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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
9
10 DESERT DISTRICT

11	MICHAEL R. SOLOMON,)	CASE NO. PSC 1503643
12)	
13	Plaintiff,)	MEMORANDUM OF POINTS AND
14	-vs-)	AUTHORITIES IN OPPOSITION TO
15	DESERT HEALTHCARE DISTRICT;)	DEFENDANTS MOTION FOR
16	KAY HAZEN, an individual; KATHY)	ATTORNEY FEES
17	GRECO, an individual;)	
18	Defendants.)	Date: February 9, 2015
)	Time: 8:30 A.M.
)	Place: PS2

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I. INTRODUCTION

Defendants prevailed in their SLAPP Motion against Plaintiff. Plaintiff has timely appealed the Order Granting the Slapp Motion. After the Notice of Appeal was filed and served, Defendant filed this Motion for Attorneys Fees.

The award of attorney fees is precluded by *California Code of Civil Procedure Section* 425.17(b). This statute provides that Section 425.16 does not apply to any action brought solely in the public interest. This opposition and its supporting declarations show that this lawsuit was brought solely in the public interest, and therefore that attorney fees are precluded.

In addition, Solomon disputes the amount of the fees requested by Defendants, which amounts to \$2,109.88 per page, or 9.23 hours per page, for each of the 23 pages that were part of the SLAPP Motion. These figures alone establish the fee request by Defendant is unreasonable, unnecessary and excessive.

Finally, SOLOMON also requests that this motion be stayed pending the outcome of the appeal. After appeal, all fees can be decided once and for all at a single hearing. Regardless of the result on the appeal, additional attorney fee motions will be necessary because this case as not yet come to its final conclusion. Therefore, it is reasonable for this motion to be postponed and heard when the entire case has reached its final conclusion.

II. UNDERLYING FACTS

Defendants HAZEN and GRECO designed a plan to transfer taxpayer funds from the Desert Healthcare District to a private foundation. The purpose of this plan was to enable taxpayer funds from the Desert Healthcare District to secretly and illegally be diverted to support organizations located outside the geographical boundaries of the Desert Healthcare District that

1 employed Defendant HAZEN.

2 Plaintiff SOLOMON objected to these illegal transfers. When Plaintiff SOLOMON
3 suffered a stroke and sought care at DESERT REGIONAL MEDICAL CENTER, Defendants
4 HAZEN and GRECO used their position with the DESERT HEALTHCARE DISTRICT to
5 obtain confidential medical information about Plaintiff SOLOMON from his attending physician
6 and his hospital records including, but not limited to, a CT scan of Plaintiff's brain. Defendants
7 then distributed this information to the general public in an effort to discredit Plaintiff
8 SOLOMON and direct attention away from their illegal scheme to divert taxpayer funds.
9

10
11 When Plaintiff SOLOMON, in his capacity as President of the DESERT HEALTHCARE
12 DISTRICT, attempted to counsel Defendant GRECO about illegally obtaining and disclosing his
13 private and confidential medical information, Defendant GRECO maintained she had a right to
14 obtain that information and distribute it, and that she would do it again.

15 Plaintiff SOLOMON then filed this lawsuit as his sole available remedy to stop the illegal
16 gathering and dissemination of private healthcare information by Defendants. Defendants filed a
17 SLAPP motion claiming they have a right to obtain and distribute confidential medical
18 information and records for patients at Desert Regional Medical Center because it is
19 "newsworthy". Defendants further contended that there were no laws that prevented them from
20 obtaining and distributing Plaintiff confidential medical information from his physicians and
21 DESERT REGIONAL MEDICAL CENTER without his consent. This Court agreed with
22 Defendants and granted the SLAPP motion.
23

24 Plaintiff SOLOMON has timely appealed, and the appeal is now pending before the
25 Court of Appeals for the Fourth Circuit, Division Two.
26
27

1 **III. BECAUSE THIS ACTION WAS BROUGHT SOLELY IN THE**
2 **PUBLIC INTEREST, C.C.P. 425.17 PRECLUDES THE AWARD OF**
3 **ATTORNEY FEES TO DEFENDANTS**

4 California Code of Civil Procedure Section 425.17 reads, in pertinent part, as follows:

5 "(b) Section 425.16 does not apply to any action brought solely in the public interest or
6 on behalf of the general public if all of the following conditions exist:

7 (1) The plaintiff does not seek any relief greater than or different from the relief sought
8 for the general public or a class of which the plaintiff is a member. A claim for attorney's
9 fees, costs, or penalties does not constitute greater or different relief for purposes of this
10 subdivision.

