

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

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| <b>MARK Z. JACOBSON, Ph.D.,</b><br><br><b>Plaintiff,</b><br><br>v.<br><br><b>CHRISTOPHER T.M. CLACK, Ph.D., et al.,</b><br><br><b>Defendants.</b> | <b>Case No. 2017 CA 006685 B</b><br><b>Judge Elizabeth C. Wingo</b> |
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**ORDER**

Before the Court is Defendant National Academy of Sciences (“NAS”) and Defendant Christopher Clack’s request for attorney fees, pursuant to the D.C. Anti-SLAPP Act, § 16-5504(a) and this Court’s April 20, 2020 Order, which granted Defendant NAS’s Motion for an Award of Attorney’s Fees and Costs Pursuant to D.C. Code § 16-5504(a), and Defendant Clack’s Motion for Costs and Attorney’s Fees Under D.C. Anti-SLAPP Act, § 16-5504(a), both filed on March 7, 2018. On June 25, 2020, the Court denied Plaintiff Mark Z. Jacobson’s Motion for Reconsideration of Order Granting Defendants’ Motions for Costs and Attorney’s Fees Under the D.C. Anti-SLAPP Act (hereinafter “Motion” or “Motion to Reconsider”), filed on May 18, 2020. Accordingly, as the Court has already determined that both Defendant NAS and Defendant Clack are entitled to an award of attorney’s fees and costs, the only matter left for resolution is the amount of attorney fees and costs to award.

**I. The Pleadings re: Attorney’s Fees**

**a. Clack Praecipe**

Defendant Clack filed his Praecipe Regarding His Costs and Attorney Fees Requests on June 1, 2020 (“Clack Praecipe”). The Clack Praecipe explains that although Mr. Marrocco and

his team of attorneys and paralegals billed 219.1 hours totaling in \$175,909, “Dentons agreed it would cap the amount it billed and would seek to collect from Dr. Clack at \$75,000 for preparing, filing and arguing his Anti-SLAPP Act motion to dismiss.” *See Clack Praecipe*, at 3. In addition to the \$75,000 in attorney’s fees, Dr. Clack also seeks an additional \$1,248 in costs for traveling to attend the motion to dismiss hearing in February 2018. *See id.* at 4; *see also* Dr. Clack’s Declaration, attached as Exhibit C. Dr. Clack’s praecipe further argues that the attorney’s fees and costs are reasonable given that the Laffey Matrix, which Plaintiff cited “in its May 18 correspondence as an appropriate measure of reasonable rates,” *see Clack Praecipe*, at 5; May 18, 2020 Letter, attached as Exhibit D, “results in a higher total fee than the fees actually recorded in Dentons’ billing records,” that is, approximately \$178,800, and that both the Laffey Matrix fees and the actual fees “far exceed the discounted fees of \$75,000 actually charged to Dr. Clack.” *See Clack Praecipe*, at 5. The Clack Praecipe also reserves the right to supplement his request for additional fees incurred in responding to the Motion for Reconsideration. *See id.* at 2 n.1. Finally, the Clack Praecipe responds to several of Plaintiff’s objections, from the amount of hours and money billed in this matter, to the manner the hours were billed (block billing and paralegal billing). *See id.* at 6-8.

**b. NAS Praecipe**

Defendant NAS filed its Praecipe Regarding its Attorney’s Fees Request on June 2, 2020 (“NAS Praecipe). The NAS Praecipe asserts that between 2017 and 2018, its attorneys and paralegals billed approximately 785.6 hours, amounting to \$535,903.65 in fees<sup>1</sup> and \$8,257.20 in costs. *See NAS Praecipe*, at 2-4. In response to Plaintiff’s objections to the hourly rates charged by NAS’s counsel, Counsel utilized the Laffey Matrix, which they assert is “widely accepted by

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<sup>1</sup> Paragraph 6 of the NAS Praecipe notes that this amount reflects a ten percent discount on total fees billed each month. *See NAS Praecipe* at 3, para. 6.

the D.C. Superior Court as furnishing hourly rates for attorneys and paralegals” to recalculate its fees, which in fact yielded a higher total amount of fees due, specifically \$605,038.10. *See id.* at 4-5.<sup>2</sup> Additionally, although “NAS maintains that the costs incurred are recoverable, it agrees to waive its request for reimbursement of costs” in response to Plaintiff’s objections to such costs. *See id.* at 5. Thus, NAS only seeks the \$535,903.65 in attorney’s fees. Much like the Clack Praecipe, the NAS Praecipe reserves the right to supplement its request for additional fees incurred in responding to the Motion for Reconsideration. *See id.* at 2 n.1. Finally, the NAS Praecipe also responds to several of Plaintiff’s objections, from the amount of hours and money billed in this matter, to the manner the hours were billed (block billing and paralegal billing). *See id.* at 5-7.

