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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 Defendants<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup> 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.

1 **II. BACKGROUND**

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

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

21 **III. LEGAL STANDARD**

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

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

#### 6 IV. DISCUSSION

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

##### 12 A. Reasonable Attorneys’ Fees and Costs

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

17 Attorney	18 Rate	19 Hours	20 Amount
21 Michael R. Kreiner	\$600	27.8	\$16,680
22 Mark D. Litvack	\$600	5.5	\$3,300
23 <b>TOTAL</b>		<b>33.3</b>	<b>\$19,980</b>

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

##### 25 1. Reasonable Hourly Rate

26 Defendants request \$600 per hour for their attorneys Mark D. Litvack and  
27 Michael R. Kreiner. (Mot. 1–3.) They claim \$600 per hour is a reasonable blended  
28 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

1 action. *See Moreno*, 534 F.3d at 1115 (explaining that the district court should defer  
2 to the winning lawyers’ professional judgment).

3 **B. Costs**

4 Defendants request \$554.65 in costs and provide a table summarizing those  
5 costs as follows:

6 Costs	7 Amount
8 Filing Fee for Removal	\$400.00
9 FedEx Expenses	\$25.65
10 Online Research Expenses	\$129.00
11 <b>TOTAL</b>	<b>\$554.65</b>

12 (Mot. 3 (citing Litvack Decl., Ex. A).)

13 The Copyright Act authorizes the court to award “full costs” to a party in  
14 copyright litigation. *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873 (2019).  
15 “That term means the costs specified in the general costs statute, [28 U.S.C. §§ 1821,  
16 1920].” *Id.*

17 Here, the Court finds that Defendants’ request for \$400 for filing fees is  
18 appropriate. *See* 28 U.S.C. § 1920. However, Defendants rely on an outdated case to  
19 support their request for FedEx and online research expenses. (*See* Mot. 3 (citing  
20 *Urban Textile Inc. v. Specialty Retailers, Inc.*, No. 2:15-cv-03456-ODW, 2017 WL  
21 5983761, at \*5 (June 15, 2017) (granting costs for online legal research expenses,  
22 messenger, courier, and overnight mail expenses). After *Urban Textile* was decided  
23 by this Court, the Supreme Court clarified that even in a Copyright Act case,  
24 recoverable costs are limited to only those specified in the general costs statute. *See*  
25 *Rimini Street*, 139 S. Ct. at 881 (citing 28 U.S.C. § 1920). In light of *Rimini Street’s*  
26 holding and Defendants’ failure to cite to any persuasive authority, Defendants cannot  
27 recover the \$154.65 they seek for FedEx and online research costs. Thus, in total,  
28 Defendants may recover costs in the amount of \$400.

1 **V. CONCLUSION**

2 For the reasons discussed above, the **GRANTS** Defendants' Motion (ECF  
3 No. 71.) The Court awards Defendants attorneys' fees in the amount of \$19,980 and  
4 litigation costs in the amount of \$400, for a total award of \$20,380.

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6 **IT IS SO ORDERED.**

7  
8 April 20, 2021

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12 **OTIS D. WRIGHT, II**  
13 **UNITED STATES DISTRICT JUDGE**