UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PASADENA TOURNAMENT OF ROSES ASSOCIATION,

Plaintiff,

vs.

CITY OF PASADENA,

Defendant.

Case No.: 2:21-cv-01051-AB (JEMx)

ORDER GRANTING DEFENDANT'S MOTION FOR ATTORNEYS' FEES

Before the Court is Defendant City of Pasadena's ("City" or "Defendant") Motion for Attorneys' Fees ("Motion"). (Dkt. No. 51). Plaintiff Pasadena Tournament of Roses Association ("Tournament" or "Plaintiff") filed an Opposition to the City's Motion ("Opp'n"), (Dkt. No. 52), and the City filed a Reply ("Reply"), (Dkt. No. 57). The Court deemed this matter appropriate for decision without oral argument and therefore vacated the hearing scheduled for October 22, 2021. (Dkt. No. 64). For the following reasons, the Court now **GRANTS** the Motion.

I. BACKGROUND

The Court and the parties are familiar with the factual and procedural background of this case, as set out in the Court's Order Denying Motion to Strike and Granting Motion to Dismiss ("Prior Order"). (Dkt. No. 50). Defendant filed the instant Motion on July 26, 2021, and, after several continuances, a hearing date was set for October 22, 2021. (Dkt. No. 63). The Court then took the matter under submission, on October 19, 2021. On November 2, 2021, the parties contacted the Court by voice message and informed the Court that they had reached a settlement in principle. They then asked the Court for time to finalize and formalize a settlement agreement.

On January 18, 2022, the Court ordered the parties to file a notice of settlement or a joint status report no later than February 18, 2022. (Dkt. No. 69). On February 3, 2022, Defendant informed the Court that the parties had been "unable to settle their differences through mediation." (Dkt. No. 70 at 2). Defendant then requested that the Court make a ruling on the instant Motion before the filing deadline for Plaintiff's brief with the Ninth Circuit, so that the Court's ruling on this Motion can be considered as part of Plaintiff's appeal. (*Id.*). In a separate filing, Plaintiff noted that the submission deadline for its opening brief is March 24, 2022. (Dkt. No. 71 at 1).

The City seeks $253,230.50 for successfully defending against Claims 3–9 of Plaintiff's First Amended Complaint, (Motion at 2), $102,019.00 "pursuant to the mandatory fee-shifting provision in California's anti-SLAPP statute," (Motion at 2–3), $49,410.50 for bringing the instant Motion, (Motion at 3), and $49,699.00 for fees it incurred while working on the Reply, (Reply at 18). In total, the City seeks $454,359.00 in attorneys' fees. (*Id.*)

II. LEGAL STANDARD

a. Attorneys' Fees Due to Contract Provision

In every case where a prevailing party seeks its attorneys' fees from an opponent, courts begin with "the general rule in this country that unless Congress [or a

state legislature] provides otherwise, parties are to bear their own attorney's fees." *Fogerty v. Fantasy, Inc.* ("*Fogerty I*"), 510 U.S. 517, 533 (1994). California's state legislature has enacted the California Code of Civil Procedure and the California Civil Code, both of which contain provisions respecting awards of attorneys' fees. *See, e.g.,* Cal. Civ. Proc. Code § 1021 *et seq.*, Cal. Civ. Code § 1717.

§ 1717(a) of the Civil Code states, in part, the following:

> In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract . . . shall be entitled to reasonable attorney's fees in addition to other costs . . . Reasonable attorney's fees shall be fixed by the court . . .

Moreover, subject to a few exceptions, "the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract." Cal. Civ. Code § 1717(b).

Trial courts have "broad authority to determine the amount of a reasonable fee." *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). In order to ensure that awards of attorneys' fees are not arbitrary, California trial courts begin the fee analysis with the lodestar, meaning "the number of hours reasonably expended multiplied by the reasonable hourly rate," where "[t]he reasonable hourly rate is that prevailing in the community for similar work." *Id.* Courts then adjust the resulting figure based on "factors specific to the case." *Id.* These factors include "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." *Id.* (quoting *Melynk v. Robledo*, 64 Cal.App.3d 618, 623–624 (1976)).

