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13 Attorneys for Defendant/Cross-Complainant,
14 SNOPEs MEDIA GROUP, INC., formerly known and
15 having appeared as Bardav Inc

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN DIEGO, CENTRAL DIVISION

18 PROPER MEDIA, LLC, a California limited
19 liability company, CHRISTOPHER
20 RICHMOND, an individual, and DREW
21 SCHOENTRUP, an individual,

22 Plaintiffs,

23 v.

24 BARDAV INC, a California corporation; and
25 DAVID MIKKELSON, an individual, VINCENT
26 GREEN, an individual; RYAN MILLER, an
27 individual; and TYLER DUNN, an individual,

28 Defendants,

AND RELATED CROSS-ACTIONS

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County of San Diego
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Case No. 37-2017-00016311-CU-BC-CTL
(consolidated with Case No. 37-2018-00004335-CU-
MC-CTL)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT/CROSS-COMPLAINANT
SNOPEs MEDIA GROUP, INC.'S
MOTION FOR ATTORNEY'S FEES
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 425.16(c)**

Dept.: C-68
Judge: Hon. Richard S. Whitney

Complaint Filed: May 4, 2017
Trial Date: June 5, 2020

IMAGED FILE

23 Defendant/Cross-Complainant SNOPEs MEDIA GROUP, INC., formerly known and
24 having appeared as BARDAV INC ("Snopes"), respectfully submits this Memorandum of Points
25 and Authorities in support of its Motion for Attorney's Fees Pursuant to Code of Civil Procedure
26 section 425.16 (the "anti-SLAPP statute") against Plaintiffs PROPER MEDIA, LLC ("Proper
27 Media"), DREW SCHOENTRUP ("Schoentrup"), and CHRISTOPHER RICHMOND
28 ("Richmond") (collectively, "Plaintiffs").

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1 **I. INTRODUCTION**

2 On August 22, 2019, this court granted Snopes’ Special Motion to Strike Plaintiffs’ Third
3 Amended Complaint (“TAC”) pursuant to Code of Civil Procedure section 425.16 (the “anti-
4 SLAPP Motion”) in its entirety, striking five (5) causes of action and restraining Plaintiffs’ effort to
5 chill protected speech through litigation. Snopes now moves for an award of attorney’s fees in the
6 amount of \$185,537.25 for the 343.29 hours of legal work that was performed in connection with
7 the anti-SLAPP Motion.

8 Code of Civil Procedure section 425.16(c) mandates that “any SLAPP defendant who
9 brings a successful motion to strike is entitled to mandatory attorney fees.” (*Ketchum v. Moses*
10 (2001) 24 Cal.4th 1122, 1131 (*Ketchum*)). Because Snopes prevailed on its anti-SLAPP Motion, it
11 is now statutorily entitled to recover attorney’s fees.¹ As explained in detail below, Snopes’ fee
12 request is eminently reasonable, and should therefore be awarded in full. (*See Ketchum*, 24 Cal.4th
13 at 1134 [holding, in the context of anti-SLAPP attorney’s fees, that “the fee award should
14 ordinarily include compensation for *all* the hours reasonably spent, including those relating solely
15 to the fee.”], emphasis in original.)

16 **II. SUMMARY OF THE UNDERLYING ANTI-SLAPP LITIGATION**

17 As the court knows, when this action was filed, Proper Media and its owners were
18 unlawfully holding the Snopes.com website hostage and had seized control of *all* of Snopes
19 advertising revenues generated by its famous fact-checking website. By cutting off Snopes’
20 primary source of revenue and stymying its ability to pay legal fees, Plaintiffs hoped they could
21 bring Snopes to its knees.

22 Snopes and its management team did not succumb to the financial pressure improperly
23 imposed by Plaintiffs. Instead, Snopes demonstrated resilience and resourcefulness, finding help in
24 two very different places: (1) this court and (2) the vast Snopes.com readership. Both efforts were
25 successful in helping Snopes survive and to continue fending off the never-ending tactics that
26 Plaintiffs have employed throughout this dispute.

