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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID LLOYD MARCUS,)	17-cv-00148-RSWL-AJWx
)	
Plaintiff,)	
)	ORDER Re: DEFENDANTS'
v.)	MOTION FOR ATTORNEYS'
)	FEES [45]
ABC SIGNATURE STUDIOS,)	
INC.; KHALABO INK SOCIETY;)	
KENYA BARRIS; DOES 1-10,)	
)	
Defendants.)	
)	

Plaintiff David Lloyd Marcus ("Plaintiff") brought the instant Action against Defendants ABC Signature Studios, Inc. ("ABC"); Khalabo Ink Society ("Khalabo"); and Kenya Barris ("Barris") (collectively, "Defendants") alleging copyright infringement and unfair competition. Defendants moved to dismiss Plaintiff's Complaint, and the Court granted Defendants' Motion to Dismiss on September 13, 2017. Currently before the Court is Defendants' Motion for

1 Attorneys' Fees [45]. Having reviewed all papers
2 submitted pertaining to this Motion, the Court **NOW**
3 **FINDS AND RULES AS FOLLOWS:** Defendants' Motion for
4 Attorneys' Fees is **GRANTED**.

5 I. BACKGROUND

6 A. Factual Background

7 In February 2013, former Defendant Overbrook and
8 ANA Alliance sponsored a script-writing contest called
9 "Search for America's Newest Screenwriter." Compl.
10 ¶ 9, ECF No. 1. On March 20, 2013, Plaintiff submitted
11 a script called *Across the Tracks* ("Across the Tracks"
12 or the "Script") to the contest. Id. ¶ 10. In
13 November 2014, Plaintiff submitted the Script to the
14 United States Copyright Office and received the
15 exclusive rights and privileges to the Script. Id.
16 ¶ 17. Plaintiff alleges he never heard from the
17 contest creators on the status of his submission. Id.
18 ¶ 12.

19 Plaintiff alleges that former Defendant Will Smith
20 is the owner of former Defendant Overbrook, the sponsor
21 of "Search for America's Newest Screenwriter." Id.
22 ¶ 4. Plaintiff further alleges that Mr. Smith
23 developed a close business relationship with Defendant
24 Barris after working with Barris on various television
25 projects. Id. ¶¶ 15-16.

26 In the fall of 2014, ABC released a pilot called
27 *Black-ish*, created by Barris and produced by Khalabo.
28 Id. ¶ 18. Plaintiff alleges *Black-ish* is virtually

1 identical to *Across the Tracks*, including the major
2 characters, thematic points, and plot turns. Id.
3 ¶¶ 18-19. Subsequently, Plaintiff initiated his Action
4 in this Court against Defendants alleging copyright
5 infringement under the Copyright Act of 1976 and unfair
6 competition under the Lanham Act of 1946, and seeking
7 declaratory and injunctive relief.

8 **B. Procedural Background**

9 On January 6, 2017, Plaintiff filed his Complaint
10 [1]. On April 26, 2017, the parties stipulated and
11 this Court granted Plaintiff leave to file an amended
12 complaint within five days of the Court's order and
13 gave Defendants fourteen days to respond to the amended
14 complaint. Plaintiff did not file an amended complaint
15 within the timeline prescribed.

16 On April 11, 2017, the parties filed a Stipulation
17 to Dismiss Defendants Overbrook and Will Smith [25].
18 The Court dismissed Defendants Overbrook and Will Smith
19 on April 20, 2017 [28].

20 On May 11, 2017, Plaintiff's counsel filed a Motion
21 to Withdraw as Attorney requesting to be relieved as
22 counsel because of a disagreement that arose between
23 counsel and Plaintiff which rendered counsel's ability
24 to represent Plaintiff difficult. Mot. to Withdraw
25 3:12-16, ECF No. 31. The Court granted the Motion to
26 Withdraw on June 7, 2017. ECF No. 40.

27 On May 22, 2017, Defendants filed their Motion to
28 Dismiss [35], and on July 17, 2017, Defendants filed a

1 Motion to Strike and for Sanctions ("Motion to Strike")
2 [42]. On September 13, 2017, the Court granted
3 Defendants' Motion to Dismiss without leave to amend.
4 ECF No. 44.

