

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/17/10

DEPT. 57

HONORABLE RALPH W. DAU

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. INNIS, C.A.

Deputy Sheriff

NONE

Reporter

BC417435

Plaintiff

Counsel

DOLE FOOD COMPANY INC

NO APPEARANCES

VS

Defendant

FREDRIK GERTTEN ET AL

Counsel

170.6 HIROSHIGE - PLAINTIFF DOL

170.6 Kwan (Defts)

RECUSAL DUFFY-LEWIS/CHARLES PAL

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

The Court having taken defendant's Special Motion to Strike and Motion for Attorney's Fees and Costs under submission on October 22, 2010 comes now and rules as as indicated below and as more fully reflected in the Order on Special Motion to Strike and Motion for Attorney Fees, which is signed and filed this date and incorporated herein by reference to the court file.

IT IS ORDERED that defendant are entitled to attorney fees in the amount of \$199,035.50 and costs in the amount of \$923.75, a total of \$199,959.25.

A conformed copy of the order is mailed to counsel as indicated below.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 11/17/2010 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope

<p align="center">MINUTES ENTERED 11/17/10 COUNTY CLERK</p>
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RECUSAL DUFFY-LEWIS/CHARLES PAL

NATURE OF PROCEEDINGS:

for each, addressed as shown below with the postage thereon fully prepaid.

Date: November 18, 2010

John A. Clarke, Executive Officer/Clerk

By: _____

E. Lopez

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FILED
LOS ANGELES SUPERIOR COURT
NOV 17 2010
JOHN A. CLARKE, CLERK
[Signature]
BY E. LOPEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DOLE FOOD COMPANY, INC., etc.,
Plaintiff,
vs.
FREDRICK GERTTEN, etc., et al.,
Defendants.

CASE NO. BC417435
**ORDER ON SPECIAL MOTION
TO STRIKE AND MOTION FOR
ATTORNEY FEES**

Plaintiff Dole Food Company, Inc. filed a complaint for defamation against defendants Fredrik Gertten, Margarete Jangård, and WG Film AB, who are, respectively, the director, the producer, and the partnership that developed and produced the documentary film *Bananas!**

Plaintiff's complaint is summarized below. The film depicts a Los Angeles lawyer named Juan J. Dominguez, who sued plaintiff on behalf of exploited Nicaraguan banana plantation workers and won a punitive damage verdict in *Tellez v. Dole Food Company, Inc.* (Cmpl. ¶¶ 2, 15.) However, before the film was released, the trial court overturned the punitive damage verdict, finding insufficient evidence to support it and that Dominguez had engineered a fraud on the court. (*Id.* at ¶ 15.) Although plaintiff

1 brought the fraud to defendants' attention, defendants nonetheless screened the film.
2 (*Ibid.*) Plaintiff believes there is no clearer case of libel and slander per se and actual
3 malice. (*Ibid.*) The film website and other promotional material contain a multitude of
4 false statements of purported facts concerning plaintiff, and these statements have
5 harmed plaintiff's reputation. (*Id.* at ¶ 19.) The film directly implied that plaintiff had
6 caused the deaths of many people in Nicaragua by the use of a chemical known as
7 DBCP, and the film falsely implies that DBCP was applied on plaintiff's banana farms
8 while the workers were on the farms. (*Id.* at ¶¶ 22-23.) Defendants showed the film
9 after the fraud had been brought to their attention without meaningful alteration. (*Id.* at ¶
10 62.)

11 Defendants filed a special motion to strike plaintiff's complaint under Code of
12 Civil Procedure section 425.16,¹ and, when plaintiff voluntarily dismissed its complaint
13 without prejudice, defendants filed a motion seeking costs and attorney fees incurred in
14 connection with their motion.

15 I. Special motion to strike

16 In ruling on a defendant's special motion to strike, the trial court uses a "sum-
17 mary-judgment-like procedure at an early stage of the litigation." (*Varian Medical*
18 *Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) In making its determinations, the
19 trial court considers the "pleadings, and supporting and opposing affidavits stating the
20 facts upon which the liability. . . is based." (*Equilon Enterprises, LLC v. Consumer*
21 *Cause, Inc.* (2002) 29 Cal.4th 53, 67.) This is a two-step process, as discussed below.

22 First, the court must decide whether defendant has made a threshold showing that
23 the causes of action² in the complaint "arise from" protected activity; that is, whether the
24 acts of which plaintiff complains were taken in furtherance of defendant's right of peti-
25

26 ¹ All further statutory citations are to this code, unless otherwise indicated.

27 ² Section 425.16 does not define "cause of action," but uses the term interchange-
28 ably with "claim," "complaint," and "action," as well as the phrase "the facts upon which
the liability or defense is based." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 646.)

1 tion or free speech. (§ 425.16; *Equilon Enterprises, LLC, supra*, 29 Cal.4th at p. 66.)
2 The focus of this issue is not on the form of the cause of action, but rather on defendant's
3 actions giving rise to the alleged liability and whether those actions are speech or peti-
4 tion-based. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76-78.) That defendant's
5 protected activity motivated plaintiff to file the complaint does not mean that the claim is
6 a SLAPP; the critical consideration is whether the cause of action is based on defendant's
7 free speech or petitioning activity. (*Id.* at pp. 76-77.) Defendant need not show that its
8 actions were necessarily protected by the First Amendment as a matter of law; only a
9 prima facie showing is required. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809,
10 820.) Arguments about the merits of the plaintiff's claims have no place in this analysis.
11 (*Freeman v. Schack* (2007) 154 Cal.App.4th 719, 733.)

12 Second, the court must decide whether plaintiff has demonstrated a reasonable
13 probability of success on the merits; that is, whether it has shown that the causes of
14 action alleged "are both legally sufficient and supported by a sufficient prima facie
15 showing of facts to sustain a favorable judgment if [the] evidence submitted by the
16 plaintiff is credited." (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.) "Legally
17 sufficient" means that the cause of action would withstand a demurrer. (*Dowling v.*
18 *Zimmerman* (2001) 85 Cal.App.4th 1400, 1421.) The plaintiff's prima facie showing
19 need only establish that its claims have "minimal merit." (*Soukup v. Law Offices of*
20 *Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The question is whether plaintiff has pre-
21 sented evidence in opposition to defendant's motion that, if believed by the trier of fact,
22 would be sufficient to support a judgment in plaintiff's favor. (*Zamos v. Stroud* (2004)
23 32 Cal.4th 958, 965.)

24 A. Evidentiary matters

25 1. Judicial notice

26 Defendants ask the court to take judicial notice of exhibits attached to the Decla-
27 ration of Lincoln Bandlow, as follows:
28

1 (1) Reported opinions issued by courts of record of the United States and of states
2 of the United States, attached as Exhibits 8, 17, 23, and 24.

3 (2) Official records of the Los Angeles Superior Court and of the United States
4 District Court for the Southern District of Florida, including trial transcripts, hearing
5 transcripts, pleadings, memoranda, verdict forms, declarations, affidavits, and court
6 orders from *Tellez v. Dole*, Los Angeles Superior Court Case No. BC 312852, *Mejia v.*
7 *Dole*, Los Angeles Superior Court Case No. BC 340049, and *Osorio v. Dole*, U.S.
8 District Court for the Southern District of Florida, Case No. 1:07-cv-22693-PCH, which
9 are attached as Exhibits 5-7, 26, 29-32, and 34-38.

10 (3) Official reports created and issued by the California Office of Environmental
11 Health Hazard Assessment, the National Cancer Institute, the California Environmental
12 Protection Agency, and the United States Environmental Protection Agency, which are
13 attached as Exhibits 11, 14, 15, and 16.

14 (4) Articles and news stories evidencing the health and safety effects of DBCP on
15 banana workers at plaintiff-operated plantations in Nicaragua, which are attached as
16 Exhibits 2, 28, and 33.

17 (5) Plaintiff's Form 10-K for 2003, 2006, and 2008 filed with the United States
18 Securities Exchange Commission, which are attached as Exhibits 12, 13, and 25.

19 The request is denied insofar as Exhibit 38 in category (2), which is not certified
20 as required by Local Rule 9.2(c), and category (4), and is otherwise granted insofar as the
21 existence of the documents, but the court does not take judicial notice of the truth of all
22 matters stated in the documents.

