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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 MESIKA MAGIC, a California
Corporation, YIGAL MESIKA, an
14 individual,

15 Plaintiffs,

16 v.

17 PENGUIN MAGIC, INC., a Nevada
corporation, CRAIG PETTY, a resident
18 of the United Kingdom, DOES 1-10,
inclusive,

19 Defendants.
20
21

Case No. 2:25-cv-07943-MWF-MBK

**DEFENDANT PENGUIN MAGIC,
INC.'S NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES
AND COSTS**

Hearing Date: September 30, 2026
Hearing Time: 10:00 a.m.
Courtroom: 5A, 5th Floor

22
23 **TO THE COURT, ALL PARTIES HEREIN, AND THEIR**
24 **ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that on Wednesday, September 30, 2026 at 10:00
26 a.m., or as soon thereafter as counsel may be heard, in Courtroom 5A before the
27 Honorable Michael W. Fitzgerald, located in the United States District Court,
28

1 Central District of California, located at 350 West 1st Street, Los Angeles, CA
2 90012, Defendant Penguin Magic, Inc. (“Penguin”) will and hereby does move the
3 Court for an award of attorneys’ fees and costs under Fed. R. Civ. P. 54(d)(2) and
4 Cal. Civ. Proc. Code § 425.16(c)(1) against Plaintiffs Mesika Magic and Yigal
5 Mesika (collectively “Mesika”).

6 This motion is based on the Court’s Order granting Penguin’s Motion to
7 Dismiss Mesika’s claims in their entirety (Dkt. 68). Specifically, the Court ordered
8 that “counsel for Penguin may move for fees incurred in drafting any sections of
9 their Motions that pertain to (1) the applicability of the anti-SLAPP statute; and (2)
10 the counts identified as arising from protected speech.” (Dkt. 68 at 29–30). Penguin
11 seeks \$162,704.89 in attorneys’ fees for the defense of this action, \$32,984.00 in
12 fees incurred in bringing this Motion (to be supplemented for the reply and hearing),
13 and \$4,102.75 in non-taxable costs, against Plaintiffs Mesika Magic and Yigal
14 Mesika jointly and severally.

15 This Motion is based upon this Notice, the concurrently filed Memorandum
16 of Points and Authorities, all other pleadings, papers, records, and documentary
17 materials on file or deemed to be on file in this action, those matters of which this
18 Court may take judicial notice, and any oral arguments of counsel made at the
19 hearing on this Motion.

20 **STATEMENT OF LOCAL RULE 7-3 COMPLIANCE**

21 This Motion is made following a conference of counsel pursuant to Local Rule
22 7-3, which took place by telephone on August 24, 2026, more than seven days before
23 the filing of this Motion. The parties were unable to reach a resolution eliminating
24 the necessity for a hearing. As required by Local Rule 7-3, a declaration setting forth
25 the date of the conference and the position of each party with respect to each disputed
26 issue that is the subject of this Motion is filed concurrently herewith.

1 Dated: September 2, 2026

Respectfully Submitted,

2
3 By: /s/Adam Daniels

4 Adam Daniels

5 Attorney for Defendant
6 Penguin Magic, Inc.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Penguin seeks \$162,704.89 in attorneys' fees and \$4,102.75 in non-taxable costs. These figures are already reduced by limiting the fees and costs to work directly attributable to moving to dismiss Mesika's claims and apportioning that work to the extent it pertained to applicability of the anti-SLAPP statute and the counts identified as arising from protected speech. Penguin further seeks an additional \$32,984.00 in fees, to date, related to bringing this motion, plus whatever further fees or costs it may incur in connection with concluding briefing and any hearing of this motion.

Penguin divides its request into four categories, all of which should be awarded: (1) fees and costs associated with Penguin's Renewed Motion to Dismiss (Dkt. 49); (2) fees and costs associated with Penguin's Original Motion to Dismiss (Dkt. 25); (3) fees and costs associated with Penguin's meet-and-confer efforts prior to filing the Original Motion to Dismiss; and (4) fees associated with bringing this motion.

Penguin is entitled to these awards under section 425.16(c)(1). This is not a case in which fee-shifting is a surprise. Before a single motion was filed, Penguin told Mesika in writing—twice—that his claims were meritless, that this action violated the anti-SLAPP statute, and that he would be liable for Penguin's fees and costs if he persisted. Mesika persisted anyway, through three successive pleadings. Every count the Court tested was eventually dismissed on grounds Penguin had identified at the outset.

When the merits arrived, Mesika declined to defend much of his own case: entire groups of claims were "effectively conceded" or drew no response in either opposition. (Dkt. 68 at 27, 29). The anti-SLAPP statute exists for precisely this pattern. Its fee provision discourages meritless speech-based litigation "by imposing

1 the litigation costs on the party seeking to ‘chill the valid exercise of the
2 constitutional rights of freedom of speech and petition for the redress of
3 grievances,’” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001) (quoting Cal. Civ.
4 Proc. Code § 425.16(a)), and it “is broadly construed so as to effectuate the
5 legislative purpose of reimbursing the prevailing defendant for expenses incurred in
6 extracting herself from a baseless lawsuit.” *Graham-Sult v. Clainos*, 756 F.3d 724,
7 752 (9th Cir. 2014). Mesika chose to impose these costs on Penguin after two written
8 warnings. The statute directs he, and not Penguin, is responsible for them.

9 II. BACKGROUND

10 A. Procedural Background

11 Mesika filed his original Complaint on August 22, 2025, asserting eight
12 counts against Penguin arising from statements made in two YouTube videos. (Dkt.
13 1). In an effort to resolve this case before motion practice began, Penguin’s counsel
14 sent Mesika’s counsel a detailed, six-page letter explaining, claim by claim and with
15 citations to controlling authority, why the Complaint failed to state a cognizable
16 claim against Penguin and why the action violated California’s anti-SLAPP statute.
17 The letter cautioned that Mesika would “be liable to Penguin Magic for attorney’s
18 fees and costs” under section 425.16(c)(1), and asked Mesika to withdraw his claims
19 before the parties incurred further expenses. (Dkt. 13-1; Dkt. 14 at 2).

20 Mesika’s counsel responded, stating that Penguin’s “communications include
21 incorrect statements of the law,” that he would “need some time” to “properly
22 address [the] statements in full,” and that “[f]or now, Plaintiff intends to file a motion
23 for a temporary restraining order.” (Dkt. 13-2 at 2–3). The substantive response
24 never came, and no such motion was ever filed. (Dkt. 14 at 3–4). Penguin then
25 moved for an extension of time, which the Court granted-in-part, setting a November
26 10, 2025 deadline to respond to the original complaint. (Dkt. 19). Penguin seeks no
27 fees for that motion practice.

1 On November 5, 2025—five days before the court-ordered November 10th
2 deadline, and while Penguin was preparing its response to the original Complaint—
3 Mesika filed a First Amended Complaint (“FAC”). (Dkt. No. 20). The FAC did not
4 remedy the defects Penguin’s letter had identified. Penguin accordingly filed its first
5 motion to dismiss on November 19, 2025, presenting Counts 1 through 8 under the
6 anti-SLAPP statute and requesting its fees. (Dkt. 25 at 4–18).

7 On March 12, 2026, the Court granted Penguin’s first motion to dismiss in
8 full, but granted Mesika leave to amend. (Dkt. 42). The Court’s order gave Mesika
9 a roadmap for addressing the deficiencies in the FAC and warned that, “while there
10 may be a Second Amended Complaint, there will be no Third.” (Dkt. 42 at 13).
11 Mesika filed a Second Amended Complaint (“SAC”) on March 27, 2026. (Dkt. 43).
12 Although the SAC quadrupled the pre-count allegations and added nineteen exhibits,
13 its factual allegations were “largely analogous” to the FAC’s (Dkt. 68 at 3), and it
14 did not cure the deficiencies the Court previously identified. Penguin then filed its
15 renewed motion to dismiss on May 1, 2026, again directing its arguments at every
16 count and again invoking the anti-SLAPP statute. (Dkt. 49).

17 Mesika’s opposition did not respond to significant parts of Penguin’s motion.
18 Indeed, as the Court found, Mesika “fail[ed] to respond in the Opposition with any
19 legal argument” regarding attribution (Dkt. 68 at 8) and Counts 6 through 8 were
20 “effectively conceded” (*id.* at 27). On August 4, 2026, the Court granted Penguin’s
21 renewed motion to dismiss in its entirety (as to Penguin)—every count, without
22 leave to amend. (Dkt. 68 at 30). The Court further held that both prongs of the anti-
23 SLAPP statute were satisfied and that “Defendants are entitled to relief under section
24 425.16(c)(1).” (*Id.* at 29). It authorized Penguin to move for “fees incurred in
25 drafting any sections of their **Motions** that pertain to (1) the applicability of the anti-
26 SLAPP statute; and (2) the counts identified as arising from protected speech.” (*Id.*
27 at 29–30 (emphasis added)).