5 Following the Court's grant of Defendants' Motion
6 to Dismiss, on September 15, 2017, defense counsel
7 contacted Plaintiff to discuss Defendants' anticipated
8 motion for attorneys' fees. Decl. of Justin M.
9 Goldstein ("Goldstein Decl.") ¶ 27, ECF No. 45-1. On
10 September 18, 2017, Plaintiff emailed defense counsel
11 informing him that he had obtained new counsel. Id. ¶
12 28. Defense counsel spoke with Plaintiff's new
13 counsel, Cory Aronovitz, and informed him of
14 Defendants' intent to recover all of their attorneys'
15 fees to date. Id. ¶ 29. Defense counsel also informed
16 Mr. Aronovitz that if Plaintiff ceased pursuing his
17 claims, Defendants would forgo seeking to recover their
18 attorneys' fees and costs. Id. ¶ 30.

19 On September 20, 2017, Mr. Aronovitz informed
20 defense counsel that Plaintiff would agree to forgo his
21 claims in exchange for Defendants' forgoing seeking
22 their fees. Id. ¶ 32. Consequently, defense counsel
23 prepared a draft agreement and sent it to Mr. Aronovitz
24 on September 21, 2017. Id. ¶ 33. The next day,
25 defense counsel received an email from Mr. Aronovitz
26 stating that Mr. Aronovitz no longer represented
27 Plaintiff. Id. ¶ 34. Plaintiff then emailed defense
28 counsel with a six-figure settlement demand. Id. ¶ 35.

1 Defense counsel sent Plaintiff a letter summarizing
2 defense counsel's prior conversation with Mr. Aronovitz
3 and offering to speak with Plaintiff directly
4 concerning the anticipated Motion for Attorneys' Fees.
5 Id. Defense counsel did not receive a response to this
6 letter. Id.

7 On September 27, 2017, Defendants filed their
8 Motion for Attorneys' Fees [45]. Plaintiff's
9 Opposition was due on October 17, 2017, but Plaintiff
10 did not file an Opposition.

11 II. DISCUSSION

12 A. Legal Standard

13 "Under the Copyright Act of 1976, a district court
14 has the discretion to award 'a reasonable attorneys'
15 fee to the prevailing party.'" Love v. Associated
16 Newspapers, Ltd., 611 F.3d 601, 614 (9th Cir.
17 2010)(quoting 17 U.S.C. § 505). Both prevailing
18 plaintiffs and prevailing defendants can recover
19 attorneys' fees under the Copyright Act. Fantasy, Inc.
20 v. Fogerty, 94 F.3d 553, 558 (9th Cir. 1996). Courts
21 must hold both prevailing plaintiffs and prevailing
22 defendants to the same standard when determining
23 whether to award attorneys' fees. Fogerty v. Fantasy,
24 Inc., 510 U.S. 517, 534 (1994).

25 In determining whether to award attorneys' fees to
26 a prevailing defendant, the court may consider, but is
27 not limited to, the following factors: "(1) defendant's
28 degree of success obtained on the claim, (2) the

1 frivolousness of plaintiff's claim, (3) the objective
2 reasonableness of plaintiff's factual and legal
3 arguments, (4) plaintiff's motivation in bringing the
4 lawsuit, and (5) the need for compensation and
5 deterrence." DuckHole Inc. v. NBCUniversal Media LLC,
6 No. CV-12-10077-BRO, 2013 WL 5797204, at *2 (C.D. Cal.
7 Oct. 25, 2013)(citing Fantasy, 94 F.3d at 558); see
8 Wall Data Inc. v. L.A. Cty. Sheriff's Dep't, 447 F.3d
9 769, 787 (9th Cir. 2006).

10 **B. Analysis**

11 Plaintiff did not file an opposition to Defendants'
12 Motion for Attorneys' Fees, and his failure to file
13 "may be deemed consent to the granting [] of the
14 motion." C.D. Cal. R. 7-12. Therefore, because
15 Plaintiff has not opposed Defendants' request for
16 attorneys' fees, such request is warranted, and the
17 Court **GRANTS** Defendants' Motion for Attorneys' Fees.
18 See Minow v. Lexus, No. CV 06-7496 CAS (SHX), 2008 WL
19 11338145, at *1 (C.D. Cal. Aug. 15, 2008)(granting
20 motion for attorneys' fees when plaintiff failed to
21 file an opposition to defendant's motion).

