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6 Attorneys for Defendants  
**GINA M. AUSTIN and**  
7 **AUSTIN LEGAL GROUP**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY SAN DIEGO – CENTRAL DISTRICT**

11 AMY SHERLOCK, an individual and on  
12 behalf of her minor children, T.S. and S.S.,  
ANDREW FLORES, an individual,

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, an individual; AUSTIN  
16 LEGAL GROUP, a professional  
corporation, LARRY GERACI, an  
17 individual, REBECCA BERRY, an  
individual; JESSICA MCELFRISH, an  
18 individual; SALAM RAZUKI, an  
individual; NINUS MALAN, an individual;  
19 FINCH, THORTON, AND BARID, a  
limited liability partnership; ABHAY  
20 SCHWEITZER, an individual and dba  
TECHNE; JAMES (AKA JIM) BARTELL,  
21 an individual; NATALIE TRANG-MY  
NGUYEN, an individual, AARON  
22 MAGAGNA, an individual; BRADFORD  
HARCOURT, an individual; SHAWN  
23 MILLER, an individual; LOGAN  
STELLMACHER, an individual;  
24 EULENTIAS DUANE ALEXANDER, an  
individual; STEPHEN LAKE, an  
25 individual, ALLIED SPECTRUM, INC. a  
California corporation, PRODIGIOUS  
26 COLLECTIVES, LLC, a limited liability  
company, and DOES 1 through 50,  
27 inclusive,

28 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**12/29/2022** at 03:23:00 PM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND  
AUSTIN LEGAL GROUP'S REPLY TO  
PLAINTIFFS' OPPOSITION TO MOTION  
FOR ATTORNEYS' FEES AND COSTS**

[IMAGED FILE]

**Date: January 6, 2023**

**Time: 9:00 a.m.**

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Austin” or  
2 “Defendants”), hereby submit the following reply to Plaintiffs AMY SHERLOCK, an individual  
3 and on behalf of her minor children, T.S. and S.S., and ANDREW FLORES’ (collectively,  
4 “Plaintiffs”) Opposition to Defendants’ Motion for Attorneys’ Fees and Costs.

5 **I.**

6 **INTRODUCTION**

7 Plaintiffs’ non-responsive opposition should be disregarded. The pending motion is  
8 straightforward and presents only three questions, none of which are addressed by Plaintiffs’  
9 pleading:

10 Question 1: Are Defendants entitled to an award of attorneys’ fees?

11 Answer: Yes. The Court granted Defendants’ anti-SLAPP motion on August 12,  
12 2022. By statute, Defendants are entitled to an award of attorneys’ fees.  
13 (Code of Civ. Proc., § 425.16, subd. (c). Plaintiffs’ pleading does not raise  
14 any dispute on this point.

15 Question 2: What was the number of hours reasonably worked by Defendants’ counsel?

16 Answer: As presented in Defendants’ motion for attorneys’ fees, defense counsel  
17 reasonably expended a total of 72.3 hours through the filing of this motion.  
18 The motion also included an estimate of an additional 10.0 hours to review  
19 and respond to Plaintiffs’ opposition and appear for the hearing.  
20 Defendants stand by the request made in their moving papers as a  
21 reasonable and supported request. Plaintiffs’ pleading does not address this  
22 question. It does not dispute the number of hours worked or the  
23 reasonableness of the time reported.

24 Question 3: What is the reasonable hourly billing rate for the work performed by  
25 Defendants’ counsel?

26 Answer: The motion requested a fee award based on an hourly billing rate of \$550  
27 per hour for Douglas A. Pettit, \$475 per hour for Matthew C. Smith and  
28 \$295 per hour for Kayla R. Sealey. An attorney declaration was provided

1 supporting these billing rates as reasonable, appropriate and well within the  
2 market rates charged for litigation work. Plaintiffs' pleading does not  
3 address this question. It does not dispute the reasonableness of the  
4 requested hourly billing rates or offer evidence of a different hourly rate.

5 Instead of addressing the relevant issues of this motion, Plaintiffs submitted 10 pages of  
6 irrelevant and frivolous arguments. First, Plaintiffs argue that the Court erred in granting  
7 Defendants' anti-SLAPP motion. Plaintiffs then go on to argue the stay prevents the trial court  
8 from ruling on this motion, an issue that was clarified by Your Honor on the original hearing date  
9 regarding Defendants' motion for attorneys' fees. Neither argument addresses the issues of this  
10 motion therefore, Defendants' unopposed motion for attorneys' fees should be granted.

