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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,

Case No. 1:11-cv-01896-LJO-SKO

Plaintiff,

**FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF'S MOTION FOR
COSTS AND ATTORNEYS' FEES
BE GRANTED IN PART AND DENIED IN
PART**

v.

DANIEL DE LA CERDA, et al.,

(Docket No. 39)

Defendants.

OBJECTIONS DUE: 14 days

I. INTRODUCTION

On November 18, 2013, Plaintiff J & J Sports Productions, Inc. ("Plaintiff") filed a "Motion for Costs and Attorneys' Fees." (Doc. 39.) No opposition was filed. The Court reviewed the motion and supporting documentation and determined that the matter was suitable for decision without oral argument pursuant to Local Rule 230(g); as such, the hearing on the motion was vacated.

For the reasons set forth above, the Court RECOMMENDS that Plaintiff's "Motion for Costs and Attorneys' Fees" be GRANTED in part and DENIED in part.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On November 10, 2011, Plaintiff filed a complaint against Defendants Daniel De La Cerda, Erica De La Cerda, and Daniel's Mexican Grill, LLC ("Grill," collectively "Defendants").

1 (Doc. 1.) Plaintiff alleged that it is a closed-circuit distributor of sports and entertainment
2 programming and obtained in the United States the exclusive commercial exhibition licensing
3 rights to "*Tactical Warfare: Manny Pacquiao v. Antonio Margarito, WBC Light Middleweight*
4 *Championship Fight Program*" (the "Program"), which was broadcast on November 13, 2010.
5 Plaintiff marketed sub-licensing (commercial exhibition) rights to commercial establishment
6 customers to permit them to show the Program. To broadcast the Program, Plaintiff required
7 commercial establishments to pay a sublicense fee of \$2,200 for seating capacity up to 100
8 persons. Plaintiff did not sublicense the program to Defendants, and alleged that Defendants
9 unlawfully intercepted and exhibited the Program without payment of the commercial
10 sub-licensing fee. (Doc. 1.)

11 On January 27, 2012, Defendants filed an answer. (Doc. 12.) On September 11, 2013,
12 Grill filed a Notice of Bankruptcy, and the Court stayed the action as to Grill only. (Docs. 33, 34.)
13 On September 12, 2013, Plaintiff filed a motion for summary judgment against Defendant Daniel
14 De La Cerda only. (Doc. 36.) No opposition was filed, and on October 16, 2013, District Judge
15 Lawrence J. O'Neill granted Plaintiff's motion for summary judgment and entered judgment
16 against Daniel De La Cerda. (Doc. 37.) Additionally, Plaintiff was ordered to file a motion before
17 Magistrate Judge Sheila K. Oberto by no later than November 18, 2013, if it sought attorney's fees
18 and costs. (Doc. 37.)

19 On November 6, 2013, Plaintiff filed a Status Report indicating that the bankruptcy against
20 Grill was dismissed and sought to reinstate the case as an active matter. (Doc. 38.) On November
21 8, 2013, Plaintiff filed the instant "Motion for Costs and Attorneys' Fees." (Doc. 39.) On
22 November 19, 2013, District Judge O'Neill ordered Plaintiff to file a status report by no later than
23 November 25, 2013, that showed good cause as to why the pretrial conference and trial dates
24 should not be vacated, noting that the judgment granted against Defendant Daniel De La Cerda
25 was contemplated as full and complete relief for all of Plaintiff's claims, except for attorney's fees
26 and costs. (Doc. 40.) Plaintiff failed to file a status report. On November 26, 2013, Judge O'Neill
27 issued an order vacating the pretrial conference and trial dates, and noted that the Court intends to
28 close this action after a ruling on the pending attorney's fees motion. (Doc. 41.)

III. DISCUSSION

A. Attorney's Fees

Reasonable attorney's fees are recoverable under both 47 U.S.C. § 605(e)(3)(B)(iii) and 47 U.S.C. § 553(c)(2)(C). The court determines the amount of reasonable attorney's fees by applying the "lodestar" method. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n. 4 (9th Cir. 2001). The lodestar is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate. *Id.* "In determining reasonable hours, counsel bears the burden of submitting detailed time records justifying the hours claimed to have been expended." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A district court should also exclude from the lodestar fee calculation any hours that were not "reasonably expended," such as hours that are excessive, redundant, or otherwise unnecessary. *See id.* at 434; *see also J & J Sports Prods., Inc. v. Napuri*, No. C 10-04171 SBA, 2013 WL 4428573, at *1 (N.D. Cal. Aug. 15, 2013).

The district court must determine a reasonable hourly rate, considering the experience, skill, and reputation of the attorney requesting fees. *Chalmers*, 796 F.2d at 1210. Reasonable hourly rates are calculated by reference to "prevailing market rates in the relevant community," with a special emphasis on fees charged by lawyers of "comparable skill, experience, and reputation." *Davis v. City of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992), vacated in part on other grounds by 984 F.2d 345 (9th Cir. 1993). Generally, the forum district represents the relevant legal community. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *see also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (determining that "generally, the relevant community [for the prevailing market rate] is the forum in which the district court sits"); *Mendenhall v. Nat'l Transp. Safety Bd.*, 213 F.3d 464, 471, n. 5 (9th Cir. 2000), overruled on other grounds by *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (finding the same).