22 Further, an award of attorneys' fee is appropriate
23 on the merits of Defendants' Motion for Attorneys'
24 Fees. As explained below, the factors courts consider
25 in determining whether to award attorneys' fees weigh
26 in favor of granting Defendants' Motion for Attorneys'
27 Fees.

28 ///

1 1. Award of Attorneys' Fees

2 a. *Degree of Success*

3 The first factor, the party's degree of success in
4 the lawsuit, "weighs more in favor of a party who
5 prevailed on the merits, rather than on a technical
6 defense." DuckHole, 2013 WL 5797204, at *2. The Court
7 granted Defendants' Motion to Dismiss without leave to
8 amend, concluding that there were no substantial
9 similarities between the two works. Order re Defs.'
10 Mot. to Dismiss 39:13-20, ECF No. 44. Defendants thus
11 prevailed on the merits, and this factor weighs in
12 favor of granting attorneys' fees. See DuckHole, 2013
13 WL 5797204, at *2 ("The Court granted Defendants[']
14 motion to dismiss without leave to amend after finding
15 'no similarity, much less substantial similarity,
16 between any expressive elements in the works.' This
17 factor weighs in favor of granting Defendants'
18 Motion.").

19 b. *Frivolousness*

20 Under the second factor, the Court examines whether
21 Plaintiff's underlying claims were frivolous. Columbia
22 Pictures Television Inc. v. Krypton Broad. of
23 Birmingham, Inc., 259 F.3d 1186, 1197 (9th Cir. 2001).
24 "A claim is frivolous when it is 'clearly baseless,'
25 involving 'fantastic or delusional scenarios.'" Wolf
26 v. Travolta, No. 214CV00938CASPJWX, 2016 WL 1676427, at
27 *5 (C.D. Cal. Apr. 25, 2016)(internal citation
28 omitted). Defendants do not provide argument regarding

1 this factor. However, "frivolousness . . . is no
2 longer required" for an award of attorneys' fees.
3 Fantasy, 94 F.3d at 560. As such, the Court need not
4 consider this factor.

5 c. *Objective Unreasonableness*

6 Under the third factor, the Court considers the
7 objective unreasonableness of a party's claims, "both
8 in the factual and in the legal components of the
9 case." Perfect 10, Inc. v. CCBill LLC, 488 F.3d 1102,
10 1120 (9th Cir. 2007). "[T]he mere fact that [a party]
11 lost cannot establish his objective unreasonability."
12 Seltzer v. Green Day, Inc., 725 F.3d 1170, 1181 (9th
13 Cir. 2013). The standard for objective
14 unreasonableness is lower than that of frivolity, with
15 a claim being objectively unreasonable when the party
16 asserting it "should have known from the outset that
17 its chances of success in this case were slim to none."
18 SOFA Entertainment, Inc. v. Dodger Prods., Inc., 709
19 F.3d 1273, 1280 (9th Cir. 2013).

20 As Defendants explain in their Motion for
21 Attorneys' Fees, it was objectively unreasonable for
22 Plaintiff to contend that Defendants had access to
23 Plaintiff's script. Mot. for Att'ys' Fees 11:5-7, ECF
24 No. 45. This was made even more clear during the
25 litigation. Prior to filing their Motion to Dismiss,
26 Defendants provided Plaintiff's former counsel with a
27 sworn declaration showing that Defendants at no point
28 received or reviewed Plaintiff's script. Goldstein

1 Decl. ¶¶ 4-5, Ex. C. After receiving this sworn
2 testimony, Plaintiff's former counsel withdrew from
3 representing Plaintiff because a disagreement arose
4 between Plaintiff and his counsel regarding the effect
5 of the sworn testimony. See Mot. to Withdraw 4:24-26.
6 Nonetheless, Plaintiff refused to dismiss this Action,
7 and Defendants were forced to proceed with their Motion
8 to Dismiss. Plaintiff's refusal to dismiss his case
9 after receiving clear evidence negating one of the
10 elements of his copyright claim shows that Plaintiff's
11 claims were objectively unreasonable. Gable v. Nat'l
12 Broad. Co., No. CV084013SVWFFMX, 2010 WL 11506430, at
13 *5 (C.D. Cal. Aug. 6, 2010)(finding copyright claim
14 objectively unreasonable where the plaintiff's "theory
15 of access was unsupported by the facts").

