

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,  
Plaintiff,  
v.  
MARTIN CARRILLO MARTINEZ,  
Defendant.

No. 1:14-cv-01578-DAD-BAM

ORDER GRANTING IN PART PLAINTIFF’S  
MOTION FOR DAMAGES, ATTORNEY’S  
FEES, AND COSTS

(Doc. No. 66)

This matter came before the court on May 2, 2017, for hearing on plaintiff’s motion for damages, attorney’s fees, and costs. Attorney Thomas Riley appeared on behalf of plaintiff. Defendant Martin Carrillo Martinez appeared on his own behalf with a private Spanish-language interpreter. After oral argument, the motion was taken under submission. For the reasons stated below, plaintiff’s motion will be granted in part.

**BACKGROUND**

Plaintiff J & J Sports Productions, Inc. (“J & J Sports”) commenced this action against defendant Martin Carrillo Martinez on October 8, 2014, alleging a violation of the Communications Act of 1934 (47 U.S.C. § 605), a violation of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 553), and state law unfair competition and conversion claims.

////

1 According to its complaint, plaintiff J & J Sports was granted exclusive commercial  
2 exhibition licensing rights to a sports program entitled “Timothy Bradley v. Juan Manuel  
3 Marquez WBO Welterweight Championship Fight Program” (the “Program”), telecast on  
4 October 12, 2013. On that date, defendant Martinez was the owner and manager of La Nayarita  
5 Restaurant at 702 L Street in Sanger, California. Defendant intercepted and exhibited the  
6 Program at La Nayarita Restaurant without authorization to do so. On January 6, 2017, this court  
7 granted plaintiff’s motion for partial summary judgment as to plaintiff’s § 605 and state  
8 conversion claims. (Doc. No. 58.)

9 On April 3, 2017, plaintiff filed the instant motion for damages, attorney’s fees, and costs.  
10 (Doc. No. 66.) On April 17, 2017, defendant filed his opposition. (Doc. No. 67.) On April 25,  
11 2017, plaintiff filed its reply. (Doc. No. 68.)

## 12 DISCUSSION

### 13 A. Damages

14 Following the court’s finding of defendant’s liability as to plaintiff’s § 605 and state  
15 conversion claims, plaintiff now seeks damages totaling \$26,600.

#### 16 1. Damages Pursuant to 47 U.S.C. § 605(e)(3)(C)

17 Under the Federal Communications Act, a plaintiff may elect to seek either actual or  
18 statutory damages. 47 U.S.C. § 605(e)(3)(C)(i)(I)–(II). The statute provides for statutory  
19 damages for each violation of not less than \$1,000 and not more than \$10,000, as the court  
20 considers just. 47 U.S.C. § 605(e)(3)(C)(i)(II). The statute also authorizes enhanced damages of  
21 not more than \$100,000 if the court finds the violation was “committed willfully and for purposes  
22 of direct or indirect commercial advantage or private financial gain.” 47 U.S.C.  
23 § 605(e)(3)(C)(ii). Here, plaintiff seeks \$5,000 in statutory damages and \$20,000 in enhanced  
24 statutory damages.

25 With respect to statutory damages, plaintiff seeks nearly three times the \$1,600 amount of  
26 the commercial licensing fee for the Program. Plaintiff argues that an increased statutory  
27 damages amount is warranted not only to compensate it for loss of revenue, but also to deter  
28 broadcast piracy in the future. (See Doc. No. 66 at 4–5.) Additionally, plaintiff argues that a

1 large enhanced damages award is justified in light of the number of patrons present for the  
2 telecast, the quality of the televisions, and the location of the restaurant. (Id. at 7.)<sup>1</sup>

3 In support of its motion for summary judgment, plaintiff submitted an affidavit from its  
4 investigators stating that on the day of the telecast, they observed the Program being shown to  
5 approximately twenty patrons on two color televisions at La Nayarita Restaurant. (Affidavit of  
6 Mitch Gerking and Jeff Lang, Doc. No. 43-2.) The investigators further stated, however, that  
7 there was no cover charge for admittance. (Id.) Plaintiff presents no further evidence suggesting  
8 that the restaurant specially advertised the event or implemented premium pricing of its services  
9 or goods during the event. Moreover, there is no evidence before the court that defendant has  
10 previously been found liable of broadcast piracy.