1 No judgment has been entered. The Court directed that judgment “will be
2 entered as part of final judgment at the conclusion of this action.” (*Id.* at 32). The
3 motion is therefore timely on two independent grounds. Federal Rule of Civil
4 Procedure 54(d)(2)(B) sets a fourteen-day clock running from entry of judgment
5 “[u]nless a statute or a court order provides otherwise,” and Local Rule 54-7 likewise
6 applies “unless otherwise ordered by the Court.” The Court ordered otherwise,
7 setting September 2, 2026. (Dkt. 68 at 31). And because no judgment has entered,
8 the fourteen-day clock has not begun.

9 **B. Apportionment**

10 Across all phases of this case, Penguin incurred 189.5 hours and \$171,448.78
11 in fees at least partially attributable to the two categories the Court authorized—(1)
12 the applicability of the anti-SLAPP statute and (2) the counts arising from protected
13 speech. That total comprises: 82.1 hours and \$79,120.50 for the renewed motion
14 (Dkt. 49), the reply (Dkt. 59), and the July 16, 2026 hearing; 89.2 hours and
15 \$76,895.28 for the first motion (Dkt. 25), the reply (Dkt. 29), and the February 2,
16 2026 hearing; and 18.2 hours and \$15,433.00 for the pre-motion effort described
17 above—the September 2025 pre-motion letter and the follow-up efforts seeking
18 withdrawal of the claims. *See* Exhibits A, E; *see also* Deming Decl. ¶¶ 6–11. These
19 figures exclude work that did not relate, at least in part, to the applicability of the
20 anti-SLAPP statute and the counts arising from protected speech—including all time
21 on Penguin’s motion for an extension of time (Dkts. 13, 14, 16), for which Penguin
22 claims nothing.

23 To further apportion the entries within each phase between the authorized
24 categories and everything else, Penguin measured its own briefing. Each of
25 Penguin’s four memoranda was segmented at its section headings, and the words in
26 each section were counted and classified against the Order’s two categories: sections
27 addressing the anti-SLAPP statute’s applicability, and sections addressing the counts
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arising from protected speech (Counts 1–8 and 10). Shared material (introductions, legal standards, conclusions) was allocated pro rata. Taking the four briefs together, 94.9% of Penguin’s substantive briefing falls within the authorized categories and 5.1% addresses the two excluded counts. Penguin applies that single fraction to every phase of its work—including the pre-motion effort, which has no briefing of its own to measure and which analyzed the same claims. After reducing the totals accordingly, Penguin seeks 77.9 hours and \$75,085.35 for the renewed motion, reply, and July 16, 2026 hearing; 84.6 hours and \$72,973.62 for the first motion, reply, and February 2, 2026 hearing; and 17.3 hours and \$14,645.92 for the pre-motion effort. *See* Exhibits A, E.

Mesika’s own briefing confirms that this allocation is conservative. Measured the same way, Mesika’s two oppositions together devoted 0.7% of his substantive words to Counts 9 and 11. Penguin excludes 5.1%. *See* Exhibit B.

III. LEGAL STANDARD

State law supplies both the fee right and the method of calculation. *Graham-Sult*, 756 F.3d at 751. Three principles govern.

First, the award is mandatory. Section 425.16(c)(1) provides that a “prevailing defendant on a special motion to strike shall be entitled to recover” its attorneys’ fees and costs. Cal. Civ. Proc. Code § 425.16(c)(1). “[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.” *Ketchum*, 24 Cal. 4th at 1131. The provision applies in federal court, *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 972–73 (9th Cir. 1999); *Graham-Sult*, 756 F.3d at 735, and it “is broadly construed so as to effectuate the legislative purpose of reimbursing the prevailing defendant for expenses incurred in extracting herself from a baseless lawsuit.” *Graham-Sult*, 756 F.3d at 752 (quoting *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 22 (2006)).