16 Additionally, it was objectively unreasonable for
17 Plaintiff to contend that the two works were
18 substantially similar. Courts have determined that a
19 plaintiff's claim is objectively unreasonable
20 where there is a "lack of any meaningful or legally
21 cognizable similarity." Gable, 2010 WL 11506430, at
22 *5; see also Shame on You Prods., 2016 WL 5929245, at
23 *8; Duckhole, 2013 WL 5797204, at *3. As explained
24 throughout the Court's Order granting Defendants'
25 Motion to Dismiss, copyright law does not protect
26 "stock scenes, general plot ideas, and scenes-a-faire."
27 Order re Defs.' Mot. to Dismiss 17:14-15. After
28 reviewing the two works, the Court concluded that

1 "Plaintiff's Complaint alleges nary a similarity that
2 is protectable under copyright law." Id. at 33:27-28.
3 Due to the lack of any legally cognizable similarity
4 between *Black-ish* and *Across the Tracks*, the lack of
5 substantial similarity was obvious, and Plaintiff's
6 suit was objectively unreasonable. See Randolph v.
7 Dimension Films, 634 F. Supp. 2d 779, 794 (S.D. Tex.
8 2009)(finding copyright claim was objectively
9 unreasonable where plaintiff failed to identify any
10 copyrightable similarity between the works); Williams
11 v. Crichton, 891 F. Supp. 120, 122 (S.D.N.Y.
12 1994)(awarding attorneys' fees after finding objective
13 unreasonableness based on the fact that the
14 similarities plaintiff asserted all flowed from an
15 uncopyrightable concept). This factor thus weighs in
16 favor of awarding attorneys' fees.

17 d. *Motivation*

18 "[T]he existence of bad faith or an improper motive
19 in bringing or pursuing an action weighs in favor of an
20 award of fees to a prevailing party." Frost-Tsuji
21 Architects v. Highway Inn, Inc., No. CV 13-00496
22 SOM/BMK, 2015 WL 5601853, at *7 (D. Haw. Sept. 23,
23 2015). "A finding of bad faith can be based on actions
24 that led to the lawsuit, as well as on the conduct of
25 the litigation." Id.

26 Defendants argue that Plaintiff's lawsuit "was
27 motivated by the desire to extract a large (and
28 entirely unjustified) payout." Mot. for Att'ys' Fees

1 12:6-8. In arguing a bad faith motive, Defendants also
2 point to Plaintiff's conduct both leading up to
3 Defendants filing their Motion to Dismiss and following
4 the Court's Order granting Defendants' Motion to
5 Dismiss. Id. at 12:5-18. Prior to filing their Motion
6 to Dismiss, Defendants provided Plaintiff's former
7 counsel with sworn testimony negating the access
8 element of Plaintiff's copyright infringement claim.
9 Goldstein Decl. ¶ 8. Despite the withdrawal of
10 Plaintiff's former counsel and multiple communications
11 from defense counsel to Plaintiff outlining the clear
12 issues with his claims, Plaintiff informed Defendants
13 that he had no intention of dismissing this Action and
14 instead told defense counsel that he was only willing
15 to discuss a settlement amount. See id. ¶ 23.

16 Even if Plaintiff's refusal to accept Defendants'
17 arguments regarding Plaintiff's claims is not
18 sufficient evidence alone for a showing of bad faith,
19 these actions, combined with Plaintiff's actions
20 following the Court's issuance of its Order on
21 Defendants' Motion to Dismiss, exemplify bad faith.
22 The Court granted Defendants' Motion to Dismiss, a
23 motion Plaintiff did not even oppose. After the Court
24 issued its Order, defense counsel contacted Plaintiff
25 to discuss Defendants' anticipated motion for
26 attorneys' fees. Id. ¶ 27. Defense counsel spoke with
27 Plaintiff's new counsel, Mr. Aronovitz, and they
28 discussed entering into an agreement where Defendants

1 would forgo seeking attorneys' fees if Plaintiff agreed
2 to stop pursuing his claims. Id. ¶¶ 29-30. After the
3 parties agreed to proceed with the agreement and
4 defense counsel drafted the agreement, Plaintiff fired
5 his counsel and sent Defendants a six-figure settlement
6 demand, thus nullifying the agreement and forcing
7 Defendants to incur further unnecessary fees. See id.
8 ¶¶ 32-35.