11 (2) The action, if successful, would enforce an important right affecting the public
12 interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on
13 the general public or a large class of persons.

14 (3) Private enforcement is necessary and places a disproportionate financial burden on
15 the plaintiff in relation to the plaintiff's stake in the matter.

16 *California Code of Civil Procedure Section 425.17*

17 The case of *Tourgeman, vs. Nelson & Kennard* , 222 Cal. App. 4th 1447, 166 Cal. Rptr.
18 3d 729 (2014) from the Court of Appeal of the Fourth District, Division One held that this
19 exception applied to an action filed to enjoin unfair Debt Collection Practices.

20 Defendant KATHY GRECO used her position as the Chief Executive Officer of the
21 Desert Healthcare District to obtain and distribute confidential medical information from
22 Plaintiff's physicians and Plaintiff's medical file at Desert Regional Medical Center. When
23 Plaintiff was conducting an annual review of the job performance of Defendant KATHY
24 GRECO in his capacity as the President of the Desert Healthcare District, he attempted to
25 counsel her about the disclosure of his confidential medical information, to which Defendant
26 KATHY GRECO responded that she had a right to obtain the information because the patient
27 confidentiality laws did not apply to her or to the Desert Healthcare District and that she would
28

1 SOLOMON. The purpose of the declaration was to establish cause for the termination of the
2 employment of Defendant KATHY GRECO.

3 This action, if successful, would have enforced an important right affecting the public
4 interest, consisting of the establishment of the right of patients at Desert Regional Medical
5 Center to privacy of their medical records and would confer a significant benefit on the general
6 public because their right to privacy of their medical records would have been established,
7 together with the establishment of a legal ground for the termination of the C.E.O. responsible
8 for obtaining and distributing Plaintiff's confidential medical information.
9

10 Private enforcement is necessary and places a disproportionate financial burden on the
11 plaintiff in relation to the plaintiff's stake in the matter. Mark Matthews, a Board Member of the
12 Desert Healthcare District, explained to Dr. Solomon in response to his initiation of litigation that
13 the Desert Healthcare District had sixty million dollars it would spend to defeat any lawsuit
14 brought by Dr. Solomon. Dr. Solomon is currently unemployed and recovering from a stroke and
15 has limited financial resources. A Declaration of Michael Solomon establishing these facts is
16 being filed and served concurrently with this Motion.
17

18 Under these facts, *California Code of Civil Procedure Section 425.17* prohibits an award
19 of attorney fees under *California Civil Code Section 425.16*.
20

21 **IV. A PORTION OF THE FEES REQUESTED BY DEFENDANTS**
22 **ARE UNREASONABLE, EXCESSIVE, AND UNNECESSARY**

23 The declaration of Clark Garen filed concurrently herewith provides admissible evidence
24 that the fees claimed by Defendants are hardly reasonable or necessary. Defendants motion and
25 the supporting declarations consisted of 23 pages. Defendants claim it cost them \$2,109.88 per
26

1 page to prepare a relatively simple SLAPP Motion. Defendants cite 34 cases and 2 statutes, only
2 a few of which relate to the facts of this case.

3 As Defendants correctly state, a Defendant has the burden of providing records showing
4 how much time was spent and whether the hours were reasonably expended. (*Lunada Biomedical*
5 *vs. Nunez*, 2014), 230 Cal. App. 4th 459, 486-487; see also *Christian Research Institute vs.*
6 *Alnor*, (2008), 165 Cal. App. 4th 1315, 1320 [evidence must allow court to determine "whether
7 the case was overstaffed, how much time the attorneys spent on particular claims, and whether
8 the hours were reasonably expended"]. An attorney fee award must be based on a "careful
9 compilation of the time spent and reasonable hourly compensation of each attorney ... involved in
10 the presentation of the case." (*Ketchum*, 24 Cal. 4th at 1131-1132).