The party that moves for attorneys' fees must produce evidence that both their rates and the hours they claim to have worked are reasonable. *See Intel Corp. v. Terabyte Intern., Inc.*, 6 F.3d 614, 623 (9th Cir. 1993); *see also Roth v. Plikaytis*, 15 Cal. App. 5th 283, 290 (2017). If the opposing party objects, they must provide the

Court with an analysis of why the moving party's rates and hours worked were unreasonable in the context of the case. *See Avikian v. WTC Financial Corp.*, 98 Cal. App. 4th 1108, 1119.

b. Attorneys' Fees for Prevailing on a Motion to Strike

"Anti-SLAPP statutes are designed to allow the early dismissal of meritless lawsuits aimed at chilling expression through costly, time-consuming litigation." *Gardner v. Martino*, 563 F.3d 981, 986 (9th Cir. 2009). California's anti-SLAPP statute authorizes a special motion to strike claims that arise "from any act of [a] person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1). However, if the Court determines that a plaintiff has established a probability of prevailing on such a claim, it has discretion to deny an opposing party's motion to strike that claim. *See id.*

§ 425.16(c) provides that if a defendant prevails on a special motion to strike, on the grounds that the relevant claim arose from an act in furtherance of defendant's right of petition or free speech (under the US or California Constitutions) in connection with a public issue, the prevailing defendant is entitled to attorneys' fees and costs. *See id.*

In order to determine which party has prevailed on an anti-SLAPP motion, Courts engage in a two-step process. *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2009). In the first step, the Court must decide whether the defendant has preliminarily shown that the challenged claim in fact arises from protected activity. *Barry v. State Bar of California*, 2 Cal. 5th 318, 321 (2017). If the Court determines that the defendant has done so, the plaintiff must respond by showing a reasonable probability of success on the claim in question. *See* Cal. Civ. Proc. Code § 425.16(b)(1); *Hallmark*, 599 F.3d at 903. Where a defendant moves to strike a claim on anti-SLAPP grounds and argues that the claim in question lacks legal sufficiency,

the standards of Rule 12(b)(6) govern. *See Planned Parenthood Fed,n of Am., Inc. v. Ctr. For Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). Finally, California courts are permitted to use the lodestar method to determine what constitutes a reasonable fee award under California's anti-SLAPP statute. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1136 (2001).

III. DISCUSSION

a. Entitlement to Fees Under Cal. Civ. Code § 1717

Defendant contends that it is entitled to attorneys' fees under Cal. Civ. Code § 1717. Under this provision, if a party incurs attorneys' fees and costs in an effort to enforce a contract, "then the party who is determined to be the party prevailing on the contract" is entitled to fees and costs, so long as the contract provides that fees and costs should be awarded for such efforts. Cal. Civ. Code § 1717(a). Moreover, the prevailing party is the party "who recovered a greater relief in the action on the contract." Cal. Civ. Code § 1717(b).

Defendant argues that § 1717 applies to its dispute with Plaintiff, on the basis of Section 28.12 of the 2010 *Master License Agreement* ("*MLA*"), (Dkt. No. 33 at 196), which is a contract between Plaintiff and Defendant. (Motion at 14). Section 28.12 of the *MLA* states:

> In the event that either Party commences an action or proceeding to enforce its rights under this Agreement or collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs, in addition to any other relief awarded by the Court.

Defendant argues that it is entitled to attorneys' fees under Section 28.12 for its defense against Count 9 of Plaintiff's First Amended Complaint ("FAC"). (Motion at 15–16). Count 9 "asserted a claim for breach of the *MLA*," and since that claim was dismissed with prejudice, Defendant argues it is the prevailing

party with respect to that claim and entitled to fees for its defense against it. (*Id.*) Moreover, Defendant argues that it is entitled to fees for its defense against Counts 3–8, since Defendant was only able to prevail on Count 9 because it prevailed on Counts 3–8. (*Id.* at 16). Defendant explains that the same allegations that gave rise to Counts 3–8 gave rise to the claim in Count 9, and that this allows Defendant to recover attorneys' fees under § 1717 for *all* of the Counts, even though Count 9 is the only breach of contract claim among Counts 3–9. (*Id.*)

Plaintiff responds that Defendant's argument is "a classic illustration of the tail wagging the dog." (Opp'n at 9). Plaintiff explains (i) that Section 28.12 only permits a recovery of fees when a party prevails in an action to enforce rights or collect damages under the *MLA*, and (ii) that Count 9 is the only claim among Counts 3–9 that mentions either the *MLA* or damages. (*See id.* at 7–8). For this reason, Plaintiff takes the position that Defendant is not entitled to fees for its defense against Counts 3–8.

