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United States District Court
Central District of California

JOHN BUSKER,

Plaintiff,

v.

WABTEC CORPORATION; MICHAEL
MARTIN; and DOES 1 through 100,
Defendants.

Case No. 2:15-cv-08194-ODW-AFM

**ORDER AWARDING ATTORNEYS'
FEES**

I. INTRODUCTION

After prevailing on their summary judgment motion, Defendants moved for an award of attorneys' fees. (ECF No. 91.) Finding that Plaintiff John Busker advanced a frivolous argument in his Opposition to Defendants' motion for summary judgment, the Court concluded that Defendants were entitled to recover their reasonable fees associated solely with responding to that frivolous argument in their Reply. (ECF No. 102.) The Court then allowed Defendants to submit evidence of those fees and Busker to submit an Opposition to Defendants' calculation. (*Id.*) Defendants have now offered evidence of the fees incurred in replying to Busker's frivolous argument, and Busker has opposed Defendants' calculation. (ECF Nos. 103; 104.) For the reasons discussed below, the Court **AWARDS** some, but not all, of the fees Defendants request.

IV. DISCUSSION

The Court determines that the balance of the *Kerr* factors supports an award substantially smaller than either amount that Defendants request. Busker is correct in pointing out the absurdity of Defendants' implicit suggestion that drafting the Reply brief for one motion constituted a quarter of the attorneys' fees incurred in the entire litigation, spanning over a year and resulting in over 100 docket entries. (*See* Opp'n 1; *see generally* Docket.) It appears that having been denied the majority of the attorneys' fees they originally sought, Defendants now attempt to increase their chances of still obtaining a large award by preposterously padding their billing statements for the Reply.

The Court considers the first *Kerr* factor, time and labor required, in assessing Defendants' request. Defendants would have this Court believe that the time and labor required in drafting a Reply brief includes spending almost 200 hours preparing, researching, and drafting, with six separate attorneys contributing to the twelve page document. (*See* Ex. A, ECF No. 103-2.) Finding these figures ludicrous as a matter of common sense, the Court turns to the twelfth *Kerr* factor, awards in similar cases, to consider the range of awards given for attorneys' fees incurred in drafting a Reply. Courts in this district have approved dramatically smaller awards for work on a Reply brief than what Defendants ask for here. *See, e.g., Magck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1194 (S.D. Cal. 2003) (finding eight hours a reasonable amount of billable time spent on a Reply brief); *Fein v. Kesterson*, No. CV 10-2048 ABC (SSx), 2010 WL 4902281, at *4 (C.D. Cal. Nov. 23, 2010) (approving an award for six hours of work spent drafting a Reply brief); *Nance v. May Trucking Co.*, No. 3:12-cv-01655-HZ, 2014 WL 6633111, at *6 (D. Or. Nov. 21, 2014) (awarding 14.9 hours of attorneys' fees for work on a Reply brief, with 12.9 of those hours subject to a 25% reduction due to vagueness in the billing descriptions); *Uhl v. Colvin*, No. 1:13-cv-01303-SMS, 2016 WL 3361800, at *6 (E.D. Cal. June 16, 2016) (determining that four hours spent drafting a Reply brief, resulting in fees of \$761.12, was reasonable);

1 *Winters v. Jordan*, No. 2:09-cv-00522 JAM KJN PS, 2011 WL 1549391, at *8 (E.D.
2 Cal. Apr. 21, 2011) (deciding that \$675 for work on a Reply brief constituted a
3 reasonable award).

4 Based on this range of cases, the Court conservatively determines that fifteen
5 hours' worth of work on Defendants' Reply brief is reasonable, with ten hours billed
6 at the middle-range rate of \$495 reflected on the list of billing entries and five hours at
7 \$600, lead counsel Patrick Madden's rate. This award is slightly larger than that
8 granted in any case cited in this Order, the reason being that this Reply was in support
9 of a case-dispositive motion for summary judgment. The Court's calculation results
10 in a total of \$7,950 incurred in working on the Reply brief. The Court does not
11 disagree with the reasonableness of Defendants' listed billing rates, nor the estimation
12 that 20% of the work on the Reply can be attributed to addressing the unpled breach of
13 contract issue. As such, the Court awards 20% of its recalculation of fees incurred in
14 drafting the Reply brief for a total of \$1,590.00.

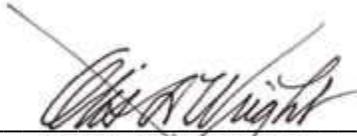
15 The Court considers but is not swayed by the other *Kerr* factors; for instance,
16 the skill and experience of the attorneys appears to reasonably support their billing
17 rates in this case, and the novelty/difficulty of the questions asked is not such that a
18 different amount is warranted.

19 V. CONCLUSION

20 For the reasons discussed above, the Court **AWARDS** Defendants attorneys'
21 fees in the amount of **\$1,590.00**.

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23 **IT IS SO ORDERED.**

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25 April 5, 2017

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE