

[Claim Must be Frivolous to Support a Fee Award for Malicious Prosecution](#)

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In *Fabbrini v. The City of Dunsmuir*, 2011 DJDAR 2372 (9th Circuit 2011), the [Ninth Circuit Court of Appeals](#) decided an interesting fee issue arising in the context of a malicious prosecution claim and California's [anti-SLAPP Statute, C.C.P. § 425.16](#).

The City of Dunsmuir (Dunsmuir) initiated legal proceedings against David Fabbrini (Fabbrini) for his failure to provide the proper promised collateral for a municipal loan. The lawsuit also contained a cause of action for declaratory relief, seeking a ruling on the respective parties' rights and obligations as well as a claim for fraud. The City voluntarily dismissed the lawsuit.

After receiving notice of the dismissal, Fabbrini filed suit against the City in federal court, alleging malicious prosecution under 28 U.S.C. Section 1983. Fabbrini also included a claim for defamation. The district court granted the City's motion to strike the defamation claim under California's anti-SLAPP statute. The court, however, rejected the motion as to the malicious prosecution count.

The district court awarded attorney fees to the City on the successful anti-SLAPP motion, including fees for hours incurred on the malicious prosecution claim. The court ruled that the hours expended on the malicious prosecution count were "inextricably intertwined" with the anti-SLAPP motion. The court thereafter granted summary judgment on the remaining claims, terminating the litigation in favor of the City.

The Ninth Circuit vacated the District Court's ruling in part. The Ninth Circuit noted that a district court may award attorney fees to a prevailing Section 1983 defendant only where the action brought is found to be "unreasonable, frivolous, meritless or vexatious." Here, the district court made no finding that the Section 1983 claim was frivolous or within the other required statutory criteria.

For these reasons, the court concluded that it was improper to award fees for hours incurred to dismiss the malicious prosecution claim. The City was only entitled to fees for work incurred on the anti-SLAPP motion.