



Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

Pursuant to this statute, the Angelikson Defendants request attorney fees and costs in the amount of **\$50,301** as the prevailing parties on the special motion to strike. According to the Angelikson Defendants, the "sole factual basis for the [UCL and CLRA] claims against [them]" is Cascio's statements on *Oprah*, so by the Court granting the special motions to strike the UCL and CLRA claims to the extent they were based on such statements, "the UCL and CLRA claims have been stricken as to the Angelikson Defendants." See Motion, 1:9-16.

In opposition, Plaintiff contends that the Angelikson Defendants are not the prevailing parties because: (1) they did not achieve a practical benefit from the anti-SLAPP ruling; and (2) the anti-SLAPP motions have not been entirely resolved. See Opposition, §§III.A and III.B.

The Court agrees with Plaintiff's first contention.

"[A] party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. The determination whether a party prevailed on an anti-SLAPP motion lies within the broad discretion of a trial court." See Mann v. Quality Old Time Service, Inc. (2006) 139 Cal.App.4th 328, 340; see also Lin v. City of Pleasanton (2009) 175 Cal.App.4th 1143, 425–426, as modified on denial of reh'g (Aug. 11, 2009) ("The anti-SLAPP statute reflects the Legislature's 'strong preference for awarding attorney fees to successful defendants.' The term 'prevailing party' must be 'interpreted broadly to favor an award of attorney fees to a partially successful defendant.' *However, a fee award is not required when the motion, though partially successful, was of no practical effect.*") (italics supplied).

Here, while the UCL and CLRA claims based on the *Oprah* interview were eliminated, the UCL and CLRA claims remain pending as to the Angelikson Defendants. As Plaintiff correctly points out (and as the Angelikson Defendants appear to recognize<sup>2</sup>), the UCL and CLRA claims also allege the Angelikson Defendants' secondary liability. See FAC, ¶¶150 ("Defendants Cascio, Porte, and Angelikson are also liable for: (a) conspiring with

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<sup>2</sup> See Reply, FN1 (" . . . No longer can Plaintiff seek to attach direct liability to the Angelikson Defendants based on their speech. *Instead, Plaintiff would have the much more difficult task of demonstrating that the Angelikson Defendants are responsible for the album cover and the YouTube Video — speech that Plaintiff admits emanated from Sony and the Estate.*").

one another to violate the CLRA; (b) furnishing the means for the accomplishment of the CLRA violations described above (by providing Sony and the Estate with 'Breaking News,' 'Monster,' and 'Keep Your Head Up,'); (c) aiding and abetting the CLRA violations of one another and the other Defendants; (d) the CLRA violations of one another under agency, alter ego, and/or joint venture principles; and (e) false and misleading statements that were not made directly to Plaintiff and Class members, but which were made to a third person with the intent and expectation that the substance of the misrepresentation would be communicated to Plaintiff and Class members and would influence their conduct in the transactions at issue."); 58 ("Defendants Cascio, Porte, and Angelikson are also liable for: (a) conspiring with one another to violate the UCL; (b) furnishing the means for the accomplishment of the UCL violations described above (by providing Sony and the Estate with 'Breaking News,' 'Monster,' and 'Keep Your Head Up,'); (c) aiding and abetting the UCL violations of one another and the other Defendants; (d) the UCL violations of one another under agency, alter ego, and/or joint venture principles; and (e) false and misleading statements that were not made directly to Plaintiff and Class members, but which were made to a third person with the intent and expectation that the substance of the misrepresentation would be communicated to Plaintiff and Class members and would influence their conduct in the transactions at issue."). With the UCL and CLRA claims still pending as to them, the Angelikson Defendants' special motion to strike produced insignificant results.

Further, while Cascio's statement on *Oprah* is excluded from the UCL and CLRA claims, Plaintiff is correct that "[t]he core facts to be litigated between Plaintiff and the Angelikson Defendants remain unchanged, including that Michael Jackson did not perform the Cascio songs; that the Angelikson Defendants jointly and severally created the songs, provided the songs to the Jackson Defendants and misrepresented to the Jackson Defendants that the songs were performed by Jackson with the intent that this misrepresentation would be repeated to consumers; as well as Plaintiff's reliance on these misrepresentations." See Opposition, 7:18-25. In short, the Angelikson Defendants still have to defend against these core facts notwithstanding exclusion of Cascio's statement on *Oprah*. The Angelikson Defendants' special motion to strike, in practical effect, therefore did not "narrow[] the scope of the lawsuit, limit[] discovery, reduc[e] potential recoverable damages, and alter[] the settlement posture of the case." See Mann, *supra*, 139 Cal.App.4<sup>th</sup> at 340.

For these reasons, the Angelikson Defendants' motion for attorney fees and costs is DENIED.