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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO, Plaintiff and Appellant, v. SAN BERNARDINO COUNTY PUBLIC ATTORNEYS ASSOCIATION, Defendant and Appellant.	E051576 (Super.Ct.No. CIVDS909445) OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher J. Warner and Michael S. Mink (retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), Judges.[1] Affirmed.

Jean-Rene Basle, County Counsel, and Kenneth C. Hardy, Deputy County Counsel, for Plaintiff and Appellant.

[1] Judge Warner sustained defendant's demurrer to the complaint. Judge Mink ruled on defendant's motion for attorney fees.

Reich, Adell & Cvitan, Marianne Reinhold, J. David Sackman, and Kent Morizawa for Defendant and Appellant.

I. INTRODUCTION

Plaintiff County of San Bernardino (County) appeals from (1) judgment of dismissal following the trial court's order sustaining the demurrer of defendant San Bernardino County Public Attorneys Association (Association) to the County's complaint, and (2) the trial court's orders granting the Association's Strategic Lawsuit Against Public Participation (anti-SLAPP) motion under Code of Civil Procedure section 425.16 and awarding attorney fees to the Association. The County contends the superior court, not the Public Employees Relations Board (PERB), has jurisdiction over a dispute concerning representation in discipline proceedings of Association members who are deputy public defenders and deputy district attorneys, because: "(1) PERB has no authority to regulate the practice of law; (2) PERB has no authority to define the discretionary authority of the [County] District Attorney or the independence of the [County] Public Defender in the criminal justice system; and (3) the violation of attorney ethical duties and the Association removing prosecutors from criminal cases is not activity 'arguably protected or prohibited' by the MMBA[2] and is of 'marginal concern' to PERB." The County further contends the trial court erred in granting the Association's anti-SLAPP motion because (1) the County's lawsuit was exempt from the anti-SLAPP statute, (2) the Association failed to establish that its activity was protected under that

[2] Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

statute, and (3) the County met its burden of showing a likelihood of prevailing on the merits. Finally, the County argues the trial court erred in awarding attorney fees because the Association did not support its request with adequate documentation in the form of copies of actual time records. The Association appeals from the trial court's order reducing its attorney fee award.

We find no error, and we affirm. We emphasize, however, that our ruling does not address the merits of the County's claims that the manner in which the Association represents its members may cause ethical conflicts. We merely determine that the PERB, not the court, has initial jurisdiction to decide the issue.

II. FACTS AND PROCEDURAL BACKGROUND

Under a Memorandum of Understanding (MOU) between the Association and the County covering 2005 to 2008, the Association was the exclusive representative of deputy district attorneys, deputy public defenders, and certain other attorneys employed by the County. The MOU provides that the Association "'may designate employees as authorized employee representatives or alternates to represent employees in the processing of grievances or during disciplinary proceedings . . . .'" An MOU covering 2008 to 2011 contains identical language.

On several occasions, County Public Defender Doreen B. Boxer conducted investigations of deputy public defenders. In each investigation, the Association president, a deputy district attorney, appointed a deputy district attorney to represent the deputy public defender being investigated. The Association asserts that it did so because

no deputy public defender wanted to be an employee representative because of Boxer's and another manager's alleged mistreatment of deputy public defenders.

Boxer issued a policy declaring that the Association may not appoint a deputy district attorney to represent a deputy public defender in any investigative matter. The County district attorney has also drafted a policy stating that no deputy district attorney may represent a deputy public defender in any administrative, investigative, or disciplinary proceeding, and no deputy district attorney may accept a deputy public defender as his or her employee representative during such a hearing.

The Association filed unfair labor practice charges with the PERB, alleging that the public defender interfered with the Association's right to represent employees. The PERB issued an unfair labor practice complaint against the County, alleging that Boxer's refusal to permit employee representatives designated by the Association to attend investigatory interviews of several deputy public defenders constituted an unfair labor practice. Hearings on the complaint have taken place before an administrative law judge, but the administrative law judge has not yet issued a decision.

