

**Tentative Rulings for December 1, 2021**  
**Department 501**

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**There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)**

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**The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.**

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**(Tentative Rulings begin at the next page)**

# **Tentative Rulings for Department 501**

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(20)

**Tentative Ruling**

Re: **Midland Funding LLC v. Doherty**  
Superior Court Case No. 20CECG02758

Hearing Date: December 1, 2021 (Dept. 501)

Motion: by Midland Funding and Mandarich Law Group for an Award of Attorney Fees

**Tentative Rulings:**

Midland Funding's Motion for an Award of Attorney Fees: To grant and award \$20,851.40 in attorney fees and \$522 in costs. (Code Civ. Proc., § 425.16, subd. (c).)

Mandarich Law Group's Motion for an Award of Attorney Fees: To grant and award \$18,133.40 in attorney fees and \$262.10 in costs. (Code Civ. Proc., § 425.16, subd. (c).)

**Explanation:**

A special motion to strike (an "anti-SLAPP" motion) provides a procedural remedy to dismiss non-meritorious litigation meant to chill the valid exercise of the constitutional rights to petition or engage in free speech. (Code Civ. Proc., § 425.16, subd. (a); see *Martinez v. Metabolife Intern., Inc.* (2003) 113 Cal.App.4th 181, 186.)

A prevailing defendant on an anti-SLAPP motion "shall be entitled" to recover its attorney fees and costs, and this award is mandatory. (Code Civ. Proc., § 425.16, subd. (c); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) Midland Funding and Mandarich Law Group (together "cross-defendants") prevailed on their anti-SLAPP motions directed at Doherty's cross-complaint, and now move for an award of attorney fees.

Doherty contends that the anti-SLAPP statute and the Consumer Statutes conflict, and Midland's right to anti-SLAPP attorney fees must yield to Doherty's claims under the California's Fair Debt Buying Practices Act, Civil Code §§ 1788.50-1788.64 ("Debt Buyer Act"), the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p ("FDCPA"), and California's Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.33 ("RFDCPA"). Each of these statutory schemes, pursuant to which the cross-claims were brought, have their own provision for award of attorney fees:

- "Reasonable attorney's fees may be awarded to a prevailing debt buyer upon a finding by the court that the plaintiff's prosecution of the action was not in good faith." (Debt Buyer Act, Civ. Code, § 1788.62, subd. (c)(2).)
- "On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." (FDCPA, 15 U.S.C. § 1692k, subd. (a)(3).)

- “[R]easonable attorney’s fees may be awarded to a prevailing creditor upon a finding by the court that the debtor’s prosecution or defense of the action was not in good faith.” (RFDCPA, Civ. Code § 1788.30, subd. (c).)

The rules we must apply when faced with two irreconcilable statutes are well established. “If conflicting statutes cannot be reconciled, **later enactments supersede earlier ones** [citation], and **more specific provisions take precedence over more general ones** [citation].” (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310, 99 Cal.Rptr.2d 792, 6 P.3d 713 (*Rumsey*)). But when these two rules are in conflict, **the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence.** (See *People v. Gilbert* (1969) 1 Cal.3d 475, 479, 82 Cal.Rptr. 724, 462 P.2d 580 [“ ‘It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.’ ”]; see *Nunes Turfgrass, Inc. v. Vaughan–Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539, 246 Cal.Rptr. 823 [same]; see also Code Civ. Proc., § 1859 [“when a general and particular provision are inconsistent, the latter is paramount to the former”].) (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960–961, emphasis added; see *Marsh v. Edward Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 890 (“A special statute dealing expressly with a particular subject controls and takes precedence over a more general statute covering the same subject”); Code Civ. Proc., § 1859 [“When a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.”])

There is no case law directly on point addressing whether the anti-SLAPP statute or the aforementioned consumer protection statutes trump with regards to a prevailing defendant’s request for attorney fees.

The court finds that the anti-SLAPP statute and the consumer protection statutes are in conflict with regards to cross-defendants’ entitlement to attorney fees. A fee award is mandatory for the party prevailing on an anti-SLAPP motion, but a debt buyer or creditor who prevails must show bad faith in order to recover attorney fees. Accordingly, the court turns to the question of which statute(s) is/are more specific.

The court finds that the statutory schemes are at least equally specific in their respective spheres, and that the anti-SLAPP statute may be construed to be more specific.

The anti-SLAPP statute and the consumer protection statutes all “vindicate an express public policy.” (*Dane-Elec Corp., U.S. v. Bodokh* (2019) 35 Cal.App.5th 761, 775.)

Unilateral fee-shifting provisions such as those in the Debt Buyer Act, the FDCPA, and the RFDCPA are “created by legislators as a deliberate stratagem for advancing some public purpose, usually by encouraging more effective enforcement of some important public policy.” (*Covenant Mutual Ins. Co. v. Young* (1986) 179 Cal. App. 3d 318, 324.) Those statutory provisions reflect the Legislature’s intent “to encourage injured

parties to seek redress—and thus simultaneously enforce public policy in situations where they otherwise would not find it economical to sue.” (*Id.* at p. 325.)