23 2. Objections to declarations

24 Defendants raise over 190 evidentiary objections to the evidence submitted by
25 plaintiff. The court first sustains defendants' objections to the declarations of David R.
26 Ginsburg and Arnold Schwartzman. Ginsburg and Schwartzman have been retained as
27 experts to analyze the film, give their opinion as to the presentation of central themes in
28 the film, and give their opinion of whether the film meets generally accepted ethical

1 standards for documentary film making. The court sustains defendants' objections
2 because Ginsburg and Schwartzman's declarations are not reasonably helpful to a trier of
3 fact. California Evidence Code section 801(a) requires that expert testimony be limited
4 to a subject that is sufficiently beyond common experience. The court finds that the issue
5 in this case, the veracity of statements made in the film, is not sufficiently beyond com-
6 mon experience. Ginsburg's testimony as to the presentation of themes in the film and
7 Schwartzman's testimony as to the film's compliance with ethical standards are not
8 relevant to this action.

9 The court overrules defendants' objection to the declaration of Dr. Marc
10 Schenker. Schenker's expertise regarding DBCP can assist the trier of fact in determin-
11 ing the veracity of certain claims made about DBCP in the film.

12 The court rules as follows on defendants' objections to the declaration of Scott A.
13 Edelman. Objection Nos. 1-3, 5-8, 10, 11, 12 (starting with "Judge Chaney . . . stated";
14 otherwise overruled), 14, 18, 21, 28-30, 32, 35, 38, 39, 41-101 are sustained on the
15 ground that the statements contain an impermissible opinion or are used to prove the
16 contents of a writing. Objection Nos. 22, 23, 25, 31, 33, 34, 36, and 40 are sustained on
17 the ground that the statements are irrelevant. Objection Nos. 4, 9, 13, 15-17, 19, 20, 24,
18 26, 37, and 40 are overruled.

19 B. Arising from protective activity

20 Plaintiff does not dispute defendants' contention that section 425.16 applies to
21 actions aimed at documentary films. (*M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th
22 623, 629.) Defendants, by producing and showing a documentary on the topic of plain-
23 tiff's treatment of its workers and use of pesticides, have exercised their right to free
24 speech, and section 425.16 can be applied to their conduct. The court therefore turns to
25 whether plaintiff can show that its claims against defendants have minimal merit.

26 C. Success on the merits

27 Plaintiff's opposition to the motion specifies three aspects of the film that it
28 contends are false and defamatory: (1) that the film "portrays Dominquez as the noble

1 'David' justly slaying the evil 'Goliath'; (2) that the film "accuses Dole of causing
2 Banana worker deaths"; and (3) that the film "falsely accuses Dole of recklessly and
3 indiscriminately deluging banana workers with DBCP through aerial spraying and
4 other saturation methods." (P's Opp. at (i), capitalization omitted.) Each of these alleged
5 defamations is addressed separately below:

6 a. The alleged portrayal of Dominquez as a "noble hero"

7 Plaintiff spends much time complaining of the overall tone of the film as one
8 which portrays plaintiff's counsel as a "'David' in a 'David versus Goliath type of
9 fight.'" (P's Opp. at 5-9.) Even aside from the reality that the impression one might draw
10 from the portrayal of attorney Juan Dominquez from the film is not necessarily positive
11—the film notes the judge's dismissal of the charges on the basis of fraud allegations
12 against Mr. Dominquez, whose actions thus have fatally harmed the hundreds of Nica-
13 ragan workers who might have valid claims against Dole and who placed their hopes
14 for justice in him; it also portrays Dominquez as what one might conclude is an "ambu-
15 lance chaser" who lives a lavish and garish lifestyle and whose practice is more style than
16 substance—this claim must fail for two fundamental reasons:

17 1. An actionable defamation can only be based on a provably false statement of
18 fact, not matters of opinion. (*Gertz v. Welch, Inc.* (1974) 418 U.S. 323, 329-40; *Gregory*
19 *v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 601.) Whether statements constitute
20 statements of fact or opinion is a question of law for the court. (*Gregory, supra*, 17
21 Cal.3d at p. 601; *Moyer v. Amador Valley Joint Union High School* (1990) 225
22 Cal.App.3d 720. As with Robin Hood, whether Juan Dominquez is a noble David taking
23 on the evil Goliath Dole, or an ambulance-chasing fraud betraying his clients or trying to
24 hold up a deep-pocket corporation, is a matter of opinion. It cannot be the basis for a
25 claim of defamation.

