

United States District Court
Central District of California

STEPHEN CUMMINGS,

Plaintiff,

v.

DOLBY LABORATORIES, INC., et al.,

Defendants.

Case No. 2:20-cv-04443-ODW (PVCx)

**ORDER GRANTING
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND COSTS
[71]**

I. INTRODUCTION

Pro se Plaintiff Stephen Cummings initiated this copyright action based on his fanciful claim that Defendants¹ adapted the 1997 motion picture *Titanic* from his life story. (See Notice of Removal, Ex. A (“Complaint” or “Compl.”), ECF No. 1-1.) The Court granted Defendants’ motion to dismiss and invited a motion for attorneys’ fees and costs. (Order Granting Mots. to Dismiss 8–9, ECF No. 69.) Defendants now request \$20,534.65 in attorneys’ fees and costs. (Mot. for Att’ys’ Fees (“Mot.”), ECF No. 71.) For the reasons discussed below, the Court **GRANTS** Defendants’ Motion.²

¹ Defendants are James Cameron; Lightstorm Entertainment, Inc.; Paramount Pictures Corp.; Paramount Home Entertainment, Inc.; and Twentieth Century Fox Film Corp.

² Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

The Court has detailed the facts underlying this action in a prior Order and hereby incorporates that discussion by reference. (*See* Order Granting Mots. to Dismiss.) This lawsuit was Cummings’s third attempt to recover from Defendants based on his claim that the character “Jack Dawson” from the film *Titanic* was based on his life story. (*Id.* at 2.) On May 19, 2017, Cummings first filed this lawsuit in the Middle District of Florida. (*See id.*) That case was dismissed because Cummings failed to comply with the local rules. (*Id.*) On November 2, 2017, Cummings filed a second lawsuit based on the same allegations that *Titanic* was based on his life story and that case was dismissed with prejudice. (*Id.*)

On January 7, 2020, Cummings initiated this action based on those same meritless claims. (*See* Compl.) Thus, on September 14, 2020, the Court granted Defendants’ motion to dismiss Cummings’s duplicative claims based on res judicata. (Order Granting Mots. to Dismiss 5–8.) As this case was premised on identical facts and circumstances as Cummings’s two prior frivolous cases, the Court determined that “an award of attorney’s fees is justified to compensate the Defendants and should deter Cummings,” and invited Defendants to file a motion for fees and costs. (*Id.* at 9–10.) Pursuant to the Court’s Order, Defendants now request \$19,980 in attorneys’ fees and \$554.65 in costs, for a total of \$20,534.65. (Mot.) Defendants’ Motion is unopposed.

III. LEGAL STANDARD

The Copyright Act grants courts discretion to award reasonable attorneys’ fees and costs to the prevailing party in a copyright case. 17 U.S.C. § 505. District courts consider the following factors: “(1) the degree of success obtained; (2) frivolousness; (3) motivation; (4) the objective unreasonableness of the losing party’s factual and legal arguments; and (5) the need, in particular circumstances, to advance considerations of compensation and deterrence.” *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 614 (9th Cir. 2010). These factors “are not exclusive and need not

all be met.” *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 558 (9th Cir. 1996). Once the court determines a party is a “prevailing party” under § 505, it must consider whether the requested fees and costs are reasonable. 17 U.S.C. § 505; *see Accredability, LLC v. Accreditsort*, No. CV 18-5969-DMG (FFMx), 2019 WL 4137409, at *4 (C.D. Cal. May 10, 2019).

IV. DISCUSSION

The Court previously determined that Defendants are the prevailing party and entitled to attorneys’ fees based on the frivolous nature of this case and to deter Cummings from filing further meritless lawsuits. (Order Granting Mots. to Dismiss 8–9.) Accordingly, the Court focuses its inquiry on whether Defendants’ request for \$20,534.65 (\$19,980 in attorneys’ fees and \$554.65 in costs) is reasonable.

A. Reasonable Attorneys’ Fees and Costs

To calculate the fee award, the Court determines “the number of hours reasonably expended on the litigation” and multiplies that number “by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Defendants seek attorneys’ fees based on the following rates and reported hours:

Attorney	Rate	Hours	Amount
Michael R. Kreiner	\$600	27.8	\$16,680
Mark D. Litvack	\$600	5.5	\$3,300
TOTAL		33.3	\$19,980

(See Declaration of Mark D. Litvack (“Litvack Decl.”), Ex. A, ECF No. 71-2.)

