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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAMSHID LAVI, Plaintiff and Appellant, v. SIMON COHEN et al., Defendants and Respondents.	B281352, B284653 (Los Angeles County Super. Ct. No. LC104608)

APPEALS from orders of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Affirmed.

Law Offices of Daniel B. Spitzer and Daniel B. Spitzer for Plaintiff and Appellant.

Abir Cohen Treyzon Salo, Boris Treyzon and Cynthia Ann Goodman for Defendants and Respondents.

Simon and Shahrzad Cohen (collectively the Cohens) bought a house from Jamshid Lavi (Lavi). When the house sustained water damage, the Cohens sued Lavi. Lavi ultimately obtained summary judgment against the Cohens. Lavi then sued the Cohens and their attorneys for malicious prosecution, but the Cohens and their attorneys were successful in having Lavi's complaint stricken. (Code Civ. Proc., § 425.16.)[1] Lavi now appeals the orders granting the Cohens and their attorneys' special motion to strike and motion for attorney fees. We affirm the orders.

BACKGROUND

I. The property

In 2004, Lavi's company, JR Capital, acquired residential real property in Beverly Hills. After acquiring the house, Lavi and JR Capital took out building permits. Lavi personally obtained building permits to "change garage header" (capitalization omitted) and to install a fence and gate. JR Capital applied for building permits for "front yard paving," (capitalization omitted) to "repair garage concrete slab," (capitalization omitted) and to reroof the garage.

In January 2006, JR Capital sold the property to Alikhani Group, Inc., a company owned by Lavi's business associate, Mohammed Alikhani. Lavi personally financed the purchase with an approximate $460,000 promissory note secured by a deed of trust on the property. Although Lavi sold the property to Alikhani Group, JR Capital remained on title during remodeling

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

of the first and second floors, which took place in January 2006.[2] When Alikhani Group defaulted on the note, Lavi foreclosed and acquired the property at a trustee's sale in April 2009. At that time, tenants were living in the house.

Lavi then engaged a real estate agent, Mahnaz Sepehr, to sell the property. The Cohens were interested buyers. At Sepehr's request, Homayoun Kiani inspected the property in October 2009. His initial report referred to leaks. Section 1.9 deferred stated, "There are moisture stains beneath the balcony at multiple locations around the residence that could be the result of prior leakage. Because membranes on wood-framed surfaces are rarely installed correctly, difficult to evaluate and extremely prone to leakage, we recommend that you have this condition evaluated by an appropriately qualified specialist." Section 8.5 deferred stated, "There are water stains or other evidence of moisture intrusion in the living room, kitchen and bedroom ceiling covering that you will need to have evaluated further by an appropriately qualified specialist. At the time of inspection the occupant claimed that they have repaired the leakage problem. We recommend that you may obtain a warranty against leak for one rainy season."

When Sepehr told Kiani that, according to the tenant, areas in the house were covered because of hidden cameras and not because of leakage, Kiani prepared a modified report. His modified report, dated November 30, 2009, deleted references to moisture stains under the wood deck or balcony. Section 1.9 now stated simply that the "deck cover at residence is functional."

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[2] According to Lavi, he failed to record the deed of trust until July 2007 due to an oversight.

Section 8.5 now stated simply that the "ceiling coverings are functional."

The Cohens received both Kiani's original and modified reports. Notwithstanding having received the original report, the Cohens released all contingencies, including those for "Reports/Disclosures," before they received the modified report.

In addition to Kiani's reports, the Cohens had other information suggesting that there were leaks. An agent's visual inspection disclosure report noted that in "[b]ath #5" there was "indication of leak from last repair." A wood destroying pests and organisms inspection report noted that there were "[w]ater stains and or possible moisture intrusion" "at the area below the rear patio in the subarea." (Italics and boldface omitted.) Also, "[m]oisture was noted adjacent to the air conditioner and or the heating unit in the subarea."

Sometime before the close of escrow, Simon Cohen told Lavi about water leakage, and, according to Sepher, Lavi sent someone to fix the problem. Lavi, however, denied that he sent anyone to fix the leak.

