

**FILED**

APR 17 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**SCOTTRADE, INC.,**

Plaintiff,

**and**

**KRISTINE DAVENPORT,**

Defendant-cross-defendant-  
Appellant,

v.

**PATRICIA FALLER; ARNOLD  
FALLER; SHANE M. LEFEBER,**

Defendants-cross-claimants-  
Appellees.

No. 15-35355

D.C. No. 1:11-cv-00003-SPW

**MEMORANDUM\***

Appeal from the United States District Court  
for the District of Montana  
Susan P. Watters, District Judge, Presiding

Submitted April 6, 2017\*\*  
Seattle, Washington

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: **KOZINSKI and W. FLETCHER**, Circuit Judges, **and BLOCK**,<sup>\*\*\*</sup>  
District Judge.

1. We previously remanded this case to the district court for it to determine only the amount of attorneys' fees and costs to be awarded to LeFeber and the Fallers. Under the rule of mandate, the district court lacked authority to consider Davenport's other arguments. See United States v. Thrasher, 483 F.3d 977, 981–82 (9th Cir. 2007). Davenport repeats these other arguments to us, but we have already decided these issues. Our prior rulings constitute the law of the case. Id.; Gould v. Mut. Life Ins. Co. of N.Y., 790 F.2d 769, 774–75 (9th Cir. 1986). We consider only Davenport's arguments about the reasonableness of the fees and costs awards.

“The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” Gates v. Deukmejian, 987 F.2d 1392, 1397–98 (9th Cir. 1993) (citations omitted). The parties seeking fees and costs supported their requests with experts, affidavits and detailed timekeeping reports. Davenport

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<sup>\*\*\*</sup> The Honorable Frederic Block, United States Senior District Judge for the Eastern District of New York, sitting by designation.

failed to show the rates were unreasonable, the tasks performed were duplicative or excessive, or the district court otherwise abused its discretion. Therefore, we affirm the district court's fees and costs awards.

2. Davenport's appeal is not frivolous because she challenged the reasonableness of the attorneys' fees awards. Therefore, LeFeber's Federal Rule of Appellate Procedure 38 motion (dkt. no. 13) is **DENIED**.

**AFFIRMED.**