Moreover, Plaintiff argues that Defendant is not entitled to fees for its defense against Count 9 because the Court dismissed one of Plaintiff's other contract claims on jurisdictional grounds (rather than on the merits) and because Defendant can only qualify as a "prevailing party" under Section 28.12 by prevailing on *all* of the contract claims in the action. (Opp'n at 8). Plaintiff purports that this argument is supported by *Scott Co. of California v. Blount, Inc.*, 20 Cal.4th 1103 (1999). (*Id.* at 8–9).

Plaintiff misrepresents *Scott.* Although the *Scott* court states that "completely prevailing on or defeating all contract claims in an action" entitles a party to recover fees under Cal. Civ. Code § 1717, it also states that "[i]f neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or

whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." *Scott*, 20 Cal.4th at 1109. Here, the fact that Plaintiff brought Count 2 before it was ripe for adjudication and had it dismissed on jurisdictional grounds, (*See* Prior Order at 8), should not be held against Defendant. Moreover, it is the Court's judgment that Plaintiff prevailed on Count 9. Therefore, Defendant is entitled to attorney fees for its defense against Count 9, under Section 28.12 of the *MLA*.

Plaintiff is also entitled to fees for its defense against Counts 3–8, even though these claims neither refer to the *MLA* nor seek damages. According to California precedent, courts need not apportion attorneys' fees when fees are "incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." *Hjelm v. Prometheus Real Estate Group, Inc.*, 3 Cal.App.5th 1155, 1178 (2016) (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129–130 (1979)). Counts 3–8 and Count 9 indisputably involve common issues.

The Court made this clear in its Prior Order. (Prior Order at 15) ("Plaintiff's breach-of-contract claim is based on its trademark and false advertising claims."). Moreover, this is evident in the way Defendant organized its Motion to Dismiss ("MTD"). (Dkt. No. 32). There, rather than provide detailed argumentation with respect to Count 9, Defendant simply referred to the arguments it made with respect to Counts 3–8, (MTD at 33) ("Because, *as shown in detail above*, the City has not participated in any false advertising or used 'Rose Bowl' in violation of Plaintiff's rights, Plaintiff's allegations of breach necessarily fail.") (emphasis added). It was only possible for Defendant to rely on its earlier arguments in this way because the core issues in Count 9 were also central to Counts 3–8. In other words, Counts 3–9 are "so intertwined as to make it impracticable, if not impossible, to separate" the time spent on the breach of

contract claim and the time spent on Counts 3–8. *Hjelm*, 3 Cal.App.5th at 1177 (quoting *Maxim Crane Works, L.P. v. Tilbury Constructors*, 208 Cal.App.4th 286, 298). For this reason, Plaintiff is entitled to fees for both its defense against Count 9 and its defense against Counts 3–8.

b. Entitlement to Fees Under Cal. Civ. Proc. Code § 425.16(c)(1)

Defendant contends that it is entitled to attorneys' fees under Cal. Civ. Proc. Code § 425.16(c)(1), which states, in part, that a "prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Plaintiff originally filed a Complaint including a cause of action for slander of title. (Dkt. No 1). However, Defendant responded by filing a motion to strike Plaintiff's slander of title claim ("anti-SLAPP Motion"), on the grounds that it violated California's anti-SLAPP statute. (*See* Dkt. No. 21). The anti-SLAPP statute states that a cause of action against a person is subject to a special motion to strike if (i) it arises from "any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue," unless (ii) a court determines that the plaintiff has established a probability of prevailing on the relevant cause of action. Cal. Civ. Proc. Code § 425.16(b)(1).

Plaintiff responded to the anti-SLAPP Motion by filing its FAC, in which it voluntarily dismissed its cause of action for slander of title. For this reason, the Court denied the anti-SLAPP Motion but stated that it was too early for the Court "to determine whether [Defendant had] prevailed within the meaning of the anti-SLAPP statute." (Prior Motion at 5–6). The Court now makes that determination.

§ 425.16(c)(1) makes clear that the prevailing party on an anti-SLAPP motion is entitled to recover fees and costs; in other words, the recovery of fees in such cases is mandatory. *See Ketchum*, 24 Cal. 4th at 1131. Moreover, a plaintiff's voluntary dismissal of a claim, after the filing of an anti-SLAPP motion *against* that claim, does

not necessarily bar the moving party from qualifying as the "prevailing party" on the anti-SLAPP motion. After some instance of voluntary dismissal, the moving party will still qualify as the prevailing party on the claim, such that it would be appropriate for a court to award the anti-SLAPP statute's mandatory fee to the moving party. *See Pfeiffer Venice Props. v. Bernard*, 101 Cal. App. 4th 211, 218 (2002). In determining which party prevailed on an anti-SLAPP motion, "the trial court is required to rule on the merits of the motion, and to award attorneys fees 'when a defendant demonstrates that [the] plaintiff's action falls within the provisions of [§ 425.16(b)] and the plaintiff is unable to establish a reasonable probability of success.'" *Id.* (quoting *Liu v. Moore*, 69 Cal. App. 4th 745, 752 (1999)).