The Cohens bought the property from Lavi in February 2010. According to the purchase agreement, they bought the property " 'as is.' "

In December 2010, the property was flooded after a rainstorm, resulting in significant damage. The Cohens' insurance company's inspection report found that water had been leaking below the deck surface into the house for a long time. Caulking and sealing suggested that there had been past attempts to prevent leakage. The insurance company ultimately denied coverage under a construction defect exclusion.

II. The Cohens sue Lavi (the underlying action)

The Cohens sued Lavi for breach of contract, breach of the implied warranty of fitness, negligence, and fraud. Alexander Cohen of Cohen & Associates represented the Cohens.[3]

The Cohens' complaint alleged that Lavi had obtained the property through foreclosure but continued to develop, rebuild or complete work on it. However, the work was poorly done, and the property suffered water damage. Lavi thus breached the terms of the residential purchase agreement by failing to provide the Cohens with a home free of defects. Further, Lavi impliedly warranted that the property was safe and fit for residential purposes, but it instead contained substantial defects. Also, Lavi owed a duty of care to the Cohens to have work done properly, and he breached this duty by "negligently designing, constructing, building, manufacturing, remodeling, supervising, maintaining and/or repairing" the house. Lavi also misrepresented that the property was waterproof, covered up evidence of leaks, and failed to disclose the problem to the Cohens.

After discovery, the trial court (Hon. Lisa Hart Cole) granted summary judgment in Lavi's favor. The court found undisputed that (1) Lavi was not the property's builder or developer; (2) Lavi disclosed any and all knowledge of any

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[3] Alexander Cohen and the Cohens are not related. Robert H. Roe also represented the Cohens in the underlying action. Lavi named him in the subsequent malicious prosecution action, but it is unclear whether he was ever served. In any event, Roe is not a party to this appeal.

existing defects; and (3) the Cohens knew about existing water damage.

III. Lavi files this action for malicious prosecution

Having obtained a favorable outcome on the underlying action, Lavi filed a complaint for malicious prosecution against the Cohens and the attorneys who represented the Cohens in the underlying action (Alexander Cohen & Associates; Alexander Cohen; Treyzon & Associates; and Boris Treyzon).[4]

Lavi alleged that the Cohens acted without probable cause in suing him because they knew: (1) he was not the property's builder or developer; (2) he never made misrepresentations about the property's fitness, freedom from defects, its construction standards, and that it was waterproof; (3) Lavi obtained title to the property by means of foreclosure and never lived there prior to its sale to the Cohens; (4) the Cohens met Lavi only "fleetingly" before closing escrow; and (5) they bought the property "as is" and therefore waived any claims against Lavi. Lavi further alleged that the Cohens should have known their lawsuit lacked probable cause as of March 30, 2015, when Lavi served verified responses to discovery.

Lavi made the same allegations as to Attorneys but added that they knew or should have known he had no liability because he did not build or develop the property; as a foreclosing lender he had no obligation to make disclosures under Civil Code

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[4] Alexander Cohen & Associates changed its name to Abir Cohen Treyzon Salo LLP. It is unclear what connection Treyzon & Associates has to the Cohens. In any event, we refer to the attorney-defendants as Attorneys.

section 1102.5;[5] Lavi obtained title to the property through foreclosure *after* improvements were completed and the city had " 'finaled' " the remodel; that there was no ground for fraud because the Cohens could not remember any specific representation Lavi made to them; and the Cohens ignored warnings about water intrusion in pre-closing reports.

Finally, the Cohens filed the underlying action with malice because they knew the facts alleged in it were false and because they had "hostility and ill will" toward Lavi because of the water damage and the repair costs they incurred. Similarly, Attorneys acted maliciously because they knew the facts and the law did not support the action but filed it nonetheless to force a monetary settlement.

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[5] Civil Code section 1102.5 provides, "If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this article. If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor or his or her agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or his or her agent, and is not used for the purpose of circumventing or evading this article."

