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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WELK RESORT GROUP, INC., *et al.*

Plaintiffs,

v.

REED HEIN & ASSOCIATES, LLC
dba TIMESHARE EXIT TEAM, *et al.*,

Defendants.

Case No. 3:17-cv-01499-L-AGS

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT SCHROETER
GOLDMARK AND BENDER’S
MOTION FOR ATTORNEYS’
FEES AND COSTS**

Pending before the Court in this action for interference with timeshare contracts is a motion for attorneys’ fees filed by Defendant Schroeter Goldmark and Bender (“Schroeter”). Schroeter prevailed on its special motion to strike pursuant to California Civil Procedure Code § 425.16 (“Anti-SLAPP Motion”), which resulted in the dismissal of all claims alleged against Schroeter. (*See* doc. no. 80 (“Anti-SLAPP Order”) at 36.) Schroeter requests attorneys’ fees in the sum of \$170,212.50 and costs in the sum of \$182.62 pursuant to § 425.16(1)(c). Plaintiffs Welk Resort Group, Inc. and Welk Resorts Platinum Owners Association (collectively, “Welk”) filed an opposition. Schroeter replied. For the reasons stated below, Schroeter’s motion is granted.

With exceptions not applicable here, California Civil Procedure Code § 425.16(1)(c) provides for “mandatory attorney fees” to a defendant who prevails

1 on an anti-SLAPP motion. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *see*
2 *also id.* at 1141-42.¹ The lodestar method applies to the calculation of the fee
3 award. *See id.* at 1131-36, 1140; *see also PLCM Group v. Drexler*, 22 Cal.4th
4 1084, 1095 (2000). The lodestar method entails multiplying the reasonable hourly
5 rate by the reasonable number of hours. *Id.*

6 Schroeter was represented by three attorneys from Klinedinst PC
7 (“Klinedinst”). (*See* doc. no. 84-1 at 16-19; doc. no. 84-2 at 8-11; 84-3 at 44-74 &
8 78-86.)² Heather L. Rosing is an attorney with more than twenty years in practice,
9 who is highly regarded among her peers. She is a certified specialist in legal
10 malpractice law and practices in the area of professional liability. She was
11 involved in the Anti-SLAPP Motion briefing because Welk alleged that Schroeter
12 violated several ethical standards of the legal profession, including California
13 Business & Professions Code §§ 6151 and 6152 (running and capping) and § 6155
14 (Lawyer Referral Services Law). (*See* doc. no. 5; *see also* Anti-SLAPP Order at 6-
15 9, 14-15.)

16 Robert M. Shaughnessy is an attorney with 25 years in practice. His
17 background is in business and appellate litigation. He heads Klinedinst’s appellate
18 department. He was involved in the Anti-SLAPP Motion briefing because the case
19 arose from a business dispute which included allegations of violation of the
20 Racketeer Influenced and Corrupt Organizations Act (“RICO”) under 18 U.S.C. §
21 1962(c), intentional interference with contract, unfair competition under California
22 Business and Professions Code §§ 17200 *et seq.*, and civil conspiracy. (*See* docs.
23 no. 5 (first am. compl.) & 25 (second am. compl.)). Furthermore, the denial of an

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26 ¹ Unless otherwise noted, internal quotation marks, citations, and footnotes
27 are omitted throughout.

28 ² All page citations in this order refer to those generated by the court’s
CM/ECF system.

1 anti-SLAPP motion is immediately appealable. *See Manzari v. Associated*
2 *Newspapers Ltd.*, 830 F.3d 881, 886 (9th Cir. 2016).

3 Gregor A. Hensrude has been in practice for 16 years. His area of practice is
4 business litigation and transactional work. He is licensed in the States of
5 Washington and California, and practices out of Klinedinst's Seattle, Washington
6 office, where Schroeter's offices are also located. (*See* doc. no. 64-3 at 1, 2-4, 18;
7 doc. no. 64-8 at 4.)

8 The attorneys seek compensation at the rate of \$450 per hour. "The
9 reasonable hourly rate is that prevailing in the community for similar work."
10 *PLCM Group*, 22 Cal.4th at 1095. The relevant local community is the community
11 where the court is located rather than the local community of out-of-town counsel.
12 *Nichols v. City of Taft*, 155 Cal.App.4th 1233, 1242-43 (2007); *Rey v. Madera*
13 *Unif. Sch. Dist.*, 203 Cal. App. 4th 1223, 1241 (2012); *Ctr for Biological Diversity*
14 *v. County of San Bernardino*, 188 Cal. App. 4th 603, 617-19 (2010). In 2009, a
15 court in this district concluded that \$425 per hour was a reasonable hourly rate of
16 Kinedinst attorneys' work on an anti-SLAPP motion. *Fleming v. Cornerstone*,
17 2009 WL 764940 (Mar. 18, 2009) (Hayes, J.).