13 BEST, BEST, and KREIGER claims to have spent a total of 51.70 hours and fees of
14 \$12,291.60 in connection with the SLAPP Motion. However, BEST, BEST, AND KREIGER
15 were not even the attorneys of record in this case! It is difficult to comprehend how these services
16 by a law firm that was not the attorney of record in this case are reasonable or necessary. Plaintiff
17 asserts that all fees to BEST, BEST, and KREIGER should be denied.

19 Evidence substantiating the unreasonable amount of the BEST, BEST, and KRIEGER is
20 established by the Declaration of Clark Garen filed concurrently herewith.

22 Artiano, Shinoff & Holtz claims to have spent a total of 160.6 hours and fees of
23 \$29,710.00 preparing a 23 page SLAPP motion. This is not a reasonable number of hours to draft
24 this motion. It amounts to 5 hours and 38 minutes for the preparation of each page!

26 Evidence substantiating the unreasonable amount of the Artiano, Shinoff & Holtz
27 attorney fees is established by the Declaration of Clark Garen filed concurrently herewith.

1 Defendant claims that it is entitled to be awarded *all* of its attorney fees and not just the
2 fees required to file the SLAPP motion. Defendant cites no authority for this position, and the
3 statute itself would appear to preclude such an award. However, the hours are equally inflated if
4 the billings are reduced to only the hours spent actually drafting the SLAPP motion.
5

6 In the case of *Maughan v. Google Tech., Inc.*, 143 Cal. App. 4th 1242, 1249, 49 Cal.
7 Rptr. 3d 861, 866 67 (2006) , the Court found that \$23,000.00 was a reasonable fee for drafting
8 a SLAPP motion. The pertinent portion of the opinion reads as follows:
9

10 "The court granted Google's motion for fees and costs but reduced the amount awarded to
11 \$23,000 after explaining: This Court routinely deals with attorneys' fee requests in
12 complex cases and other contexts such as in class actions and discovery motions. As
13 such, this Court has experience with how much time attorneys should be spending and
14 typically do spend on difficult and complex matters. This court believes that a reasonable
15 time spent on the [anti-] *SLAPP motion and the instant motion* [for fees and costs] is, as
16 [Maughan and Brown & Maughan] have suggested, approximately 50 hours or one
attorney work week. Averaging the billing rate of the two attorneys who worked on the
motion results in \$425 per hour. \$425 per hour multiplied by 50 hours amounts to
\$21,250. Adding a reasonable figure for costs the Court believes that \$23,000 is a
generous and reasonable award of attorneys' fees and costs given the circumstances in this
action."

17 *Maughan v. Google Tech., Inc.*, 143 Cal. App. 4th 1242, 1249,
18 49 Cal. Rptr. 3d 861, 866-67 (2006)

19 In *Davis v. City of San Diego*, 106 Cal. App. 4th 893, 903 04, 131 Cal. Rptr. 2d 266
20 (2003), the Court held:
21

22 "The California Supreme Court has stated a trial court must "determine a 'touchstone' or
23 Lodestar' figure based on a 'careful compilation of the time spent and reasonable hourly
24 compensation for each attorney ... involved in the presentation of the case.' " (*Press,*
25 *supra*, 34 Cal.3d. at p. 322.) "The proper determination of the use of the lodestar figure
26 is extremely important" because " '[t]he starting point of every fee award ... must be
27 a calculation of the attorney's services in terms of the time he has expended on the case.
28 Anchoring the analysis to this concept is the only way of approaching the problem that
can claim objectivity" ' " (*Ibid.*) "Ultimately, the trial judge has discretion to
determine 'the value of professional services rendered in his [or her] court' [Citation.]

1 However, since determination of the lodestar figures is so '[f]undamental' to calculating
2 the amount of the award, the exercise of that discretion must be based on the lodestar
3 adjustment method." (*Ibid.*) In sum, "California courts have consistently held that a
4 computation of time spent on a case and the reasonable value of that time is fundamental
to a determination of an appropriate attorneys' fee award." (*Margolin v. Regional*
Planning Com. (1982) 134 Cal.App.3d 999, 1004 [185 Cal.Rptr. 145] (*Margolin.*))

5 *Davis v. City of San Diego*, 106 Cal. App. 4th 893, 903-04,
6 131 Cal. Rptr. 2d 266 (2003)

7 Defendant's claim it used the Lodestar method, but this method prohibits fees that are
8 "excessive, redundant, or otherwise unnecessary." A portion of Defendant's request is
9 unreasonable, excessive, and unnecessary. Therefore, Plaintiff requests an adjustment of the fee
10 award based on the below argument and supporting declarations of Plaintiff and Clark Garen.
11