1 Second, the measure is the lodestar. California calculates the fee by the lodestar-
2 adjustment method: the hours reasonably expended multiplied by reasonable hourly
3 rates, with the rate set at the “fair market value” of the services rather than the price
4 any particular client paid. *See Ketchum*, 24 Cal. 4th at 1131–32, 1136. The lodestar is
5 “the basic fee for comparable legal services in the community,” and may be adjusted
6 from there. *Id.* at 1132. The resulting figure is “presumptively reasonable.” *Burton Way*
7 *Hotels, Ltd. v. Four Seasons Hotels Ltd.*, No. CV 11-303 PSG (PLAx), 2012 WL
8 12883819, at *1 (C.D. Cal. June 12, 2012).

9 Third, where the motion is dispositive of the whole case, the fee reaches the
10 whole defense. “[W]here an anti-SLAPP motion disposes of an ‘entire lawsuit,’ as
11 opposed to only some of the claims in a lawsuit, ‘all of the activity by [the] attorneys’
12 in connection with the successful motion is deemed to have ‘occurred in the context
13 of,’ and to have been ‘inextricably intertwined with, the anti-SLAPP motion,’ at least
14 where the moving party was required to raise or waive the alternative grounds for
15 dismissal.” *Id.* at *2. Here, the Court dismissed every one of the eleven counts against
16 Penguin, without leave to amend. (Dkt. 68 at 30–31). Although that rule could reach
17 Penguin's full defense costs, because every count was dismissed, Penguin claims less
18 in accordance with the Court’s Order. Accordingly, Penguin seeks 94.9% of its work
19 allocable to the two authorized categories, with the balance excluded.

20 IV. ARGUMENT

21 A. Penguin Is Entitled to Fees, and the Only Question Is Amount

22 The Court has already resolved entitlement. Having found both anti-SLAPP
23 prongs satisfied, it “h[e]ld[] that Defendants are entitled to relief under section
24 425.16(c)(1)” and authorized this Motion by name. (Dkt. 68 at 29–30). That award
25 is mandatory, not discretionary: “any SLAPP defendant who brings a successful
26 motion to strike is entitled to mandatory attorney fees.” *Ketchum*, 24 Cal. 4th at
27 1131. Thus, the question to be resolved by this Motion is how much the award should
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be.

B. Counts 1–8 and 10 Arise from Protected Speech

Penguin identified the counts arising from protected speech in its Renewed Motion. Section III.A of the Opening Brief stated that “[a]ttribution is the gatekeeper for every speech-based count,” naming Counts 1, 2, 3, 4, 5, 10, and 11, and adding that “[s]o do the speech-based predicates within Counts 6–8.” (Dkt. 49 at 3–4). Section III.I similarly stated that “Mesika’s claims based on protected speech—Counts 1 through 8—should be struck under California Code of Civil Procedure § 425.16.” (Dkt. 49 at 20).

That identification tracks the governing test. A claim arises from protected activity by reference to “the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.” *Park v. Bd. of Trs. of Cal. State Univ.*, 2 Cal. 5th 1057, 1063 (2017). And the labels a plaintiff chooses do not control, because “the application of section 425.16 cannot reasonably turn on how the challenged pleading is organized.” *Baral v. Schnitt*, 1 Cal. 5th 376, 392 (2016). Mesika’s claims and their relationship to protected speech are summarized in the table below:

Count(s)	Claim	Bases on Protected Speech
1, 2, 5	Libel; trade libel; false light	Statements in challenged videos
3, 4	Misappropriation	Use of likeness in challenged videos
6, 7	UCL § 17200; § 17500	Defamation as predicate
8	UCL—self-preferencing, product copying	Unlawful prong used defamation as predicate
10	Intentional interference	Derivative of the speech counts

C. Penguin Properly Allocates Fees

1. Penguin’s Percentage Calculation is Reasonable

Exhibit B measures Penguin’s own briefing section by section. Taken

1 together, 94.9% of the substantive words in Penguin’s four briefs fall within the two
2 authorized categories, and 5.1% addresses Counts 9 and 11. Where a single
3 subsection of the first-round reply argued Counts 6 through 11 together, Exhibit B
4 divides it at its internal count-by-count boundaries and excludes the Count 9 and
5 Count 11 passages by their actual word counts. Penguin applies the aggregate
6 fraction to every phase and seeks an order only for the value of work so apportioned.

7 Penguin’s reliance on its relative word count dedicated to each count is a
8 reasonable metric. Mesika’s own allocation of words converged. His opposition to
9 Penguin’s Renewed Motion devoted less than a single page to misappropriation, the
10 UCL and section 17500 claims, the Lanham Act claim, and interference combined.
11 Across both oppositions, 0.7% of his substantive words addressed Counts 9 and 11.

12 While that convergence corroborates Penguin’s estimate, exact apportionment
13 is not required where claims “involve a common core of facts or [are] based on
14 related legal theories,” because “[s]uch a lawsuit cannot be viewed as a series of
15 discrete claims.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (considering fees
16 under § 1988); *cf. ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1018
17 (2001) (section 425.16(c)’s fee preference “is analogous to the rule followed in cases
18 arising under the federal civil rights statutes” and relying on *Hensley* for proper
19 allocation of fees).

20 **2. Penguin Should Recover Fees for Each Stage of the Case**

21 The Court’s Order already contemplates recovery across both motions. It
22 authorized Penguin to seek “fees incurred in drafting any sections of their
23 **Motions**”—plural—and, in setting the briefing path for this Motion, referred to
24 Penguin’s filings as “the anti-SLAPP **Motions**.” (Dkt. 68 at 29–31 (emphasis
25 added)). Moreover, the Court’s Order does not limit the award to the renewed
26 motion. It authorizes fees for the sections of Penguin’s briefing that pertain to the
27 two identified categories, and it says nothing to exclude the motion that first
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1 presented them. (Dkt. 68 at 29–30.) Whether work on that earlier motion is
2 compensable is a question California law and the Ninth Circuit answer. Both of
3 Penguin’s motions presented the same anti-SLAPP challenge to the same claims: the
4 first was captioned “Counts 1 through 8 Fail under the Anti-SLAPP Statute” and
5 requested fees (Dkt. 25 at 4, 18), and the second renewed the identical showing
6 against a pleading whose allegations were “largely analogous” (Dkt. 68 at 3).

7 The Ninth Circuit has affirmed fees for work on an earlier anti-SLAPP motion
8 where “the work relating to the two motions overlapped and ... the first anti-SLAPP
9 motion was integral to Defendants’ eventual success.” *Manufactured Home Cmtys.,*
10 *Inc. v. Cnty. of San Diego*, 655 F.3d 1171, 1181 (9th Cir. 2011) (affirming an award
11 embracing a first motion that “laid the groundwork” for the second); *accord Ekorus,*
12 *Inc. v. Elohim EPF USA, Inc.*, 2020 U.S. Dist. LEXIS 122847, at *4–5 (C.D. Cal.
13 June 3, 2020) (applying *Manufactured Home* even to a never-filed draft motion
14 mooted by amendment).

15 Here, Penguin’s first motion squarely invoked the statute—its Section III.A is
16 captioned “Counts 1 through 8 Fail under the Anti-SLAPP Statute,” and its Section
17 III.C requested fees (Dkt. 25 at 4, 18)—and the SAC’s claims were “largely
18 analogous” to the FAC’s (Dkt. 68 at 3), so the first round’s protected-activity
19 showing carried directly into the second. While the Court granted Penguin’s first
20 motion to dismiss the FAC, it granted Mesika leave to amend and declined to award
21 fees at that stage only because it “d[id] not reach the two-prong analysis provided
22 by the anti-SLAPP statute.” (Dkt. 42 at 12.) The Court has now reached the anti-
23 SLAPP analysis and resolved it in Penguin’s favor as to every count. Where that
24 happens, the earlier motion’s work is compensable. In *Manufactured Home*, the
25 Ninth Circuit affirmed an award reaching the first anti-SLAPP motion over a law-
26 of-the-case objection even though its own earlier decision had reversed a fee award
27 for that motion—an obstacle far greater than an order that merely declined to reach
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1 the question. 655 F.3d at 1181.

2 Each phase reflects real, documented effort. The pre-motion phase—17.3
3 hours and \$14,645.92—produced the six-page September 11, 2025 letter analyzing
4 every claim under the anti-SLAPP statute, and three follow-up attempts to resolve
5 the case without motion practice, each of which went unanswered in substance (but
6 does not include the extension-of-time motion that Mesika’s silence made
7 necessary). *See* Deming Decl. ¶¶ 6–11. The original motion phase—84.6 hours and
8 \$72,973.62—produced the first motion and reply (Dkts. 25, 29) and the argument at
9 the February 2, 2026 hearing; that work was extended by Mesika’s filing of the FAC
10 five days before Penguin’s court-ordered response deadline, which required Penguin
11 to redirect its briefing to a new pleading mid-preparation. (Dkts. 19, 20). And the
12 renewed motion phase—77.9 hours and \$75,085.35—produced the motion, reply,
13 and argument that ended every claim against Penguin. (Dkts. 49, 59, 68). The work
14 in each phase overlapped with and was integral to the next: the September 11 letter’s
15 analysis became the first motion; the first motion’s analysis, refreshed against a
16 “largely analogous” pleading, became the second. *See* Deming Decl. ¶ 9.

17 The shape of those hours reflects the case Mesika chose to run. The first-
18 motion phase carried the build cost of the entire defense—the claim-by-claim
19 analysis of every count, the anti-SLAPP framework, and the underlying research—
20 built on top of the pre-motion work but exacerbated by Mesika’s filing of the FAC
21 five days before Penguin’s court-ordered response deadline. (Dkts. 19, 20). The
22 renewed-motion phase remained nearly as large for a different reason: the SAC
23 “quadrupled in length—from 35 pre-count paragraphs to 144—and added nineteen
24 new exhibits” (Dkt. 49 at 1), and Penguin had to review, brief, and be prepared to
25 argue every new allegation and exhibit to demonstrate that the additions changed
26 nothing. (Dkt. 68 at 3 the SAC’s allegations were “largely analogous” to the FAC’s).
27 A plaintiff who quadruples his pleading cannot be heard to complain that answering
28

1 it took time.

2 **D. Penguin's Lodestar Amount Is Reasonable**

3 The lodestar—the hours reasonably expended multiplied by reasonable hourly
4 rates—is “presumptively reasonable.” *Burton Way*, 2012 WL 12883819, at *1.
5 Penguin's lodestar is reasonable at each step: the hours are documented and already
6 reduced; the rates are at or below the prevailing market rates in this District; and
7 none of the work duplicates co-defendant Petty's.

8 **1. The Hours Claimed Are Appropriate**

9 Penguin's time records are grouped by phase, describe each task, and are
10 submitted with the methodology by which entries were included, excluded, and
11 apportioned. *See* Exhibit A; *see also* Deming Decl. ¶¶ 6–11. The totals for each
12 phase are reduced according to the apportionment fraction described above.

13 Penguin's entries already reflect voluntary reductions between originally
14 recorded work amounts and that which was billed to the client—more than 45 hours
15 were written off as part of standard billing adjustments. Deming Decl. ¶ 11.
16 Voluntary reduction before filing is itself a mark of reasonableness. *Moreno v. City*
17 *of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (in a § 1988 case noting that
18 “[p]laintiff's counsel had already cut her fees by 9 percent” in evaluating the
19 reasonableness of further reductions).

20 Finally, any adjustments must be specific: “it is the burden of the challenging
21 party to point to the specific items challenged, with a sufficient argument and
22 citations to the evidence. General arguments that fees claimed are excessive,
23 duplicative, or unrelated do not suffice.” *Premier Med. Mgmt. Sys., Inc. v. Cal. Ins.*
24 *Guar. Ass'n*, 163 Cal. App. 4th 550, 564 (2008); *accord Moreno*, 534 F.3d at 1116.

25 **2. The Rates Used Are Prevailing Market Rates**

26 The lodestar rests on the market, not on what any particular client paid. Rates
27 must be “in line with those prevailing in the community for similar services by
28

lawyers of reasonably comparable skill, experience and reputation”—the “prevailing market rate.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). “[F]ee awards must be ‘based on current rather than merely historical market conditions,’ and ‘the adjudicator should rely on[] the most current information available.’” *LA Int’l Corp. v. Prestige Brands Holdings, Inc.*, 168 F.4th 608, 624–25 (9th Cir. 2026) (quoting *Seachris v. Brady-Hamilton Stevedore Co.*, 994 F.3d 1066, 1077–78 (9th Cir. 2021)).

“[I]n calculating attorneys’ fees, the Court’s task is not to rubber-stamp the fees an attorney actually charges, but rather to determine the ‘fair market value’ of the attorneys’ services. This might cut in either direction, either reducing or increasing a fee from the price charged to a client.” *Griffin v. Strauss*, 2024 WL 647650, at *4–5 (C.D. Cal. Jan. 3, 2024) (awarding \$425–\$550 per hour where the firm had charged its client \$235, and approving partner rates of \$950 and \$1,100 as “not out of line with what the market generally pays”).

Below is a table summarizing the fees Penguin seeks and the relative seniority and experience of each timekeeper:

Timekeeper	Rate (2025 / 2026)	Seniority ¹ / Experience
Adam Daniels	\$795 / \$885	Principal / 15+ years
Mark Deming	\$885 / \$975	Shareholder / 16+ years
Jasmine Han	\$295 / \$325	IP Specialist / 10+ years
Morgan Kirley	\$840 / \$925	Shareholder / 20+ years
Joncilee Miller	\$335 / NA	Paralegal / 25+ years
Josh Rayes	\$760 / \$840	Principal / 10+ years
Adam Weiss	\$1070 / \$1180	Shareholder / 27+ years

¹ Polsinelli uses “Principal” and “Shareholder” titles interchangeably to identify partner-level attorneys.

Timekeeper	Rate (2025 / 2026)	Seniority ¹ / Experience
Miya Yusa	\$730 / \$805	Associate / 8+ years

These rates are consistent with and supported by independent evidence of what the market generally pays. For example, Thomson Reuters Financial Insights benchmarking of standard hourly rates actually invoiced by AmLaw 100 firms in Los Angeles and Orange County from January through July 2026 reports a median litigation rate of \$1,146 per hour (mean \$1,172; 25th percentile \$1,009). See Exhibit C. Across practice areas, the median partner rate is \$1,367 and the median associate rate is \$956. *Id.*

Similar rates have also been approved in other cases: *Tracy Anderson Mind & Body, LLC v. Roup*, 2023 WL 6890744, at *7 (C.D. Cal. Sept. 11, 2023) (awarding \$163,953.21 on rates to \$1,065 in an anti-SLAPP fee motion); *Griffin*, 2024 WL 647650, at *4–5 (\$950/\$1,100); *N.T.A.A., Inc. v. Nordstrom, Inc.*, 2024 U.S. Dist. LEXIS 72914, at *13–14 (C.D. Cal. Apr. 19, 2024) (partner and senior-counsel rates of \$848 to \$1,364.70 “consistent with the prevailing market rates within the Central District”).

Penguin’s requested rates sit within—and for all but one timekeeper, well below—the market these sources measure. Seven of the eight timekeepers bill at or below \$1,009, the 25th percentile of invoiced Los Angeles litigation rates. See Exhibit C. The senior-most, a 27-year shareholder, bills \$1,180—below the AmLaw 1-100 partner median of \$1,367 and within the range this District found “consistent with the prevailing market rates” in *N.T.A.A.* (\$848 to \$1,364.70). And Penguin’s counsel’s rates are comparable to those co-defendant Petty’s counsel seek in this very case. (Dkt. 69 at 8). A rate the market routinely commands, in a case the mandatory fee provision was written for, is a reasonable rate.

3. Penguin Does Not Seek Fees Duplicative of Petty’s Work

Penguin seeks fees only for work performed by its own counsel. Co-defendant

Petty has filed his own fee motion (Dkt. 69), supported by the billing records of his own counsel, Randazza Legal Group, for Petty’s own motion, reply, and related work. No entry in Penguin’s Exhibit A reflects work performed by Randazza Legal Group, and none duplicates it: the two defendants were separately represented, filed separate motions raising defendant-specific arguments, and obtained different results. Where two defendants move separately, courts analyze “the fees and costs of each Defendant separately.” *Orian v. Fédération Int’l des Droits de L’Homme*, 2012 WL 994643, at *2 (C.D. Cal. Mar. 22, 2012).

E. Penguin’s Fees Bringing This Motion Are Also Recoverable

Fees incurred enforcing the fee right are recoverable. “[A]n award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure section 425.16.” *Ketchum*, 24 Cal. 4th at 1141. This component should be awarded in full even where the underlying motion succeeded only in part, because any partial-success reduction “does not apply to these efforts.” *Griffin*, 2024 WL 647650, at *6 (declining to reduce the fee-collection component for the partial success of the underlying motion).

Penguin’s request is modest and documented: it claims 33.2 hours and \$32,984 fees actually incurred through the date of this filing. *See* Deming Decl. ¶ 16. Penguin will present actual hours and fees for reviewing any opposition, preparing a reply, or attending any hearing on this Motion by supplemental declaration. Mesika’s counsel did not dispute the recoverability of these fees at the parties’ Local Rule 7-3 conference. *See* Deming Decl. ¶ 26.

F. Costs Are Recoverable Under Section 425.16(c)

Section 425.16(c)(1) awards a prevailing defendant its “attorney’s fees **and costs**,” which reaches expenses not taxable under section 1920. Interpreting the analogous federal fee-shifting statute, the Ninth Circuit has long held that “[e]ven

1 though not normally taxable as costs, out-of-pocket expenses incurred by an attorney
2 which would normally be charged to a fee paying client are recoverable as attorney's
3 fees....” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986)
4 (fees under 42 U.S.C. § 1988), *amended on other grounds*, 808 F.2d 1373 (9th Cir.
5 1987); *see ComputerXpress*, 93 Cal. App. 4th at 1018 (section 425.16(c)’s fee
6 preference “is analogous to the rule followed in cases arising under the federal civil
7 rights statutes”).

8 Courts apply the same rule under section 425.16(c)(1). In *Makaeff*, the court
9 awarded \$8,695.81 in costs on a request that included a “Meals, Hotel &
10 Transportation” line and online research charges, excluding only \$513.46 and
11 holding that “[o]therwise ... Makaeff’s costs are reasonable.” *Makaeff v. Trump*
12 *Univ., LLC*, 2015 WL 1579000, at *28 (S.D. Cal. Apr. 9, 2015).

13 Penguin seeks \$4,102.75 in costs, itemized and apportioned in Exhibit D.
14 Taxable costs are not sought here. Penguin reserves them for a bill of costs after
15 entry of judgment.

16 **G. Plaintiffs Should Be Jointly and Severally Liable**

17 The award should run against both plaintiffs jointly and severally. Section
18 425.16(c)(1) makes the fee award recoverable from the plaintiff who brought the
19 stricken claims—and here, that is both of them: Mesika Magic and Yigal Mesika
20 jointly asserted every count against Penguin, through the same counsel and in the
21 same pleadings, and every count was dismissed as to both. (Dkt. 43; Dkt. 68 at 30–
22 31). Unlike co-defendant Petty’s motion, which allocates its request between the
23 plaintiffs because the results as to each differed (Dkt. 69 at 5–6), there is nothing
24 here to allocate: Penguin’s success against each plaintiff is complete and
25 coextensive, and each is fully responsible for the litigation both chose to bring.
26 Where losing parties’ responsibility for the fee-generating litigation is coextensive,
27 joint liability is proper. *Cf. Corder v. Gates*, 947 F.2d 374, 383 & n.13 (9th Cir.

1 1991) (district court “did not abuse its discretion when it declined to apportion
2 liability for attorney’s fees among defendants” where nothing suggested the
3 plaintiffs “expended less time” pursuing one defendant than his codefendants, and
4 that defendant was “not so dramatically less culpable” as to compel apportionment).
5 California courts enter precisely this award under the anti-SLAPP statute. *See, e.g.,*
6 *Quay Works LLC v. Morris Cerullo World Evangelism*, No. 30-2019-01056982-CU-
7 BC-CXC, 2023 Cal. Super. LEXIS 55013, at *7 (Orange Cty. Super. Ct. July 31,
8 2023) (awarding \$49,670 in attorney’s fees under § 425.16 “against Cross-
9 Complainants ... jointly and severally”).

10 **V. CONCLUSION**

11 Penguin respectfully requests that the Court award \$162,704.89 in attorneys’
12 fees, plus an additional \$32,984.00 in fees for the present motion, and \$4,102.75 in
13 costs under California Code of Civil Procedure section 425.16(c)(1), against
14 Plaintiffs Mesika Magic and Yigal Mesika jointly and severally as both plaintiffs
15 jointly pleaded every count against Penguin and every count was dismissed.

1
2 Dated: September 2, 2026

Respectfully submitted,

3 Polsinelli LLP
4 By: /s/Adam P. Daniels
5 Adam P. Daniels

6 Polsinelli PC
7 Mark T. Deming

8 *Attorneys for Defendant*
9 *Penguin Magic, Inc.*

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Penguin Magic, Inc., certifies that this brief contains 4877 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 2, 2026

Polsinelli LLP

By: /s/Adam P. Daniels

Adam P. Daniels

Attorneys for Defendant
PENGUIN MAGIC, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2026, a copy of this Motion was filed electronically, and is available for viewing and downloading through the Court's CM/ECF System. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

Dated: September 2, 2026

By: /s/Jasmine Han

Jasmine Han