18 Welk opposes the motion arguing that the fees Kinedinst actually billed were
19 much lower -- \$240 and \$230 per hour. (*Cf.* doc. no. 84-3 at 44-74.) Klinedinst
20 explains that these rates represent a substantial volume discount they extend to
21 their insurance company clients. (Doc. no. 84-2 at 5.) In support of its argument,
22 Welk cites *El Escorial Owners' Ass'n v. DLC Plastering, Inc.*, 154 Cal. App. 4th
23 1337, 1367 (2007). Its reliance is unavailing. *El Escorial Owners Association*
24 involved contractual attorneys' fees and did not apply the lodestar method. *See id.*
25 at 1365. It also does not include any discussion why the lower hourly rates
26 charged the insurance company were reasonable. *See id.* at 1367. When applying
27 the lodestar method, California courts award a reasonable hourly rate even when
28 the fee agreement provides for a lower rate. *See Chacon v. Litke*, 181 Cal. App.

1 4th 1234, 1260 (2010) (awarding \$350 per hour although the fee agreement
2 provided for \$300 per hour).

3 Welk also contends that the requested billing rate is unreasonable because
4 the case should have been staffed by lower level attorneys. The Court disagrees.

5 [T]he reasonable hourly rate used to calculate the lodestar is the
6 product of a multiplicity of factors . . . the level of skill necessary,
7 time limitations, the amount to be obtained in the litigation, the
attorney's reputation, and the undesirability of the case.

8 *Ketchum*, 24 Cal.4th at 1138-39 (brackets omitted).

9 In addition to punitive damages, Welk sought more than \$15 million in
10 compensatory damages against three Defendants, including Schroeter. (*See doc.*
11 *no. 25 at 22.*) The initial complaint alleged a RICO claim against Schroeter, which
12 raised the risk of treble damages. (*Doc. no. 5 at 23-24.*) Although the second
13 amended complaint omitted Schroeter from the RICO claim, it contained a
14 conspiracy claim which sought indirectly to expose Schroeter to the same risk.
15 (*Doc. no. 25 at 28-29.*) In addition to exposing Schroeter to the risk of several
16 million dollars in damages, the lawsuit attacked Schroeter's professional reputation
17 in the legal community by alleging it was involved in an unethical and unlawful
18 client representation scheme. Finally, the anti-SLAPP motion involved a complex
19 fact pattern. (*See Anti-SLAPP Order at 2-3, 5-16.*)

20 Based on the complexity of the case requiring a high level of skill in the
21 business litigation and professional responsibility areas, attorneys' qualifications,
22 billing rates in this District, and the passage of time since *Fleming v. Cornerstone*,
23 the Court finds the requested hourly rates reasonable.

24 The attorneys seek compensation for a total of 270.5 hours. This includes
25 215.5 hours billed in relation to the Anti-SLAPP Motion and 55 hours attributed to
26 the briefing of the pending motion for attorneys' fees and costs. (*Doc. no. 84-1 at*
27 *12.*)

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1 Hours billed to the Anti-SLAPP Motion comprise of factual background
2 investigation, including the settlement negotiations, arbitrations and lawsuits
3 between Schroeter's clients and Welk, which preceded the filing of the instant
4 action. It further involved research and drafting of the anti-SLAPP motion seeking
5 to strike the first amended complaint. Instead of opposing the motion, Welk chose
6 to file the second amended complaint. (*See* doc. no. 28.) In its response to Welk's
7 statement of non-opposition, Schroeter reserved its right to seek attorneys' fees for
8 preparation of the initial motion as a prevailing defendant, because Welk dropped
9 three claims it had alleged against Schroeter in the first amended complaint. (Doc.
10 no. 34.) The hours also cover preparation of the Anti-SLAPP motion to strike the
11 second amended complaint, including re-drafting the points and authorities to bring
12 them into compliance with Civil Local Rule 7.1 and Standing Order for Civil
13 Cases, and coordination with co-defense counsel's anti-SLAPP motion and
14 motions to dismiss. Finally, the time includes preparation of the reply brief.

15 Welk claims that 215.5 hours was excessive based on the counsel's
16 experience and the "non-complex" nature of the case. (Doc. no. 98 at 15.) It
17 complains that the time includes "unrelated" matters (*id.* at 18) such as reviewing
18 the amended complaints, reviewing filings in related cases that were not cited in
19 the anti-SLAPP motion, and considering RICO allegations that ultimately were not
20 included in the anti-SLAPP motions. Welk further argues the hours were
21 unreasonable because Schroeter is seeking reimbursement for drafting two separate
22 anti-SLAPP motions that were "substantively identical" (*id.* at 16), drafting its
23 motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and re-drafting
24 of the second anti-SLAPP motion to combine it with Rule 12(b)(6) motion and
25 coordinate with co-defendants' counsel. Finally, Welk maintains that the
26 attorneys' time entries were too vague, and attorneys engaged in double billing.