26 2. To be actionable as a defamation, false statements must be "of and concerning"
27 the person complaining of them. One cannot complain of a false portrayal of someone
28 else. Thus in *Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1042, the court

1 affirmed dismissal of an injurious falsehood complaint by a best-selling author who
2 claimed that his book was falsely omitted from the New York Times best-seller list; the
3 statements the Times published were not “of and concerning” plaintiff.

4 In connection with its contention that the film falsely portrays Juan Dominquez in
5 an heroic light, Dole points to two aspects of the portrayal that it says constituted defam-
6 atory factual errors. First, Dole argues that the film mischaracterizes the fraud allegations
7 against Dominquez as “a mere ‘investigation.’” (P’s Opp. at 7.) The contention is un-
8 tenable. The film correctly informs viewers that “Judge Chaney dismis[s]e[d] all Nicara-
9 guan cases pending before her, citing serious fraud allegations.” (P’s Opp. at 8.) No
10 reasonable person could characterize a court’s dismissal of an action on the basis of fraud
11 to be “a mere investigation.” Dole further asserts that the film “completely distort[s]”
12 Judge Chaney’s fraud findings by leaving out part of her statement about the effect of the
13 fraud. The film summarizes her findings as follows:

- 14 • Dole appealed all verdicts in the case and accused Juan Dominquez
15 of fabricating evidence.
- 16 • April 23, 2009, Judge Chaney dismisses all Nicaraguan cases
17 pending before her, citing serious fraud allegations.
- 18 • Judge Chaney: “We’ll never know if anybody in Nicaragua was
19 actually injured or harmed by the alleged wrongful conduct of the
20 defendants, and people will never have the opportunity to learn . . .
21 the truth.”
- 22 • Juan Dominquez is fighting all charges of fraud against him.

23 Dole asserts that this summary is defamatorily misleading because it omits a
24 portion of Judge Chaney’s language from the third paragraph above. The full quote from
25 Judge Chaney (with the omitted portion boldfaced) is as follows:

- 26 • We’ll never know if anybody in Nicaragua was actually injured or
27 harmed by the alleged wrongful conduct of the defendants, and
28 people will never have the opportunity to learn, **since this fraud is**

1 so pervasive and extensive that it has forever contaminated even
2 our own ability to ever know the truth.

3 The test for truth of a statement is whether or not the basic substance or “gist or
4 sting” of the statement is accurate. (*Mahue v. Hughes Tool Co.* (9th Cir. 1974) 569 F.2d
5 459, 465-466.) In the case of an altered quotation, the ultimate issue is whether “the
6 alteration results in a material change in the meaning conveyed by the statement.”
7 (*Masson v. New Yorker Magazine, Inc.* (1991) 501 U.S. 496, 517. It is hard to see how
8 the omission complained of by Dole could be said to materially change the meaning con-
9 veyed by Judge Chaney's statement. What the court is clearly saying in both the abbre-
10 viated and full quote is that, as a result of the fraud committed by Dominquez and the
11 resultant dismissal of the cases, a trial on the merits of the allegations against Dole will
12 never take place and truth will never become known. That statement is surely accurate.

13 b. The accusation that “Dole caused banana worker deaths”

14 Plaintiff next complains that the film “falsely accuses Dole of causing banana
15 worker deaths.” (P’s Opp. at 9, capitalization omitted.) It correctly notes that the film
16 begins with the funeral of a banana worker, at which a priest tells the mourners that
17 “plantations do provide work, but they are also the source of slow death,” because of the
18 widespread use of pesticides. “The unmistakable point of . . . the film as a whole, is that
19 Dole caused the death of the man in the coffin and of countless others in Nicaragua by
20 exposing them to DBCP.” (P’s Opp. at 10.) Plaintiff suggests that in this manner, the
21 film falsely defames Dole “by clear implication,” citing *Blatty, supra*, 42 Cal.3d at p.
22 1044.