11 In light of this record, the court finds it appropriate to award plaintiff \$1,800 in statutory  
12 damages, plus \$200 in enhanced statutory damages, for a total of \$2,000 in total damages  
13 pursuant to 47 U.S.C. § 605(e)(3)(C). See, e.g., J & J Sports Prods., Inc. v. Hernandez, No. 12-  
14 cv-05773-JST, 2013 WL 2468354, at \*5 (N.D. Cal. June 6, 2013) (awarding \$2,200 in statutory  
15 and enhanced damages); J & J Sports Prods., Inc. v. Aranda, No. 1:12-cv-01508-AWI-BAM,  
16 2013 WL 1982974, at \*3–4 (E.D. Cal. May 13, 2013) (awarding \$1,000 in statutory damages and  
17 denying request for enhanced statutory damages); J & J Sports Prods., Inc. v. Jurado, No. 2:10-  
18 cv-03040-GEB-DAD, 2011 WL 6153605, at \*4 (E.D. Cal. Dec. 12, 2011) (awarding \$1,000 in  
19 statutory damages and \$3,000 in enhanced statutory damages for a total award of \$4,000 in a  
20 default judgment under similar circumstances to those presented here), findings and  
21 recommendations adopted, No. 2:10-cv-03040-GEB-DAD (Jan. 13, 2012), ECF No. 21.

## 22 2. Damages for Conversion Claim

23 Plaintiff also seeks an award of \$1,600 for its conversion claim. Plaintiff is entitled to  
24 such an award. See, e.g., J & J Sports Prods., Inc. v. Ro, No. C 09-02860 WHA, 2010 WL  
25 668065, at \*4 (N.D. Cal. Feb. 19, 2010) (awarding damages in the amount defendant “would have  
26 been required to pay for a proper sublicensing agreement”). In moving for summary judgment,

---

27 <sup>1</sup> The court notes that plaintiff erroneously associates defendant’s restaurant with the city of  
28 Fresno, California, despite its location in Sanger, California. (See id.)

1 plaintiff submitted a declaration by the president of J & J Sports and a rate card for the fight in  
2 question, establishing that the defendant would have been required to pay \$1,600 for a proper  
3 sublicensing agreement. (Affidavit of Joseph M. Gagliardi, Doc. No. 43-4.) Accordingly, the  
4 court will award plaintiff \$1,600 in damages with respect to its conversion claim.

5 **B. Attorney's Fees**

6 Plaintiff requests an award of \$10,195.00 in attorney's fees, covering fees incurred by  
7 three individuals: Attorney Thomas P. Riley, a research attorney, and an administrative assistant.  
8 (See Declaration of Thomas P. Riley ("Riley Decl."), Doc. No. 66-1, Ex. 1.)

9 Reasonable attorney's fees are recoverable under 47 U.S.C. § 605(e)(3)(B)(iii). The court  
10 determines the amount of reasonable attorney's fees by applying the "lodestar" method. *Ferland*  
11 *v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001). The lodestar is calculated by  
12 multiplying the number of hours the prevailing party reasonably expended on the litigation by a  
13 reasonable hourly rate. *Id.* "In determining reasonable hours, counsel bears the burden of  
14 submitting detailed time records justifying the hours claimed to have been expended." *Chalmers*  
15 *v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). "Where the documentation of hours  
16 is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461  
17 U.S. 424, 433 (1983). A district court should also exclude from the lodestar fee calculation any  
18 hours that were not "reasonably expended," such as hours that are excessive, redundant, or  
19 otherwise unnecessary. See *id.* at 434; see also *J & J Sports Prods., Inc. v. Napuri*, No. C 10-  
20 04171 SBA, 2013 WL 4428573, at \*1 (N.D. Cal. Aug. 15, 2013).

21 1. Prevailing Market Rate for Attorneys in the Eastern District of California

22 The district court must first determine a reasonable hourly rate, considering the  
23 experience, skill, and reputation of each attorney requesting fees. *Chalmers*, 796 F.2d at 1210.  
24 Reasonable hourly rates are calculated by reference to "prevailing market rates in the relevant  
25 community," with a special emphasis on fees charged by lawyers of "comparable skill,  
26 experience, and reputation." *Davis v. City of San Francisco*, 976 F.2d 1536, 1546 (9th Cir.  
27 1992), vacated on other grounds by 984 F.2d 345 (9th Cir. 1993). Generally, the forum district  
28 represents the relevant legal community. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir.