IV. The Cohens and Attorneys file a special motion to strike the complaint

The Cohens and Attorneys responded to Lavi's malicious prosecution action with a special motion to strike the complaint. To show they had probable cause to bring and to maintain the underlying action, they established that Lavi took out building permits for the property; he failed to disclose material defects in the property; a major leak occurred at the property and the Cohens' insurer denied coverage based on a finding that the leakage had been long-term; Lavi refused to mediate; Lavi had sold the property to his business partner and foreclosed on him; Lavi's agent had an inspection report revised to delete references to water damage; Lavi knew about the leak; Lavi failed to provide contact information for witnesses; and Lavi had a duty to disclose material defects of which he had actual knowledge, even if he obtained the property through foreclosure.

The trial court granted the Cohens' anti-SLAPP motion, finding that probable cause existed for the underlying action and that there were "ample" grounds on which to file it. The court found no evidence of malice. Thereafter, the court granted the Cohens' motion for attorney fees in the amount of $22,000.

This appeal followed.

DISCUSSION

I. Anti-SLAPP motions

The anti-SLAPP statute "provides a procedure for the early dismissal of what are commonly known as SLAPP suits (strategic lawsuits against public participation)—litigation of a harassing nature, brought to challenge the exercise of protected free speech

rights."[6] (*Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3; *Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 312, 315.) "The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

"In evaluating an anti-SLAPP motion, the trial court first determines whether the [moving] defendant has made a threshold showing that the challenged . . . action arises from protected activity," that is, activity in furtherance of the rights of petition or free speech. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056; § 425.16, subd. (e).) If so, the burden shifts to the "plaintiff [to] demonstrate[ ] a probability of prevailing on the claim." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820 (*Oasis*); see *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88–89.)

"We review an order granting or denying a [special] motion to strike . . . de novo." (*Oasis*, *supra*, 51 Cal.4th at p. 820.) We consider the "pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based."

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[6] Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

(§ 425.16, subd. (b)(2).) We examine the complaint in a fair and commonsense manner and we broadly construe the anti-SLAPP statute. (See § 425.16, subd. (b)(2).) "[W]e neither 'weigh credibility [nor] compare the weight of the evidence.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).)

Here, there is no dispute that the action arises from protected activity. We therefore proceed to the second prong, whether Lavi demonstrated a probability of prevailing on his claim of malicious prosecution.

II. Elements of a malicious prosecution

To establish a cause of action for malicious prosecution, a plaintiff must plead and prove that the prior action (A) was commenced by or at the defendant's direction and was pursued to a legal termination in plaintiff's favor;[7] (B) was brought without probable cause; and (C) was initiated with malice. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

"The question of probable cause is 'whether, as an objective matter, the prior action was legally tenable or not.' " (*Soukup*, *supra*, 39 Cal.4th at p. 292.) "Probable cause is a low threshold designed to protect a litigant's right to assert arguable legal claims even if the claims are extremely unlikely to succeed. '[T]he standard of probable cause to bring a civil suit [is] equivalent to that for determining the frivolousness of an appeal [citation], i.e., probable cause exists if "any reasonable attorney would have thought the claim tenable." [Citation.] This rather

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[7] The underlying action resulted in a judgment in Lavi's favor. Hence, there is no dispute that Lavi satisfied the first element of his malicious prosecution cause of action.

lenient standard for bringing a civil action reflects "the important public policy of avoiding the chilling of novel or debatable legal claims." [Citation.] Attorneys and litigants . . . " 'have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win . . . .' " [Citations.] Only those actions that " 'any reasonable attorney would agree [are] totally and completely without merit' " may form the basis for a malicious prosecution suit.' " (*Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1047–1048; see *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 743, fn. 13.) A grant of summary judgment "does not establish [a] lack of probable cause." (*Jarrow*, at p. 742.)