23 There is no question but that the courts in California and elsewhere have set a
24 high standard for claims based on allegedly defamatory implication and innuendo. Thus,
25 in *Forsher v. Bugliosi* (1980) 26 Cal.3d 792, 802, the court on demurrer held non-action-
26 able a book about the disappearance during a murder trial of a defense attorney, which
27 theorized that the attorney had been murdered and pointed out that it was the plaintiff
28

1 who had given a ride to the attorney just before his disappearance, which could have led
2 some readers to infer that the plaintiff was guilty of the killing.

3 The import of the case law in this area is clear: A media defendant is not liable
4 for a work which may be capable of supporting defamatory impressions, but whose ac-
5 tual content is not defamatory. (*Newton v. National Broadcasting Co.* (9th Cir. 1990)
6 930 F.2d 662, 681, cert. den. (1991) 502 U.S. 866.) As the court has already noted,
7 when viewed as a whole, the gist or sting of the film's message is that while various Nic-
8 araguan banana workers have made claims against Dole for injuries allegedly resulting
9 from pesticide use, because of findings that their attorney committed fraud in the presen-
10 tation of those claims, the truth of the charges against Dole may never be known. "The
11 defamatory meaning which [Dole] urges that this court discern in the context of the
12 whole [film] must be one that can be reasonably inferred." (*Forsher v. Bugliosi, supra*,
13 26 Cal.3d at p. 805.) Here, "the defamatory character [is not] open to reasonable
14 debate." (*Ibid.*)

15 c. The accusation that Dole "deluged" banana workers with pesticides

16 Finally, Dole complains that the film "falsely accuses Dole of recklessly and
17 indiscriminately deluging Banana workers with DBCP through aerial spraying and other
18 saturation methods." (P's Opp. at 11, capitalization omitted.) Plaintiff notes that the film
19 includes shots of aerial spraying, workers plodding barefoot through DBCP-contami-
20 nated puddles and dripping plants—all of which were shot on non-Dole plantations.

21 A careful review of the film does not support Dole's assertions. As plaintiff itself
22 notes in its opposition, "The publication in question must be considered in its entirety; it
23 may not be divided into segments and each portion treated as a separate unit," citing
24 *Balzaga v. Fox News Network* (2009)173 Cal.App.4th 1325, 1338. There are shots of
25 aerial spraying of banana plantations, most notably at the beginning of the film, but this
26 is during a general discussion of banana plantations in Nicaragua. When the film begins
27 to focus on the lawsuits against Dole, the film shows attorney Dominquez with one of the
28 Dole workers, who explains that on the Dole plantation, the pesticides were sprayed from

1 water cannons set on top of turrets. The workers further explain that the spraying
2 occurred at night, while the workers were in their dorms, where they could smell the
3 pesticides. This narrative is consistent with the methods Dole concedes it used on its
4 Nicaraguan banana plantations. Throughout the discussion of the Dole suit, the film
5 shows the use of water cannons spraying pesticides. In none of these shots are workers
6 present while DBCP is sprayed. Furthermore, the film includes the testimony of Dole's
7 president on the stand at trial, that workers were not sprayed directly with DBCP.

8 As for Dole's complaint that the film suggests that workers were contaminated by
9 water dripping from plants which were sprayed earlier, that was from actual testimony of
10 Dole workers at trial, which is shown in the film. But the film also relates at the end that
11 the cases against Dole were thrown out because of serious allegations of fabricated
12 testimony. This would hardly tend to leave viewers with the conviction that the testi-
13 mony against Dole was necessarily true. In sum, the court cannot find that the false
14 "impression" Dole claims the film conveys about its Nicaraguan operations is clear from
15 the film itself, as it must be under governing case law. Accordingly,

16 IT IS ORDERED that defendants' special motion to strike plaintiff's complaint is
17 granted to the following extent: The court finds that plaintiff's action is what is com-
18 monly known as a SLAPP, and plaintiff did not establish a probability that it would have
19 prevailed upon the claim had it not voluntarily dismissed that claim. In other words, had
20 plaintiff not voluntarily dismissed its action, the court would be granting defendants'
21 motion to strike under section 425.16.

22 II. Motion for attorney fees

23 Section 425.16, subdivision (c) provides, in relevant part, as follows:

24 (1) Except as provided in paragraph (2), in any action subject to
25 subdivision (b), a prevailing defendant on a special motion to strike shall
26 be entitled to recover his or her attorney's fees and costs. . . .