12 Plaintiff agrees with the Court in *Maughan v. Google Tech., Inc.*, 143 Cal. App. 4th 1242,
13 1249, 49 Cal. Rptr. 3d 861, 866-67 (2006) that 50 hours, or one attorney work week, is the
14 appropriate amount of time in which to have drafted the SLAPP Motion. Since the Artiano firm
15 bills \$195.00 per hour for its partner, Plaintiff SOLOMON suggests that the appropriate fee is 50
16 hours at \$195.00 per hour for a total of \$9,750.00 in fees.
17

18 The Declaration of Clark Garen filed concurrently provides evidence that the reasonable
19 number of hours to prepare this motion is 50.80 hours and the reasonable fee at the rate of
20 \$195.00 per hour is \$9,906.00.
21

22 **V. DEFENDANT'S MOTION FOR ATTORNEY FEES**
23 **SHOULD BE STAYED UNTIL THE APPEAL IS DECIDED**

24 This case is on Appeal. Plaintiff SOLOMON proposes that the motion be stayed until the
25 completion of the appeal so that the Court and the parties do not have to spend duplicative time
26 deciding attorney fees. It is possible that a decision by the appeals court could lead to another re-
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1 calculation and ruling on attorney fees. Further, this entire case has not come to a final
2 conclusion and it would be more economical to stay the decision on attorney fees until the final
3 conclusion of the case.

4
5 A determination of attorney fees before the Appeal is decided will require that a separate
6 appeal be filed of the order determining attorney fees, and will result in two appeals pending
7 before the Court of Appeal on the same issue. The better solution is to reserve jurisdiction over
8 the issue of attorney fees until the Appeal is resolved.

9
10 In the event this Court decides to determine attorney fees now, the order for payment of
11 fees should be stayed pending resolution of the Appeal.

12 **VI. CONCLUSION**

13 1. The Court must find that *California Code of Civil Procedure Section 425.17* prohibits
14 an award of attorney fees under *California Civil Code Section 425.16* in this case.

15 2. If the Court does award fees, that the fees awarded be reduced to 50.8 hours at \$195.00
16 per hour for a total of \$9,906.00..

17
18 3. The Motion for Attorney fees should be stayed pending resolution of the appeal now on
19 file herein. In the event that this court makes an order for the payment of attorney fees, the order
20 should be stayed until the conclusion of the appeal now on file herein.

21 Dated:

22
23 LAW OFFICES OF CLARK GAREN

24 BY

25 
26 CLARK GAREN,
ATTORNEY FOR PLAINTIFF

1 PROOF OF SERVICE BY MAIL

2 (1013a, 2015.5 C.C.P.)

3 STATE OF CALIFORNIA)
4 COUNTY OF RIVERSIDE) S.S.

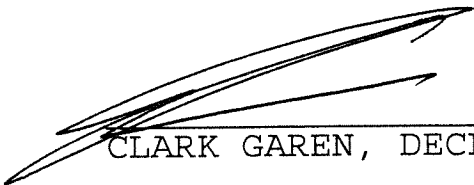
5 I am a citizen of the United States and a Resident
6 of the County Aforesaid; I am over the age of eighteen
7 years and not a party to the within entitled action;
8 my business address is:
9 17100 NORTH INDIAN, NORTH PALM SPRINGS, CALIFORNIA
10 92258

11 On January 18, 2016, I served the within
12 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS
13 MOTION FOR ATTORNEY FEES on the interested parties herein
14 in said action by placing a true copy thereof enclosed
15 in a sealed envelope with postage thereon fully
16 prepaid, in the United States mail at NORTH PALM
17 SPRINGS, CALIFORNIA addressed as follows:

18 ARTIANO, SHINOFF & HOLTZ,
19 ATTORNEYS AT LAW,
20 17710 JEFFERSON AVENUE,
21 SUITE 102,
22 TEMECULA, CALIFORNIA 92590

23 I DECLARE UNDER PENALTY OF PERJURY THAT THE
24 FOREGOING IS TRUE AND CORRECT.

25 EXECUTED ON JANUARY 18, 2016 AT PALM SPRINGS,
26 CALIFORNIA

27
28

CLARK GAREN, DECLARANT