27
28

¹ Snopes does not seek to recover costs via the present motion, and will instead file a separate Memorandum of Costs.

1 This honorable court helped greatly when it entered a TRO and, thereafter, issued a
2 preliminary injunction that ultimately released more than \$1 million of stolen advertising revenue
3 and led to Snopes regaining control of its website. While those early court battles were being
4 fought, the Snopes.com readership and other members of the public who value Snopes as an
5 important fact-checking resource also helped. In response to an ongoing GoFundMe campaign, the
6 public donated hundreds of thousands of dollars to support Snopes. However, to avoid reaching the
7 merits of Snopes' claims, Plaintiffs continued their strategy of browbeating Snopes and its
8 employees with baseless claims and scorched-earth litigation tactics.

9 Snopes should be applauded for its resiliency and resourcefulness. Instead, Plaintiffs
10 SLAPPED Snopes two years into the litigation with five new claims designed to chill Snopes'
11 efforts to fundraise and otherwise cut off funding. (*See* Declaration of Paul A. Tyrell, ¶7, Exh. A
12 [TAC].²) Specifically, each Plaintiff asserted defamation-based claims arising from Snopes'
13 truthful fundraising publications (TAC, Claims 14-15), and each Plaintiff also asserted claims
14 challenging Snopes' litigation funding decisions (TAC, Claims 15-18) (collectively, "SLAPP
15 claims"). These SLAPP claims were part and parcel of Plaintiffs' strategy to "bring legal hell" on
16 Snopes employees in retaliation for terminating Snopes' contract with Proper Media (*see* Exh. B),
17 and are exactly what California's anti-SLAPP statute is designed to prevent. (*See* Code Civ. Proc.
18 § 425.16(a); *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815-16 [aim of SLAPP suit is to
19 "drive up the cost of litigation to the point where the plaintiff/cross-defendant will abandon its case
20 or have less resources available to prosecute its action"], overruled in part on other grounds in
21 *Equilon Enter's v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.)

22 In furtherance of their scheme to "bring legal hell" with new-fangled SLAPP claims, in
23 December 2018, Plaintiffs reserved an *ex parte* hearing for a temporary restraining order ("TRO")
24 scheduled for January 2019. Upon discovering the reservation on the court's docket, Snopes'
25 counsel sent an email to Plaintiffs' counsel requesting to the nature of yet another TRO application,
26 which purportedly required *ex parte* relief but was scheduled weeks in advance. (Tyrell Decl., ¶9,
27 Exh. C.) After receiving no response, on December 19, 2018, Snopes' counsel called Plaintiffs'

28 ² Hereinafter, all "Exhibit" references are exhibits to the Declaration of Paul. A. Tyrell ("Tyrell Decl.").

1 counsel and again inquired about the *ex parte* TRO. (*Ibid.*) Plaintiffs’ counsel flatly refused to
2 disclose the nature of the TRO. (*Ibid.*) On December 20, 2018, Snopes’ counsel followed up a
3 third time in writing but, as before, Plaintiffs’ counsel refused to provide a response. (*Ibid.*)
4 Instead, on January 9, 2019—the day before the *ex parte* hearing—Plaintiffs’ counsel disclosed for
5 the first time they were seeking a TRO and order to show cause (“OSC”) to cut off Snopes’
6 litigation funding. (Tyrell Decl., ¶10, Exh. D.) Notably, no causes of action in Plaintiffs’ operative
7 complaint supported this relief. Rather, when Plaintiffs filed their *ex parte* application that same
8 day, they simultaneously filed a motion for leave to assert new SLAPP claims to deprive
9 defendants of counsel by choking off litigation funding. (Exhs. E, p. 4:23-27, G, p. 11:11-13
10 [“[T]he requested injunctive relief is based on recently-discovered claims pled in TAC.”].)

