

1 [prior firm info redacted]

2 Mary F. Mock (State Bar No. 249379)

3 Attorneys for Cross-Defendant LAWYERS' MUTUAL INSURANCE COMPANY
4

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **FOR THE COUNTY OF SAN BERNARDINO, VICTORVILLE BRANCH**
7

8 ANTIONETTE BILLINGS,

9 Plaintiff,

10 vs.

11 D.M. DAVIS (AKA DEE M. DAVIS), JOHN
12 M. BILLINGS, JOSEPH M. BILLINGS, AND
13 ALL PERSONS UNKNOWN CLAIMING
14 ANY LEGAL OR EQUITABLE RIGHT,
15 TITLE, ESTATE, LIEN, OR INTEREST IN
16 THE PROPERTY ADVERSE TO
17 PLAINTIFF'S TITLE OR ANY CLOUD ON
18 PLAINTIFF'S TITLE TO THE PROPERTY,
19 AND DOES 1 THROUGH 10,

20 Defendants.

21 JOHN BILLINGS AND JOSEPH BILLINGS,

22 Cross-Complainants,

23 vs.

24 ANTIONETTE BILLINGS (AKA TONI "THE
25 BULL" BILLINGS), AND ALL PERSONS
26 UNKNOWN CLAIMING ANY LEGAL OR
27 EQUITABLE RIGHT, TITLE, ESTATE, LIEN,
28 OR INTEREST IN THE PROPERTY
ADVERSE TO CROSS-COMPLAINANTS'
TITLE OR CLOUD ON CROSS-
COMPLAINANTS' TITLE TO THE
PROPERTY; JEREMY J. OFSEYER;
NETHERLY & OFSEYER, LLP; ROBERT
WARFORD; REBACK, McANDREWS &
KJAR, LLP; LAWYERS MUTUAL
INSURANCE COMPANY, and DOES 1-50,
INCLUSIVE,

Case No. MCVMS 08151

[Assigned to The Honorable Larry Allen,
Dept. V9]

Complaint Filed: 02/28/07

**CROSS-DEFENDANT LAWYERS'
MUTUAL INSURANCE COMPANY'S
NOTICE OF MOTION AND MOTION
FOR \$22,749.88 IN ATTORNEYS' FEES
AND COSTS AGAINST JOSEPH
BILLINGS; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATIONS
OF TERESA CHO AND MARY F. MOCK
[CODE OF CIVIL PROCEDURE § 425.16(c)]**

Date:

Time: 8:30 a.m.

Place: 14455 Civic Drive Victorville, CA

Dept.: V9

Trial Date: Not Set

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Cross-Defendants.

TO CROSS-COMPLAINANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on _____ [date] at 8:30 a.m., or as soon thereafter as the matter may be heard in Department V9 of the above-entitled Court, located at 14455 Civic Drive Victorville, CA, Cross-Defendant LAWYERS’ MUTUAL INSURANCE COMPANY (“LMIC”), will and hereby does move this Court pursuant to *Code of Civil Procedure* section 425.16(c) for an order awarding \$22,749.88 as its attorney’s fees and costs as the prevailing party on its special motion to strike against cross-complainant Joseph Billings.

This Motion is based upon this Notice of Motion and Motion, Memorandum of Points and Authorities, the Declarations of Teresa Cho (“Cho Decl.”) and Mary F. Mock (“Mock Decl.”) filed concurrently herewith, all pleadings, papers and records on file in this action and upon such other matters as may be presented prior to the hearing of this Motion.

DATED: January 6, 2009

By: _____
Mary F. Mock
Attorneys for Cross-Defendant LAWYERS’
MUTUAL INSURANCE COMPANY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Cross-defendant Lawyers’ Mutual Insurance Company (“LMIC”) hereby seeks fees and costs pursuant to the anti-SLAPP statute, *Code of Civil Procedure* section 425.16 (“CCP 425.16”), against Joseph Billings.

A. Factual Background

In 2007, Plaintiff Antoinette Billings brought an action to quiet title against her brothers, Joseph and John Billings, an attorney named Dee Davis, and all others claiming an interest in her father’s property. LMIC was Davis’ malpractice insurer and hired Robert Warford of the firm of ReBack Andrews & Kjar (“Reback parties”) to defend Davis.

Joseph Billings, acting in pro per, then cross-complained against, among others, LMIC – Davis’ malpractice insurer. The ninth and tenth causes of action of Joseph Billings’ cross-complaint were directed against LMIC for “Malicious Interference with Attorney-Client Relationship” and “Abuse of Process.” These causes of action attacked LMIC’s conduct in providing a defense to Davis, all of which involved protected litigation conduct and/or constitutionally protected speech or activities. As to these causes of action, LMIC filed an anti-SLAPP motion, which was granted in its entirety by this Court on December 29, 2008.

II. ARGUMENT

A. LEGAL STANDARD FOR AWARD OF ATTORNEYS’ FEES AND COSTS UNDER CCP § 425.16

The party prevailing on an anti-SLAPP motion may bring a separate, subsequently filed motion for fees and costs. *Doe v. Luster* (2006) 145 Cal.App.4th 139, 144; *American Humane Assn. v. Los Angeles Times Comm.* (2001) 92 Cal.App.4th 1095, 1103.

“[A] prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs.” CCP 425.16(c). A “prevailing defendant” within the meaning of the attorney fees provision of the anti-SLAPP statute also includes a defendant whose anti-SLAPP motion was granted as to some causes of action but not others. CCP 425.16(c); *Huntingdon Life Science, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129

1 Cal.App.4th 1228, 1267.

2 Thus, an award of attorney’s fees to a defendant who successfully brings a special
3 motion to strike under the anti-SLAPP statute is **mandatory**. *Pfeiffer Venice Properties v.*
4 *Bernard* (2002) 101 Cal.App.4th 211, 215 (emphasis added). This provision authorizes the court
5 to make an award of reasonable attorney’s fees to a prevailing defendant, which will adequately
6 compensate the defendant for the expense of responding to a baseless lawsuit. *Dowling v.*
7 *Zimmerman* (2001) 85 Cal.App.4th 1400, 1423.