**c. Plaintiff’s Response to Clack Praecipe**

Plaintiff filed two Praecipis in Response to Affidavit in Support of Fees of Defendant Clack and Defendant NAS on June 15, 2020. In Plaintiff’s Praecipe in Response to Affidavit in Support of Fees of Defendant Clack (“Plaintiff’s Response to Clack Praecipe”), Plaintiff requests that the Court deny the award of any fees or costs for Dr. Clack due to his failure to timely follow the Court’s order and for his unreasonable, poorly documented, and overreaching fee request. *See* Plaintiff’s Response to Clack Praecipe, at 16. Additionally, Plaintiff requests Dr. Clark be denied fees and costs entirely, but insists that if the Court decides to award any amount, it should be a nominal award of no more than 25% (\$18,750) of the requested attorney’s fees and costs. *See id.* at 4. Plaintiff makes ten arguments in total in support of his request to deny Dr. Clack’s fee request. *See id.* at 5-16 (breaking arguments down into Sections III.A-J).

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<sup>2</sup> The Court notes that even without the 10% discount, the fees are slightly lower than under the Laffey Matrix; if the \$605,038.10 amount is discounted by 10%, the amount of fees would be \$544,534.30.

Plaintiff argues Dr. Clack failed to timely submit his proposed attorney's fees and costs to Plaintiff in writing on or before May 4, 2020 in compliance with the Court's order because Dr. Clack provided copies of invoices along with a "brief letter bereft of information about what amounts Defendant's actually sought." *See* Plaintiff's Response to Clack Praecipe, at 6. He also argues Dr. Clack's request for \$75,000 in attorney's fees and costs is unreasonable and excessive, the block billing is improper, and the redactions in the record are improper. Additionally, Plaintiff believes "Dr. Clack's counsel spent an 'unreasonable amount of time' on litigation that heavily consisted of filing 'me too' briefs." *See id.* at 4. Plaintiff also asserts that Dr. Clack failed to provide information regarding the experience levels of its attorneys to assess the reasonableness of hourly rates, believes reimbursement for paralegal work is improper and the rate charged is improper, and believes reimbursement for personal expenses in relation to his attendance at the Anti-SLAPP hearing is improper. *Id.* at 13-15. Finally, Plaintiff asserts both that Dr. Clack should not be awarded any fees for providing false or misleading information in his briefs to the Court and states the Court should not allow Dr. Clack to submit a reply brief. *Id.* at 15.

**d. Plaintiff's Response to NAS Praecipe**

On June 15, 2020, Plaintiff filed a Praecipe in Response to Affidavit in Support of Fees of Defendant NAS ("Plaintiff's Response to NAS Praecipe") in which he argues the Court should deny NAS's request for attorney's fees and costs as a sanction for its "unreasonable, poorly documented, and overreaching fee request." *See* Plaintiff's Response to NAS Praecipe, at 22. Plaintiff requests that if the Court decides to award any amount, the award be limited to no more than \$30,000. *Id.* at 5, 22. The arguments in Plaintiff's Response to NAS Praecipe are generally similar to the arguments made in Plaintiff's Response to Clack, with the addition of

two supplemental arguments, that is, with respect to the NAS fees, there is an excessive amount of attorney duplication, and that there is an excessive number of attorneys (six) and paralegals (two), thus creating further attorney duplication and inefficiency. *See id.* at 4.

**e. Defendants' Replies**

On June 22, 2020, both Defendant Dr. Clack and Defendant NAS filed Praecipes in Response to Plaintiff's Opposition to Request for Attorney Fees (Clack Reply) and (NAS Reply). In his Reply, Dr. Clack points out that nowhere in Plaintiff's 17-page brief does he even mention that Dr. Clack has reduced the amount requested by over \$100,000 from the total amount of time reasonably spent by his attorneys due to an agreement with Denton to cap the fees at \$75,000. *See Clack Reply*, at 1-2. Dr. Clack thus states that Plaintiff's continued objections are virtually all pointless and not in good faith. *Id.* at 2.<sup>3</sup>

In NAS's Reply, the Defendant rebuts Plaintiff's assertion that the fees sought are excessive by arguing this was not a "straightforward defamation case" as Plaintiff claims, but rather, this lawsuit included three separate causes of action, detailed in a 41-page Complaint, accompanied by a 36-page Court opinion finding the Defendant's entitled to attorney's fees. *See NAS Reply*, at 1. NAS argues the question of whether the number of hours was reasonable should be obviated by the fact that NAS's fees are already 12 percent lower than the fees reflected in the Laffey matrix, which had been requested to be used by Plaintiff himself. *Id.* at 2.

