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9

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SAN MATEO COUNTY

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Clerk of the Superior Court
By ASHMIKA SEGRAN-TEO
DEPUTY CLERK

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN MATEO**

13 THREE CAPTAINS SEA PRODUCTS, INC.,
14 a California Corporation,

15 Petitioner,

16 v.

17 SAN MATEO COUNTY HARBOR
DISTRICT BOARD OF HARBOR
18 COMMISSIONERS and SAN MATEO
COUNTY HARBOR DISTRICT,

19 Respondents.

CASE NO. CIV 534067

**MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION FOR
ATTORNEYS' FEES**

CODE CIV. PROC., § 425.16(c)

Judge: Hon. George A. Miram
Date: November 5, 2015
Time: 2:00 p.m.
Dept.: 28, Courtroom 2F

Action Filed: June 2, 2015
Trial Date: TBD

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1 I. INTRODUCTION

2 Respondents San Mateo County Harbor District and the Harbor District's Board of Harbor
3 Commissioners (collectively, the "District") prevailed on their special motion to strike Petitioner
4 Three Captains Sea Products, Inc.'s ("Three Captains") nominal Second Cause of Action. The
5 Anti-SLAPP statute, under which the District's motion to strike was brought, provides for the
6 mandatory award of reasonable attorneys' fees and costs to the prevailing defendant or respondent.
7 Accordingly, Three Captains should now reimburse the District for the expenses it incurred on its
8 successful motion.

9 II. BACKGROUND

10 Three Captains leases space from the District on Johnson Pier in Princeton, California, for
11 its commercial fish-buying and fish-unloading business. (Declaration of Brendan Quigley in
12 support of the District's Motion for Attorneys' Fees ("Quigley Dec."), ¶3, Ex. 1 [Three Captains'
13 Petition for Writ of Mandate and Complaint], ¶¶9-11.) Under the terms of that lease (the "Lease"),
14 Three Captains has to obtain and pay for all licenses and permits required for its use and
15 occupancy of the leased premises. (*Id.* ¶4, Ex. 2 [Declaration of Sabrina Brennan in support of the
16 District's motion to strike], ¶7.) The Lease also provides that Three Captains may install a second
17 hoist on the premises, with prior approval from the District. (*Id.* ¶3, Ex. 1, ¶11.)

18 In late March 2014, pursuant to the Lease, Three Captains and the District entered into a
19 probationary agreement whereby Three Captains was authorized to install a new hoist on Johnson
20 Pier for up to one year, ending April 1, 2015. (Quigley Dec., ¶4, Ex. 2, ¶¶8-9.) The probationary
21 agreement reiterated Three Captains' ongoing obligation to obtain all required permits as a
22 condition for its use of the premises. (*Ibid.*) In September 2014, Three Captains submitted an
23 application to the California Coastal Commission for a permit to operate the new hoist. (*Id.* ¶4,
24 Ex. 2, ¶17.) At least twice after Three Captains filed its application, the Coastal Commission
25 contacted it, informed it that its permit application was incomplete, and requested additional
26 information. (*Id.* ¶4, Ex. 2, ¶¶25-26.) As of March 2015, however, Three Captains had failed to
27 obtain the required permit from the Coastal Commission. (*Id.* ¶4, Ex. 2, ¶¶26-27.) On March 4,
28 2015, the District's Board of Harbor Commissioners ("Board") voted to terminate the one-year

1 probationary agreement on numerous grounds, including Three Captains' failure to obtain the
2 required permit from the Coastal Commission. (*Id.* ¶4, Ex. 2, ¶27.) This decision was affirmed
3 and memorialized in District Resolution 11-15, dated May 6, 2015. (*Ibid.*)

4 On or about June 2, 2015, Three Captains filed a Verified Petition for Administrative
5 Mandate and Complaint ("Petition") in San Mateo County Superior Court against the District and
6 the District's Board, requesting that the Court set aside Resolution 11-15. (Quigley Dec., ¶3, Ex.
7 1.) In particular, Three Captains alleged that two of the findings on which the Resolution was
8 based—that the new hoist was unsafe and that Three Captains failed to obtain a required permit,
9 respectively—were arbitrary, capricious, and not supported by substantial evidence. (*Id.* ¶3, Ex. 1,
10 ¶¶37-58.) As for the permit requirement, Three Captains argued both that a permit was not
11 required and that, even if a permit had been required, Harbor Commissioner Sabrina Brennan had
12 appeared before the Coastal Commission and advocated against a proposed waiver of the permit
13 requirement. (*Id.* ¶3, Ex. 1, ¶58.) In fact, the evidence demonstrates that a permit was required;
14 that the Coastal Commission decided not to waive the permit requirement due to concerns raised
15 by the fishing community; and that, in any event, Three Captains did not obtain a permit in large
16 part due to its repeated failures to submit a complete application. (*Id.* ¶4, Ex. 2, ¶¶19-26.)