11 As a result of Plaintiffs’ underhanded and procedurally improper tactics, Snopes incurred
12 significant fees responding to and defending against Plaintiffs’ SLAPP claims *months before the*
13 *claims were even added to the case*, and thus long before Snopes could properly bring its anti-
14 SLAPP Motion. Although Plaintiffs had months to prepare their application for a TRO and OSC,
15 Snopes scrambled to prepare and file an opposition on one-days’ notice. (*See* Tyrell Decl., ¶¶11,
16 13, Exh. H.) The court denied the TRO and scheduled a full-noticed motion on Plaintiffs’ request
17 for a preliminary injunction to cut of Snopes’ litigation funding. Plaintiffs then submitted
18 additional declarations with dozens of additional exhibits in support of their preliminary injunction,
19 requiring Snopes to prepare another opposition brief. (Tyrell Decl., ¶14, Exh. I.) After Snopes
20 incurred all the expense of defending against a *proposed* SLAPP claim, Plaintiffs simply took their
21 preliminary injunction request off calendar. (Tyrell Decl., ¶15, Exh. J.) Meanwhile, Snopes
22 continued to incur fees relating to the unfiled SLAPP claims, including defending depositions of its
23 persons most knowledgeable on Snopes’ fundraising campaign and its advancement of legal fees,
24 producing records relating to Plaintiffs’ defamation and litigation funding efforts, and opposing
25 Plaintiffs’ motion for leave to add the SLAPP claims to the case. (*See, e.g.*, Tyrell Decl., ¶16,
26 Exhs. K, S.)

27 Once the TAC was filed, Snopes prepared and timely filed its anti-SLAPP Motion, which it
28 accomplished shortly after opposing yet another time-consuming preliminary injunction motion

1 filed by Plaintiffs.³ In its anti-SLAPP Motion, Snopes argued Plaintiffs’ claims should be stricken
2 pursuant to the anti-SLAPP statute because the claims (i) arose from Snopes’ constitutionally
3 protected activities, and (ii) lacked even minimal merit. (Exhs. M, N, pp. 6-20.) However,
4 Plaintiffs declined to dismiss their claims. Instead, Plaintiffs—all of whom were represented by
5 same counsel—filed not one, but *two* opposition briefs replete with multiple declarations, 15-page
6 memoranda, and numerous lodged records. (Tyrell Decl., ¶19, Exhs. O, P.) Snopes, in turn,
7 submitted a single reply brief on August 2, 2019, and prepared for oral argument. (Exh. Q.)
8 Snopes’ counsel attended oral argument on August 9, 2019. After Snopes’ CEO provided
9 additional briefing regarding Snopes’ litigation funding decisions, the court issued an Amended
10 Ruling on August 22, 2019, which granted Snopes’ anti-SLAPP Motion in its entirety. (Exh. R.)

11 **III. ARGUMENT**

12 **A. Snopes is Statutorily Entitled to a Mandatory Award of Fees**

13 “In any action subject to [a special motion to strike], a prevailing defendant . . . shall be
14 entitled to recover his or her attorney’s fees and costs.” (Code Civ. Proc. § 425.16(c).) As this
15 language suggests, such an award is mandatory. (*See Ketchum*, 24 Cal.4th at 1131 [California
16 Supreme Court decision affirming award of at least \$70,106 in reasonable fees and costs incurred
17 in connection with a successful anti-SLAPP motion].) This fee-shifting provision serves an
18 important “dual purpose”: *First*, it is designed to discourage SLAPP claims by “imposing the
19 litigation costs” on the party seeking to chill speech, petition, and conduct protected by the statute.
20 *Second*, it is also intended to provide relief, including financial relief, to those persons who have
21 been “victimized by meritless, retaliatory SLAPP lawsuits.” (*City of Los Angeles v. Animal*
22 *Defense League* (2006) 135 Cal.App.4th 606, 628 n.19 [quoting *Ketchum*, 24 Cal.4th at 1131; *Liu*
23 *v. Moore* (1999) 69 Cal.App.4th 745, 750].) Specifically, the provision is intended to “compensate
24 a defendant for the expense of *responding* to a SLAPP suit. [Citation.]” (*Wanland v. Law Offices*
25 *of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 22 (*Wanland*), emphasis added.)

