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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 J & J Sports Productions, Inc.,

10 Plaintiff,

11 v.

12 Arturo Rubio, an individual; J.R.R.
13 Restaurant, LLC, d/b/a Filiberto's Mexican
14 Food,

15 Defendants.

No. CV-17-1026-PHX-DGC
CV-17-1321-PHX-DGC
(Consolidated)

ORDER

16 The Court granted summary judgment against Defendants Arturo Rubio and J.R.R.
17 Restaurant, LLC for violations of 47 U.S.C. § 605 and awarded \$6,700 in damages to
18 Plaintiff J & J Productions, Inc. Doc. 41. Plaintiff has filed a motion for attorneys' fees
19 and non-taxable expenses. Doc. 42. The motion is fully briefed, and oral argument has
20 not been requested. Docs. 46, 47. The Court will grant the motion in part.

21 **I. Legal Standard.**

22 A party requesting an award of attorneys' fees must show that it is (a) eligible for
23 an award, (b) entitled to an award, and (c) requesting a reasonable amount. *See* LRCiv
24 54.2(c). Section 605 provides that the Court "shall direct the recovery of full costs,
25 including reasonable attorneys' fees to an aggrieved party who prevails" under the statute.
26 47 U.S.C. § 605.

27 To determine the reasonableness of requested attorneys' fees, federal courts
28 generally use the "lodestar" method. *See Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989);

1 *United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 755 (9th Cir. 2011). The
2 Court must determine the initial lodestar figure by taking a reasonable hourly rate and
3 multiplying it by the number of hours reasonably expended on the litigation. *Blanchard*,
4 489 U.S. at 94 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The Court then
5 “determines whether to modify the lodestar figure, upward or downward, based on factors
6 not subsumed in the lodestar figure.” *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir.
7 2016). “These factors are known as the *Kerr* factors.” *Stetson v. Grissom*, 821 F.3d 1157,
8 1166-67 (9th Cir. 2016) (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.
9 1975)).

10 **II. Discussion.**

11 Plaintiff was represented by the Law Offices of Thomas P. Riley, P.C. in this matter
12 and requests \$12,019 in attorneys’ fees and \$1,250 in investigative costs. This amount
13 represents \$3,090 for 6.18 hours of work by Mr. Riley at \$500 per hour; \$6,300 for 21
14 hours of work by a research attorney at \$300 per hour; \$2,629 for 26.29 hours of work by
15 an administrative assistant at \$100 per hour; and \$1,250 for two investigative expenses.
16 Docs. 42 at 1,3; 42-2 at 4, 17.

17 **A. Attorneys’ Fees.**

18 Defendants assert that Plaintiff’s counsel has not provided “convincing
19 documentation to support its assertion that the rates charged are reasonable specifically in
20 this jurisdiction.” Doc. 46 at 7. Reasonable hourly rates are determined “by the rate
21 prevailing in the community for similar work performed by attorneys of comparable skill,
22 experience, and reputation.” *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895,
23 908 (9th Cir. 1995) (internal quotation marks omitted). Plaintiff’s counsel has
24 approximately 25 years of experience specializing in commercial broadcast, licensing
25 rights, and satellite agreements, and his research attorney has practiced law for over 24
26 years. Doc. 42-2 at 3. Mr. Riley’s declaration states that he and his research attorney are
27 among only a handful of attorneys who specialize in civil prosecution of commercial signal
28 piracy claims on behalf of promoters and closed-circuit distributors of major sporting

1 events. *Id.* Plaintiff also cites several cases from this district showing that his and his
2 employees' billing rates are within the range of reasonable rates in Phoenix. *See* Doc. 42-
3 1 at 5-6.

4 Plaintiff has met its initial burden of showing the charged rates are reasonable, and
5 Defendants offer no contrary evidence. The Court will not reduce counsel's hourly rates
6 for this reason. *See Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110-11 (9th Cir. 2014); *see*,
7 *e.g.*, *Massage Envy Franchising LLC v. Doc Marketing LLC*, No. CV-15-02129-PHX-
8 DLR, 2016 WL 5464594, at *2 (D. Ariz. Sept. 29, 2016) (partners' hourly billing rates of
9 \$495, \$589, and \$639.60 reasonable for seeking injunctive relief and compliance with
10 settlement agreement); *Alliance Labs, LLC v. Stratus Pharms., Inc.*, No. 2:12-cv-00927
11 JWS, 2013 WL 3298162, at *3 (D. Ariz. July 1, 2013) (finding \$520 hourly median partner
12 rate and \$330 hourly median associate rate reasonable for work on motion to compel).

