

**TRIPLETT v LAGUNA GOLD MORTGAGE, INC., et al**

**23CV47133**

**DEFENDANT TULARE'S MOTION  
TO SET ASIDE DEFAULT AND QUASH SERVICE**

On December 27, 2023 James Triplett ("Plaintiff") filed his complaint for conversion, breach of contract, and negligence against multiple defendants including Tulare Industrial Center, Inc. ("Tulare"). Now before the Court is Tulare's motion to set aside default and quash service of process.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

**Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]**

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Based on the foregoing, the motion is **DENIED**, without prejudice to refile. The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.

# WELLS FARGO BANK, N.A. v ELWESS

24CF14402

## PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") sued Defendant Kellie El Wess ("Defendant") for the collection of a debt. Thereafter, Defendant filed an Answer. Now before the Court is Plaintiff's motion to deem admitted the matters specified in the Plaintiff's Request for Admission ("RFA").

On or about June 7, 2024, Plaintiff served its first set of discovery: Request for Admissions - Set One ("RFA.") On or about July 16, 2024, Plaintiff's counsel attempted a meet and confer by sending the letter to Defendant regarding the outstanding discovery and offering additional time to respond. (*Id.* ¶ 5, Ex. 2.) As of the Plaintiff's motion, Defendant has not responded to the letter or provided any responses to the RFA. Defendant has also not filed an opposition to the Plaintiff's motion.

Pursuant to Code Civ. Proc. section 2033.280:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

- 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
- 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

Defendant has not served a response and has not provided any evidence to the court that the failure is a result of mistake, inadvertence, or excusable neglect.

Accordingly, Plaintiff's motion is **GRANTED**.

The Clerk shall provide notice of the Ruling forthwith. The Court intends to sign the Order submitted by Plaintiff.

# DVORAK v HOPE PUBLICATIONS, LLC

24CV47332

## DEFENDANT'S MOTION FOR ATTORNEY'S FEES

On April 22, 2024, Michael Dvorak ("Plaintiff") filed a complaint against Hope Publications LLC, dba Calaveras Enterprise ("Defendant"), alleging causes of action for: 1) defamation, 2) libel, 3) false light, 4) defamation "per se", 5) defamation "per quod", 6) intentional infliction of emotional distress, 7) negligent infliction of emotional distress, and 8) damages.

On August 16, 2024, the Court granted Defendant's special motion to strike. Now before the Court is Defendant's motion for attorney's fees and costs.

### I. Background

Plaintiff is a member of the Board of Directors of the Calaveras County Resource Conservation District ("Calaveras RCD"). He was appointed to the seven-member board in January 2022 by the County Board of Supervisors.

Defendant is a publishing company that operates a locally owned newspaper called the Calaveras Enterprise ("Newspaper"). The Newspaper is printed once a week but is also available daily online. Plaintiff alleged that in the October 11, 2023 edition, the Newspaper published an "erroneous felony booking log" stating that Plaintiff had been booked for vandalism.

The Court granted Defendant's motion to strike, finding that the information Defendant published in the Newspaper was privileged as an accurate report of the Sheriff's communications concerning a public official proceeding.

### II. Legal Standard and Discussion

Pursuant to Code of Civil Procedure section 425.16(c)(1), "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (See also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141-1142.) Parties may seek attorney fees and costs in connection with a special motion to strike (1) in the moving papers, (2) in a subsequently filed motion, or (3) as part of a cost memorandum. (*Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 992.)

A prevailing party may only recover for work related to the motion, not the entire suit. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) However, compensable fees include fees incurred in moving for attorney's fees

and establishing the appropriate fee amount. (*Ketchum v. Moses*, (2001), 24 Cal.4th 1122, 1133.)