11 **II.**

12 **ARGUMENT**

13 **A. Plaintiffs' Opposition Fails to Oppose Defendants' Motion for Attorneys' Fees**

14 Plaintiffs spend most of their opposition attempting to reargue the merits of the anti-  
15 SLAPP motion. The issues of the anti-SLAPP motion have already been decided and judgment  
16 was entered in favor of Defendants on August 12, 2022. Plaintiffs' opposition is nothing more  
17 than an improper attempt to relitigate these issues. The pending motion involves three discrete  
18 questions: (1) Are Defendants entitled to an award of attorneys' fees? (2) What was the number  
19 of hours reasonably worked by Defendants' counsel? (3) What is the reasonable hourly billing  
20 rate for the work performed by Defendants' counsel? Plaintiffs' opposition does not address any  
21 of these questions. Thus, Defendants' motion is unopposed and should be granted.

22 **B. Plaintiffs Argument that an Appeal Prevents the Trial Court from Ruling on a**  
23 **Motion for Attorneys' Fees is Frivolous**

24 This is Plaintiffs second attempt at making this argument. Plaintiffs argued this point at  
25 the original hearing for Defendants motion for attorneys' fees as the reason for Plaintiffs failure to  
26 file an opposition. Your Honor clarified that the stay was not intended to apply to a motion for  
27 attorneys' fees and gave Plaintiffs a second chance to oppose Defendants' motion. Plaintiffs now  
28 foolishly make the exact same argument.

1 Plaintiffs argue, while citing nothing in support, that the appellate stay prevents the trial  
2 court from awarding fees and costs. When an appeal from a judgment is taken, matters that are  
3 “embraced therein or affected thereby” are generally stayed. (Code of Civ. Proc., § 916, subd.  
4 (a).) An appeal does not prevent the trial court from awarding the prevailing party’s attorneys’  
5 fees. In fact, the First District Court of Appeal recently called this a frivolous argument in  
6 *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1052. To the contrary, the proposition is  
7 refuted definitively in *Bankes v. Lucas* (1992) 9 Cal.App.4th 365, 368-369, superseded by statute  
8 on other grounds as stated in *Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1197, where,  
9 rejecting the identical argument Plaintiffs make here, the court in *Bankes* held as follows:

10 Contrary to Bankes’s argument, the filing of a notice of appeal does  
11 not deprive the trial court of jurisdiction to award attorney fees and  
12 costs post trial.... [I]t has been held that a motion for attorney fees is  
13 not premature despite the filing of a notice of appeal. [Citations.] [¶]  
14 In any event, an award of attorney fees as costs is a collateral matter  
15 which is embraced in the action but is not affected by the order from  
16 which an appeal is taken. (Code Civ. Proc., § 916, subd. (a); *In re*  
*Marriage of Sherman* (1984) 162 Cal.App.3d 1132, 1140.)  
Consequently, filing a notice of appeal does not stay any proceedings  
to determine the matter of costs and does not prevent the trial court  
from determining a proper award of attorney fees claimed as costs.

17 Based on the foregoing, Plaintiffs’ argument that the trial court lacks jurisdiction is  
18 meritless. An appellate stay does not prevent the court from awarding fees and costs.

19 **III.**

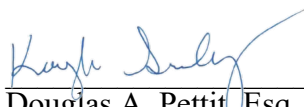
20 **CONCLUSION**

21 Plaintiffs have offered no substantive opposition to the pending motion but instead have  
22 put forth irrelevant and unsupported arguments. Defendants’ motion for attorneys’ fees is  
23 unopposed on the merits and should be granted.

