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Attorney for Defendant Kevin Mieras

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

GREGG SCHUMACHER and LINDA  
SCHUMACHER, individually and as  
husband and wife, and GREGG  
SCHUMACHER FURS LLC dba  
SCHUMACHER FURS & OUTERWEAR,

CV-07-00601-MO

Plaintiffs,

v.

DEFENDANT KEVIN MIERAS’  
REPLY TO PLAINTIFFS’ RESPONSE  
TO MOTION FOR AWARD OF  
ATTORNEY FEES

CITY OF PORTLAND, a municipal  
corporation; IN DEFENSE OF ANIMALS,  
a foreign nonprofit corporation; ANIMAL  
LIBERATION FRONT, an unincorporated  
association; PEOPLE FOR THE ETHICAL  
TREATMENT OF ANIMALS, INC., a  
foreign nonprofit corporation; MATT  
ROSSELL; KEVIN MIERAS aka “Bluejay”;  
CONNIE DURKEE; ALEX LILLI; JOHN  
DOES 1-10; and JANE DOES 1-10,

Defendants.

**INTRODUCTION**

The attorney fees incurred by Kevin Mieras during this litigation are recoverable in full because this Court has decided that attorney fees recoverable under ORS 31.152 are not limited to those directly attributable to a defendant’s special motion to strike, and the hours of work

recorded by defense counsel are reasonable and properly itemized. Plaintiffs do not dispute the hourly rate charged by counsel.

### ARGUMENT

**1. The attorney fees that are mandated by ORS 31.152 are not limited to those directly attributable to the special motion to strike.**

Plaintiffs concede that ORS 31.152 “does not expressly limit the award to those hours expended on the special motion to strike.” Plaintiffs’ Response at p. 2. Plaintiffs then go on to suggest a reading based on a tenuous interpretation of the statute that is contrary to prior court decisions.

The purpose of the anti-SLAPP statute is to guard those engaged in protected free speech activities from the cost and expense of litigation. This Court has interpreted the anti-SLAPP statute to mean that, upon a defendant prevailing on the motion, *all* reasonable attorney fees incurred in the lawsuit are recoverable. *Card v. Pipes*, Case No. 03-CV-6327, 2004 WL 1403007 (D. Or. 2004). In *Card*, the Court reasoned that, “[P]laintiff argues that defendants impermissibly seek fees unrelated to their special motion to strike. The statute contains no such limiting provision, and the court has held that the statute does not limit defenses upon which a party may base a special motion to strike.” *Id* at 1.

As there does not seem to be any mandatory precedent in Oregon regarding this issue, and the Oregon anti-SLAPP statute was modeled on the California anti-SLAPP statute, it is reasonable to turn to California precedent to determine the extent and scope of the parallel attorney fees provision. The California Court of Appeals has held that the “fee-shifting provisions of [the anti-SLAPP statute] were enacted to impose litigation costs on those who assert meritless claims burdening the exercise of the defendant's constitutional free speech and

petition rights. The Legislature also sought to encourage private representation for defendants who might not otherwise have the financial resources to retain an attorney.” *Mann v. Quality Old-Time Service, Inc.* 139 Cal.App.4th 328, 344 (2006). The language is clear – plaintiffs who bring meritless claims must assume all of a defendant’s litigation costs. The *Mann* court went on to distinguish that defendants who were only partially successful on their anti-SLAPP motions could not recover all of their attorney fees incurred. *Id.* Here, Mr. Mieras was wholly successful as his anti-SLAPP motion was granted in its entirety; thus, Plaintiffs must incur the costs of Mr. Mieras’ defense.

Mr. Mieras was dismissed from the lawsuit because Plaintiffs did not have substantial evidence, let alone any evidence, that Mr. Mieras participated in tortious conduct. An award of reasonable attorney fees in this case will deter others from bringing meritless claims that blatantly jeopardize the constitutional rights of individuals. Conversely, a limited award of attorney fees would encourage future meritless litigation.

**2. The amount requested by Defendant Mieras is reasonable and stated with specificity.**

Mr. Mieras is not asking for reimbursement of costs such as postage, long distance, photocopying, etc. In addition, counsel for Mr. Mieras voluntarily elected to forego requesting reimbursement for numerous telephone and email communications with Mr. Mieras that totaled over 10 hours. The remaining number of hours is more than reasonable in light of the nature of the case, and the additional allegations unique to Mr. Mieras.

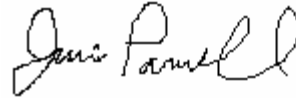
Plaintiffs argue that, “Even a cursory review of counsel’s billing records documents numerous instances of ‘block billing’ that does not segregate time for individual tasks.” Plaintiffs’ Response at p. 6. However, block billing is the “time-keeping method by which each

lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.” *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 945 FN 2 (9th Cir. 2007), quoting *Harolds Stores, Inc. v. Dillard Dep’t Stores, Inc.*, 82 F.3d 1533, 1554 (10th Cir. 1996). The descriptions of the tasks performed in Exhibit A to the Pannell Declaration and Exhibit A to the Curphey Declaration are properly itemized. Each research and writing task, each meeting, and every other task is separately accounted for with specificity. There are no instances of block billing as defined in *Welch*, as counsel for Mr. Mieras did not bill on a daily basis, but instead on a one-tenth hour basis (six minute increments.)

### **CONCLUSION**

For the foregoing reasons, Defendant Mieras respectfully requests that this Court grant his motion for attorney fees in its entirety.

DATED: October 22, 2007



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Mieras