1 1992); see also *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (determining  
2 that “generally, the relevant community [for the prevailing market rate] is the forum in which the  
3 district court sits”); *Mendenhall v. Nat’l Transp. Safety Bd.*, 213 F.3d 464, 471 n.5 (9th Cir. 2000)  
4 (finding the same), overruled on other grounds by *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir.  
5 2012).

6 The fee applicant bears the burden of producing satisfactory evidence “that the requested  
7 rates are in line with those prevailing in the community for similar services by lawyers of  
8 reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895  
9 n.11 (1984). “Affidavits of the plaintiff[’s] attorney and other attorneys regarding prevailing fees  
10 in the community, and rate determinations in other cases, particularly those setting a rate for the  
11 plaintiff[’s] attorney, are satisfactory evidence of the prevailing market rate.” *United*  
12 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990); see also *Napuri*,  
13 2013 WL 4428573, at \*2.

14 With regard to plaintiff’s lead counsel, attorney Riley, plaintiff references “specific  
15 authority involving Plaintiff’s counsel in this district” to support a rate of \$350.00 per hour. (See  
16 Doc. No. 66 at 11.) This court finds that \$350.00 is a reasonable hourly rate within the Fresno  
17 Division of the Eastern District of California as to attorney Riley. See, e.g., *J & J Sports Prods.,*  
18 *Inc. v. Barajas*, No. 1:15-cv-01354-DAD-JLT, 2017 WL 469343, at \*2 (E.D. Cal. Feb. 2, 2017)  
19 (concluding that \$350.00 is a reasonable hourly rate for attorney Riley); *Joe Hand Promotions,*  
20 *Inc. v. Garcia*, No. 1:12-cv-01744-LJO, 2013 WL 238369, at \*3 (E.D. Cal. May 30, 2013), report  
21 and recommendations adopted, No. 1:12-CV-0174-LJO-JLT, 2013 WL 2991048 (E.D. Cal. June  
22 14, 2013) (“Previously this court has determined that \$350 is a reasonable hourly rate for ‘(very)  
23 experienced and skilled trial counsel’ within the Fresno Division of the Eastern District.” (citing  
24 *Jadwin v. Cty. of Kern*, 767 F. Supp. 2d 1069, 1132 (E.D. Cal. 2011))).

25 Plaintiff additionally seeks attorney’s fees based on an hourly rate of \$210.00 for  
26 plaintiff’s research attorney. (See Doc. No. 66 at 11.) While plaintiff provides no authority for  
27 the requested rate in comparable cases, this court finds that such a rate is reasonable, as compared  
28 to attorney Riley’s rate, in the Fresno Division of the Eastern District of California. Accordingly,

1 plaintiff will be awarded attorney's fees based on a rate of \$210.00 per hour for its research  
2 attorney.

3           2.     Fees for the Administrative Assistant

4           While plaintiff acknowledges that the award of attorney's fees for the services rendered by  
5 administrative assistants have been denied in some Eastern District cases, plaintiff asks the court  
6 to award such fees here, distinguishing that the tasks assigned to the administrative assistant in  
7 this case were not clerical in nature "but more akin to paralegal type tasks" in order to keep actual  
8 attorney's fees down. (Doc. No. 66 at 11.) Accordingly, plaintiff asks the court to award \$75.00  
9 per hour for work performed by administrative assistants if the court is not inclined to grant the  
10 \$100.00 fee originally requested by plaintiff. (Id.)

11           The court declines to part from the decisions of other judges in the Eastern District  
12 concerning the award of fees for time expended by administrative assistants because the court  
13 finds that the distinction plaintiff provides between clerical and paralegal type tasks is illusory.  
14 At the outset, plaintiff correctly notes that "filing, transcript, and document organization time  
15 [are] clerical in nature and should [be] subsumed in firm overhead rather than billed at paralegal  
16 rates." *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009). Turning to the actual request,  
17 time entries submitted in support of plaintiff's motion in this regard can be divided into three  
18 categories: (1) entries presented in block format; (2) duplicative entries; and (3) entries solely  
19 related to the preparation of documents.