Meanwhile, during the pendency of the PERB proceedings, the County filed a complaint in the trial court, along with an application for order to show cause for preliminary injunction. The complaint alleged causes of action (1) for an injunction limiting the Association's discretion to assign Association representatives in disciplinary proceedings, (2) for an injunction preventing the Association from claiming to remove deputy district attorneys or deputy public defenders from particular cases, (3) for a declaration that the public defender's policy is valid insofar as it purports to prevent

deputy public defenders from representing other County employees in disciplinary proceedings, and (4) for a declaration that the MMBA and the MOU do not grant the Association the right to choose representatives for disciplinary proceedings.

The Association filed a demurrer to the complaint and a special motion to strike under Code of Civil Procedure section 425.16. In both the demurrer and anti-SLAPP motion, the Association contended the trial court lacked jurisdiction over all the County's causes of action, because the County's claims lay within the exclusive jurisdiction of the PERB. The trial court sustained the demurrer and granted the anti-SLAPP motion, finding that the PERB had exclusive jurisdiction over the matter.

Following entry of judgment, the Association brought a motion for attorney fees in the amount of $76,038 and costs in the amount of $3,447. Judge Mink granted the motion but reduced the amounts of the awards to $49,500 for attorney fees and $2,377 in costs.

III. DISCUSSION

A. Requests for Judicial Notice

The County has requested this court to take judicial notice of (1) the California Rules of Professional Conduct, (2) the National District Attorneys Association National Prosecution Standards, Third Edition, and (3) the briefs in a case pending in Division One of this court. The Association opposed the request on the ground that the requested materials are irrelevant to any issues now before this court.

We reserved ruling on the request for consideration with the merits of this appeal. We now conclude the materials are not helpful to our resolution of the issues on appeal, and we therefore deny the request for judicial notice.

The County has also requested this court to take judicial notice of the proposed decision of the administrative law judge in the PERB proceedings; the unpublished decision in *People v. Garcia* (Nov. 4, 2011, D057959 [nonpub. opn.]), and the notice of hearing in PERB case No. LA-CE-554-M. The Association has not filed any opposition to the request. We grant the request.

B. Standard of Review of Order Sustaining Demurrer

On appeal from a judgment dismissing an action after a demurrer has been sustained without leave to amend, we treat the complaint as admitting all material facts properly pleaded. We affirm the judgment if any ground for the demurrer is well taken. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The issue of whether the trial court properly sustained the Association's demurrer on the ground that the PERB has exclusive jurisdiction over a complaint concerning representation of Association members in investigatory proceedings presents a pure question of law, which we review de novo. (*International Assn. of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1208.)

C. MMBA Overview

"In California, labor relations between most local public entities and their employees are governed by the Meyers–Milias–Brown Act (MMBA) (Gov. Code, § 3500 et seq.), which recognizes the right of public employees to bargain collectively with their

employers over wages and other terms of employment." (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 601 (*City of San Jose*).) The MMBA grants recognized employee associations the right to "represent their members in their employment relations with public agencies." (Gov. Code, § 3503.) The scope of such representation includes "all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment," but not "the merits, necessity, or organization of any service or activity provided by law or executive order." (Gov. Code, § 3504.) Case law has clarified that the right of representation extends to employer-conducted interviews which an employee reasonably believes may lead to disciplinary action. (*NLRB v. J. Weingarten, Inc.* (1975) 420 U.S. 251, 252-253 (*Weingarten*)[3]; *Robinson v. State Personnel Bd.* (1979) 97 Cal.App.3d 994, 999-1000.)

The PERB is the administrative agency authorized to adjudicate unfair labor practices charges under the MMBA. (*City of San Jose*, *supra*, 49 Cal.4th at p. 601.) "PERB is an expert, quasi-judicial administrative agency. [Citation.] One of PERB's primary functions is to investigate and adjudicate charges of unfair labor practices. ([Gov. Code,] § 3541.3, subd. (i).)" *City and County of San Francisco v. International Union of Operating Engineers, Local 39* (2007) 151 Cal.App.4th 938, 943 (*Local 39*).)

