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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MICHAEL MOI,

9 Plaintiff,

10 v.

11 CHIHULY STUDIO, INC., *et al.*,

12 Defendants.

No. C17-0853RSL

ORDER GRANTING DEFENDANTS'
MOTION FOR ATTORNEY'S FEES

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14 This matter comes before the Court on “Chihuly’s Motion for Attorneys’ Fees.” Dkt.
15 # 173. Plaintiff initiated this litigation under Washington’s procedural rules when he served the
16 complaint on defendants in May 2017.¹ The complaint sought disgorgement of revenues
17 generated from unspecified artistic works which plaintiff claimed to have created over a fifteen
18 year period. The complaint put at issue Dale Chihuly’s “reputation as a prolific artist whose
19 ambition, brilliance, and talent allowed him to personally create” - and sell - art (Dkt. # 10 at
20 1), essentially accusing Mr. Chihuly and his studio of selling bogus “Chihuly” art and
21 defrauding their customers. In correspondence preceding service of the complaint, plaintiff
22 demanded \$21 million to settle his claims, threatened to publicly disclose personal and private
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25 ¹ Pursuant to CR 3 of the Washington Superior Court Civil Rules, a civil action is commenced by
26 service of the summons and complaint on defendant or by filing the complaint with the court. The
period for removing an action to federal court generally begins to run from defendant’s receipt of the
initial pleading. 28 U.S.C. § 1446(b).

1 information he possessed regarding Mr. Chihuly, and suggested that settlement was the only
2 way to avoid publicity that would cause immediate harm to Mr. Chihuly's personal and
3 business interests. Plaintiff represented that he had a videotape, documents, and thirty-five
4 witnesses who would support his claim that he authored the unspecified artistic works.

5 Defendants, not surprisingly, took the threat of this litigation seriously. They attempted to
6 obtain and review plaintiff's evidence, to locate and interview plaintiff's witnesses, and to
7 otherwise gather information regarding the basis for plaintiff's claim of authorship and his
8 demand for dominion over the paintings. They also took steps to prevent plaintiff from utilizing
9 and publicizing privileged and/or confidential materials in this litigation. Despite their efforts at
10 prevention, plaintiff disclosed the materials in a number of publicly-available filings in state
11 and federal court. Defendants then had to request that the documents be sealed or stricken
12 (these efforts were largely successful since the materials were generally irrelevant to any issue
13 before the court).

14 Discovery in this matter lasted approximately nine months, and defendants filed a timely
15 motion for summary judgment. Dkt. # 75 and # 90. Plaintiff's copyright claims were ultimately
16 dismissed because plaintiff failed to raise a genuine issue of fact regarding his claim to be a co-
17 author of 285 works he identified during discovery, any effort to separately copyright his
18 contributions to the 285 works would fail because plaintiff could not identify what original,
19 artistic contribution he made to any given work, and any copyright claim related to works
20 produced before February 21, 2014, was barred by the statute of limitations. Dkt. # 169.

21 Defendants now seek an award of \$1,621,817.48 in attorney's fees incurred by outside counsel
22 in connection with plaintiff's copyright claim. The requested fee award does not include hours
23 defendants' in-house employees spent investigating and defending this matter or hours incurred
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1 in connection with plaintiff's promissory estoppel claim or the state court defamation suit.²

2 **A. Award of Fees Under the Copyright Act**

3 In determining whether an award of fees is appropriate under the Copyright Act, 17
4 U.S.C. § 505, the Court considers (1) the degree of success obtained, (2) whether the claims
5 were frivolous, motivated by bad faith, and/or objectively unreasonable, (3) the need for
6 compensation and deterrence, and (4) whether the chilling effect of a fee award may be too
7 great or impose an inequitable burden on an impecunious plaintiff. See Love v. Associated
8 Newspapers, Ltd., 611 F.3d 601-614-15 (9th Cir. 2010); Perfect 10, Inc. v. Giganews, Inc., 847
9 F.3d 657, 675 (9th Cir. 2017). There is no precise rule or formula for weighing these
10 considerations, and not all of the factors need to be considered or met. YS Built v. Huang, C15-
11 1411BJR, 2017 WL 1093207, at *1 (W.D. Wash. Mar. 23, 2017). The Court must, however,
12 make a particularized assessment of the circumstances of this case (meaning that it cannot
13 award or deny fees as a matter of course) and it must not treat prevailing plaintiffs and
14 defendants differently. Kirtsaeng v. John Wiley & Sons, Inc., __ U.S. __, 136 S. Ct. 1979, 1985
15 (2016) (quoting Fogerty v. Fantasy, Inc., 510 U.S. 517, 527, 533 (1994)). A successful defense
16 of a copyright may further the Copyright Act's primary purpose of encouraging the production
17 of original literary, artistic, and musical expressions for the public good just as much as a
18 successful challenge by a putative author. See Fogerty, 510 U.S. at 524 and 527.