1. Reasonable Hourly Rate

Defendants request \$600 per hour for their attorneys Mark D. Litvack and Michael R. Kreiner. (Mot. 1–3.) They claim \$600 per hour is a reasonable blended rate that “reflects a discount of 49% on the standard rate of [Litvack], and 11.6% on the standard rate of [Kreiner].” (Mot. 2 (citing Litvack Decl. ¶ 6).)

1 To determine whether hourly rates are reasonable, courts consider “the rates
2 prevailing in that district for similar services by lawyers of reasonably comparable
3 skill, experience, and reputation.” *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-
4 07098-AB (SHx), 2015 WL 1746484, at *5 (C.D. Cal. Mar. 24, 2015) (quoting *Prison*
5 *Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010)), *aff’d*, 847 F.3d
6 657 (9th Cir. 2017). “Unless counsel is working outside of his or her normal area of
7 practice, evidence that a billing rate was the usual rate the attorney charges for his or
8 her services is evidence that the rate is comparable to the market rate.” *Id.* (internal
9 quotation marks omitted); see *Kourtis v. Cameron*, 358 F. App’x 863, 868 (9th Cir.
10 2009) (“The district court’s calculation of an attorney’s fee award . . . based on the
11 actual rates charged by [prevailing party’s] attorneys was reasonable under 17 U.S.C.
12 § 505.”). Typically, “[i]n Los Angeles, partners have an hourly rate ranging from
13 \$450 to \$955, and associates from \$382 to \$721.” *Vasquez v. Packaging Corp. of*
14 *Am.*, No. CV 19-1935-PSG (PLAx), 2020 WL 6785650, at *10 (C.D. Cal. Aug. 17,
15 2020) (citing *2018 Real Rate Report: The Industry’s Leading Analysis of Law Firm*
16 *Rates, Trends, and Practices*).

17 Litvack earned his law degree from Northwestern University School of Law
18 and has over thirty-seven years of legal experience. (Litvack Decl. ¶ 3.) Litvack is a
19 partner in the Los Angeles office of the law firm Pillsbury Winthrop Shaw Pittman
20 LLP (“Pillsbury”) and focuses his practice on civil litigation. (*Id.*) Litvack’s standard
21 billing rate is \$1,185 per hour. (*Id.* ¶ 6.) Kreiner earned his law degree from Loyola
22 Law School and has four years of legal experience. (*See id.* ¶ 4.) Kreiner is an
23 associate in the Los Angeles office of Pillsbury and also focuses his practice on civil
24 litigation. (*Id.*) Kreiner’s standard billing rate is \$670 per hour. (*Id.* ¶ 6.)

25 In the Motion, Defendants explain that they agreed upon a blended rate of \$600
26 per hour for all attorney work performed in this matter. (Mot. 2.) Relevantly,
27 Defendants’ requested rate of \$600 per hour for Litvack and Kreiner’s work is
28 significantly lower than both of their usual rates, (Litvack Decl. ¶ 6), and well within

1 the range of what other partners and associates that service corporate clients charge in
2 this district, *see Vasquez*, 2020 WL 6785650. Accordingly, the Court finds that
3 Defendants have carried their burden to demonstrate that their requested rates are
4 aligned with those prevailing in the community for civil litigators in Southern
5 California. For the foregoing reasons, the Court concludes that the blended rate of
6 \$600 per hour for Litvack and Kreiner is reasonable, and Defendants shall be entitled
7 to recover for their attorneys' time at that rate.

8 2. *Reasonable Number of Hours Expended*

9 Defendants seek to recover for the 33.3 hours their attorneys expended
10 litigating this matter (e.g., moving to dismiss this action on *res judicata* grounds and
11 moving for attorneys' fees). (Mot. 2.)

12 "The fee applicant bears the burden of documenting the appropriate hours
13 expended in the litigation and must submit evidence in support of those hours
14 worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). "By and large,
15 the court should defer to the winning lawyer's professional judgment as to how much
16 time he was required to spend on the case; after all, he won, and might not have, had
17 he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115
18 (9th Cir. 2008).

19 In support of the Motion, Defendants submit a table outlining the tasks and
20 hours their attorneys billed for work on this case. (Litvack Decl., Ex. A.) After
21 reviewing the evidence, the Court finds that Defendants have adequately supported
22 their requested hours. Kreiner, the associate on this matter, performed the majority of
23 the work and seeks fees for the 27.8 hours he expended on tasks that appear necessary
24 to quickly resolve this duplicative case. (*See id.*) Litvack, the supervising partner,
25 expended only 6.6 hours finalizing motions, discussing issues with clients, and
26 preparing for hearings. (*See id.*) Accordingly, the Court finds that Defendants'
27 attorneys may recover for the 33.3 hours they reasonably expended litigating this
28

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