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[3] The MMBA is modeled on section 7 of the National Labor Relations Act (29 U.S.C. § 157), at issue in *Weingarten*, and "'[w]here, as here, California law is modeled on federal laws, federal decisions interpreting substantially identical statues are unusually strong persuasive precedent on construction of our own laws. [Citations.]' [Citation.]" (*Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294, 1308.)

Government Code section 3509, subdivision (b), regarding unfair practice charges, provides that "[t]he initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the [PERB] . . . ." Decisions of the PERB are subject to judicial review to this court. (Gov. Code, § 3509.5.) The PERB has the power "[t]o determine in disputed cases, or otherwise approve, appropriate units." (Gov. Code, § 3541.3, subd. (a).)

Government Code section 3509, subdivision (c) states that the PERB has the power to "enforce and apply rules adopted by a public agency concerning unit determinations, *representation*, recognition, and elections." (Italics added.) Government Code section 3509, subdivision (b), provides: "A complaint alleging any violation of [the MMBA] . . . shall be processed as an unfair practice charge by [the PERB]. *The initial determination as to whether the charge of unfair practice is justified* and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the *exclusive jurisdiction* of [the PERB] . . . ." (Italics added.) When the PERB has exclusive jurisdiction, courts have only appellate jurisdiction over the PERB's decisions. (*International Assn. of Firefighters, Local 230 v. City of San Jose*, *supra*, 195 Cal.App.4th at p. 1209.) Whether the PERB has exclusive initial jurisdiction is determined based on the underlying conduct described in the complaint. (*Id*. at p. 1208.) A public employer may not avoid the exclusive jurisdiction of the PERB over unfair practice charges through artful pleading. (*Local 39*, *supra*, 151 Cal.App.4th at p. 945.)

D. Exhaustion of Administrative Remedies

The trial court sustained the Association's demurrer on the ground that the PERB had exclusive initial jurisdiction over the matter, and the County failed to exhaust its administrative remedy.

"Subject to certain exceptions, local public agencies and their employees must exhaust their administrative remedies under the MMBA by applying to PERB for relief before they can ask a court to intervene in a labor dispute." (*City of San Jose, supra*, 49 Cal.4th at p. 601.) The requirement of exhaustion of available administrative remedies is subject to exceptions, for example, when the administrative remedy is inadequate or when it is clear it would be futile to seek an administrative remedy. (*Id.* at pp. 609-610; see also *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080 (*Coachella Valley*).) We review de novo the question of whether the exhaustion doctrine applies to a given case. (*Paulsen v. Local No. 856 of Internat. Brotherhood of Teamsters* (2011) 193 Cal.App.4th 823, 828-829 (*Paulsen*).)

In *Paulsen*, deputy probation officers sued their union for breach of the duty of fair representation, among other causes of action. The trial court sustained the union's demurrer without leave to amend on the ground of lack of subject matter jurisdiction, and the appellate court affirmed, holding that the action was subject to the exclusive jurisdiction of the PERB because the breach of the union's duty of fair representation was an unfair labor practice within the meaning of Government Code section 3509. (*Paulsen, supra*, 193 Cal.App.4th at pp. 830-834.)

A party is excused from exhausting administrative remedies if doing so would result in irreparable injuries. (*Local 39, supra,* 151 Cal.App.4th at p. 948.) In addition, a court may determine that an agency lacks jurisdiction even while agency proceedings are still pending. (*Id.* at p. 949.) Three factors guide the court's determination whether to exercise that power: "the injury or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue. [Citation.]" (*Coachella Valley, supra,* 35 Cal.4th at p. 1082.)

The County argues that the PERB has no inherent power to regulate the practice of law; the PERB has no authority to define the discretionary authority of the district attorney or the independence of the public defender; and violating attorney ethics and interfering with the discretionary authority of the district attorney and the independence of the public defender are not activities "arguably protected or prohibited" by the MMBA. The County's argument centers on *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525 (*Woodside*), superseded by statute as stated in *Coachella Valley, supra*, 35 Cal.4th at p. 1077. In *Woodside*, the court held that attorneys employed by the county could sue their public entity employer under the MMBA for breach of the duty to bargain in good faith, and such a lawsuit was not barred by any ethical requirements on the attorneys. (*Woodside, supra,* at pp. 544-553.) *Woodside* predated the PERB's obtaining exclusive jurisdiction over unfair practice charges brought under the MMBA. (See *Coachella Valley, supra*, at p. 1077 ["Effective July 1, 2001 . . . the

Legislature vested [PERB] with exclusive jurisdiction over alleged violations of the MMBA."] (Fn. omitted.).) Thus, *Woodside* is not helpful to the County's position.