9 Despite his refusal to stop pursuing his claims and
10 his repeated demands for a large settlement, Plaintiff
11 failed to provide any opposition to Defendants' Motion
12 for Attorneys' Fees. Plaintiff's failure to cooperate
13 with Defendants, while simultaneously refusing to
14 actively participate in this litigation, shows a clear
15 motivation only for monetary gain. Plaintiff has made
16 no attempt toward a resolution of this matter.

17 Defendants, on the other hand, have been forced to
18 incur significant attorneys' fees while making an
19 effort to resolve this matter in the most cost-
20 efficient way possible for all parties. Accordingly,
21 Plaintiff's cumulative conduct throughout this
22 litigation provides evidence of bad faith, and this
23 factor weighs in favor of awarding attorneys' fees.

24 e. *Need for Compensation and Deterrence*

25 In assessing the fifth factor, courts determine
26 whether the attorneys' fees award would "advance
27 considerations of compensation and deterrence."

28 Fantasy, 94 F.3d at 558 n.2. Courts recognize that

1 "[d]eterring non-meritorious lawsuits against
2 defendants seen as having 'deep pockets' and
3 compensating parties that must defend themselves
4 against meritless claims are both laudible ends."
5 Scott v. Meyer, No. CV 09-6076 ODW(RZX), 2010 WL
6 2569286, at *3 (C.D. Cal. June 21, 2010). However,
7 courts should not "discourage 'starving artists' from
8 defending copyrights in original works due to the
9 threat of attorney's fees." Brod v. Gen. Pub. Grp.,
10 Inc., 32 F. App'x 231, 236 (9th Cir. 2002).

11 While the Court recognizes that the Copyright Act
12 was created to "encourage the production of original
13 literary, artistic, and musical expression for the good
14 of the public," Fogerty, 510 U.S. at 524, an award of
15 attorneys' fees to Defendants may be the only way to
16 deter Plaintiff from continuing his bad faith conduct
17 in this Action and any further litigation he may
18 initiate, see AF Holdings LLC v. Navasca, No. C-12-2396
19 EMC, 2013 WL 3815677, at *3 (N.D. Cal. July 22,
20 2013)("[G]iven AF's conduct, there is a strong argument
21 in favor of awarding fees as a deterrent, both with
22 respect to AF and other persons or entities that might
23 contemplate a similar business model that is not
24 intended to protect copyrighted work but instead
25 designed to generate revenues through suits and coerced
26 settlements."). In this Action, Defendants have
27 offered Plaintiff many opportunities to walk away from
28 his lawsuit without having to pay Defendants'

1 attorneys' fees incurred in defending against
2 Plaintiff's meritless lawsuit. Instead of accepting
3 this offer, Plaintiff has continued to seek six-figure
4 settlements from Defendants, whom he clearly sees as
5 having deep pockets. Therefore, a fee award in this
6 matter is warranted, especially after "Defendants were
7 forced to defend against Plaintiff's claims even after
8 pointing out the fatal flaws from which [his] lawsuit
9 suffered." Scott, 2010 WL 2569286, at *3; see
10 Duckhole, 2013 WL 5797204, at *4.

11 Balancing the above factors, an award of attorneys'
12 fees is appropriate under the Copyright Act.
13 Accordingly, the Court **GRANTS** Defendants' Motion.¹

14 2. Reasonableness of the Amount of Fees Requested

15 After determining that a party is entitled to an
16 award of attorneys' fees, the court must determine if
17 the fees requested are reasonable. See Hensley v.
18 Eckerhart, 461 U.S. 424, 433 (1983).

19 Courts employ the "lodestar method" to determine
20 the reasonableness of the requested attorneys' fees.
21 Hensley, 461 U.S. at 433. "The lodestar figure is

22
23 ¹ While the above analysis contemplates an award of
24 attorneys' fees under 17 U.S.C. § 505 for defense against
25 Plaintiff's copyright claim, the award of attorneys' fees
26 encompasses Defendants' defense of all of Plaintiff's claims,
27 which were based on the same allegations as Plaintiff's copyright
28 claim. See Entm't Research Grp., Inc. v. Genesis Creative Grp.,
Inc., 122 F.3d 1211, 1230 (9th Cir. 1997)(finding that a
prevailing party could recover attorneys' fees incurred in
defending against a copyright claim and any related claims);
Counts v. Meriwether, No. 2:14-CV-00396-SVW-CW, 2016 WL 1165888,
at *6 (C.D. Cal. Mar. 9, 2016)(same).