26 ³ Plaintiffs filed yet another preliminary injunction motion to cut off Snopes’ litigation funding shortly after filing their
27 TAC, which was likewise based on its newly-added SLAPP claims. (Tyrell Decl., ¶17, Exh. L, p. 3:27-28 [“This
28 Motion for Preliminary Injunction is made on the grounds that Plaintiffs Schoentrup and Richmond are entitled to the
relief demanded in the Third Amended Complaint”].) Plaintiffs’ supporting papers totaled over 500 pages and
included over 40 exhibits and declarations from Plaintiffs, their counsel, and even a retained expert. (*Ibid.*)

1 This includes the “fees incurred in connection with litigating the fee award itself (the fees on
2 fees).” (*569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6
3 Cal.App.5th 426, 433 (*569 E. County Boulevard*), citing *Wanland*, 141 Cal.App.4th at 21.)

4 California courts have made clear that this fee-shifting provision should be “broadly
5 construed so as to effectuate the legislative purpose of reimbursing the prevailing defendant for
6 expenses incurred in extracting herself from a baseless lawsuit.” (*Wanland*, 141 Cal.App.4th at
7 22, citing *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446.) In recognition of the reality that
8 mounting a vigorous legal defense is often costly, California courts of appeal have consistently
9 upheld sizeable fee awards to prevailing anti-SLAPP defendants that stretch well into the six-figure
10 range and substantially exceed the present request. (*See, e.g., Vargas v. City of Salinas* (2011) 200
11 Cal.App.4th 1331, 1338, 1352 [affirming attorney fee award of \$226,928 to prevailing anti-SLAPP
12 defendant]; *Premier Med. Mgmt. Sys., Inc. v. California Ins. Guarantee Assn.* (2008) 163
13 Cal.App.4th 550, 565 [affirming a total of \$274,501 in attorney fees to successful anti-SLAPP
14 defendants].)

15 In summary, the only issue before this court is determining what amount of fees will
16 “adequately compensate” Snopes for responding to Plaintiffs’ SLAPP claims. (*See Dove Audio v.*
17 *Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785.) As discussed below, under the
18 “lodestar” approach adopted by the California Supreme Court more than thirty years ago, Snopes’
19 present request for \$185,537.25 in fees is eminently reasonable.

20 **B. The Hours For Which Defendants Seek To Recover Were Reasonable And**
21 **Necessary To Extract Snopes From The SLAPP Claims.**

22 As noted above, an attorney’s fee award under section 425.16(c) should “include
23 compensation for all the hours reasonably spent, including those relating solely to the fee.” (*See*
24 *Ketchum*, 24 Cal.4th at 1133.) In awarding attorney’s fees under section 425.16, courts generally
25 apply the so-called “lodestar” approach (i.e., multiplying the number of hours reasonably expended
26 by a reasonable hourly rate). (*Id.* at 1136, citing *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639
27 (*Serrano*).)

1 Snopes seeks fees for 166.80 hours of legal work relating to the following tasks:

- 2 (1) Analyzing Plaintiffs' Third Amended Complaint for filing an anti-SLAPP motion;
- 3 (2) Drafting the anti-SLAPP Motion and supporting documents;
- 4 (3) Reviewing and responding to Plaintiffs' two opposition briefs, including four supporting
- 5 declarations and two notices of lodgment;
- 6 (4) Preparing for, traveling to, and appearing at the anti-SLAPP Motion hearing;
- 7 (5) Reviewing and disputing Plaintiffs' new arguments and evidence submitted after the
- 8 hearing in opposition to Snopes' CEO's anti-SLAPP motion to strike the same claims;
- 9 (6) Preparing a motion for attorney's fees and supporting documents.

10 (Tyrell Decl. ¶30.)