In short, although the County frames the argument in terms of the ethical duties of deputy public deputies and deputy public defenders, the crux of the dispute is representation in disciplinary investigations, a matter that is explicitly covered in the MOU. Government Code section 3509, subdivision (b) specifically allocates primary initial jurisdiction over such a dispute to the PERB.

Moreover, although the County extensively argues public policy concerns, in *City of San Jose*, our Supreme Court held that even when a public employer "is of the view that a threatened strike by certain public employees will endanger public welfare," the public employer "must . . . generally first seek relief from PERB before asking a superior court for injunctive relief." (*City of San Jose, supra,* 49 Cal.4th at p. 603.)

We therefore find no error in the trial court's granting of the demurrer, and we affirm.

E. Anti-SLAPP Motion

The County argues that the trial court erred in granting the Association's anti-SLAPP motion because the County's complaint fell within the public prosecutor exception of Code of Civil Procedure section 425.16, subdivision (d), and the public interest exception of Code of Civil Procedure section 425.17, subdivision (b). The County further argues that the Association failed to establish that its activity was protected speech within the meaning of the anti-SLAPP statute, and the County met its burden of showing a likelihood of success on the merits

1. Standard of Review

We review the trial court's order granting the anti-SLAPP motion de novo. In doing so, "'[w]e consider "the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." [Citation.] However, we neither "weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citation.]' [Citation.]" (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

2. Public Prosecutor Exception

The County argues that its complaint fell within the public prosecutor exception of Code of Civil Procedure section 425.16, subdivision (d), which provides: "This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor." The County contends that "[t]he current lawsuit is a direct result of the District Attorney's determination that cross-representation threatens his ability to effectively bring enforcement actions in criminal court. The District Attorney requested the County to file the lawsuit so as to address his concerns."

In *City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 111 Cal.App.4th 302 (*City of Long Beach*), the court held the exception in Code of Civil Procedure section 425.16, subdivision (d) applied to a city attorney's civil injunction actions to enforce local election laws brought on behalf of a city. (*City of Long Beach, supra,* at pp. 308-309.) The court held it was reasonable to extend the

exception beyond the literal language of the statute to include "all civil actions brought by state and local agencies to enforce laws aimed at consumer and/or public protection." (*Id.* at p. 308.)

However, subsequent to the *City of Long Beach* decision, our Supreme Court, in *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728 (*Jarrow*), held that "[t]he Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so," (*id.* at p. 735), and when it has not done so, the court has no authority to create a broad exception that the Legislature has not enacted. (*Id.* at pp. 735-741.) In *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606 (*City of Los Angeles*), the city sought protective orders under Code of Civil Procedure section 527.8, subdivision (a) on behalf of some of its employees to shield them from workplace violence. The appellate court acknowledged that previously in *City of Long Beach* it had extended the plain language of the statute, but emphasized that "any further erosion of the specific requirements of that provision is unwarranted in light of the Supreme Court's subsequent admonition in [*Jarrow*], 31 Cal.4th [at page] 735 . . . that the plain language of [Code of Civil Procedure] section 425.16 is to be respected and that exceptions to the statute's broad reach must not be lightly implied . . . ." (*City of Los Angeles, supra,* at p. 620.) The court stated: "Although [Code of Civil Procedure] section 425.16, subdivision (d), thus applies somewhat more broadly than the literal language of the provision may suggest, only actions brought by a governmental agency to enforce laws aimed generally at public protection qualify for this exemption to anti-SLAPP scrutiny," (*id.* at p. 618),

and the exemption did not apply when the city was acting in its capacity as an employer seeking to protect its own employees (*id.* at pp. 617-620).