24 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

25 Dated: December 29, 2022

26 By:

  
\_\_\_\_\_  
Douglas A. Pettit, Esq.  
Kayla R. Sealey, Esq.  
Attorneys for Defendants  
**GINA M. AUSTIN and**  
**AUSTIN LEGAL GROUP**

1 **PROOF OF SERVICE**

2 *Amy Sherlock, et al. v. Gina M. Austin, et al.*  
3 **San Diego Superior Court Case No.: 37-2021-00050889-CU-AT-CTL**

4 I, the undersigned, declare that:

5 I am and was at the time of service of the papers herein, over the age of eighteen (18)  
6 years and am not a party to the action. I am employed in the County of San Diego, California,  
7 and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

8 On **December 29, 2022**, I caused to be served the following documents:

- 9 • **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP’S REPLY TO**  
10 **PLAINTIFFS’ OPPOSITION TO MOTION FOR ATTORNEYS’ FEES AND**  
11 **COSTS**

12 **[X] BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court,**  
13 **rule 2.251):** Based on an agreement between the parties to accept service by e-mail or  
14 electronic transmission, I caused such document(s) to be electronically served to those  
15 parties listed below from e-mail address [lzamora@pettitkohn.com](mailto:lzamora@pettitkohn.com). The file transmission  
16 was reported as complete and a copy of the Service Receipt will be maintained with the  
17 original document(s) in our office.

<p>13 Andrew Flores, Esq. 14 Law Office of Andrew Flores 15 427 C Street, Suite 220 16 San Diego, CA 92101 17 Tel: (619) 356-1556 18 Fax: (619) 274-8053 19 Email: <a href="mailto:Andrew@FloresLegal.Pro">Andrew@FloresLegal.Pro</a> 20 <b>Plaintiff in <i>Propria Persona</i></b> 21 <b>and Attorney for Plaintiffs</b> 22 <b>Amy Sherlock, Minors T.S.</b> 23 <b>and S.S.</b></p>	<p>James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: <a href="mailto:crosby@crosbyattorney.com">crosby@crosbyattorney.com</a> <b>Attorney for Defendants</b> <b>LARRY GERACI and REBECCA BERRY</b></p>
<p>19 Scott H. Toothacre, Esq. 20 Michael R. Weinstein, Esq. 21 FERRIS &amp; BRITTON 22 501 West Broadway, Suite 1450 23 San Diego, CA 92101 24 Tel: (619) 233-3131 25 Email: <a href="mailto:stoothacre@ferrisbritton.com">stoothacre@ferrisbritton.com</a> 26 <a href="mailto:mweinstein@ferrisbritton.com">mweinstein@ferrisbritton.com</a> 27 <a href="mailto:dbarker@ferrisbritton.com">dbarker@ferrisbritton.com</a> 28 <b>Attorney for Defendants</b> <b>LARRY GERACI and REBECCA BERRY</b></p>	<p>Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: <a href="mailto:steve@blakelawca.com">steve@blakelawca.com</a> <a href="mailto:andrew@blakelawca.com">andrew@blakelawca.com</a> <a href="mailto:eservice@blakelawca.com">eservice@blakelawca.com</a> <b>Attorney for Defendant</b> <b>STEPHEN LAKE</b></p>


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<p>Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: <a href="mailto:natalie@nguyenlawcorp.com">natalie@nguyenlawcorp.com</a> <b>Defendant NATALIE TRANG-MY NGUYEN PRO SE</b></p>	<p>Regan Furcolo, Esq. Laura Stewart, Esq. WALSH MCKEAN FURCOLO LLP 550 West C Street, Suite 950 San Diego, CA 92101 Tel: (619) 232-8486 Email: <a href="mailto:rfurcolo@wmfllp.com">rfurcolo@wmfllp.com</a> <a href="mailto:lstewart@wmfllp.com">lstewart@wmfllp.com</a> <a href="mailto:mdavis@wmfllp.com">mdavis@wmfllp.com</a> <b>Defendant JESSICA MCEL FRESH</b></p>
<p>George R. Najjar, Esq. THE NAJJAR LAW FIRM 1901 First Avenue, First Floor San Diego, CA 92101 Tel: (619) 233-3445 Email: <a href="mailto:gnajjar1@san.rr.com">gnajjar1@san.rr.com</a> <b>Defendant ABHAY SCHWEITZER dba TECHNE</b></p>	<p>Douglas Jaffe, Esq. 501 West Broadway, Suite 800 San Diego, CA 92101 Tel: (619) 400-4945 Email: <a href="mailto:Dougjaffelaw@gmail.com">Dougjaffelaw@gmail.com</a> <b>Defendant SALAM RAZUK</b></p>

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 29, 2022**, at San Diego, California.

  
\_\_\_\_\_  
Luis Zamora