11 All of this work was performed by a leanly staffed team that primarily consisted of one
12 partner and one associate. (Tyrell Decl., ¶5.) Because the anti-SLAPP Motion was granted in its
13 entirety, all hours expended in connection with the motion are allocable to the successful result
14 achieved by Snopes. (*See Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th
15 581, 605 [defendants who prevailed on all causes of action "entitled to awards of fees and costs
16 reasonably allocable to achieving that result," and a partially prevailing defendant "may be entitled
17 to an award of fees and costs reasonably allocable to achieving that victory"].) Nevertheless,
18 Snopes voluntarily declines to seek an award for work by paralegals and non-litigation attorneys in
19 its fees motion. (Tyrell Decl., ¶29.)

20 Snopes also reduces its request for fees relating to preparation of this fees motion to 25
21 hours of associate time. (Tyrell Decl., ¶29.) As California caselaw highlights, Snopes' billing
22 judgment is strongly probative of both the necessity and reasonableness of Snopes' request. (*See*
23 *Green v. Dillingham Constr. N.A., Inc.*, (2002) 101 Cal.App.4th 418, 422 [finding prevailing
24 party's claim for attorney's fees especially reasonable where he exercised billing judgment and
25 reduced hours sought]; *Harman v. City & County of San Francisco* (2006) 136 Cal.App.4th 1279,
26 1310 [discussing importance of billing judgment].) Snopes requests an award that covers only a
27 portion of the time that the remaining attorneys actually expended in connection with the anti-

1 SLAPP motion, as follows:⁴

2 **HOURS SUMMARY**
3 **(ANTI-SLAPP AND FEES MOTION)**

4

<u>ATTORNEY</u>	<u>ROLE</u>	<u>HOURS</u>	<u>FEES</u>
5 PAUL A. TYRELL	PARTNER	15.50	\$11,160.00
6 RYAN C. CAPLAN	SENIOR COUNSEL	13.10	\$6,419.00
7 P. JACOB KOZACZUK	ASSOCIATE	126.60	\$47,475.00
8 TINA S. FELAHI	ASSOCIATE	11.60	\$4,350.00
9 Total		166.80	\$69,404.00

10

11 (Tyrell Decl., ¶30.)

12 These hours represent only a *fraction* of attorney hours worked to extract Snopes from the
13 stricken SLAPP claims. When Plaintiffs initially sought leave to amend their complaint to add
14 their SLAPP claims, Snopes opposed the request on many of the same bases raised in the anti-
15 SLAPP Motion. (*See* Exh. S.) The same research and analysis was utilized in Snopes’ anti-
16 SLAPP Motion. (*See* Exh. N.) Snopes also filed a demurrer to Plaintiffs’ SLAPP claims that—
17 like Snopes’ opposition to Plaintiffs’ motion for leave to amend—involved considerable research
18 and analysis relevant to the second prong of the anti-SLAPP analysis. (*See* Exh. T.) Because these
19 fees were incurred to *extract* Snopes from Plaintiffs’ baseless SLAPP claims, Snopes’ fees motion
20 requests fees associated with Snopes’ demurrer and opposition to motion for leave to amend. (569
21 *E. County Boulevard*, 6 Cal.App.5th at 432-33 [“An award of attorney fees to a prevailing
22 defendant on an anti-SLAPP motion . . . is designed to ‘reimburs[e] the prevailing defendant for
23 expenses incurred *in extracting* herself from a baseless lawsuit’ [citation] rather than to reimburse
24 the defendant for all expenses incurred *in the* baseless lawsuit.”], citing *Wanland*, 141 Cal.App.4th
25 at 22, emphasis in original.) Once again, Snopes voluntarily declines to seek an award for work by

26 ⁴ By way of example: Where a particular time entry reflected time worked on this case that partially encompassed tasks
27 not directly related to either the anti-SLAPP Motion or fees motion, out of an abundance of caution Snopes has opted
28 not to seek recovery for any of the time included in that entry. (Tyrell Decl., ¶29.) Accordingly, even putting aside the
various cuts that Snopes has voluntarily undertaken (see above), by their very nature the fees that Snopes seek
inherently understate the fees that were actually incurred in this case.