Here, similarly, the County was acting in its capacity as an employer, not in its capacity as a public prosecutor, and the exception in Code of Civil Procedure section 425.16, subdivision (d) therefore does not apply.

3. Public Interest Exception

The County next argues that its complaint fell within the public interest exception of Code of Civil Procedure section 425.17, subdivision (b), which provides: "Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if *all* of the following conditions exist:

"(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. . . .

"(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether or pecuniary or nonpecuniary, on the general public or a large class of persons.

"(3) *Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter*." (Italics added.)

The language of the statute is clear and unambiguous, and by its terms, applies to private enforcement actions, not to an action brought by the County in its role as employer. "'The plain language of the statute establishes what was intended by the Legislature.' [Citation.]" "'"If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to [extrinsic] indicia of the intent of the

Legislature . . . .”’ [Citation.]” (*Jarrow, supra,* 31 Cal.4th at p. 735.) We have no authority to expand the language of the exception to encompass the County’s claims.

4. Trial Court’s Ruling on the Merits

The County next argues the Association failed to establish that its activity was protected speech within the meaning of the anti-SLAPP statute.

a. Overview of anti-SLAPP procedure

A trial court considering an anti-SLAPP motion must engage in a two-part inquiry. The court must first determine whether the defendant has met its initial burden of showing that the cause of action arises from the defendant’s activities that further its rights of petition or free speech. Once the defendant has made such a prima facie showing, the court next determines whether the plaintiff has shown a probability of prevailing on the merits. (*Freeman v. Schack* (2007) 154 Cal.App.4th 719, 726-727.) This court exercises its independent judgment on those same issues. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

b. Protected activities

The County contends the Association did not meet its initial burden to establish that its activities were protected.

Protected activity under the anti-SLAPP statute includes “(a) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any

written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." The Association argues its activity fell within Item (1), (2), or (4).

The County contends the underlying issue is the Association's appointment of deputy district attorneys to represent deputy public defenders, and case law holds that anti-SLAPP motions do not apply to litigation that concerns an attorney's breach of the duty of loyalty. To support its argument, the County cites *Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179; *Freeman v. Schack*, *supra*, 154 Cal.App.4th 719; and *United States Fire Ins. Co. v. Sheppard, Mullin, Richter & Hampton LLP* (2009) 171 Cal.App.4th 1617. In those cases, the courts held that attorneys who breached their fiduciary duties toward clients by abandoning them to represent adverse interests were not protected by the anti-SLAPP statute. (*Benasra v. Mitchell Silberberg & Knupp LLP*, *supra*, at p. 1187-1188; *Freeman v. Schack, supra*, at pp. 728-731; *United States Fire Ins. Co. v. Sheppard, Mullin, Richter & Hampton LLP*, *supra*, at p. 1628-1629.)

However, courts have long recognized that activities of unions—including public employee unions—are protected free speech activities. (*In re Berry* (1968) 68 Cal.2d 137, 153 [picketing by public employee union to publicize its demands was protected speech]; *Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1064 [statements in a labor dispute were protected activity, and a resulting defamation action was subject to an anti-SLAPP motion]; *Macias v. Hartwell*

(1997) 55 Cal.App.4th 669, 673-674 [statements made during a campaign for a union post were a matter of public interest, and a complaint directed at those statements was subject to an anti-SLAPP motion].)

We conclude the Association has met its burden of establishing that its activities were protected for purposes of the anti-SLAPP statute.

c. Likelihood of success on the merits

The County next argues that it met its burden of showing a likelihood of success on the merits. Given that we have determined the County's lawsuit must fail because the County failed to exhaust its administrative remedies, it necessarily follows that the County has failed to show a likelihood of success on the merits.

F. Attorney Fees Award

Both parties have appealed from the award of attorney fees. The County contends the trial court erred in awarding attorney fees because the Association did not support its request with adequate documentation in the form of copies of actual time records. In its appeal, the Association contends the trial court erred by reducing the amount of its attorney fee award.

1. Standard of Review

We review a challenge to the amount of an attorney fee award in an anti-SLAPP action under the abuse of discretion standard. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research Institute*).) "[W]hen, as here, the fee order under review was rendered by a judge other than the trial judge, we may exercise 'somewhat more latitude in determining whether there has been an abuse of

discretion than would be true in the usual case.' [Citation.]" (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 616.)