The Court, then, must resolve two issues: (i) whether Defendant has shown that Plaintiff's slander of title cause of action arises from "any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue," Cal. Civ. Proc. Code § 425.16(b)(1), and (ii) whether Plaintiff has shown a reasonable probability of success on that cause of action. In the Court's judgment, Defendant has shown that the slander of title claim fails within § 425.16(b)(1), and Plaintiff has failed to show a reasonable probability of success on the claim. Therefore, Defendant is the prevailing party on the anti-SLAPP Motion and is entitled recover fees and costs under California's anti-SLAPP statute.

As to the first issue, Defendant has "made a threshold showing that the challenged cause of action is one arising from protected activity." *See Equilon Enters. v. Cons. Cause, Inc.*, 29 Cal. 4th 53, 67 (2002). Defendant persuasively argues that the two disputed statements in the January 1, 2021 *New York Times* article were "made in a place open to the public or a public forum[,] in connection with an issue of public interest," § 425.16(e)(3), since both statements were made in a widely-available newspaper and concerned issues relating to local government. (Motion at 25–26). In

its Opposition, Plaintiff does not dispute that Defendant managed to make the required threshold showing. (Reply at 13).

As to the second issue, Plaintiff has failed to show a reasonable probability of success on its slander of title claim, by failing to show a reasonable probability that each of that claim's four elements were satisfied by Defendant. The elements of slander of title are "(1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss." *Sumner Hill Homeowners' Ass'n v. Rio Mesa Holdings, LLC*, 205 Cal. App. 4th 999, 1030 (2012). More colloquially, slander of title occurs "when a person, without a privilege to do so, publishes a false statement that disparages [another's] title to property" and causes a monetary loss to that owner. *Id.*

Plaintiff fails to show that it plausibly pled (or *could* have plausibly pled) that the first *New York Times* statement satisfied the "publication" element of slander of title. As this Court previously stated, "the *New York Times* [article] does *not* attribute the first statement to the Mayor." (Prior Order at 13). Instead, the article makes the following statement without attribution: "[the City] shares a trademark on the name of the game with [the Tournament]." (FAC, ¶ 75). For Plaintiff to show a reasonable probability of success on its slander of title claim with respect to this statement, it would have to show, at the very least, that it plausibly alleged either that the statement was made by Defendant or that it could be attributed to Defendant (or one of its representatives, such as the City's Mayor). However, Plaintiff has not done so, and, given the phrasing and context of the statement, it could not possibly do so.

Plaintiff also fails to show a reasonable probability of success with respect to the second *New York Times* statement. In California, a slander of title claim can only succeed if it targets a claim that "specifically refers to the plaintiff's product or business." *Finch Aerospace Corp. v. City of San Diego*, 8 Cal. App. 5th, 1248, 1253 (2017). The second statement, which the article attributes to Pasadena's Mayor, Victor Gordo, is this: "The football game belongs to the City of Pasadena and the people of

Pasadena." (FAC, ¶ 75). This statement neither refers to a product nor to a business owned by the Tournament. As the Court previously stated, "[t]he Mayor's general statement is not a representation of fact with respect to who owns [any trademarks associated with the Rose Bowl Game] but . . . is merely opinion or puffery," which reflects the Mayor's and the City's belief that "the heart and soul of the Rose Bowl Game belongs to the people of Pasadena," wholly apart from any questions about intellectual property ownership. (Prior Order at 14).

Since Defendant has made a threshold showing that the slander of title claim arose from protected activity and since Plaintiff has failed to show a reasonable probability of success on that claim, Defendant is the prevailing party on the anti-SLAPP Motion and is entitled to fees and costs for its defense against Plaintiff's slander of title claim, under Cal. Civ. Proc. Code § 425.16(c)(1).