Statutory attorney fees are ordinarily determined by the court pursuant to the lodestar method. Under this approach, a base amount is calculated from a compilation of time reasonably spent and reasonable hourly compensation of each attorney and may be adjusted in light of various factors. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394-395.) The attorney's fees must be reasonable and the court has broad discretion to determine the amount of a reasonable fee. (*Syers Properties III, Inc. v. Rankin*, (2014), 226 Cal.App.4th 691, 703.) To determine the reasonableness of hours actually spent litigating the matter, the court reviews the evidence to determine if there was

Courts begin with an independent review of the evidence to determine the reasonableness of the hours actually spent litigating the matter and to assess whether there was "padding, over-conferencing, attorney stacking, and excessive research" or some other marked inefficiency. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272.) Other factors courts consider include the development of the case, the complexity of the issues, and how long the court estimates it should have taken to perform the services. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249.) After the courts determine the number of hours reasonably necessary to the conduct of litigation, the final step is to determine an appropriate hourly rate for the work performed, based on market trends in the particular region for that kind of work. (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 619.)

### **Hours Expended**

Defendant seeks a total of \$52,084 in fees and \$648.46 in costs and submits a declaration by counsel, Matthew S.L. Cate, detailing the work performed in support of the fees sought. Defense counsel proffers an hourly rate for two attorneys and one paralegal between \$210 and \$550 per hour, and a billing summary reflecting approximately 95.5 hours of attorney and paralegal time. (Cate Decl. ¶ 17.) Mr. Cate avers that an additional 13.1 hours of work was billed for work performed by both attorneys on the Reply. (Cate Declaration No. 2, ¶ 10.) Mr. Cate avers that he reduced his standard rate of \$870 per hour to \$475 per hour and that his of counsel attorney, Mr. Gutierrez, reduced his standard frate of \$965.00 to \$550.00. (Cate Decl. ¶ 17.)

Plaintiff does not dispute that Defendant is statutorily authorized to seek and obtain fees and costs in this matter. Rather, Plaintiff argues that the fees are excessive in that they are overly high, not all related to the anti-SLAPP motion, and not all appropriate. The Court agrees.

Defendant's counsel seeks 9.7 hours for "assessment and development of Anti-SLAPP defenses" and an additional 6.7 hours for "assessment and development of Anti-SLAPP defenses in connection with answer preparation." Within these broader categories, counsel bills for approximately 5 hours of correspondence between the two attorneys, reviewing and analyzing the complaint, and seeking public records related to the

allegedly defamatory publications. While counsel attempts to clarify that the Answer needed to be drafted very strategically and in preparation for the motion itself, these billings are problematic for two reasons. First, the strategy development overlaps and given their expertise in this field, approximately 16 hours of defense development is excessive and includes 5 hours of counsel correspondence with each other. Second, even in anti-SLAPP matters, the preparation of an answer is not recoverable as a proper fee for a motion to strike. (*Christian Research Institute v. Alnor*, (2008), 165 Cal.App.4th 1315, 1325.) Accordingly, the Court reduces the hours for “assessment and development of defenses” to six (6) hours.

Next, counsel seeks 57.02 hours for “drafting anti-SLAPP motion.” The Court finds that some of those 57 hours involved correspondence between the attorneys, in large part related to review of each other’s work. The Court find the compensable part of the “drafting anti-SLAPP motion” billing to be approximately 43 hours.

Counsel next seek 5 hours for “anti-SLAPP opposition, reply and surreply” and finds three hours of that compensable as actual work or research performed.

Counsel also seek 5.3 hours for preparation and attendance at the hearing and preparing the order. The Court finds that three hours of this is compensable.

Finally, Counsel seek 11.8 hours for the motion for fees and an additional 13.1 hours for the reply. The Court reduces the reasonable hours spent on the motion to 10 hours and the reply to 2 hours.

Accordingly, the Court finds that the compensable hours reasonably spent on the motion for attorney’s fees and reply to be 67 hours (65 attorney hours, 2 paralegal hours).

### **Reasonable fee and award amount**

Defendant seeks attorney’s fees in the amount of \$550 and \$475 per hour and paralegal fees in the amount of \$210. The Court finds that the prevailing hourly rate for attorneys in Calaveras County is \$300.00 and for paralegals is \$100.00.

Accordingly, the Court **GRANTS** defendant’s motion and **awards total attorney’s fees in the amount of \$19,700.00 and costs in the amount of \$648.16, for a total award of \$20,348.16, to be paid within 30 (thirty) calendar days of this ruling..**

The Clerk shall provide notice of the Ruling forthwith. Defendant to prepare a formal Order conforming to this Ruling pursuant to Rule 3.1312.