"The 'malice' element of the malicious prosecution tort relates to the subjective intent or purpose with which the defendant acted in initiating the prior action." (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 874.) "As an element of malicious prosecution, malice 'reflects the core function of the tort, which is to secure compensation for harm inflicted by misusing the judicial system, i.e., using it for something other than to enforce legitimate rights and secure remedies to which the claimant may tenably claim an entitlement.' " (*Lanz v. Goldstone* (2015) 243 Cal.App.4th 441, 466–467.) "Malice ' "may range anywhere from open hostility to indifference" '; it is not limited to ' "ill will toward plaintiff but exists when the proceedings are [prosecuted] primarily for an improper purpose." ' " (*Id.* at p. 466.) "Improper purposes can be established in cases in which, for instance (1) the person bringing the suit does not believe that the claim may be held valid; (2) the proceeding is initiated primarily because of hostility or ill will; (3) the proceeding is initiated solely for the purpose of depriving the opponent of a beneficial use of property; or (4) the proceeding

is initiated for the purpose of forcing a settlement bearing no relation to the merits of the claim." (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 224.) "Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 218.)

III. Lavi has not demonstrated that the Cohens acted with malice.

We now focus on the malice element and find that Lavi has not demonstrated that the underlying action was initiated or continued with malice. We therefore need not reach the element of probable cause to conclude that he has not shown a likelihood of prevailing on the merits.

To establish malice, Lavi relies primarily on the supposed lack of probable cause to bring and to continue the underlying action. However, even assuming probable cause did not exist, a lack of probable cause is by itself insufficient to establish malice. (*HMS Capital, Inc. v. Lawyers Title Co.*, *supra*, 118 Cal.App.4th at p. 218; *Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 498, fn. 29.) Although the " 'lack of probable cause is a factor that may be considered [to] determin[e]' " the existence of malice, the " 'lack of probable cause must be supplemented by other, additional evidence.' " (*Daniels v. Robbins*, *supra*, 182 Cal.App.4th at p. 225; *Silas v. Arden* (2012) 213 Cal.App.4th 75, 90.)

The "other" evidence Lavi points to is the allegedly inconsistent positions the Cohens took with their insurance carrier and in the underlying action. After the Cohens' home insurance carrier denied coverage based on its conclusion that

the damage resulted from a construction defect to the second floor deck, the Cohens' attorney wrote to the carrier in 2011, "We believe that the damage sustained to the deck and balcony is *not a result of construction defect* and should be covered under the policy and should not be excluded from coverage." (Italics added.) Thereafter, in their 2013 complaint against Lavi, the Cohens alleged to the contrary that the water damage resulted from construction defects.

The Cohens, however, were entitled to assert different theories of coverage for the water damage. "Where the exact nature of the facts is in doubt, or where the exact legal nature of plaintiff's right and defendant's liability depend on facts not well known to the plaintiff, the pleading may properly set forth alternative theories in varied and inconsistent counts." (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29.) Any inconsistency in positions the Cohens took during prelitigation and litigation proceedings does not constitute evidence of malice. The Cohens could have believed, in 2011 when they were trying to recover from their carrier, that something other than a construction defect caused the water damage. But, after their carrier investigated and found evidence of construction defects, the Cohens could have then believed that a construction defect caused the damage.

Next, Lavi argues that the Cohens' failure to drop their lawsuit after he served his discovery responses is other evidence of malice. Lavi relies on *Zamos v. Stroud* (2004) 32 Cal.4th 958, 971. In *Zamos*, the attorney representing the plaintiff in a fraud lawsuit refused to dismiss it even after receiving the plaintiff's sworn testimony from a prior proceeding establishing that the fraud allegations were false. (*Id.* at pp. 961–962.) Here, Lavi, in

his discovery responses, denied developing, remodeling or rebuilding the property after obtaining title to it; denied being aware of defects when he sold the property to the Cohens; and denied representing that the property was waterproof and would not leak during a rainstorm. Lavi's denials, however, were not the equivalent of prior statements of the Cohens establishing the falsity of their allegations. Stated otherwise, Lavi's discovery responses were not conclusive evidence establishing the truth of his denials.