27 Upon review of detailed time entries filed in support of the motion (doc. no.
28 84-3 at 44-74; doc. no. 84-2 at 4-7), Welk's arguments are rejected. The time

1 entries include sufficient explanation to evaluate their reasonableness. To describe
2 the case as “non-complex” is an unfair understatement in light of the fact pattern
3 and legal issues raised by the parties. (*See generally* Anti-SLAPP Order.)

4 Furthermore, given the facts and claims of this case, it was necessary for the
5 attorneys to familiarize themselves with related proceedings to prepare the Anti-
6 SLAPP Motion. (*See, e.g.*, Anti-SLAPP Order at 7, 9, 12.) Time billed to this
7 work was therefore reasonable.

8 It was also reasonable and necessary for the attorneys to review the amended
9 complaints filed by Welk. This was not only necessary to prepare a motion to
10 dismiss, but to draft an Anti-SLAPP Motion as well. To prevail on the Anti-
11 SLAPP Motion, the attorneys had to successfully rebut Welk’s argument that its
12 case had at least “minimal merit.” *See Navellier v. Sletten*, 29 Cal.4th 82, 89
13 (2002); *see also* Cal. Civ. Proc. Code § 425.16(b)(1); *Metabolife Int’l, Inc. v.*
14 *Wornick*, 264 F.3d 832, 840 (9th Cir. 2001). In this regard, Welk had to show, and
15 Schroeter had to rebut, that “the complaint is legally sufficient and supported by a
16 prima facie showing of facts to sustain a favorable judgment.” *Navellier*, 29
17 Cal.4th at 88-89. In ruling on this issue, the court considers the pleadings, among
18 other things. *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*,
19 890 F.3d 828, 833 (9th Cir. 2018) (citing Cal. Civ. Proc. Code § 425.16(b)(2)).
20 Accordingly, there is often a substantial overlap between an anti-SLAPP motion
21 and a Rule 12(b)(6) motion to dismiss. Schroeter’s motion to dismiss rested
22 almost entirely on the arguments in support of its Anti-SLAPP Motion. (*See doc.*
23 *no. 64-1 at 25.*) Although the Anti-SLAPP Motion was granted based on the
24 litigation privilege defense, it was prudent to brief alternative arguments why
25 Welk’s claims lacked even “minimal merit.” To the extent the billing records
26 show an overlap between the two motions, including consideration of the RICO
27 claim, the fees were reasonably incurred in connection with the Anti-SLAPP
28 Motion.

1 Also rejected is Welk's contention that Schroeter's attorneys spent an
2 unreasonable amount of time on the second Anti-SLAPP Motion after Welk filed
3 the second amended complaint, and on re-drafting the briefs to comply with local
4 and chambers rules, including coordinating with co-defendant counsel. Review of
5 the time entries reflects that the work was necessary and efficiently performed.

6 Finally, the great majority of the work was performed by Mr. Shaughnessy
7 (186.7 out of 215.5 hours), which virtually eliminates the possibility of double
8 billing. Review of the time billed by Ms. Rosing and Ms. Hensrude, does not
9 reveal an undue overlap in the work.

10 For the foregoing reasons, the Court finds that 215.5 hours were reasonably
11 incurred in connection with the Anti-SLAPP Motion in light of the procedural
12 history of this case, and complexity of the issues presented in the Anti-SLAPP
13 motion and Welk's opposition.

14 Schroeter also requests reimbursement of the fees incurred relative to the
15 pending motion for attorneys' fees. Welk does not oppose this request. Mr.
16 Shaughnessy's declaration states he billed 45 hours to prepare the moving papers,
17 and he estimated an additional ten hours for the reply. (Doc. no. 84-2 at 12.) Fees
18 recoverable under California Civil Procedure Code § 425.16(1)(c) "ordinarily
19 include compensation for all hours reasonably spent, including those necessary to
20 establish and defend the fee claim." *Ketchum*, 24 Cal.4th at 1141. Upon review of
21 the fee motion with attached exhibits, the Court finds the request to be reasonable.

22 Based on the foregoing, Schroeter's request for reimbursement of 270.5
23 hours at \$450 per hour is reasonable. The lodestar is therefore calculated at
24 **\$121,725.**

25 Schroeter requests a 1.5 multiplier to be applied to its lodestar to the extent it
26 is attributable to the Anti-SLAPP Motion. This amounts to an additional
27 \$48,487.50. (Doc. no. 84-1 at 12; doc. no. 100 at 10 n.4.) Welk opposes this
28 request.