1 calculated by multiplying the number of hours the
2 prevailing party reasonably expended on the litigation
3 (as supported by adequate documentation) by a
4 reasonable hourly rate for the region and for the
5 experience of the lawyer." In re Bluetooth Headset
6 Prods. Liability Litig., 654 F.3d 935, 941 (9th Cir.
7 2011). "The fee applicant bears the burden of
8 documenting the appropriate hours expended in
9 litigation and must submit evidence in support of those
10 hours worked." Gates v. Deukmejian, 987 F.2d 1392,
11 1397 (9th Cir. 1992).

12 Here, Defendants seek an award of attorneys' fees
13 based on the work of two attorneys, Justin Goldstein
14 and Michelle Han.² Goldstein Decl. ¶¶ 36-37. As
15 explained in Mr. Goldstein's Declaration, Mr. Goldstein
16 is a partner at Carlsmith Ball LLP who has been
17 practicing law for nearly twenty years and bills at an
18 hourly rate of \$500, while Ms. Han, a fifth-year
19 associate at Carlsmith Ball LLP, bills at an hourly
20 rate of \$320. Id. ¶¶ 36-37, 41. These rates are
21 comparable to rates the Central District has previously
22 approved for attorneys with similar skill and
23 experience in Los Angeles in copyright cases. See,
24 e.g., Shame on You Prods., 2016 WL 5929245, at *14
25 (finding partner rate of \$595 per hour and associate

26
27 ² At the outset of this case, Barris and Khalabo were
28 represented by other counsel. Defendants are not seeking to
recover the fees incurred by this counsel or Defendants' in-house
counsel. Mot. for Att'ys' Fees 21:17-21.

1 rates of \$395 and \$320 per hour reasonable in copyright
2 action); Perfect 10, Inc. v. Giganews, Inc., No. CV
3 11-07098-AB SHX, 2015 WL 1746484, at *15-16 (C.D. Cal.
4 Mar. 24, 2015)(finding "reasonable and comparable"
5 hourly fees for partners ranging from \$610 to \$930);
6 DuckHole, 2013 WL 5797204, at *5 (finding \$580 hourly
7 rate for a partner and \$380 hourly rate for a third-
8 year associate to be reasonable).

9 Defendants seek recovery of \$79,942 in attorneys'
10 fees for work done prior to the Court's grant of
11 Defendants' Motion to Dismiss, which consists of
12 \$16,205 for investigating Plaintiff's claims, \$37,868
13 for the preparation of Defendants' Motion to Dismiss,
14 and \$25,869 for preparation of Defendants' Motion to
15 Strike. Goldstein Decl. ¶ 45. The Court finds these
16 fees to be reasonable, especially in light of the fact
17 that Defendants sought to avoid having to file their
18 Motion to Dismiss by stipulating to the filing of
19 Plaintiff's Amended Complaint and repeatedly
20 communicating with Plaintiff regarding the weaknesses
21 in his claims to secure voluntary dismissal. Due to
22 Plaintiff's issues with his former counsel, who
23 ultimately withdrew from representing Plaintiff, and
24 Plaintiff's constant flip-flopping regarding whether he
25 would file an amended complaint, Defendants were forced
26 to revise their Motion to Dismiss multiple times,
27 resulting in further fees. After reviewing defense
28 counsel's billing entries, which are broken up by

1 attorney and task, the Court finds that the fees
2 incurred in relation to Defendants' Motion to Dismiss
3 and Motion to Strike were reasonable. See id., Ex. Q.