13 Defendants challenge the total amount of Plaintiff's requested fees for lack of
14 contemporaneous billing records. Doc. 46 at 5. Generally, fees are not compensable if the
15 attorneys failed to maintain time records contemporaneously. *See Ariz. Dream Act*
16 *Coalition v. Brewer*, No. CV 12-02546-PHX-DGC, 2018 WL 6448395, at *7 (D. Ariz.
17 Dec. 10, 2018) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 438 n.13 (1983) (affirming
18 thirty percent reduction for lack of contemporaneous time records)); *New York State Assoc.*
19 *for Retarded Children v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983). Lawyers must keep
20 records of work performed and time expended. It is not enough to recreate the records
21 from documents, calendars, and other extrinsic evidence. *Kottwitz v. Colvin*, 114 F. Supp.
22 3d 145, 150 (S.D.N.Y. 2015).

23 Plaintiff's motion and reply concede that the billing records were not created
24 contemporaneously with work performed. Docs. 42-1 at 6; 47 at 4. Mr. Riley's declaration
25 states that his firm's "[b]illable hours for legal services rendered [were] reconstructed by
26 way of a thorough review of the files themselves. [And that having] handled thousands of
27 commercial signal piracy files over the last decade and a half, [the firm is] most capable of
28 calculating billable hours for legal services rendered." Doc. 42-2 at 6.

1 Because Plaintiff's time records were improperly created after the work was
2 performed, it is impossible for the Court to determine the accuracy of the entries. The
3 Court will not credit after-the-fact records and will accordingly reduce Plaintiff's requested
4 fees by 50%. *See Hensley*, 461 U.S. at 438 n.13; *Gates v. Deukmejian*, 987 F.2d 1392,
5 1399 (9th Cir. 1992); *Ariz. Dream Act Coalition*, 2018 WL 6448395, at *8.

6 Defendants assert several other bases for reducing the requested amount: Plaintiff's
7 fees are disproportionate to the \$6,700 of damages awarded; Plaintiff failed to engage in
8 good faith settlement discussions; the requested amount incentivizes defendants in § 605
9 cases to default; and Plaintiff has filed thousands of similar cases. Doc. 46 at 2-10.
10 Defendants also argue the Court should award only about 5% of the requested fees,
11 proportionate to the awarded damages when compared to those sought. *Id.* at 3. After
12 considering Defendants' arguments and Plaintiff's time entries, the Court finds the
13 requested fees otherwise reasonable and declines to further reduce the award. The Court
14 cannot accept Defendants' arguments that the number of cases Plaintiff pursues to protect
15 its statutory interests, nor Plaintiff's counsel's advocacy and refusal to settle, justify a 95%
16 reduction. Defendants cite no authority for such a proposition.

17 **B. Investigator Fees.**

18 Defendants challenge Plaintiff's request for \$1,250 for two charges of \$625 spent
19 on its investigator. Docs. 42 at 3; 42-2 at 22-23; 46 at 7. Investigative costs are not
20 attorneys' fees, and Plaintiff does not contend that it obtained prior court approval to tax
21 its investigator fees or expenses pursuant to Local Rule 54.1(e)(10). *See J & J Sports*
22 *Prods., Inc. v. Mosqueda*, No. CV-12-00523-PHX-DGC, 2013 WL 5336848 (D. Ariz.
23 Sept. 24, 2013). Rather, Plaintiff appears to seek these fees under § 605. *See* Doc. 42 at
24 2-3. The only authority from this district that Plaintiff cites is a one-page order awarding
25 Plaintiff's counsel all requested attorneys' fees and costs without explanation, including
26 investigative expenses. *See J & J Sports Prods., Inc. v. Jimenez*, 16-cv-01214-JJT at
27 Doc. 23.

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1 Courts are split on whether investigative fees are recoverable under § 605, which
2 provides that the court “shall direct the recovery of full costs, including awarding
3 reasonable attorneys’ fees to an aggrieved party who prevails.” See *J&J Sports Prods.,*
4 *Inc. v. Gonzalez*, No. 1:17-cv-00678-CL, 2018 WL 1515097, at *3 (D. Or. Feb. 14, 2018)
5 (citing cases); 47 U.S.C. § 605(e)(3)(B)(iii). In *Kingvision Pay-Per-View Ltd. v. Autar*,
6 426 F. Supp. 2d 59, 67 (E.D.N.Y. 2006), the court held that recoverable “full costs” in
7 § 605(e)(3)(B)(iii) exceeded the types of “taxable costs” listed elsewhere in the statute
8 because full costs include attorneys’ fees, not a listed taxable cost. The court also reasoned
9 that the legislative history of § 605 supported an aggrieved party’s ability to recover
10 investigative fees. 426 F. Supp. At 67.