c. Entitlement to Fees for Bringing the Instant Motion

Defendant argues that both the *MLA* and California's anti-SLAPP statute entitle it to attorneys' fees for drafting and bringing the instant Motion. This view is supported by applicable precedents. *See Bruckman v. Parliament Escrow Corp.*, 190 Cal. App. 3d 1051, 1062 (1987); *Ketchum*, 24 Cal. 4th at 1133. Moreover, Plaintiff does not dispute that Defendant would be entitled to fees for drafting and bringing the instant Motion, in the event that the Court awarded attorneys' fees to Defendant. (*See* Opp'n at 25). Plaintiff's only argument with respect to Defendant's fee request for work on the instant Motion is that the request is unreasonably high. (*See id.*) The Court will consider the reasonableness of Defendant's request in the following section. Here, it simply notes that Defendant is entitled to fees for drafting and bringing the instant Motion, since it has shown that it is entitled to fees under both Cal. Civ. Code § 1717 and Cal. Civ. Proc. Code § 425.16(c)(1).

d. The Lodestar Calculation

As explained above, the lodestar is "the number of hours reasonably expended

multiplied by the reasonable hourly rate," where "[t]he reasonable hourly rate is that prevailing in the community for similar work." *PLCM Group*, 22 Cal. 4th at 1095. After calculating the lodestar, courts may adjust the figure based on "factors specific to the case." *Id.* These factors include "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." *Id.* (quoting *Melynk v. Robledo*, 64 Cal.App.3d 618, 623–624 (1976)). The Court will now determine the lodestar figure with respect to each of the awards to which Defendant is entitled.

i. Cal. Civ. Code § 1717 Lodestar

Defendant requests the following hourly rates: $795 for Kent Raygor, $795 for David Sunkin, $795 for Jonathan Moss, $770 for Paul Bost, $750 for Valerie Alter, $735 for Tenaya Rodewald, $585 for Nolan Walter, and $550 for Gian Ryan. (Raygor Declaration ("Raygor"), Dkt. No. 52-1, ¶¶ 15–25). Plaintiff briefly addresses these rates in its Opposition, arguing simply that other partners from Defendant's law firm were awarded a rate of $420 per hour (after requesting $490) in their defense of a major insurance company, by a February 2020 order in the Central District. (*See* Opp'n at 15). Notwithstanding the result in that case, the Court finds that Defendant's requested rates are appropriate.

Defendant refers to seven other cases, in which federal district courts in California awarded fees at rates that are comparable to or higher than Defendant's requested rates, to attorneys with similar levels of experience. (Motion at 18). These cases support the view that Defendant's requested rates are reasonable and outweigh the outlier case cited by Plaintiff. Defendant also provides the Court with the average standard hourly rates for litigation attorneys in AmLaw 100 firms. These statistics indicate that partners with 26–29 years of experience charge $1,005 per hour (on average), partners with 14–16 years of experience charge $852 per hour (on average), and Of Counsel attorneys charge $853 per hour (on average). (Raygor at 10).

Defendant caps all of its fee request rates at $795, such that its requests for partners like Mr. Sunkin (who has been practicing law for 29 years) and special counsel attorneys like Ms. Alter and Mr. Bost (who specialize in trademark and anti-SLAPP matters) are well-below the average rates of similarly-experienced attorneys in AmLaw 100 firms. (*See* Raygor, ¶¶ 16, 18–19).

Additionally, the Court finds that Defendant's requested rates are reasonable on the basis of its own knowledge of fees in the Central District. *See Ingram v.* Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011) (holding that courts are permitted to rely on their own knowledge and experience in determining reasonable and proper fees). The Court notes that the requested rates for the two associates who worked on this case, Mr. Walter and Ms. Ryan exceed those of comparably experienced attorneys in the AmLaw 100 table provided by Defendant. (Raygor, ¶ 25). However, the table lists rates from two years ago, rather than rates at the present time. The Court therefore finds that the requested rates for the two associates are proper, after accounting for both inflation and changes in the legal market.

Plaintiff raises various objections to Defendant's requested hours for the § 1717 fee, which amount to 330 hours of billable work. (Motion at 17). One objection is that the City has not accounted for how it separated out fees related to Counts 1 and 2 and that this is a problem because Defendant only requests fees under § 1717 for its work on Counts 1–9. (Opp'n at 11). However, at the time that Plaintiff filed its Opposition, it knew that the City had spent $442,000 on this litigation through June of 2021 (excluding fees for work *since* that time, such as work on the instant Motion). (*See* Motion at 36). Moreover, it knew that Plaintiff was requesting $355,249.50 for its work through June of 2021. (*See id.*). Therefore, it was clear to Plaintiff that Defendant was excluding over $86,000 in fees from its request. (Reply at 9). Plaintiff should have made the reasonable inference that the unrequested fees were incurred for the work of Defendant's counsel on Counts 1 and 2.