The anti-SLAPP statute, on the other hand, provides all people, including creditors, with procedural safeguards to weed out meritless claims asserted by others, including consumers or their attorneys, “that might chill the exercise of their rights to speak and petition on matters of public concern.” (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 883-884.) It was enacted to address the “disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.” (Code Civ. Proc., § 425.16, subd. (a).)

The purpose behind the anti-SLAPP statute is to provide defendants with “an efficient means of dispatching, early on in the lawsuit, and discouraging, insofar as fees may be shifted, a plaintiff’s meritless claims.” (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 63 [citation omitted].) It carves out an early portion of litigation when constitutional rights are at stake, in any case, including statutory claims for employment discrimination or, as here, claims under the consumer statutes. “The entitlement to fees and costs enhances the anti-SLAPP law’s protection of the state’s ‘important, substantive’ interests.” (*Northon v. Rule* (9th Cir. 2011) 637 F.3d 937, 938.)

The court finds that the respective statutes are at least equally specific. The anti-SLAPP statute may be construed as more specific in that it provides for recovery of attorney fees in connection with the anti-SLAPP motion only, not for the entire litigation. (*Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 21; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) The fee provisions in the consumer protection statutes pertain to recovery of fees for the entire litigation. In order to obtain fees for the entire litigation, cross-defendants would have to show bad faith under those statutes. But Code of Civil Procedure section 425.16, subdivision (c), only authorizes fees incurred in making a specific motion, not the entire action. Accordingly, it is more narrowly-tailored and limited.

To the extent the inquiry into which statutes are more specific or general does not resolve the issue, the court looks to which was more recently enacted. (See *State Dept. of Public Health v. Superior Court, supra*, 60 Cal.4th at pp. 960-961.)

The anti-SLAPP statute was enacted in 1992. (Civ. Proc. Code, §§ 425.16 *et seq.*) The FDCPA and the Rosenthal Act were enacted in 1978 and 1977, respectively. (15 U.S.C. § 1692; Civ. Code, § 1788.) The anti-SLAPP prevails vis-à-vis those statutes.

But Doherty also brought a claim under the California Fair Debt Buying Practices Act, Civil Code §§ 1788.50-1788.64 (“CFDBPA”), which became effective in 2014. (Stats.2013, c. 64 (S.B.233), § 2.) Cross-defendants do not mention this statute when they discuss which statute is earlier.

The court finds it noteworthy, however, that the anti-SLAPP statute's attorney fee provision was amended in 2010 to exempt specific types of actions:

A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(Code Civ. Proc., § 425.16, subd. (c)(2).)

"We must assume that the Legislature knew how to create an exception if it wished to do so." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 (citation omitted).) The Legislature demonstrated that it knew how to create such an exception in 2011, when the Legislature amended the anti-SLAPP statute to enumerate two specific exceptions to fee recovery for anti-SLAPP litigation. (Stats.2010, c. 328 (S.B.1330), § 34.) These two exceptions are not applicable here, and the fact that in creating exceptions the Legislature did not exempt claims pursuant to the previously-enacted FDCPA and Rosenthal Act is significant. Subdivision (c)(2) was again amended as recently as 2014, the year after adoption of the CFDBPA. (Stats.2014, c. 71 (S.B.1304), § 17, eff. Jan. 1, 2015.) The legislature chose not to exempt this consumer protection statute in that post-CFDBPA amendment.

Accordingly, the court finds that the anti-SLAPP statute's attorney fee provision applies here, and the court must award cross-defendants their reasonable attorney fees.

Although the anti-SLAPP statute does not expressly so provide, it has been interpreted to allow awards of only such fees that the court deems reasonable. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.) Courts apply the lodestar approach (number of hours reasonably expended multiplied by reasonable hourly rate prevailing in community) in determining the fee award under Code of Civil Procedure section 425.16. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131, 1136.) A prevailing defendant is entitled to recover fees incurred in making the motion for attorney fees. (*Id.* at p. 1141.)

Midland Funding seeks \$29,133 in attorney fees in connection with its anti-SLAPP motion, \$2,906.40 in fees incurred bringing this fee motion, and \$2,499 in connection with drafting the reply brief, plus \$522 in costs.

Mandarich Law Group seeks \$20,212.50 in attorney fees plus \$258.80 in costs. Counsel charges \$385 per hour and spent 42.9 hours on the anti-SLAPP motion, and 10.6 hours on this fees motion. It seeks an additional \$1,540 to prepare the reply and \$3.60 in e-filing fees.

As the Supreme Court observed in *Ketchum*, "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Ketchum, supra*, 24 Cal.4th at p. 1137.) The prevailing party must make a "good-faith effort to exclude from a fee request hours that are

excessive, redundant, or otherwise unnecessary." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 434.)

It is well established that the value of legal services performed in a case is a matter in which the trial court has its own expertise. The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case. ... The court therefore found that the amount of hours claimed by [plaintiff's] counsel was reasonable in light of the length and difficulty of the ... litigation.

(*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1395-1396, internal quotation and citation omitted.)