20           With respect to the first category, it has been noted that records which bundle several  
21 tasks together in a single block of time make it extremely difficult to assess the reasonableness of  
22 the hours expended. *J & J Sports Prods., Inc. v. Corona*, No. 1:12-cv-01844-LJO, 2014 WL  
23 1513426, at \*2 (E.D. Cal. Apr. 16, 2014) (citing *Aranda v. Astrue*, No. CV. 08-340-MA., 2011  
24 WL 2413996, at \*5 (D. Ore. June 8, 2011)), findings and recommendation adopted, No. 1:12-cv-  
25 01844-AWI, 2014 WL 1767691 (E.D. Cal. May 2, 2014); see also *Welch v. Metro. Life Ins. Co.*,  
26 480 F.3d 942, 948 (9th Cir. 2007) ("[B]lock billing makes it more difficult to determine how  
27 much time was spent on particular activities.") Here, plaintiff submits several entries in block  
28 format where it is difficult for the court to determine the amount of time the administrative

1 assistant allegedly spent on the preparation of documents compared to time expended filing and  
2 serving the documents. (Riley Decl., Ex. 1 at 1–11.)

3 As to the second category, duplicative entries, courts specifically have expressed concern  
4 that plaintiff’s attorney and the administrative assistants working with him “completed several  
5 duplicative tasks” and recommended that fees not be awarded for such time attributed to such  
6 tasks:

7 For example, on February 5, 2012, both the administrative assistant  
8 and Mr. Riley spent 0.15 hour on “Initial File Review and File  
9 Preparation.” (Doc. 27 at 5). On March 15, 2012, the  
10 administrative assistant conducted “Public Records Research and  
11 Review of Defendant Klarke Anthony Garl” for 0.15 hour. Id. Mr.  
12 Riley seeks 0.15 hour for the same task, on the same day. Id.  
Further, the time records indicate both Mr. Riley and the  
administrative assistant spent 0.10 hour on October 5, 2013 in  
“Review of Notice Filed by Defendant Klarke Anthony Garl” and  
0.10 hour on July 24, 2013 for “Review of Judgment against  
Defendant Klarke Anthony Garl.” Id. at 6–7.

13 Joe Hand Promotions, Inc. v. Garl, No. 1:12-cv-00672-LJO, 2013 WL 4736826, at \*2 (E.D. Cal.  
14 Sept. 3, 2013), findings and recommendation adopted, No. 1:12-CV-00672-LJO, 2013 WL  
15 5279000 (E.D. Cal. Sept. 18, 2013). Likewise here, plaintiff has submitted records reflecting  
16 tasks of an identical nature that are apparently claimed to have been completed by both the  
17 attorney and the administrative assistant. For example, both spent 0.15 hours on “Review of  
18 Defendant’s Letter in response to Initial Demand Letter” on January 3, 2014. (Riley Decl., Ex. 1  
19 at 1.) Both conducted a “Public Records Research and Review re: Defendant Martin Carillo  
20 Martinez” for 0.15 hours on January 20, 2015. (Id. at 2.) These examples are not exhaustive, as  
21 both also reviewed the court’s orders on the same day and entered the same amount of time spent  
22 in several of the other entries in the records submitted to the court. (See id. at 1–11.)

23 There are also a few entries in the records submitted in support of the pending motion that  
24 fall into the third category involving the preparation of documents. These include, for example,  
25 the “Preparation of Plaintiff’s Ex-Parte Application” for 0.50 hours on February 13, 2017. (Id. at  
26 10.) Based on these entries, it is unclear to what extent this preparation involved actual  
27 substantive work as opposed to merely the organizing of documents and the latter is clearly to be  
28 subsumed in overhead costs. See Nadarajah, 569 F.3d at 921. While this court court has the

1 discretion to reduce hours billed in block format, see *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115,  
2 1121 (9th Cir. 2000), it sees no reason to part from the rulings of other judges of this court  
3 “[g]iven the lack of specificity and the clerical and duplicative nature of the tasks . . . .” *Corona*,  
4 2014 WL 1513426, at \*2. Therefore, plaintiff’s request for the award of fees for the time of  
5 administrative assistants expended in this case is denied in its entirety.