4 Defendants also seek to recover fees incurred in
5 connection with the instant Motion for Attorneys' Fees.
6 According to the Supplemental Declaration of Justin
7 Goldstein, Defendants incurred \$21,974 in connection
8 with this Motion for Attorneys' Fees, which includes
9 both preparation of the Motion for Attorneys' Fees and
10 efforts to avoid having to file such a motion. Suppl.
11 Decl. of Justin M. Goldstein ("Goldstein Suppl. Decl.")
12 ¶¶ 3-5, ECF No. 46. Along with his Supplemental
13 Declaration, Mr. Goldstein included the specific
14 billing entries related to the Motion for Attorneys'
15 Fees. Id., Ex. A.

16 It is not entirely clear that fees incurred in
17 preparation of a motion for attorneys' fees are
18 available under the Copyright Act. See Shame on You
19 Prods., 2016 WL 5929245, at *18; Identity Arts v. Best
20 Buy Enterp. Servs. Inc., No. C 05-4656 PJH, 2008 WL
21 820674, at *8 (N.D. Cal. Mar. 26, 2008) ("While other
22 federal statutes—e.g., 42 U.S.C. § 1988 [and] 28 U.S.C.
23 § 2412—have been construed to permit the recovery of
24 fees upon fees, Defendants have not submitted any
25 controlling authority regarding the availability of
26 fees upon fees vis-a-vis the Copyright Act
27 specifically."). As noted in Identity Arts, the Ninth
28 Circuit has allowed for recovery of fees incurred in

1 connection with a motion for attorneys' fees under 42
2 U.S.C. § 1988. 2008 WL 820674, at *8; see In re Nucorp
3 Energy, Inc., 764 F.2d 655, 660 (9th Cir. 1985). The
4 Ninth Circuit noted that 42 U.S.C. § 1988 is "a fee and
5 cost provision similar in form to" 17 U.S.C § 505, the
6 provision through which Defendants seek to recover
7 their fees. Twentieth Century Fox Film Corp., 429 F.3d
8 at 884. Therefore, because the two statutes are
9 similar in form, it follows that if fees incurred in
10 connection with a motion for attorneys' fees are
11 recoverable under 42 U.S.C. § 1988, they would also be
12 recoverable under 17 U.S.C § 505.

13 Further, unlike the facts in Shame on You
14 Productions and Identity Arts, here, Defendants have
15 provided an explanation for why the fees incurred in
16 preparing the Motion for Attorneys' Fees were
17 reasonably necessary and detailed billing entries along
18 with a supplemental declaration explaining these
19 entries. See Goldstein Suppl. Decl., Ex. A.
20 Defendants gave Plaintiff multiple opportunities to
21 avoid having to pay defense counsel's fees, but
22 Plaintiff refused to reasonably engage in
23 communications with defense counsel. Defense counsel
24 even drafted an agreement regarding forgoing seeking a
25 fee award after Plaintiff assented to such an
26 agreement, but Plaintiff then reneged on this agreement
27 and made a six-figure settlement demand instead.
28 Accordingly, the Court finds that the 54.1 hours

1 expended in connection with the instant Motion for
2 Attorneys' Fees, resulting in a total of \$21,974 in
3 fees, were reasonably expended and thus recoverable.

4 In light of the reasonableness of the fees
5 requested and Plaintiff's failure to oppose Defendants'
6 Motion for Attorneys' Fees, the Court awards Defendants
7 the \$101,916 in attorneys' fees they request.

8 3. Recoverability of Costs

9 "Section 505 allows the court in its discretion to
10 award 'full costs.'" Identity Arts, 2008 WL 820674, at
11 *9 (citing 17 U.S.C. § 505). Defendants seek to
12 recover \$792.22 in costs, which includes courier costs
13 and the costs of obtaining and making copies of DVDs of
14 *Black-ish*. Goldstein Decl. ¶ 50. After reviewing the
15 billing invoices for these costs, the Court finds that
16 the courier costs are reasonable. However, defense
17 counsel has not explained why Defendants should recover
18 the \$481.86 spent obtaining and copying DVDs of *Black-*
19 *ish*. Defense counsel should have been able to obtain
20 these DVDs from their clients, the creators and
21 producers of *Black-ish*, at no cost. See Duckhole, 2013
22 WL 5797204, at *17 (declining to award costs incurred
23 in obtaining copies of DVD, which defense counsel could
24 have obtained from client). Accordingly, the Court
25 awards the requested courier costs of \$310.36 but
26 declines to award the \$481.86 cost of the *Black-ish*
27 DVDs.

28 ///

