or
16 declaration regarding the reasonable hourly rate charged by
17 paralegals in the Los Angeles area. Therefore, the Court
18 reduces the hourly rate billed by Perello and [REDACTED] from \$240
19 to \$150.

20 Mr. Aaron Shur's declaration provides sufficient
21 information regarding his education and training to support an
22 hourly rate of \$630.

23 In sum, the Court finds that the hourly rate charged by
24 each of Defendant's attorneys is reasonable.
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1 C. Hours Worked

2 Plaintiff argues that Defendant engaged in block billing,
3 making it difficult to tell how much time has been spent on
4 various tasks. Plaintiff cites Bell v. Vista Unified School
5 District (2000) 82 Cal.App.4th 672, 689 for the rule that
6 attorney billing statements that contain block billing may be
7 disregarded in their entirety or reduced significantly. In
8 Bell, the trial court awarded attorney's fees to the prevailing
9 party without attempting to separate out hours spent on claims
10 for which fees were recoverable and claims for which they were
11 not. The appellate court noted that block billing made it
12 nearly impossible to ascertain which hours could be attributed
13 to the claim for which fees were recoverable, and instructed the
14 trial court to use its discretion in assigning a reasonable
15 percentage, or cast the billing statements aside. Plaintiff
16 also relies on Christian Research Institute v. Alnor (2008) 165
17 Cal.App.4th 1315, 1325, which warns against the danger of block
18 billing because doing so could destroy an attorney's credibility
19 if the court believes the billing statement is padded.

21 Plaintiff's argument is not well taken under the
22 circumstances. First, this is not a case where some claims
23 provide for fees and others do not. Defendant's anti-SLAPP
24 motion attacked the entire complaint and not just part of it.
25 Second, Defendant has taken the time to excise entries that do

1 not relate to the anti-SLAPP motion or the discovery motion
2 related to it. Finally block billing is not per se
3 objectionable, but is a discouraged practice because to the
4 extent it renders a billing statement vague, it impedes the
5 Court's ability to determine the reasonableness of the hours
6 spent. Christian Research Institute v. Alnor (2008) 165
7 Cal.App.4th 1315, 1325. The billing statement attached to the
8 Brill declaration is exceptional in its organization and
9 clarity.

10
11 Plaintiff argues that because Ms. Brill is extremely
12 experienced in the areas of anti-SLAPP, first amendment and
13 technology, it should not have taken the firm 164 hours to
14 research and draft an uncomplicated 15 page brief. Plaintiff
15 cites Maughan v. Google Technology, Inc. (2006) 143 Cal.App.4th
16 1242 in support of this proposition. In Maughan, plaintiff
17 accounting corporation sued Google for libel, product liability
18 and unfair business practice based on the allegation that a
19 Google search produced results suggesting that the firm had been
20 disciplined by the California Board of Accountancy. Google's
21 anti-SLAPP motion was granted and it then filed a motion for
22 fees in which it sought to recover \$112,288.63. The trial court
23 granted the motion for fees but only awarded \$23,000. The trial
24 court found that one 50-hour week of work was all that should
25 have reasonably been spent on the motion, especially given the

1 expertise of defense counsel in the area of anti-SLAPP
2 litigation. The trial court specifically noted that it was
3 having a hard time believing that counsel spent approximately
4 four 50-hour work weeks on the motion. The trial court's order
5 was appealed by Google and was affirmed on appeal.

6 The Maughan case is on point and provides good support for
7 Plaintiff's argument that the number of hours billed in this
8 case is not reasonable. The Court has already found that the
9 hourly rate charged by each of the attorneys is reasonable, and
10 this was based in part on the exceptional qualifications they
11 possess. Given that, it was not reasonable to spend so many
12 hours of attorney time on the anti-SLAPP motion. Objections to
13 the Cassanego declaration as to the reasonableness of the hours
14 spent are sustained; the Court has reached its own conclusion
15 regarding the reasonableness of the hours spent.

17 Ashlee Hansen

18 Ms. Hansen spent the most time on this action. According
19 to the Court's examination of the billing statements, it appears
20 that she billed in excess of 200 hours in researching and
21 preparing the briefs and documents for the motion. According to
22 Defendant's motion for fees, Ms. Hansen spent approximately 285
23 hours on the briefs and supporting materials. While the Court
24 acknowledges that there was a certain amount of complexity of
25 issues, and understands that a second motion was required after

1 Plaintiff amended his complaint, this is still an unreasonable
2 amount of time. For Ms. Hansen's time from the time the
3 Complaint was filed up through the date of the SLAPP motion
4 hearing, the Court finds that 200 hours is reasonable. For Ms.
5 Hansen's time since the hearing, she has billed over 95 hours.
6 The Court finds that 75 is a reasonable number for the time
7 required to draft this motion and reply. Therefore, 275 hours
8 at \$460/hour = \$126,500.

9
10 Laura Brill

11 Ms. Brill acted as lead counsel for Defendant and
12 supervised the work of Ms. Hansen. Ms. Brill billed for 104.6
13 hours through February 28, 2013, and 28.6 since that time. The
14 Court finds that 75 is a reasonable number of hours to have
15 devoted to this action up to and including the hearing and 25 is
16 a reasonable number of post-hearing hours. Therefore, 100 hours
17 at \$660/hour = \$66,000.

18 Nicholaus Daum

19 The Court finds that the four hours billed by Mr. Daum are
20 reasonable. Therefore, four hours at \$535/hour = \$2,140.

21 William Jacobson

22 The Court finds that the 9.2 hours billed by Mr. Jacobson
23 are reasonable. Therefore, 9.2 hours at \$310 = \$2,852.

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1 Aaron Schur

2 The Court finds the 25 hours billed by Mr. Schur are
3 reasonable. Therefore, 25 hours at \$630/hour = \$15,750.

4 Patricia Perello

5 The Court finds all 16.5 hours to be reasonable, but
6 reduces the hourly rate to \$150. Therefore, 16.5 hours at
7 \$150/hour = \$2,475.

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10 The Court finds all 8.7 pre-hearing and the 2.8 post-
11 hearing hours to be reasonable, but reduces the hourly rate to
12 \$150. Therefore, 11.5 hours at \$150/hour = \$1,725.

13 III.

14 CONCLUSION

15 Based upon the foregoing, the court orders that:


- 16 1) Defendant's Motion for Attorney Fees and Costs is
17 GRANTED.
18 2) Plaintiff shall pay Defendant \$221,886 in attorney fees
19 (\$217,442) and costs (\$4,444.63).
20 3) Plaintiff's Objections to the Hansen, Brill, and Shur
21 declarations are OVERRULED.

22 CLERK TO GIVE NOTICE TO DEFENDANT. DEFENDANT TO GIVE
23 NOTICE TO ALL OTHER PARTIES.
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1 NON-COMPLIANCE WITH ANY ORDER HEREIN SHALL EXPOSE THE NON-
2 COMPLIANT PARTY AND/OR COUNSEL TO ANY SANCTIONS AUTHORIZED BY
3 LAW.

4 IT IS SO ORDERED.

5 DATED: November 13, 2013

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8 JUVETTE M. PALAZUELOS
9 JUDGE OF THE SUPERIOR COURT
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