1 paralegals and non-litigation attorneys in connection with these tasks. The time actually expended
2 by Snopes' litigation counsel in connection with its demurrer and opposition for leave to amend are
3 conservatively summarized below:⁵

4 **HOURS SUMMARY**
5 **(DEMURRER AND OPPOSITION TO MOTION FOR LEAVE TO AMEND)**

<u>ATTORNEY</u>	<u>ROLE</u>	<u>HOURS</u>	<u>FEES</u>
6 PAUL A. TYRELL	PARTNER	9.19	\$6,616.80
7 RYAN C. CAPLAN	SENIOR COUNSEL	84.10	\$41,209.00
8 P. JACOB KOZACZUK	ASSOCIATE	83.20	\$31,200.00
9 Total		176.49	\$79,025.80

10
11
12 (Tyrell Decl., ¶31.)

13 Additionally, Snopes incurred significant expense opposing Plaintiffs' multiple requests for
14 a TRO and preliminary injunction, which were entirely premised on Plaintiffs' SLAPP claims.
15 (E.g., Tyrell Decl., ¶¶13, 14, Exhs. H, I.) Plaintiffs even deposed Snopes' CEO and accountant in
16 connection with their preliminary injunction motion and sought sensitive financial information,
17 which Snopes produced. (See *id.* at ¶16, Exh. K.) Snopes' work relating to Plaintiffs' preliminary
18 injunction are intertwined with the fees Snopes' otherwise incurred in responding to the SLAPP
19 claims, and Snopes is therefore entitled to recover fees incurred on these matters as well. (See
20 *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133 [attorney's fees need not be
21 allocated between compensable and noncompensable work on intertwined issues or claims].)
22 While the court has discretion to apportion fees incurred in connection with Plaintiff's TRO and
23 preliminary injunction (see *Carver v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 505),
24
25

26 ⁵ As with Snopes' tally of hours spent on the anti-SLAPP motion and the instant fees motion, Snopes' does not
27 incorporate any "mixed" entries or entries that only partially encompass the tasks referenced above. (Tyrell Decl.,
28 ¶29.) Also, Snopes does not seek fees relating to the demurrer and opposition to motion for leave to amend for work
performed after August 22, 2019, when the court issued its amended ruling granting the anti-SLAPP Motion in full.
(*Id.* at ¶31, Ex. R.)

1 Snopes has not included these additional 159.07 hours totaling an additional \$96,016.00 in its fee
2 request, which are summarized below:

3 **ADDITIONAL FEES INCURRED TO DEFEND AGAINST THE SLAPP CLAIMS**
4 **THAT ARE NOT REQUESTED IN SNOPE'S FEES MOTION**

<u>MATTER</u>	<u>Hours</u>	<u>Fees</u>
5 PRELIMINARY INJUNCTION 6 MOTION NO. 1	44.27	\$37,308.10
7 PRELIMINARY INJUNCTION 8 MOTION NO. 2	56.60	\$26,764.50
9 PRELIMINARY INJUNCTION 10 DISCOVERY (DEPOSITIONS AND DOCUMENT PRODUCTION)	58.20	\$27,454.50
11 Total	159.07	\$96,016.00

12 (Tyrell Decl., ¶32.) Thus, Snopes' fees motion requests far less than the fees actually incurred by
13 Snopes to respond and defend against Plaintiffs' SLAPP claims.

14 The hours expended by Snopes' counsel are also reasonable in in light of the nature and
15 complexity of this litigation. (See Tyrell Decl., ¶28.) The anti-SLAPP Motion presented complex
16 issues involving five causes of action and distinct protected activities such as litigation funding and
17 publications in public forums. The issues included: multiple alleged defamatory statements on
18 different websites (e.g., TAC, ¶297); whether Snopes' speech activity was made in connection with
19 a public issue, which Plaintiffs incorrigibly disputed (Exh. O, pp. 7:28-11:23); challenges by
20 Plaintiffs that Snopes' statements were made in the context of commercial litigation (Exh. O, p.
21 9:13-24); whether Snopes' litigation funding decisions were activities protected under the anti-
22 SLAPP statute (Exh. P, pp. 8:18-11:8); and whether Plaintiffs' defamation claims were barred by
23 the statute of limitations (Exh. O, pp. 13:18-14:20), among many other issues raised in the anti-
24 SLAPP motion.