8 **B. UPON PREVAILING ON AN ANTI-SLAPP MOTION TO STRIKE, LMIC**
9 **IS ENTITLED TO RECOVER ITS ATTORNEY’S FEES**

10 **1. As The Prevailing Party On Its Anti-SLAPP Motion, LMIC May**
11 **Recover Its Fees For This Motion, As Well**

12 As LMIC prevailed on its anti-SLAPP motion to strike, it is now entitled to recover
13 its attorney’s fees and costs incurred in bringing the anti-SLAPP motion to strike as well as this
14 motion for attorney’s fees. CCP § 425.16(c); *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1141
15 (“award of fees may include not only the fees incurred with respect to the underlying claim, but
16 also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure
17 section 425.16.”)

18 **2. The Attorney’s Fees Sought By LMIC Are Reasonable.**

19 A court has broad discretion in awarding the reasonable amount of attorney fees to
20 a defendant who prevails on an anti-SLAPP motion to strike. *Metabolife Intern., Inc. v. Wornick*
21 (S.D. Cal., 2002) 213 F.Supp.2d 1220, 1222 (citing *Dove Audio, Inc. v. Rosenfeld, Meyer &*
22 *Susman* (1996), 47 Cal.App.4th 777, 785). To assess the amount of attorney’s fees to award to a
23 prevailing defendant, the court begins with a “lodestar figure, [which is] based on the careful
24 compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in
25 the presentation of the case.” *Ketchum, supra*, 24 Cal.4th at 1131-32 (citing *Serrano v. Priest*
26 (1977) 20 Cal.3d 25, 48 (hereinafter “*Serrano III*”). The reasonable value of attorney services is
27 defined as the “hourly amount to which attorneys of like skill in the area would typically be
28 entitled.” *Ketchum, supra*, 24 Cal.4th at 1133 (citing *Serrano v. Unruh* (1982) 32 Cal.3d 621, 625

1 (“*Serrano IV*”). Where proper, the lodestar may be adjusted by the court based on relevant
2 factors, including the novelty and difficulty of the questions involved and the skill displayed in
3 presenting them. *Ketchum, supra*, 24 Cal.4th at 1132 (citing *Serrano III, supra*, 20 Cal. 3d at 49).

4 LMIC seeks recovery of its fees actually incurred. As reflected in Teresa Cho’s
5 and Mary F. Mock’s Declarations filed herewith, LMIC has incurred attorneys fees of \$9188.19 in
6 the preparation, filing, and Reply to the Opposition for the anti-SLAPP motion. (Cho Decl., ¶ 10.)
7 LMIC incurred \$8,276.44 in opposing Joseph Billings’ three ex parte applications related to the
8 anti-SLAPP motion against him. (Cho Decl., ¶ 11.) LMIC has incurred another \$669.75 in the
9 preparation and attendance of the hearing on the anti-SLAPP motion (the attorneys’ fees for the
10 preparation and attendance on the hearing of the anti-SLAPP motion were equally split between
11 Joseph and John Billings). (Cho Decl., ¶ 12.) LMIC further anticipates incurring \$4,615.50 in
12 preparing this Motion for Fees, the Reply for this Motion, and appearing at the hearing on this
13 Motion, for a total amount of \$22,749.88. (Mock Decl., ¶ 2.)

14 The fees incurred by LMIC are reasonable given the extensive and convoluted
15 procedural history and voluminous proceedings in this case, particularly those directly related to
16 the anti-SLAPP motion. (Cho Decl., ¶¶ 4-6, 8.) For example, Joseph Billings brought three ex
17 parte applications related to and arising from the anti-SLAPP motion. These three ex parte
18 applications sought, among other things, to conduct discovery in spite of the anti-SLAPP
19 discovery stay, vacate the hearings on the anti-SLAPP motions, and permit Joseph Billings to file
20 additional opposition papers to the anti-SLAPP motions. Thus, it was critical that LMIC and the
21 other cross-defendants vigorously oppose these ex parte applications to preserve their right to
22 hearings on the anti-SLAPP motions. Had LMIC not opposed Joseph Billings’ ex parte
23 applications, the anti-SLAPP motions may have been entirely vacated and/or otherwise lost.

24 The Opposition to LMIC’s anti-SLAPP motion was also extensive. Joseph
25 Billings’ Opposition papers included a Memorandum of Points and Authorities in excess of 15
26 pages and a Supplemental Declaration exceeding 70 pages. (Cho Decl., ¶ 7.) This required work
27 by LMIC’s counsel related to its anti-SLAPP motion above and beyond what one might ordinarily
28 perform.

1 Additionally, the hourly rates charged by LMIC’s attorneys are wholly reasonable.
2 Mary F. Mock, charged an hourly rate of only \$175. (*Id.*) These rates are on the low-side for
3 commercial litigation in the Los Angeles area, and as such are entirely reasonable. (*Id.*)

4 **III. CONCLUSION**

5 For the foregoing reasons, LMIC respectfully requests a total award of \$22,749.88
6 for the attorney’s fees and costs incurred in prevailing on its anti-SLAPP motion to strike and on
7 this motion for fees and costs against Joseph Billings.

8

9 DATED: January 6, 2009

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By: _____
Mary F. Mock
Attorneys for Cross-Defendant LAWYERS’
MUTUAL INSURANCE COMPANY

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