27 (2) A defendant who prevails on a special motion to strike in an
28 action subject to paragraph (1) shall not be entitled to attorney's fees and

1 costs if that cause of action is brought pursuant to Section 6259, 11130,
2 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this
3 paragraph shall be construed to prevent a prevailing defendant from
4 recovering attorney's fees and costs pursuant to subdivision (d) of Section
5 6259, 54690.5, or 11130.5.

6 In determining the fee award pursuant to section 425.16, the court may utilize the
7 lodestar method addressed in *Serrano v. Priest* (1977) 20 Cal.3d 25 and in appropriate
8 cases may include a fee enhancement for the purpose of compensating the attorney for
9 contingent risk, exceptional skill or other factors. (*Ketchum v. Moses* (2001) 24 Cal.4th
10 1136, 1138.)

11 A plaintiff's voluntary dismissal of a suit after a special motion to strike has been
12 filed neither prevents nor mandates an award of attorney fees and costs. (*Liu v. Moore*
13 (1999) 69 Cal.App.4th 745, 750-751.) The defendant is entitled to fees and costs if
14 plaintiff's case is shown to be a "pure SLAPP suit." (*Kyle v. Carmon* (1999) 71
15 Cal.App.4th 901, 918.) The trial court must adjudicate the merits of the special motion
16 to strike before it may rule on the request for attorney's fees and costs. (*Liu v. Moore*,
17 *supra*, 69 Cal.App.4th at p. 751.)

18 Plaintiff's objection to the declaration of Douglas E. Mirell filed with defendants'
19 reply is sustained.

20 The court sustains defendants' objections to the declarations of C. Michael Carter
21 and Jeffrey A. Todd.

22 Mr. Todd, an attorney with the firm representing plaintiff, declares,
23 based on his "read[ing of] the relevant case law," that various entries in the
24 invoices of defendants' attorneys "were statutorily not allowed or were im-
25 properly vague, duplicative, and/or unnecessary." (Todd Decl. ¶ 2.) The
26 exercise engaged in by Mr. Todd is not properly the subject of lay opinion
27 testimony, and Mr. Todd has not established that he is qualified to give
28 expert testimony on this subject. Moreover, much of his analysis is mis-

1 guided. For example, he contends that reviewing plaintiff's complaint and
2 the documentary film are outside the purview of the preparation of a
3 motion under section 425.16. (*Id.* at 3:23-24, citing entries 49-52 on Exh.
4 1, which include "review, analyze, and evaluate complaint for defamation"
5 and "documentary film DVD" as items 49 and 50.) The court necessarily
6 reviewed those very matters in considering the motions before it.

7 Mr. Carter is plaintiff's General Counsel. His declaration reads like
8 the argument he would present in opposition to defendant's motion. He
9 attempts to justify the filing of Dole's action and the action's dismissal,
10 contending that the latter was for business reasons unrelated to the merits
11 of the case.³ That plaintiff may have had good business reasons for dis-
12 missing its defamation claim has no bearing on the attorney fee motion.
13 The court having determined that plaintiff's action is in fact a SLAPP suit,
14 defendants are entitled to attorney fees. (See *Liu v. Moore, supra*, 69
15 Cal.App.4th at p. 753.) The portions of the declaration addressed by
16 defendants' objections do not contain admissible evidence.

17 A prevailing defendant in a special motion to strike is entitled to the fees and costs
18 incurred specifically on the special motion to strike. (*Lafayette Morehouse, Inc. v.*
19 *Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) Defendants seek attor-
20 ney's fees of \$256,793.50 and costs of \$16,042.51. (Bandlow Decl. ¶ 2.) The fees are
21 based on over 900 hours of work. Lincoln Bandlow, and John Shaeffer, partners at
22 Lathrop & Gage LLP billed 254.7 hours at a rate of \$350 per hour and 80.5 hours at a

23
24 ³ Mr. Carter contends that defendants sought to bring public opinion to bear
25 against Dole in Sweden, and members of the Swedish parliament threatened to hold
26 hearings and denounced Dole's suit as unwarranted interference with freedom of speech,
27 at a time when Dole was attempting to launch a successful IPO. The court takes judicial
28 notice (Evid. Code, § 452, subd. (g)) of the following matters: It is now commonplace for
parties involved in litigation, in which there may be a public interest, to orchestrate cam-
paigns designed to sway public opinion, and such campaigns are just as much a part of the
"litigation" as events in the courtroom. It does not appear, however, that defendants are
seeking attorney fees for such activities.