25 Furthermore, the SLAPP claims directly threatened Snopes' professional reputation as a
26 news reporting company. Plaintiffs alleged that Snopes and its CEO knowingly published false
27 statements and further published misleading information in order to mislead the public. (See, e.g.,
28 TAC, ¶¶154, 297-98.) Plaintiffs' claims were a direct assault on Snopes' professional reputation as

1 a truthful news reporter and fact checker, claims which carry significant reputational risks for
2 Snopes. Given the seriousness of these accusations to Snopes' business, it was necessary for
3 Snopes to invest the appropriate time in defending against Plaintiffs' SLAPP claims. (*See* Tyrell
4 Decl., ¶28; *cf. Wynn v. Chanos* (N.D. Cal. June 19, 2015) No. 14-CV-04329-WHO, 2015 WL
5 3832561, at *3 (finding it "especially" reasonable to retain two law firms in defamation SLAPP
6 suit given that "an individual's personal reputation [was] at stake"), *aff'd*, 685 F. App'x 578 (9th
7 Cir. 2017).)

8 **i. Snopes' Fees Are A Direct Result of Plaintiffs' Litigation Tactics**

9 The hours expended by Snopes was driven by Plaintiffs' own litigation tactics in filing
10 unnecessary and combative filings. For instance, Plaintiffs filed not one, but *two* opposition briefs
11 to Snopes' single motion, along with multiple declarations and numerous lodged documents.
12 While all Plaintiffs asserted time-barred claims arising from Snopes' truthful publications (TAC,
13 Claims 14-15), Schoentrup filed an opposition with a 15-page memorandum of points and
14 authorities dedicated entirely to the defamation allegations *on behalf of Proper Media only*.
15 Schoentrup simultaneously filed *another* opposition on behalf of himself and Richmond with a 15-
16 page memorandum of points and authorities dedicated entirely to the Snopes' litigation funding
17 decisions, even though Proper Media sought declaratory relief on the same issue. (TAC, Claim
18 18.) Plaintiffs thus improperly filed 30 pages of opposition briefing in addition to four declarations
19 and two notices of lodgment, each of which were over 200 pages in length. (Tyrell Decl., ¶19.)
20 The oppositions disputed *both* prongs of the anti-SLAPP analysis for all five causes of action at
21 issue. (*See* Exhs. O, P.) In order to conserve client and judicial resources, Snopes filed a single
22 reply brief succinctly addressing both opposition papers. (Exh. Q.) However, Snopes' counsel's
23 efforts to tease out and coherently articulate Plaintiffs' arguments further increased the amount of
24 time needed to effectively respond to them. As the California Supreme Court observed in *Serrano*,
25 a party "cannot litigate tenaciously and then be heard to complain about the time necessarily spent
26 by [an opposing party] in response." (32 Cal.3d at 638, internal quotation marks omitted.)

27 Snopes' fee request is also supported by its counsel's efforts to staff this matter
28 appropriately and delegate most work to junior associates with lower billable rates. Courts

1 consider staffing decisions in determining whether hours are reasonable. Here, the vast majority of
2 the attorney hours requested (93%) were billed by associates. When Snopes was forced to reply to
3 Plaintiffs’ two, 15-page opposition briefs within four days, an additional associate (Tina S. Felahi)
4 was staffed to assist with Snopes’ reply at the lower rate. (*See* Tyrell Decl., ¶5.) Thus, the hours
5 worked in connection with the anti-SLAPP Motion are both reasonable and necessary.