2. Additional Background

The Association filed a motion for attorney fees and costs, supported by the declaration of Marianne Reinhold, the Association's attorney. The Association claimed 220.7 hours of senior attorney time at a rate of $285 per hour and 24.8 hours of associate attorney time at a rate of $185 per hour. The Association also provided a spreadsheet, compiled from its computerized billing system, listing the dates services were provided, a brief description of each service, the hours spent on each service, and the identity of the attorney providing the service.

The County filed an opposition to the motion. It argued that the Association did not file copies of actual detailed time records, and such records were required as the basis for an attorney fee award. In reply to the County's opposition, the Association filed Reinhold's supplemental declaration stating that all the attorney services for which the Association requested fees were connected to the current lawsuit; services performed in connection with the PERB proceedings were billed under a separate transaction number and were not included in the fee request.

Judge Mink was specially assigned to hear the motion for attorney fees. Following oral argument, he took the matter under submission. He later granted the motion but reduced the amount of fees to $49,500 and the amount of costs to $2,377 without explaining the basis for awarding those amounts.

3. Adequacy of Records Provided

The County contends the Association was required to support its request for attorney fees with copies of actual time records.

"As the moving party, the prevailing defendant seeking fees and costs '"bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." [Citation.] To that end, the court may require [a] defendant[] to produce records sufficient to provide "'a proper basis for determining how much time was spent on particular claims.'" [Citation.] The court also may properly reduce compensation on account of any failure to maintain appropriate time records. [Citation.]' [Citation.] The evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended. [Citation.]" (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1320.)

The County argues that copies of actual time records must be filed with the court to support an award of attorney fees, and the summarization the Association provided did not include sufficient detail to support the Association's request. We disagree. The summarization of services provided and Reinhold's declaration constituted a sufficient basis on which the trial court could determine how much time was spent on particular claims. No more was required. (See, e.g., *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1470 [records "which detail[ed] the hours spent on the case and for what purpose, gave the court an adequate basis upon which to exercise its discretion," even if contemporaneous recorded time sheets are preferred]; see also *PLCM*

Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096, fn. 4 [affirming an award of attorney fees based on "a detailed reconstruction of time spent on specific legal tasks performed in the case" when in-house counsel for the prevailing party had not kept contemporaneous daily billing records].)

4. Allocation of Attorney Time

The County argues that the attorney fee award was erroneous because the Association failed to provide sufficient information from which the trial court could determine which work was performed for the PERB proceedings and which was performed for the superior court case.

However, Reinhold's declaration established that the time spent on this case was separately recorded from time spent in other matters, such as the PERB proceedings, so that the records provided included only time spent on this case. Moreover, when attorney fees are incurred for representation on an issue common both to a cause of action in which fees are allowed and one in which they are not allowed, the fees need not be apportioned. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.) Here, the demurrer and the anti-SLAPP motion were both based on the exclusive jurisdiction of the PERB to determine the underlying legal issue.

5. Reduction of Award

The Association contends that the trial court erred in reducing its award of attorney fees to $49,500. With exceptions not relevant to this case, a prevailing defendant on an anti-SLAPP motion is entitled to recover its attorney fees and costs. (Code Civ. Proc., § 425.16, subd. (c)(1).) The purpose of the mandatory fee provision is

to "adequately compensate" the prevailing party for "the expense of responding to a baseless lawsuit." (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785.)

"The trial court is not required to issue a statement of decision" (*Christian Research Institute, supra,* 165 Cal.App.4th at p. 1323), and here, the trial court did not do so. We do not disturb the trial court's ruling unless we are convinced that it is clearly wrong. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) We must presume the attorney fee award was correct. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 998.) "When the trial court substantially reduces a fee or cost request, we infer the court has determined the request was inflated. [Citation.]" (*Christian Research Institute, supra,* at p. 1323.) We therefore find no abuse of discretion in the award of attorney fees.

IV. DISPOSITION

The judgment is affirmed. Costs are awarded to defendant Association.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.