The fee applicant bears the burden of producing satisfactory evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of

1 reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895, n.
2 11 (1984). "Affidavits of the plaintiff[s] attorney and other attorneys regarding prevailing fees in
3 the community, and rate determinations in other cases, particularly those setting a rate for the
4 plaintiff[s] attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers*
5 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990); *see also Napuri*, 2013 WL
6 4428573, at *2.

7 Here, Plaintiff requests a total of \$5,921.25 in attorney's fees. (Doc. 39, 5:28; *see also*
8 *Riley Decl.*, Doc. 39-1, Exh. 1, p. 10.) These fees consist of 4.65 hours of work at \$450 per hour
9 performed by Thomas P. Riley, Esq. ("Riley"), 6 hours of work performed by an unidentified
10 "research attorney" at \$300 per hour, 3 hours of work by an unidentified paralegal at \$150 per
11 hour, 10.6 hours of work by an unidentified administrative assistant at \$75 per hour, and
12 2.85 hours of work by an unidentified person with the initials "ASC" at \$275 per hour. (*Riley*
13 *Decl.*, Doc. 39-1, Exh. 1, p. 10; *see also Riley Decl.*, Doc. 39-1, ¶ 7 (providing the description of
14 the acronyms used in the billing records and failing to include any description regarding "ASC").)

15 Plaintiff submits the declaration of Riley in support of its fee request and a chart describing
16 the services rendered and hours billed. (*Riley Decl.*, Doc. 39-1, ¶¶ 5-7 and Exh. 1.) However, the
17 entries in the chart are not based on contemporaneous billing records; instead, "[b]illable hours for
18 legal services [were] reconstructed by way of a thorough review of the files themselves" after
19 services were rendered. (*See Riley Decl.*, Doc. 39-1, ¶ 6.) Riley declares that, "[h]aving handled
20 thousands of commercial signal privacy files over the last decade and a half, we are most capable
21 of calculating billable hours for legal services rendered. Our rates for legal, administrative, and
22 paralegal time are well within the prevailing market rates for the Central District of California."
23 (*Riley Decl.*, Doc. 39-1, ¶ 6.) Riley further states that he has been practicing law for over two
24 decades, and that his firm has specialized in the civil prosecution of commercial signal piracy
25 claims since 1994. (*Riley Decl.*, Doc. 39-1, ¶¶ 3-4.)

26 "Absent the submission of detailed contemporaneous time records justifying the hours
27 claimed to have been expended on this case, the Court gives little weight to the figures provided
28 by Plaintiff." *Napuri*, 2013 WL 4428573, at *2; *see also Joe Hand Promotions, Inc. v. Be*, No.

1 11–CV–01333–LHK, 2011 WL 5105375, at *7 (N.D. Cal. Oct. 26, 2011) ("Without actual billing
2 records, . . . the Court gives little weight to . . . figures" in a chart "reconstructing" billable time);
3 *Joe Hand Promotions, Inc. v. White*, No. C 11–01331 CW (JSC), 2011 WL 6749061, at *2 (N.D.
4 Cal. Dec. 6, 2011) ("Because the billing records were not created contemporaneously, the Court
5 finds that they are inherently less reliable"); *Zynga Game Network Inc. v. Erkan*, No. 09–3264 SC,
6 2010 WL 3463630, at *2 (N.D. Cal. Aug. 31, 2010) (denying motion for attorney's fees where
7 plaintiff failed to attach "actual billing records").

8 Further, Plaintiff's showing regarding the hourly rates charged by the attorneys and staff in
9 this case is "woefully inadequate." *Napuri*, 2013 WL 4428573, at *2. Plaintiff has made no effort
10 to demonstrate that the hourly rates charged are reasonable in the Eastern District of California.
11 Instead, Riley declares that the rates are "well within the prevailing rates for the Central District of
12 California," and attaches the Laffey Matrix to support this assertion, which establishes prevailing
13 market rates in the "District of Columbia." (See Riley Decl., Doc. 39-1, ¶ 6 and Exh. 2.)
14 However, the Eastern District of California is neither the Central District of California nor the
15 District of Columbia, and Plaintiff fails to establish the prevailing market rate in the relevant legal
16 community. See *Gates*, 987 F.2d at 1405. Plaintiff has not submitted an affidavit from any
17 attorney that worked on this case or from any other attorney attesting to the prevailing rates in the
18 Eastern District of California for similar services by lawyers of reasonably comparable skill,
19 experience and reputation. See *Davis*, 976 F.2d at 1546. Similarly, Plaintiff has not submitted any
20 evidence of hourly rate determinations in other such cases in the Eastern District of California
21 setting the rate for the attorneys seeking fees. See *Phelps Dodge Corp.*, 896 F.2d at 407; see also
22 *Napuri*, 2013 WL 4428573, at *2. Attorney Riley's declaration, without any supporting evidence,
23 fails to meet Plaintiff's burden to establish that the rates sought are the prevailing market rates for
24 the Eastern District of California.