**II. Analysis**

The Anti-SLAPP Act "authorizes the trial court to award costs and fees – including attorney's fees – to a moving party who prevails 'in whole or in part' on a special motion to dismiss." *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1238 (D.C. 2016); D.C. Code § 15-

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<sup>3</sup> Specifically, he notes that even if each and every objection were conceded – which they are not – the amount by which the award would be reduced - \$47, 493 – is far less than the attorneys have already reduced the \$175,909 of fees actually incurred. *Clack Reply*, at 2.

5504(a). Specifically, pursuant to Code § 16-5504(a), “[t]he court may award a moving party who prevails, in whole or in part, on a motion brought under Code § 16-5502 . . . the costs of litigation, including reasonable attorney’s fees.” “[A] successful movant under [the Anti-SLAPP Act] is entitled to reasonable attorney’s fees in the ordinary course – *i.e.*, presumptively- unless special circumstances in the case make a fee award unjust.” *Doe v. Burke*, 133 A.3d 569, 571 (D.C. 2016). This Court has already determined that for the purposes of resolving the request for attorney’s fees, Defendants have prevailed in whole or part under the statute and there are no special circumstances that would render an award of reasonable fees unjust in this case. The D.C. Anti-SLAPP Act was enacted to protect the right of advocacy on issues of public interest against lawsuits intended to punish or censor speech. The safeguards provided by the Act, including reasonable attorney’s fees and costs, are critical parts of the statute that must serve its purpose and be upheld. Defendants are entitled to recoup such fees pursuant to D.C. Code § 16-5504(a).

In its April 20, 2020 Order, this Court directed the parties to communicate in order to minimize any disputes regarding the amount of such fees and set forth a schedule for the parties to proceed. Defendants were to provide their proposed attorney fees and costs to Plaintiff in writing on or before May 4, 2020, who was ordered to promptly respond with any objections to the specific requests, on or before May 18, 2020. Defendants were ordered to evaluate the merit of any such objections, and adjust their fees if appropriate, before filing praecipes with the Court detailing their requested fees and costs on or before June 1, 2020.

Plaintiff initially objects on the grounds that Defendants did not provide him with actual fee petitions in compliance with the order, believing copies of invoices, records, and a brief summary to be wholly inadequate to render the submissions untimely. However, the April 20, 2020 Order did not specify the form in which the requested fees should be documented; it did not

require a formal fee petition be provided, but rather it required Defendants to provide their proposed fees and costs in writing so that a substantive discussion could ensue that might narrow the issues in dispute; both Defendants complied with the directive. Thus, the Court finds this argument wholly unpersuasive.<sup>4</sup>

After reviewing the praecipes and exhibits submitted by both Defendants, as well as the entire record in this matter, and considering Plaintiff's objections to the requests for fees, the Court finds most of Plaintiff's objections generally meritless under the circumstances. The Court notes, as an initial matter, that the argument, made to Defendants in the May 18 Letters and quoted in Plaintiff's Responses, that the use of "attorney's fees" rather than "attorneys' fees" in this Court's Order somehow limits the award of fees to that of one attorney per Defendant (*see* Plaintiff's Response to Clack Praecipe, at 2; Plaintiff's Response to NAS Praecipe, at 2), borders on the frivolous and is in no way persuasive; there is nothing in this Court's order awarding fees, nor in the statute upon which it is based, that was intended to limit the request for fees to the fees of one attorney, nor that could be reasonably interpreted as doing so.<sup>5</sup> *See* NAS Reply, at 3 (noting that the language in the actual statute is "attorney fees"); *see also* D.C. Code 16-5504(a). Additionally, many of Plaintiff's arguments are based on his assertion that "[t]his is not a patent infringement or antitrust case with complex theories of law," but instead "is a relatively straightforward defamation case primarily involving two written publications." Plaintiff's Response to Clack Praecipe, at 7; Plaintiff's Response to NAS Praecipe, at 8. The Court

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<sup>4</sup> The Court further notes that although the argument is patently without merit as to the NAS request, as it essentially requested what was billed in the invoices submitted, under the circumstances here, the Court also finds it without merit as to the Clack request. The Court notes that because Dr. Clack is requesting what he was charged, not what was billed, the submission of invoices without clarification in the cover letter that the significantly reduced amount was sought is somewhat misleading. Here, however, where Plaintiff makes essentially identical arguments both before and after the amount sought was confirmed, that is, in the May 18 letter and in his response here, Plaintiff has failed to identify any prejudice from the lack of clarification.