17 On July 13, 2015, pursuant to Code of Civil Procedure section 425.16 ("Section 425.16"),
18 the District moved to strike Three Captains' Second, permit-related Cause of Action on the
19 grounds that it arose from Commissioner Brennan's constitutionally protected conduct—namely,
20 her proper and legal communications with the Coastal Commission on behalf of her constituents—
21 and Three Captains did not have a reasonable probability of prevailing on the merits.

22 On August 13, 2015, the Court granted the District's motion to strike finding that the
23 Second Cause of Action was based on constitutionally protected activity and that Three Captains
24 "cannot prevail on the cause of action because a permit was clearly required and yet, was never
25 obtained." (Quigley Decl., ¶5, Ex. 3 [Court's Order granting the District's motion to strike], at p.
26 2.)

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III. ARGUMENT

A. The Anti-SLAPP Statute Mandates that the District Recover Its Reasonable Attorneys' Fees.

Attorneys' fees are recoverable as costs authorized by contract, statute, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10).) Section 425.16, also known as the Anti-SLAPP statute, provides in relevant part that "[A] prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (Code Civ. Proc., § 425.16, subd. (c).) Where the defendant prevails, the award of fees is not discretionary. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141; see also *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 193-197 [public entities are entitled to mandatory award of fees under Section 425.16 the same as any other defendant].)

In this case, the Court granted the District's motion in full, finding that:

The [District has] made a strong showing that the Second Cause of Action arises from a protected activity, to wit Commissioner Brennan's statements to the Coastal Commission which are protected statements and activities under CCP Section 425.16. Further the Petitioner cannot prevail on the cause of action because a permit was clearly required and yet, was never obtained.

(Quigley Decl., ¶5, Ex. 3.) Accordingly, the District is indisputably the prevailing party on its special motion to strike and is entitled to the reasonable attorneys' fees that it incurred in bringing the motion. (Code Civ. Proc., § 425.16, subdivision (c).)

B. The Amount Claimed is Reasonable.

Where permitted by statute, as here, the prevailing party is entitled to be compensated for "all hours reasonably spent." (*Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d 621, 639.) "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Further, "counsel's own billing rates . . . carry a presumption of reasonableness." (CEB, *California Attorney Fee Awards* (3d ed. 2014) §9.121.) Thus, a moving party may satisfy its burden "through its own affidavits, without additional evidence." (*MBNA America Bank v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13.)

1 **1. The Work Performed Was Reasonable and Appropriate.**

2 All of the work for which the District seeks reimbursement is directly related to the
3 District's successful motion to strike. Initial research and preparation for the motion began
4 roughly a week after Three Captains filed its Petition, in early June. (Declaration of Steven Miller
5 in Support of Motion for Attorneys' Fees ("Miller Dec."), ¶5.) The nature of Three Captains'
6 allegations—which implicated roughly 10 months of interactions between and among
7 Commissioner Brennan, the local fishing community, and the Coastal Commission—required the
8 District to spend some time developing a clear understanding and factual record to demonstrate
9 that Three Captains' Second Cause of Action was (1) based on protected activity and (2) meritless.
10 (*Ibid.*)

11 The District then incurred the reasonable cost of reviewing Three Captains' opposition and
12 preparing responsive briefing, effort that was increased by Three Captains' unusual and
13 unauthorized opposition papers. (Miller Dec., ¶6.) First, Three Captains' briefing in opposition to
14 the District's motion exceeded the 15-page limit imposed by the California Rules of Court. (*Id.*
15 ¶7.) Specifically, in addition to filing a 15-page memorandum and an attorney declaration, Three
16 Captains submitted a six-page document, titled "Petitioner's Opposition to Respondent's Special
17 Motion to Strike," by which it laid out additional arguments in opposition to the District's motion.
18 (*Ibid.*) This supplemental filing required the District's counsel to spend additional time and
19 resources evaluating the document and preparing an objection to Three Captains' unauthorized
20 briefing. (*Id.* ¶8.) Second, although no administrative record had yet been prepared or certified,
21 Three Captains objected to the evidence supporting the District's motion. (*Id.* ¶9.) In response,
22 the District prepared a request for judicial notice of the "Agenda Packet" for the relevant District
23 Board meeting—unquestionably a part of whatever administrative record is eventually certified—
24 which demonstrated that the anticipated record merely confirmed the facts set forth in the
25 District's motion. (*Ibid.*) The Court granted the request without objection from Three Captains.
26 (*Ibid.*)

27 Three Captains then, two days before the hearing, filed an unauthorized "Sur-reply" in
28 opposition to the District's motion. (Miller Dec., ¶10.) This imposed further work upon the

1 District, which evaluated the unauthorized brief and prepared a response. (*Ibid.*)

2 Finally, the District prepared for the hearing. (Miller Dec., ¶11.)

3 The District's fees and costs, therefore, reflect the reasonable and appropriate work
4 undertaken by counsel for the District in support of its motion to strike. (Miller Dec., ¶14.)