6 **C. The Requested Attorney Billing Rates Are Reasonable.**

7 Once the court establishes the hours worked were reasonable, the lodestar approach
8 requires the court to multiply those hours by the reasonable value of the attorneys’ services—which
9 should be determined according to “reasonable market value.” (*Ketchum*, 24 Cal.4th at 1133,
10 1139). That reasonable market value is computed based on “a multiplicity of factors,” including
11 the level of skill necessary, time limitations, the attorney’s reputation, and the undesirability of the
12 case. (*Ibid.*) Importantly, in the fee award context, standard billing rates carry a presumption of
13 reasonableness. (*See, e.g., Russell v. Foglio* (2008) 160 Cal.App.4th 653, 658, 661-62 [attorney
14 entitled to his standard billing rate despite opposing party’s offered evidence that it was higher than
15 typical]; *Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761 [“The value of an attorney’s time
16 generally is reflected in his normal billing rate.”], *disapproved on other grounds by Serrano*, 32
17 Cal. 3d 621.) The rates charged by Snopes’ counsel for work on this matter are summarized
18 below:

19 **FEES SUMMARY**

<u>ATTORNEY</u>	<u>RATE</u>	<u>ATTORNEY’S FEES</u>
PAUL A. TYRELL	\$720	\$17,776.80
RYAN C. CAPLAN	\$490	\$47,628.00
P. JACOB KOZACZUK	\$375	\$78,675.00
TINA S. FELAHI	\$375	\$4,350.00
Total		\$148,429.80

1 Here, the rates that Snopes' counsel charges for the services rendered on this matter are
2 within—if not lower than—the range charged by other attorneys at similar firms of comparable
3 skill and expertise. (Tyrell Decl., ¶¶26-27). For instance, Plaintiffs' counsel in this same case
4 sought attorney's fees at an hourly rate of \$525 for a seventh-year associate's work on a discovery
5 motion. (See Exh. S, ¶46.) The associate rate for Plaintiffs' counsel is higher than even the senior
6 counsel rate for Snopes' counsel, and significantly higher than the \$375 associate rate applied for
7 the majority of the work requested in this fees motion. As noted above, Snopes' attorney fee rates
8 are presumptively reasonable as they reflect the “normal billing rate” for similarly-situated
9 attorneys.

10 **D. A Multiplier Enhancement Should be Applied to the Fee Award.**

11 The purpose of a multiplier is to ensure that the fee *in a particular action* is appropriate.
12 (*Ketchum*, 24 Cal.4th at 1132.) Adjustments to the lodestar may be made upward or downward
13 depending on a number of factors, including the “novelty and difficulty of the questions involved.”
14 (*Id.* at 1133.) Snopes proposes a modest multiplier enhancement of 1.25 in light of the novelty and
15 difficulty of the issues litigated in the anti-SLAPP motion. (See *ibid.*) While the lodestar
16 multiplier is discretionary (see *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1240), the
17 factual and legal complexity of the claims stricken by Snopes' anti-SLAPP motion—in addition to
18 the other considerations discussed above, including the significant amount of work necessitated by
19 Plaintiffs' SLAPP claims for which Snopes is not seeking recovery here—weigh in favor of an
20 upward adjustment to the lodestar figure. A multiplier enhancement of 1.25 increases Snopes' fee
21 award from \$148,429.80 to \$185,537.25.

22 **IV. CONCLUSION**

23 California's anti-SLAPP statute mandates an award of attorney's fees to deter lawsuits filed
24 to quell first amendment rights and ensure defendants are able to obtain competent representation.
25 As the prevailing party on its anti-SLAPP motion, Snopes should be awarded its reasonable
26 attorney's fees described in this motion and the supporting declaration and exhibits.
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Each Plaintiff asserted claims based on defamation *and* litigation funding, and all such claims were dismissed in their entirety as a result of the court's ruling on the anti-SLAPP Motion. Snopes therefore respectfully requests that the court enter an award of \$185,537.25 in attorney's fees jointly and severally against Plaintiffs. In addition, Snopes requests that the court award any fees that Snopes incurs in connection with the filing of a reply in support of this fees motion (if necessary), and/or appearing at a hearing on this motion.

DATED: October 22, 2019

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