<sup>5</sup> Indeed, in his Complaint, Plaintiff himself also uses the standard phrase "attorney's fees" in his request, despite the fact that his pleadings routinely list more than one attorney. *See Complaint and Jury Demand*, at 41.

wholeheartedly disagrees. Plaintiff in this case sued two different entities, asserting multiple counts in a 41-page Complaint with 217 pages of exhibits, and seeking \$10 million in damages from each Defendant, as well as punitive damages, attorney's fees and costs. *See Complaint and Jury Demand*, generally, and at 40-41. Plaintiff chose to bring a case that not only had potentially enormous financial impacts at stake for each Defendant, but also very significant First Amendment rights at stake as well, that is, the right to be free to author or publish scientific ideas without fear of precisely this kind of lawsuit, which the District's Anti-SLAAP Act was enacted to address. The briefing involved complex issues under the relatively recently-enacted statute, including issues of first impression with respect to the fees. Thus, that the fees are high is not in any way surprising.

The Court also concludes with respect to the Clack invoice that the complaints regarding block billing and redaction are without merit; although Plaintiff claims that Clack's invoices are "so heavily redacted" that the nature of the services for which compensation is sought cannot be determined, *see* Plaintiff's Response to Clack Praecipe, at 10, in the Clack invoices, a grand total of 10 entries are redacted, and those entries contain sufficient remaining information for the Court to determine the nature of the task at issue. Thus, the Court will order Plaintiff to pay the attorney fees to Dr. Clack in the amount requested within 30 days. As the Court noted in its April 20, 2020 *Order*, "[t]he D.C. Anti-SLAPP Act was enacted to protect the right of advocacy on issues of public interest against lawsuits intended to punish or censor speech. The safeguards provided by the Act, including reasonable attorney's fees and costs, are critical parts of the statute that must serve its purpose and be upheld." *See* April 20, 2020 *Order*, at 35.

The complaints with respect to redaction in the NAS invoices, however, have greater force. The arguments with respect to block billing in the NAS invoices have significant issues



that undermine their force; for example, many of the alleged “discrepancies” noted (approximately 25-30) appear to relate either partially or solely to individuals who received emails failing to charge for the time reading an email while the individual who wrote the email did charge. *See* Plaintiff’s Response to NAS Praecipe, at 10-14 (listing alleged discrepancies). He also notes occasions when an email was sent, but there is no indication of a charge by the recipient on the same day. *See id.* at 12. The Court generally finds no real discrepancy for such occurrences, as common sense suggests drafting an email may require significantly more time and effort than reading to it, and that an individual may review an email on a date other than the date it is sent. Other alleged “discrepancies” are also identified in a sufficiently misleading way Plaintiff’s arguments in general are undermined; Plaintiff claims, for example, that “[o]n November 11, 2017, Potts claims to charge 6.8 hours to ‘prepare’ but nothing is identified as to what he is preparing.” *Id.* at 11. Similarly, Plaintiff claims that “[o]n November 17, 2017, Potts claims a 6.5 hour phone call with A. Moseley and M. Gold.” *Id.* Both entries, however, are redacted, and thus it is clear that what has been prepared is identified, but redacted, and that the 6.5 hours claimed are clearly not for one phone call; therefore, Plaintiff’s assertions as to these entries appear to be deliberately misleading. Nonetheless, though, as Plaintiff complains in a different portion of his Response, the Court cannot in fact tell given the redactions what tasks the individual was engaged in for 6.5 hours, and what it was that was prepared, in order to determine if the amount of time spent is reasonable. Thus, particularly given the amount sought, the Court concludes that it is necessary to order Plaintiff to submit an unredacted version of the invoices for its *in camera* review to chambers before it makes a final award as to Defendant NAS’s fees.<sup>6</sup> Because such unredacted invoices undoubtedly already exist and must simply be delivered, the

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<sup>6</sup> The Court is neither requesting nor accepting any further briefing; it is solely requiring counsel for Defendant NAS to submit an unredacted version of the invoices.

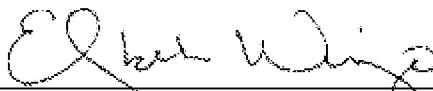
Court will order a relatively short turnaround, and direct that the unredacted version of Defendant NAS's Exhibit B be delivered to chambers on or before September 20, 2021.

Accordingly, it is this 13th day of September, 2021, hereby

**ORDERED**, that Plaintiff Mark Z. Jacobson shall pay Defendant Christopher Clack \$75,000 in reasonable attorney fees by October 13, 2021. It is further

**ORDERED** that counsel for Defendant NAS shall cause to be delivered to this Court's chambers at the District of Columbia Superior Court, Room 2110, an unredacted copy of Exhibit B, the invoices, on or before September 20, 2021.

**SO ORDERED.**



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JUDGE ELIZABETH CARROLL WINGO  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
(Signed in Chambers)

Copy via CaseFileXpress to:

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