1 “[S]ection 425.16 permits the use of the so-called lodestar adjustment
2 method[, which] allows a court awarding attorney fees to include a fee
3 enhancement . . .” *Ketchum*, 24 Cal.4th at 1131, 1136. After calculating the
4 lodestar, a court considers whether the total award so calculated is reasonable. *See*
5 *PLCM Group*, 22 Cal.4th at 1095-96. In adjusting the lodestar, the court may
6 consider: “the nature of the litigation, its difficulty, the amount involved, the skill
7 required in its handling, the skill employed, the attention given, the success or
8 failure, and other circumstances in the case.” *Id.* at 1096 (internal quotation marks
9 and citation omitted). However, the court “should not consider these factors to the
10 extent they are already encompassed within the lodestar.” *Ketchum*, 24 Cal.4th at
11 1138. “[T]he party seeking a fee enhancement bears the burden of proof.” *Id.*

12 The request is based primarily on the contention that Welk’s action was filed
13 essentially in bad faith by making representations of fact Welk knew were untrue.
14 (*See* doc. no. 100 at 10.) It also points to the fact that the Anti-SLAPP motion
15 resulted in a complete dismissal of the case against Schroeter, which was the result
16 of exceptional representation. Klinedinst also claims that by charging discounted
17 rates to Schroeter’s insurance company, it undertook the representation on
18 something akin to a contingency basis by taking the risk that payment may not
19 reflect the full value of their services. (*Id.*)

20 The Court disagrees that enhancement is necessary for reasonable
21 compensation.

22 [T]he legislative aim in including the attorney fee provision [in
23 section 425.16] was apparently to strengthen enforcement of certain
24 constitutional rights, including freedom of speech and petition for
25 redress of grievances, by placing the financial burden of defending
26 against so-called SLAPP actions on the party abusing the judicial
system, and by encouraging private representation, including
instances when a litigant cannot afford fees.

27 *Ketchum*, 24 Cal.4th at 1136.

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1 Both aims weigh against a fee enhancement here. A sanction against abuse
2 of the judicial system is inherent in the fee-shifting provision. It therefore cannot
3 also serve as a reason to enhance the fees. *See Ketchum*, 24 Cal.4th at 1142, 1139
4 (fee enhancement should not be “imposed for the purpose of punishing the losing
5 party”).

6 Furthermore, Klinedinst was not retained on a contingency basis by an
7 indigent litigant. It was retained by Schroeter’s insurance company at a volume-
8 discounted hourly rate. It was promised payment at the agreed-upon rate. By
9 prevailing on the Anti-SLAPP Motion, it received not only the rate it was promised
10 by the Schroeter’s insurance, but a higher, reasonable rate. The Court therefore
11 finds that further enhancing Schroeter’s fees for contingency representation is not
12 warranted.

13 Finally, the Court declines to enhance Klinedinst’s fees based on exceptional
14 representation.

15 For the most part . . . quality of representation [is] already
16 encompassed in the lodestar. A more difficult legal question typically
17 requires more attorney hours, and a more skillful and experienced
18 attorney will command a higher hourly rate. . . . Thus, a trial court
19 should award a multiplier for exceptional representation only when
20 the quality of representation far exceeds the quality of representation
21 that would have been provided by an attorney of comparable skill and
22 experience billing at the hourly rate used in the lodestar calculation.
23 Otherwise, the fee award will result in unfair double counting and be
24 unreasonable.

25 *Ketchum*, 24 Cal.4th at 1138-39. The Court awarded Klinedinst an hourly rate
26 commensurate with the attorneys’ experience and expertise required to address the
27 complexities of this case. Despite the high quality of representation which resulted
28 in an excellent outcome for the client, the quality of representation did not exceed
the level provided by attorneys commanding the same hourly rate. To further
enhance the fees would amount to “improper double counting.” *See id.* at 1138.

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1 Accordingly, Schroeter is awarded \$121,725 for reasonable attorneys' fees
2 associated with the Anti-SLAPP Motion and pending motion for attorneys' fees.
3 Its request for a fee enhancement is denied.

4 Schroeter further requests **\$182.62** for costs, which Welk does not oppose.
5 Upon review of the documentation provided in support of the cost request (doc. no.
6 84-3 at 76), the Court finds them to be reasonable.

7 For the foregoing reasons, Schroeter's motion for attorneys' fees and costs is
8 granted in part and denied in part. Welk shall pay Schroeter \$121,725 for
9 attorneys' fees and \$182.62 for costs.

10 **IT IS SO ORDERED.**

11 Dated: February 3, 2020

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14 Hon. M. James Lorenz
15 United States District Judge
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