19 The Court finds that an award of fees is appropriate in this matter. Defendants were not
20 only successful in defending against plaintiff's copyright claim, the claim was revealed as
21 frivolous and objectively unreasonable once the paucity of supporting evidence became
22 apparent through discovery. The course of this litigation - including threats to publicize
23 personal, potentially damaging information, repeated submissions of irrelevant materials
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25 ² Plaintiff sued defendants in state court alleging that they made defamatory statements about
26 him in the press after he filed this lawsuit.

1 despite defendants' claims of confidentiality, and the inability to produce any supporting
2 evidence - suggests that the copyright claim was filed and pursued in bad faith in the hopes of
3 forcing defendants to pay a significant monetary sum in order to avoid embarrassment or
4 damage to their reputations and business interests. Given that plaintiff's claim was patterned on
5 claims previously made by other artists and could be copied by other Chihuly assistants, there
6 is a need to deter the type of unsupported and fatally-flawed copyright claims asserted by
7 plaintiff in this litigation. For the same reason, the Court finds that any chilling effect of an
8 award is not "too great" given the meritlessness of the copyright claim at issue and the
9 purposes of the Copyright Act. The only two considerations that may not favor an award of
10 fees are defendants' need for compensation and plaintiff's indigency. Although neither party
11 has provided evidence regarding their financial condition, the Court assumes for purposes of
12 this motion that defendants can more easily bear the costs of litigation than can plaintiff.
13 Nevertheless, the weight of the relevant factors in the circumstances of this case strongly favors
14 an award of fees.

15 **B. Reasonableness of Fee Request**

16 Defendants have requested an award of over \$1.6 million in fees. They justify the sizeable
17 request by highlighting the nature of plaintiff's claims and the threat they posed to defendants'
18 personal and business interests, the extraordinary motions practice required to prevent the
19 improper use of privileged and/or confidential information (or to mitigate the damage caused
20 by its publication), the breadth of plaintiff's claims, covering fifteen years and an unknown
21 number of works, and the number of leads defendants had to track down to ensure that there
22 was no genuine dispute regarding any material fact. Plaintiff does not challenge the
23 reasonableness of defense counsel's hourly rates.

24 With regards to the number of hours expended, plaintiff chose not to review the time
25 records to identify tasks or entries that may have been unnecessary, duplicative, or otherwise
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1 unreasonable. Instead, plaintiff reargued the merits of the summary judgment ruling and,
2 contrarily, to argue that his claims should have been dismissed at the very beginning of the
3 case. The first argument is procedurally improper: plaintiff did not file a timely motion for
4 reconsideration of the summary judgment order and cannot do so in response to defendants' fee
5 application.


6 The argument that defendants should have filed a motion to dismiss shortly after this
7 action was filed in May 2017, thereby avoiding the majority of the fees incurred, lacks merit.
8 The timekeeper records show that, even before the complaint was filed, defendants were
9 evaluating whether a motion to dismiss would be successful. At the time, plaintiff was asserting
10 that, in addition to his own testimony, he had a "multitude of witnesses," a videotape, and
11 documents that would prove that he authored the works at issue. Dkt. # 174-1 at 88-89. He also
12 alleged that some of the works he created with or for defendants were generated within the
13 applicable limitations period. It was not, therefore, unreasonable to conclude that a motion to
14 dismiss was not likely to be successful.

15 Plaintiff's inability to prove his copyright claim did not become apparent until December
16 2018, at the earliest, when plaintiff responded to discovery and revealed his inability or
17 unwillingness to specify what original, artistic contributions he made to any of the works at
18 issue. Discovery closed less than a month later. Despite the lack of evidence that could support
19 the claim of authorship under governing law, the parties were unable to settle their dispute, and
20 defendants filed a motion for summary judgment on the date specified in the case management
21 order. The argument that plaintiff's claims would have been dismissed had defendants filed a
22 motion to dismiss at the outset of the case is based on a mischaracterization of the state of the
23 record prior to December 2018. The Court finds that there was no undue or unreasonable delay
24 in attempting to bring this matter to an end. Given the threat posed by plaintiff's allegations,
25 the discovery that was necessary to disprove the copyright claim, the pretrial motions and
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1 preparations made before summary judgment was entered, and the absence of any other
2 objection from plaintiff, the Court finds that the tasks and hours reflected in the timekeeper
3 records were reasonable.
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5 For all of the foregoing reasons, defendants' motion for an award of attorney's fees is
6 GRANTED. The Court awards defendants \$1,621,817.48 in attorney's fees pursuant to 17
7 U.S.C. § 505. The Clerk of Court recently awarded defendants costs in the amount of
8 \$24,842.20. Dkt. # 200. The Clerk is therefore directed to enter judgment in favor of
9 defendants and against plaintiff in the amount of \$1,646,659.68.
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11 Dated this 14th day of November, 2019.

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14 Robert S. Lasnik
15 United States District Judge
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