6 **C. Costs**

7 Finally, plaintiff seeks costs in the amount of \$1,228.70, consisting of (1) \$400.00 for the  
8 complaint filing fee, (2) \$165.00 for service of process charges, (3) \$650.00 for investigative  
9 expenses, and (4) \$13.70 for telephone charges. 47 U.S.C. § 605(e)(3)(B)(iii) requires that the  
10 court award “full costs . . . to an aggrieved party who prevails.” The court determines that an  
11 award of costs in the amount of \$578.70, for the filing fee, service of process, and telephone  
12 charges are appropriate.

13 The remaining issue is whether an award of costs for investigative expenses is warranted.  
14 Courts have refused to award such pre-filing investigative fees to the prevailing party. See, e.g.,  
15 *Napuri*, 2013 WL 4428573, at \*3; *Joe Hand Promotions, Inc. v. Piacente*, No. C-10-3429 CW  
16 (JCS), 2011 WL 2111467, at \*9 (N.D. Cal. Apr. 11, 2011). Plaintiff contends that there is a split  
17 of authority with respect to the recovery of investigative costs. (Doc. No. 66 at 12–13.) While  
18 the court recognizes that investigative costs have been awarded to the prevailing party in some of  
19 the cases cited by plaintiff, those decisions do not address the issue or explain why the award of  
20 such costs was appropriate. See, e.g., *J & J Sports Prods., Inc. v. Pagliaro*, 2014 WL 7140605,  
21 No. 1:12-cv-01507-LJO-SAB, at \*2 (E.D. Cal. Dec. 12, 2014) (noting only that “[p]laintiff spent  
22 \$601.00 on ‘Investigative Expenses,’” and awarding such costs without explaining why).

23 Plaintiff asks the court to take judicial notice of a decision in *J & J Sports Prods., Inc. v. Bandera*  
24 *Cowboy Bar, LLC*, No. 5:15-cv-00352-DAE (W.D. Tex. June 3, 2016), where a district court  
25 awarded investigative costs based on counsel’s affidavit attesting that the investigator’s fee was  
26 reasonable. (Riley Decl. ¶ 10, Ex. 5.) Plaintiff’s counsel submits a declaration containing the  
27 same attestation as to the reasonableness of the investigation fees here. (Riley Decl. ¶ 8 (“Based  
28 on my experience in handling anti-piracy cases, it is my opinion that the fee of \$650.00 for



1 auditor's investigation in this case is a reasonable fee.”.)

2 The court is not persuaded and finds the analysis set forth in Joe Hand Promotions, Inc. v.  
3 Albright, No. 2:11-cv-02260-WBS, 2013 WL 4094403 (E.D. Cal. Aug. 13, 2013), to be  
4 instructive. There, the court found that even if the investigative costs were recoverable, they were  
5 insufficiently documented because plaintiff only included a bare invoice and “no additional  
6 information regarding the qualifications of the investigation company or what services it  
7 provided, leaving the court with no means of determining if the charge is reasonable.” Id. at \*6.  
8 Other jurisdictions have followed a similar approach. See, e.g., Kingvision Pay-Per-View Ltd. v.  
9 Autar, 426 F. Supp. 2d 59, 67 (E.D.N.Y. 2006) (“Thus a plaintiff must document ‘(1) the amount  
10 of time necessary for the investigation; (2) how much the investigators charged per hour; [and]  
11 (3) why the investigators are qualified to demand the requested rate.’” (internal quotations  
12 omitted)). Here, plaintiff has submitted only an invoice and no other documentation regarding  
13 the qualifications of its investigator or an explanation of what services were provided. (See Riley  
14 Decl., Ex. 2.) Accordingly, the court declines to award the requested investigative costs.


### 15 CONCLUSION

16 Consistent with the reasoning set forth above,

- 17 1. Plaintiff's motion for damages, attorney's fees, and costs (Doc. No. 66) is granted in  
18 part;
- 19 2. The court awards \$3,600.00 to plaintiff in total damages;
- 20 3. The court awards \$7,805.00 to plaintiff in attorney's fees;
- 21 4. The court awards \$578.70 to plaintiff in costs; and
- 22 5. Within fourteen days of the date of this order, plaintiff shall file a status report  
23 regarding plaintiff's intention to proceed with its remaining claims under 47 U.S.C.  
24 § 553 and California's unfair competition laws. Failure to comply with this order may  
25 result in dismissal of those claims.

26 IT IS SO ORDERED.

27 Dated: May 10, 2017

28   
UNITED STATES DISTRICT JUDGE