However, Lavi also focuses on allegations the Cohens made about fraud in their complaint. According to Lavi, the Cohens alleged that Lavi personally, and, not through his agents, made fraudulent representations to them. Then, in discovery, the Cohens admitted he did not make any such representations. We do not, however, read the Cohens' complaint in the underlying action so narrowly as to preclude representations by Lavi's agents, such as Sepehr. Also, the Cohens did not concede at their depositions that Lavi, or his agents, made no false representations. Rather, Simon Cohen said he had two face-to-face conversations with Lavi from the time they signed the purchase agreement to the close of escrow. At the second meeting, Lavi said it was a " 'good house.' " Shahrzad Cohen could not remember if she talked to Lavi before moving into the house. Thus, the Cohens did not admit that Lavi and his agents made no fraudulent representation.

Lavi cites no other evidence of malice. Nor do we ascertain any. Rather, in support of their anti-SLAPP motion, the Cohens submitted declarations denying any animus toward Lavi. Also, there is no evidence Lavi, the Cohens and Attorneys had any relationship prior to or outside the real estate transaction and

this lawsuit. And, as to the real estate transaction, Lavi does not dispute that the parties at most met in brief and without incident.

Finally, Lavi contends that the trial court erred by failing to distinguish between the Cohens and Attorneys. (See generally *Daniels v. Robbins*, *supra*, 182 Cal.App.4th at p. 225 [where malicious prosecution is alleged against former adversary's attorney, malice harbored by adversary may not be attributed to the attorney]; *Pattiz v. Minye* (1998) 61 Cal.App.4th 822, 828.) Here, Lavi alleges no distinguishing facts or evidence as to Attorneys. Rather, he merely repeats that Attorneys should have easily gleaned from public records that Lavi was never involved in building the house and merely acquired the property by foreclosure.

However, Lavi simplifies the facts. Lavi acquired the property by foreclosure in 2009. But he was more than just a foreclosing lender. His company had previously acquired the property in 2004 and the company and Lavi personally took out building permits for work on the property. The nature of that work may not have related to the defective deck or whatever caused the water damage, but this was some evidence that Lavi was more than just a lender because he had work done to the property. Lavi's argument as to Attorneys therefore is merely that they too lacked probable cause to bring and maintain the underlying action. As we have said, a mere lack of probable cause, without more, does not establish malice.

IV. Attorney fees[8]

After their success on their anti-SLAPP motion, the Cohens moved for attorney fees in the amount of $44,656.73 under section 425.16, subdivision (c)(1), which entitles the party prevailing on a special motion to strike to recover fees and costs. Finding that the attorneys' hourly rates and time spent on the anti-SLAPP motion were "high," the trial court reduced the fees to $22,000. Lavi now contends that the court erred in granting fees at all and in the amount awarded. We disagree.

An order granting attorney fees is generally reviewed for abuse of discretion, in particular, with respect to the amount of fees awarded. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The amount of an attorney fees award under the anti-SLAPP statute is computed by the trial court in accordance with the familiar "lodestar" method—multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 491.) The lodestar "may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) An experienced trial judge is in the best position to evaluate these factors and to value professional services rendered in court. (*Ibid.*)

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[8] For the purposes of oral argument and decision, we consolidated cases Nos. B281352 and B284653.

Lavi attacks the attorney fees award here on three grounds: (1) the trial court did not conduct a "careful" examination of the rates and time spent on the motion; (2) the court erred in awarding anything at all; and (3) the court failed to apportion fees incurred on Attorneys' behalf and those incurred on the Cohens' behalf.

A. *The trial court's examination of rates and times*

Lavi argues the trial court failed to conduct a "principled analysis" of Attorneys' rates and hours. His argument appears to rest on Attorneys' use of block billing. "Block billing occurs when 'a block of time [is assigned] to multiple tasks rather than itemizing the time spent on each task.' " (*Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 279 (*Mountjoy*).) However, "[b]lock billing[ ] [is] not objectionable per se." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325.)