1 rate of \$300 per hour. (*Id.* at ¶ 5(a)-(b).) Randy Merritt, Emily Birdwhistell, Amber
2 Henry, and Suzanna Morales, associates at Lathrop & Gage LLP billed 105.9 hours at a
3 rate of \$350 per hour, 304.7 hours at a rate of \$250 per hour, and 1.7 hours at a rate of
4 \$285 per hour. (*Id.* at ¶ 5(c)-(f).) Sharon Wright provided paralegal services for 92.6
5 hours at a rate of \$165 per hour. (*Id.* at ¶ 5(g).) Marin Pascu provided paralegal services
6 for 63 hours at a rate of \$145 per hour. (*Id.* at ¶ 5(h).) And Hugh Williams provided
7 computer system and database litigation support for 37.4 hours at a rate of \$150 per hour.
8 (*Id.* at ¶ 5(I).)

9 Plaintiff argues that the amount of fees claimed by defendants is excessive. First,
10 plaintiff contends that defendants have included work that is not compensable in their
11 request because defendants seek compensation for work that does not involve the special
12 motion to strike, including the preparation of a cross-complaint, work on motions to
13 disqualify judges, and work on a press release. (Opposition to Motion for Attorney's
14 Fees, pp. 13-14.) The court agrees that those three examples are non-compensable.
15 Those and other matters that the court finds are not shown to be compensable total
16 \$41,138.⁴

17 Plaintiff also argues that a number of the entries for hours worked are so vague
18 that it is impossible to ascertain whether the hours were incurred in connection with the
19 special motion to strike. (*Id.* at p. 14.) The court agrees with plaintiff on this point.
20 Many of the entries contained in defendants' invoices are redacted so that the matters
21 researched or discussed cannot be identified. Such matters cannot be shown to relate to
22 the SLAPP motion. These matters total \$16,620.

23 Lastly, plaintiff argues that defendants have not met their evidentiary burden of
24 showing that the hourly rates charged by their attorneys are reasonable because defen-

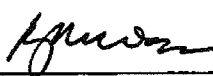
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⁴ These include the following items on Exhibit 1 to the Todd Declaration: 7, 11,
23-25, 30-35, 37-39, 44, 47, 48, 51, 52, 55, 57-60, 62, 67-69, 72, 80, 88, 90, 91, 97, 98,
101-103, 105, 108-110, 112-114, 116, 118, 123, 129, 132, 135, 139, 142, 148, 149, 151,
153, 155, 163, 175, 190, 202, 226, 229, 235, 283-288, 290, 291, 294, 297-307, 345, 368.
(Although the court has sustained objections to this declaration, the Exhibit attached is
useful for identifying matters that are not shown to be compensable.)

1 dants have not submitted any expert opinion. (P's Opp. at 15.) The court is not per-
2 suaded by plaintiff's argument because in California such expert testimony is not re-
3 quired. (*Davis v. City of San Diego*, (2003) 106 Cal.App.4th 893, 902-903.) The hourly
4 fees requested are in line with those the court has awarded to counsel with skill and
5 experience comparable to defendants' attorneys in cases involving similar complexity.

6 From defendants' fee request in the amount of \$256,793.50, the court is not
7 allowing \$57,758. The court finds that defendants have demonstrated reasonable fees in
8 connection with the SLAPP motion in the amount of \$199,035.50. In addition, the court
9 agrees with plaintiff that \$15,118.76 of the costs claimed by defendants (e.g., "legal
10 research regarding [redacted]") are not recoverable on the fee motion. Thus the court is
11 granting defendants' motion for costs in the amount of \$923.75. Accordingly,

12 IT IS ORDERED that defendants are entitled to attorney fees in the amount of
13 \$199,035.50 and costs in the amount of \$923.75, a total of \$199,959.25.

14 Dated: November 17, 2010

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17 _____
18 Ralph W. Dau, Judge
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