Plaintiff also objects that Defendant "incurred tens of thousands of dollars in fees by engaging in early discovery," even though Defendant's MTD was pending at the time and had the potential to render any such discovery useless. (Opp'n at 12). In the Court's estimation, the time Defendant spent on discovery was not wasted. As Plaintiff well knows, one of this Court's orders encouraged the parties to begin discovery early: "The Court encourages counsel to agree to begin to conduct discovery actively *before* the Scheduling Conference." (Order Setting Scheduling Conference, Dkt. No. 25 at 2). Moreover, Plaintiff also conducted "early discovery," (Reply at 9), and the Court will not fault counsel on either side of this case for their diligence in prosecuting and defending against this action.

The Court is not persuaded by Plaintiff's remaining objections, except that it agrees with Plaintiff that a ten-percent "haircut" is warranted. (Opp'n at 15). Based on its own experience of fee awards and fees in the Central District, the Court finds that a ten-percent downward adjustment would be proper with respect to Defendant's request of fees under § 1717. It is within the Court's discretion to make such a reduction, and the Court is permitted to do so without providing a more specific explanation, other than that it deems such a reduction warranted. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

ii. Cal. Civ. Proc. Code § 425.16 and Fee Motion Lodestars

The hourly billing rates for the § 425.16 and Fee Motion requests are the same as those for the § 1717 request. The Court therefore affirms the requested rates as reasonable.

Plaintiff raises various objections to Defendant's requested hours for the § 425.16 fee, which amount to 137.7 hours of billable work. (Motion at 17). Plaintiff argues that the Court should eliminate approximately 30 hours of work from Defendant's request under § 425.16, namely all of the time Defendant spent preparing and filing the Reply for the anti-SLAPP Motion. (Dkt. No. 35). (Opp'n at 23).

Plaintiff's argument is that the Reply was unnecessary, since it was filed over two weeks after Plaintiff filed its FAC, from which Plaintiff chose to exclude its earlier slander of title claim. (*Id.*) What this argument neglects to mention is that Plaintiff filed an Opposition to Defendant's anti-SLAPP Motion on the same day that it filed its FAC, (*See* Dkt. Nos. 29–30), in which Plaintiff argued that it was the prevailing party on the anti-SLAPP Motion and that Defendant was not entitled to any fees under § 425.16. (Dkt. No. 30). As Defendant rightly points out, it "had to reply or risk losing its right to seek fees." (Reply at 16).

Plaintiff's other arguments concerning the anti-SLAPP hours duplicate some of the arguments Plaintiff made concerning the § 1717 request, which the Court has already deemed unpersuasive. (*See* Opp'n at 23–25). Defendant's requested hours under § 425.16 are reasonable. The Court's only adjustment is to again apply a ten-percent "haircut," in an exercise of its discretion. *See Moreno*, 534 F.3d at 1112.

Plaintiff objects to Defendant's requested hours for work on the instant Motion, which amount to 88.4 hours of billable work on the Motion and 46.6 hours of billable work on the Reply. (Motion at 35; Second Raygor Declaration ("Raygor 2"), Dkt. No. 57-1 at 5–7). Plaintiff argues that it was unreasonable to assign the tasks of cite-checking cases, correcting case citations, and creating spreadsheets of billing entries to attorneys, when the same work could have been performed by other firm employees at substantially lower rates of pay. (*See* Opp'n at 25).

Defendant responds to this argument by noting (i) that the tasks involving case citations also involved original research, as noted in the billing entries (Plaintiff failed to mention this fact), and (ii) that the creation of the relevant spreadsheets involved judgments about which entries were relevant and were appropriate to include in a fee request, judgments which a non-attorney would not be qualified to make. (Reply at 17). The Court finds Defendant's responses persuasive. As with the other portions of the fee request, the Court's only adjustment is to apply a ten-percent "haircut" to

Defendant's requested amount. *See Moreno*, 534 F.3d at 1112.

a. Final Calculation

	Hours worked	Lodestar	With 10% Haircut
Fees Under § 1717	330	$253,230.50	$227,907.45
Fees Under § 425.16	137.7	$102,019.00	$91,817.10
Fees for instant Motion	135	$99,109.50	$89,198.55
Total	602.7	$454,359.00	$408,923.10

IV. CONCLUSION

For the foregoing reasons, the Court now **GRANTS** Defendant's Motion and awards Defendant fees totaling $408,923.10.

IT IS SO ORDERED.

Dated: March 17, 2022

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT JUDGE