We have reviewed the declarations and billing statement submitted in support of the fees motion and discern no problem. First, according to the declarations, senior attorneys and partners billed at $625 per hour and associates billed at $450 per hour. Attorneys spent a total of 74.60 hours on the Cohens' anti-SLAPP motion.[9] Attorney Cynthia Goodman was principally

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[9] The total amount billed to the Cohens was $46,607.50. Of that amount, Attorneys admitted that 2.4 hours or $1,500 was unrelated to the anti-SLAPP motion, and therefore Attorneys reduced the total amount requested to $45,107.50. For work attributable to Attorneys' defense, they reduced the amount requested by a further 10 percent (or $4,510.77). The total fees requested therefore was $44,656.73.

responsible for preparing the motion, and the bulk of the time billed to the case (67.60 hours) was attributable to her. Attorney Goodman has been a "law and motion/appellate attorney" for over 30 years. Attorney Treyzon has practiced law for over 20 years, is a partner at Abir Cohen Treyzon Salo, and has extensive experience in business and tort litigation, insurance bad faith, and products liability. The declarations therefore adequately set forth the attorneys' experience and background. (See generally *Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661 [counsel's experience and expertise are relevant to reasonableness attorney fees].)

Second, the billing statement entries are not vague but contain detailed descriptions of tasks or series of tasks. Attorney Goodman, on October 26, 2016, for example, spent 10 hours to "[c]ontinue researching and drafting anti-slapp motion" and, on October 27, 2016, she spent 10 hours preparing or revising five declarations and compiling evidence.

The declarations and billing statement, considered together, support the fees requested.

In any event, the trial court, concerned with the "high" hourly rates and amount of time Attorneys spent on the motion as a whole, reduced the fee award *by half*. Lavi nonetheless takes issue with what he calls the court's "eyeball[ ]" reduction. He cites *Mountjoy*, *supra*, 245 Cal.App.4th 266. In that case, the trial court found that over 70 percent of the attorneys' billing entries suffered from one or more flaws and therefore reduced the total hours claimed by 70 percent. (*Id*. at pp. 280–281.) *Mountjoy* held that such an "across-the-board reduction in hours claimed based on the percentage of total time entries that were flawed, without respect to the number of hours that were actually

included in the flawed entries, is not a legitimate basis for determining a *reasonable* attorney fee award." (*Id.* at p. 282.)

In contrast, the trial court here did not find that the billing statement was improper because of block billing or contained flawed entries, i.e., entries included nonreimbursable fees. The court simply believed that the billing rates were too high and that Attorneys spent too much time on the motion. The court did not find that Attorneys, for example, double billed or billed for work not incurred in connection with the anti-SLAPP motion. By halving the fees requested, the experienced court was making a finding—based on its personal knowledge of the anti-SLAPP motion and of others like it—of a reasonable fee award. (E.g., *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 786–787 [trial court's reduction of attorney fees in half was reasonable].)

Furthermore, Lavi makes no showing that, in the absence of any error in the approach the trial court took, the result would be an amount less than $22,000.

B. *Overreach*

Lavi contends that the trial court should have denied fees altogether based on the Cohens' overreach. (See generally *Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th 1319 [600 hours of time by five attorneys for over $250,000, which was inflated and padded, properly reduced to $21,300].) We discern no overreach that would justify such a result.

C. *Apportioning fees*

Lavi complains that the trial court should have apportioned the work done on the motion for the Attorneys (which was not recoverable) versus work for the Cohens. However, Attorneys reduced their total bill by 10 percent (or $4,510.77) for work

attributable to Attorneys' defense. Moreover, Attorney Goodman declared that, had the Cohens been the sole defendants, "virtually the same amount of time would have been spent on researching and drafting the motion." Again, the trial court was in the best position to evaluate this claim, and our review of the record reveals no abuse of discretion in accepting it. (See generally *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [all intendments and presumptions are indulged to support judgment on matters as to which record is silent, and error must be affirmatively shown].)

DISPOSITION

The orders are affirmed. Simon and Shahrzad Cohen are awarded costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.