11 The *Autar* court held that to “recover investigative costs a plaintiff must make a
12 showing similar to that required to recover attorneys’ fees . . . [documenting] (1) the
13 amount of time necessary for the investigation; (2) how much the investigators charged per
14 hour; [and] (3) why the investigators are qualified to demand the requested rate.” *Id.*
15 (internal quotations and citation omitted); see also *Kingvision Pay-Per-View Ltd. v.*
16 *Lalaleo*, 429 F. Supp. 2d 506, 511 (E.D.N.Y. 2006) (same).

17 Some courts have followed the *Autar* approach. See *Joe Hand Promotions, Inc. v.*
18 *Upstate Recreation*, No. 6:13-2467-TMC, 2015 WL 685461, at *9 (D. S.C. Feb. 18, 2015)
19 (not awarding fees where plaintiff provided no detail about \$450 investigative fee). Others
20 have awarded investigative costs without requiring this showing. See *Gonzalez*, 2018 WL
21 1515097, at *3; *J&J Sports Prods., Inc. v. Paz-Padilla*, No. 3:12-cv-02228-GPC-WMC,
22 2013 WL 6002872, at *1 (S.D. Cal. Nov. 12, 2013); cf. *Joe Hand Promotions, Inc. v.*
23 *Pollard*, No. CIV S-09-03155 MCE DAD, 2010 WL 2902343 at *5 (E.D. Cal. July 22,
24 2010) (without discussion, declining to award investigator fees because the amounts were
25 not adequately documented). And still others have found investigative fees unrecoverable.
26 See *J&J Sports Prods., Inc. v. Brummell*, No. 15cv2601-MMA (MDD), 2016 WL 4595140,
27 at *2 (S.D. Cal. Sept. 2, 2016) (“district courts in California continue to conclude that a
28 plaintiff in [a § 605 case] should not recover investigative fees, particularly when the

1 request for fees is insufficiently supported”); *Garden City Boxing Club, Inc. v. Conway*,
2 No. 06 Civ. 3145(BSJ)(HBP), 2009 WL 125434, at *5 (S.D.N.Y. Jan. 20, 2009) (finding
3 statute unclear about whether investigator fees were recoverable and noting insufficient
4 evidence of the reasonableness of the fees, citing *Autar*).

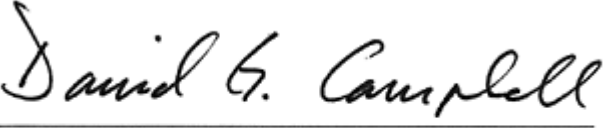
5 The Court is persuaded by the reasoning in *Autar*, and its requirement that a § 605
6 plaintiff cite evidence of the basis for and reasonableness of investigative fees sought,
7 including time spent on the investigation and the investigator’s hourly rate and
8 qualifications justifying the charged rate. *See Autar*, 426 F. Supp. 2d at 67. Plaintiff’s
9 motion contains only two invoices that appear to be redacted. One, dated May 23, 2016,
10 includes an itemized charge for \$625, but the total reads \$1,275. Doc. 42-2 at 22. The
11 other, dated June 16, 2016, has only one itemized charge for \$625. Doc. 42-2 at 23. Neither
12 invoice includes information about hours spent on the investigation or the investigator’s
13 hourly rate. Nor does Plaintiff’s motion otherwise explain the reasonableness of these
14 requested fees. Docs. 42, 47. Given insufficient evidence regarding the basis for and
15 reasonableness of these costs, the Court will not award the investigative charges.

16 **C. Taxable Costs.**

17 Plaintiff’s Bill of Costs seeks \$800 in filing fees, \$351 in service of summons fees,
18 and \$70 in pro hac vice fees. Doc. 43. Fees for admission pro hac vice are not taxable.
19 *See* LRCiv 54.1(e). The Court will award \$1,151 in taxable costs.

20 **IT IS ORDERED** that Plaintiff’s motion (Doc. 42) is **granted in part** as set forth
21 above. Defendants are ordered to pay \$6,009.50 in attorneys’ fees and \$1,151 in taxable
22 costs to Plaintiff.

23 Dated this 9th day of April, 2019.

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David G. Campbell
28 Senior United States District Judge