The court is very familiar with the issues presented in this action and the level of complexity of the underlying anti-SLAPP motions. Having reviewed the time records submitted by cross-defendants and Doherty's objections, the court finds as follows on the issue of the reasonableness of the requested attorney fees..

Midland Funding's time entries include a lot of block billing where it is impossible to ascertain the amount of time spent on any particular task. (See *Bell v. Vista Unified Sch. Dist.* (2000) 82 Cal.App.4th 672, 689 [where fees cannot be apportioned due to block billing, trial court may assign a reasonable percentage to the recoverable entries or "simply cast them aside"].) "[W]here vague, block billed time entries inflated with noncompensable hours destroy an attorney's credibility with the trial court, we have not power on appeal to restore it." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325-1326.)

The block billing makes it difficult to ascertain how much time was spent on compensable tasks. There are a number of entries that are either for matters that clearly do not relate directly to the anti-SLAPP motion (such as drafting discovery responses), or due to redactions it cannot be ascertained if it relates to the anti-SLAPP motion. The court has identified \$2,028.50 in entries that do not appear related to the anti-SLAPP motion. Due to the block billing, the court will double that and reduce the fee award by \$4,057 for work not relating to the anti-SLAPP motion.

While anti-SLAPP motions are complicated and time-consuming, the time spent on the motion appears to be somewhat excessive, where we have two partners who spend a combined 35.9 hours and a 10<sup>th</sup> year associate who spent 52.3 hours. The court will reduce the partner in half (18 hours), and reduce the associate time by 12.3 hours (bringing it down to 40). That's a total reduction of \$13,687, for a fee award of \$20,851.40, plus \$522 in costs.

Mandarich Law Group also has quite a few entries that clearly do not pertain directly to the anti-SLAPP motion (such as work on a demurrer, the filing of a notice of association of counsel, and preparation and review of case management statements). Additionally, there are quite a few entries for communications with various individuals, some identified and some not, regarding unspecified matters. For example, there was a 5/27/21 entry described as "Receive and review correspondence regarding". That's it!

No fees will be awarded for work that does not clearly relate to the anti-SLAPP motion. The fee request is reduced by \$3,619.10. Otherwise the court finds the fees incurred to be reasonable, and awards \$18,133.40 in attorney fees, and \$262.10 in costs.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** DTT on 11/18/2021.  
(Judge's initials) (Date)



(34)

**Tentative Ruling**

Re: **Sullivan v. California Department of State Hospitals**  
Superior Court Case No. 18CECG04118

Hearing Date: December 1, 2021 (Dept. 501)

Motion: by Plaintiff for an Extension of Time to Respond to Discovery Requests

**Tentative Ruling:**

To take the hearing off calendar. Plaintiff's motion is moot, as responses were served August 16, 2021, and no motion for an order compelling the responses at issue was filed by the propounding party.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: DTT on 11/24/2021.  
(Judge's initials) (Date)



(36)

**Tentative Ruling**

Re: ***In Re: Chandler Cox***  
Superior Court Case No. 21CECG03057

Hearing Date: December 1, 2021 (Dept. 501)

Motion: Petition for Approval of Compromise of Claim of Minor

**Tentative Ruling:**

To deny without prejudice. In the event oral argument is presented, the minor is excused from attending.

**Explanation:**

Two matters prevent the Petition from being granted:

Medical and Insurance Liens:

The Petition does not provide any proof that the medical provider and the insurance plan with liens have agreed to the reduced amounts in payment of the liens as stated in the Petition. If a provider agreed to negotiate its bill, this must be substantiated. Similarly, if any medical expenses were paid under a health insurance plan, and the plan agreed to a negotiated reduction to the reimbursement of such payments, petitioner must submit substantiation of the reduction.

Proposed Order:

The proposed Order lodged on October 14, 2021, is defective. Unless a corrected proposed Order is supplied, the Petition cannot be granted. Item 8(b)(2) of the proposed Order states: "\$187,000.00 will be invested in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court. The name, branch and address of each depository are specified in Attachment 18b(3)."

First, the court finds that no such attachment was filed. The court notes that an Attachment 18b(3) was attached to the Petition; however, the Order must also have the attachment.

Second, the wording of item 8(b)(2) is erroneous. Attachments 10c and 18b(3) of the Petition sets forth the particulars of the parties' agreement for defendant to fund an annuity with the settlement proceeds. However, item 8(b)(2) of the Order refers to investment of \$187,000 "in a single-premium deferred annuity, *subject to withdrawal only upon the authorization of the court. The name, branch and address of each depository*

are specified in Attachment 18b(3)." (Emphasis added.) That is language pertinent to funds deposited in a blocked account, and is not pertinent to investment in an annuity.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** DTT **on** 11/24/2021.  
(Judge's initials) (Date)

(29)

**Tentative Ruling**

Re: **Castro, Jr. v. Carter**  
Superior Court Case No. 20CECG02068

Hearing Date: December 1, 2021 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

To grant. The court intends to sign the proposed order. No appearances are necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: DTT on 11/30/2021.  
(Judge's initials) (Date)