5 **2. Hanson Bridgett LLP's Rates Are Reasonable.**

6 Rates are reasonable if they are within the range of rates charged by attorneys of similar
7 skill, reputation, and experience for comparably complex litigation. (*PLCM Group, supra*, 22
8 Cal.4th at pp. 1094-1096.) Further, the degree of success achieved and the aggressiveness of the
9 opposing party are evidence of the reasonableness of the fees incurred. (See *Peak-las Positas*
10 *Partners v. Bollag* (2009) 172 Cal.App.4th 101, 114 [fee award exceeding purchase price of the
11 land in controversy was reasonable in light of the complexity of the issues, and aggressive
12 litigation posture]; see also *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 846
13 [necessity and usefulness of conduct a factor in evaluating attorneys' fees].)

14 Here, the rates charged by the District's attorneys are reasonable because they are well
15 within the range of market rates for attorneys of their skill, reputation, and experience in San
16 Francisco.¹ (See *MBNA America Bank, supra*, 147 Cal.App.4th Supp. at p. 15 [noting that the
17 "reasonable market value" is the "rate[] prevalent in the community where the services are
18 rendered"].) All work on the motion was carried out by non-partner attorneys Adam Hofmann and
19 Brendan Quigley. (Miller Dec., ¶3.) Mr. Hofmann is senior counsel at Hanson Bridgett with 10
20 years' experience in litigation and expertise in civil writs, appeals, and mandate proceedings.
21 (*Ibid.*) Mr. Hofmann's hourly rate is believed to be commensurate with the rates charged by
22 comparable firms in San Francisco for attorneys of equivalent experience and qualifications. (*Id.*
23 ¶13.) The rate charged for Mr. Quigley, associate at Hanson Bridgett with more than three years'

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25 ¹ According to one report on attorney billing rates from 2013, the median hourly rate for
26 associates in San Francisco with more than 7 years' experience is \$422.50. (See Miller Dec., ¶13,
27 Ex. 2, at p. 6.) For associates in San Francisco with 3 to 7 years' experience, the median hourly
28 rate is \$413.50. (*Ibid.*) These rates are significantly higher than those charged by the District's
attorneys in this matter. (*Id.* ¶13.)

1 experience, is also commensurate with his respective experience and relevant market rates. (*Id.*
2 ¶¶3, 13.)

3 Likewise, because the tasks described in the invoices were reasonable and appropriate, the
4 amount billed was reasonable. "The ultimate goal . . . is the award of a 'reasonable' fee to
5 compensate counsel for their efforts" (*Apple Computer, Inc. v. Superior Court* (2005) 126
6 Cal.App.4th 1253, 1270; see also *Peak-las Positas, supra*, 172 Cal.App.4th at p. 114.) As the
7 California Supreme Court has explained, an attorney fee award "should be fully compensatory"
8 and, absent "circumstances rendering the award unjust, an . . . award should ordinarily include
9 compensation for *all* the hours *reasonably spent*" (*Ketchum*, 24 Cal.4th at p. 1133, citing
10 *Serrano IV, supra*, 32 Cal.3d at pp. 624, 639, emphasis in original.) Because the time spent by
11 counsel was reasonable, the Court should award the fees and expenses incurred in this effort.
12 (Miller Dec., ¶14.)

13 **3. The District Is Entitled to Fees and Costs to Make This Motion.**

14 A fee award should include all hours reasonably spent, "including those relating solely to
15 the fee." (*Ketchum*, 24 Cal.4th at p. 1135, citing *Serrano IV, supra*, 32 Cal.3d at pp. 624, 639.)
16 The District is thus entitled to recover the fees to make this motion, which, to date, includes
17 approximately 20 hours of attorney time. (Miller Decl., ¶12.) In addition to the amount sought in
18 the present motion, the District estimates an additional 8 hours for a reply brief, if any, and 4 hours
19 to prepare for and appear at the hearing on this motion. (*Ibid.*) Counsel for the District will
20 confirm at the hearing, and provide evidence for, any additional amount that should be included in
21 the total award.

22 **IV. CONCLUSION**

23 Pursuant to Code of Civil Procedure section 425.16, subdivision (c), the District is entitled
24 to recover its reasonable attorneys' fees because it is the prevailing party. On the facts here, the
25 amounts claimed are reasonable based on the work done. For these reasons, the District

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1 respectfully requests that the Court award its fees in the total sum of \$40,935, plus the amount for
2 work done following the filing of this motion. (Miller Decl., ¶12.)

3 DATED: October 5, 2015

HANSON BRIDGETT LLP

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5 By: 

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