25 Additionally, Plaintiff offers no information or documentation justifying the rates
26 requested, such as the curriculum vitae, résumé, or even the identities of the individuals who
27 worked on this case other than Attorney Riley. As such, the Court cannot determine the
28 comparable skill, experience, and reputation of the attorneys involved. *Davis*, 976 F.2d at 1546.

1 There is no indication whether the unidentified independent "research attorney" who worked on
2 this case is admitted to practice law in California and, if so, when he or she was admitted to
3 practice. (See Riley Decl., Doc. 39-1.) Nor has Plaintiff provided a description of the individual's
4 educational background or litigation experience. (See Riley Decl., Doc. 39-1.) Further, there is no
5 clue given as to the identity of "ASC" or whether "ASC" is an attorney or other staff member.
6 (See Riley Decl., Doc. 39-1, ¶ 7.)

7 Accordingly, the Court concludes that Plaintiff has failed to meet its burden to demonstrate
8 that the requested fee award is reasonable, and RECOMMENDS that Plaintiff's request for
9 attorney's fees be DENIED with prejudice.¹

10 **B. Costs**

11 Section 605 requires that the court award "full costs . . . to an aggrieved party who
12 prevails." 47 U.S.C. § 605(e)(3)(B)(iii); see also 47 U.S.C. § 553(c)(2)(C) (A court may "direct
13 the recovery of full costs . . . to an aggrieved party who prevails."). Here, Plaintiff seeks costs in
14 the amount of \$1,208.60, consisting of \$350.00 for the complaint filing fee, \$244.75 for the
15 service of process charges, \$600.00 for investigative expenses, and \$13.85 in photocopying
16 charges.

17 Plaintiff provides no authority for the recovery of its investigative fees, and courts have
18 refused to award pre-filing investigative fees to the prevailing party. See, e.g., *Napuri*, 2013 WL
19 4428573, at *3; *Joe Hand Promotions Inc. v. Piacente*, No. C-10-3429 CW (JCS), 2011 WL
20 2111467, at *9 (N.D. Cal. Apr. 11, 2011); *J & J Sports Prods., Inc. v. Schrader Rest. Corp.*,
21 485 F. Supp. 2d 422, 424 (S.D.N.Y. 2007). Further, Plaintiff provides no documentation to
22 support the amount sought for the service of process or photocopying charges. (See Riley Decl.,
23 Doc. 39-1, ¶ 8, and Exh. 1.)

24 ¹ There are numerous duplicative or excessive billings entries in Plaintiff's counsel's records. (Riley Decl., Doc. 39-1,
25 Exh. 1.) The Court dispenses of an exhaustive analysis that would be necessary to eliminate hours from the fee
26 calculation that are excessive, redundant, or otherwise unnecessary, since the Court finds that Plaintiff has failed to
27 meet its burden to support any fee request. Further, the Court recommends that Plaintiff not be given an opportunity
28 to amend his motion to provide additional documentation. Riley, Plaintiff's counsel, has filed approximately
390 similar cases in the Eastern District of California alone and, as such, is aware of the need to provide sufficient
documentation to support his claims. Further, other courts have also informed Riley of the need to provide
documentation to support his request for attorney's fees, and have dismissed his requests for failing to do so. See, e.g.,
Napuri, 2013 WL 4428573, at *2-*3; *Be*, 2011 WL 5105375, at *7; *White*, 2011 WL 6749061, at *2.

1 Accordingly, the Court finds that Plaintiff has failed to meet its to burden support its
2 request for costs for the investigative expenses, service of process fees, and photocopying charges,
3 and RECOMMENDS that Plaintiff's request for costs be GRANTED in part as to the
4 \$350.00 complaint filing fee only (*see* Docket), and DENIED as to all other costs.

5 **IV. CONCLUSION AND RECOMMENDATION**

6 For the reasons set forth above, IT IS HEREBY RECOMMENDED that:

- 7 1. Plaintiff's "Motion for Costs and Attorneys' Fees" be GRANTED in part and
8 DENIED in part;
- 9 2. Plaintiff's request for attorney's fees be DENIED;
- 10 3. Plaintiff's request for costs for the \$350.00 complaint filing fee be GRANTED; and
- 11 4. Plaintiff's request for costs for the investigative expenses, service of process fees,
12 and photocopying charges be DENIED.

13 Within fourteen (14) days of service of this recommendation, any party may file written
14 objections to this order with the Court and serve a copy on all parties. Such a document should be
15 captioned "Objections to Magistrate Judge's Order." The district judge will review the magistrate
16 judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are
17 advised that failure to file objections within the specified time may waive the right to appeal the
18 district judge's order. *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: January 10, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE