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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G & G CLOSED CIRCUIT EVENTS,
LLC,

Plaintiff,

v.

EVERETT HUNTER, et al.,

Defendants.

No. 2:22-cv-1059-JAM-KJN

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES AND
COSTS PURSUANT TO 47 U.S.C.
§ 605(e) (3) (B) (iii)**

Plaintiff G & G Closed Circuit Events, LLC's ("Plaintiff")
obtained default judgment in this action. Default Judgment
Order, ECF No. 36. As the prevailing party, Plaintiff now seeks
attorneys' fees and costs pursuant to 47 U.S.C. section
605(e) (3) (B) (iii). Mot., ECF No. 38. Since the defendants in
this action have not appeared, the motion is unopposed. See
generally, Dkt. For the reasons set forth below, the Court
GRANTS IN PART and DENIES IN PART Plaintiff's motion.¹

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¹This matter is determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g).

1 I. OPINION

2 A. Factual Background

3 Plaintiff filed its First Amended Complaint on November 8,
4 2022, against multiple defendants for the allegedly unlawful
5 broadcast of a sporting event in which Plaintiff possessed the
6 exclusive right to distribute. See First Am. Compl. ("FAC"),
7 ECF No. 17. The FAC asserts violations of the Federal
8 Communications Act of 1934, 47 U.S.C. § 605, among other claims.
9 Id.

10 Defendants Everett Hunter and Port City Sports Bar and
11 Grill, LLC failed to file a responsive pleading to the FAC, see
12 Dkt., and the Clerk of Court entered default as to those
13 defendants on December 23, 2022. Clerk's Entry of Default, ECF
14 No. 27. The only remaining defendant, Tommy Barksdale, was
15 later dismissed without prejudice. Minute Order, ECF No. 30.
16 Plaintiff then moved for default judgment. Plf.'s Mot. for
17 Default Judgment, ECF No. 31. The Magistrate Judge found and
18 recommended that default judgment be entered and that Plaintiff
19 be awarded damages in the sum of \$6,900.00. Findings and
20 Recommendations, ECF No. 34. This Court adopted the Magistrate
21 Judge's findings and recommendations in full and ordered
22 Plaintiff to file a motion for costs and fees within 14 days.
23 Default Judgment Order, ECF No. 36. Plaintiff timely filed the
24 instant motion, seeking \$12,818.40 in fees and \$2,338.47 in
25 costs under 47 U.S.C. section 605(e)(3)(B)(iii). Mot. at 7.

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1 B. Legal Standard

2 An aggrieved party that prevails under the Federal
3 Communications Act is entitled to recover “full costs,”
4 including “reasonable attorneys’ fees.” 47 U.S.C.
5 § 605(e)(3)(B)(iii). A “person aggrieved” includes a party
6 “with proprietary rights in the intercepted communication by
7 wire or radio, including wholesale or retail distributors of
8 satellite cable programming” Id. at § 605(d)(6).

9 Because default judgment has been entered as to this claim, and
10 based on the Magistrate Judge’s Findings and Recommendations,
11 Plaintiff necessarily qualifies as an aggrieved party who
12 prevailed and may thus recover “full costs” under section 605.

13 “Once a party is found eligible for fees, the district
14 court must then determine what fees are reasonable.” Roberts v.
15 City of Honolulu, 938 F.3d 1020, 1023 (9th Cir. 2019) (quoting
16 Klein v. City of Laguna Beach, 810 F.3d 693, 698 (9th Cir.
17 2016)).

18 C. Analysis

19 Plaintiff seeks \$12,818.40 in attorneys’ fees and \$2,338.47
20 in costs under 47 U.S.C. section 605(e)(3)(B)(iii). Mot. at 1,
21 7.

22 1. Attorneys’ Fees

23 “[D]istrict courts in the Ninth Circuit apply the lodestar
24 method to determine whether a fee request is reasonable under
25 Section 605.” G & G Closed Cir. Events, LLC v. Velasquez, No.
26 1:20-CV-1736 JLT SAB, 2022 WL 348165 (E.D. Cal. Feb. 4, 2022)
27 (collecting cases); see also Kelly v. Wengler, 822 F.3d 1085,
28 1099 (9th Cir. 2016). The lodestar is calculated by

1 "multiplying the number of hours reasonably expended on a case
2 by a reasonable hourly rate." Kelly, 822 F.3d at 1099. The
3 Court may also modify "the lodestar figure, upward or downward,
4 based on factors not subsumed in the lodestar figure." Id.

5 a. Reasonable Hourly Rates

6 The Court must determine a reasonable hourly rate
7 considering the experience, skill, and reputation of the
8 attorney requesting fees and should be guided by the prevailing
9 rate in the forum community for similar work performed by
10 comparable attorneys. Chalmers v. City of Los Angeles, 796 F.2d
11 1205, 1210 (9th Cir. 1986), opinion amended on denial of reh'g,
12 808 F.2d 1373 (9th Cir. 1987). Here, Mr. Riley asserts his
13 current billable rate is \$600.00 per hour and submits a
14 declaration in support thereof, but he acknowledges that \$350.00
15 per hour has previously been found reasonable. Mot. at 5;
16 Declaration of Thomas P. Riley ("Riley Declaration"), ECF No.
17 38-1 at ¶ 6. Indeed, other courts in this District have found
18 an hourly rate between \$350.00 and \$375.00 to be reasonable as
19 to Mr. Riley. See J & J Sports Prods. Inc. v. Cervantes, No.
20 116CV00485DADJLT, 2019 WL 935387 at *3 (E.D. Cal. Feb. 26, 2019)
21 (\$375.00); G&G Closed Cir. Events, LLC v. Barajas-Quijada, No.
22 1:19-CV-1259 AWI JLT, 2020 WL 1640005 at *2 (E.D. Cal. Apr. 2,
23 2020) (same); J & J Sports Prods., Inc. v. Barajas, No.
24 115CV01354DADJLT, 2017 WL 469343 (E.D. Cal. Feb. 2, 2017)
25 (\$350.00); Velasquez, 2022 WL 348165 (same).

26 Given Mr. Riley's skill, experience, and the prevailing
27 rate for similar legal work in the Eastern District, the Court
28 finds an hourly rate of \$375.00 to be reasonable and consistent

1 with other courts in this District.

2 Plaintiff also seeks to recover \$350.00 for every hour
3 billed by an unidentified research attorney. Mot. at 5; Riley
4 Decl. at ¶ 6. Given the minimal information provided about this
5 research attorney, see Riley Decl. at ¶ 3, the Court joins the
6 other courts in this District that previously found an hourly
7 rate of \$225.00 to be reasonable. See Velasquez, 2022 WL 348165
8 at *5; Barajas-Quijada, 2020 WL 1640005 at *2.

9 In sum, the Court finds the hourly rates of \$375.00 and
10 \$225.00 are reasonable as to Mr. Riley and his research
11 attorney, respectively.

12 b. Hours Reasonably Expended

13 The Court must also determine whether the hours expended
14 were reasonable. Kelly, 822 F.3d at 1099. "In determining
15 reasonable hours, counsel bears the burden of submitting
16 detailed time records justifying the hours claimed to have been
17 expended." Chalmers, 796 F.2d at 1210. Courts may reduce the
18 hours expended "where documentation of the hours is inadequate;
19 if the case was overstaffed and hours are duplicated; [or] if
20 the hours expended are deemed excessive or otherwise
21 unnecessary." Id. (citing Hensley, 461 U.S. at 433-34); see
22 also J & J Sports Prods., Inc. v. Napuri, No. C 10-04171 SBA,
23 2013 WL 4428573, at *1 (N.D. Cal. Aug. 15, 2013). Here, the
24 hours expended do not appear excessive or unnecessary, and the
25 total time spent was reasonable for the work completed in this
26 action. Therefore, the Court will not reduce the time billed by
27 both counsel.

28 However, the Court declines to award fees for the time

1 expended by Mr. Riley's administrative assistant. See Riley
2 Decl. at ¶¶ 5-7; Exh. 1 at 6-10. Tasks that are clerical or
3 duplicative are not compensable. E.g., Nadarajah v. Holder, 569
4 F.3d 906 (9th Cir. 2009) (clerical); Velasquez, 2022 WL 348165
5 (collecting cases regarding duplicative billings). "[Clerical]
6 tasks include, but are not limited to: creating indexes for a
7 binder; filing emails, memoranda, and other correspondence;
8 updating the case calendar with new dates; copying, scanning,
9 and faxing documents; and filing or serving documents." Moore
10 v. Chase, Inc., No. 1:14-CV-01178-SKO, 2016 WL 3648949, at *3
11 (E.D. Cal. July 7, 2016) (citing Prison Legal News v.
12 Schwarzenegger, 561 F.Supp.2d 1095, 1102 (N.D. Cal. 2008)).
13 Here, many of the administrative assistant's entries are
14 duplicative of Mr. Riley's entries. See generally Exh. 1 to
15 Mot. Other entries are clerical or block-billed with clerical
16 tasks thus preventing the Court from determining how much time
17 within each entry was spent on compensable tasks, if any. E.g.,
18 Exh. 1 at 6 (2/10/22, "Preparation, Filing, and Service of Third
19 Demand letter to Chantille Marie Clemons"). Although document
20 preparation may be a compensable task, the billable descriptions
21 here are ambiguous and do not sufficiently support that non-
22 clerical skills were required. See, e.g., Exh. 1 to Mot. at 9
23 (1/15/2024, "Preparation of Attorneys' Fees and Costs Bill").

24 Therefore, the Court declines to award the administrative
25 assistant's fees given the clerical and duplicative nature of
26 the tasks billed.

27 c. Lack of Contemporaneous Billing System

28 A contemporaneous billing system is not necessary to

1 recover attorneys' fees, but it is preferred. Fischer v. SJB-
2 P.D. Inc., 214 F.3d 1115, 1121 (9th Cir. 2000). Mr. Riley does
3 not utilize a contemporaneous billing system. Riley Decl. at
4 ¶ 7. Instead, the hours are reconstructed by reviewing the file
5 and notes at some later time. Id. Courts in this District have
6 found the lack of contemporaneous billing to be less reliable
7 and "have reduced the fee award where the time requested for
8 certain tasks appeared to be unnecessary, excessive, or
9 unreasonable." Joe Hand Promotions, Inc. v. Albright, No. CIV.
10 2:11-2260 WBS, 2013 WL 4094403 at *4 (E.D. Cal. Aug. 13, 2013)
11 (collecting cases); Cervantes, 2019 WL 935387 at *4. Here,
12 however, the Court does not find the requested time to be
13 unnecessary, excessive, or unreasonable such that a reduction is
14 warranted despite the lack of a contemporaneous billing system.

15 d. Lodestar Amount

16 After the rate and hour adjustments, Plaintiff is entitled
17 to recover 5.05 hours at \$375.00 per hour for Mr. Riley and
18 24.00 hours at \$225.00 per hour for the unidentified research
19 attorney, for a total sum of \$7,293.75 in attorneys' fees.

20 2. Costs

21 Plaintiff is also entitled to recover "full costs" under 47
22 U.S.C. § 605(e)(3)(B)(iii). Nevertheless, there is a limit as
23 to what costs are compensable, and sufficient documentation must
24 be provided to support that the costs were reasonable. Here,
25 Plaintiff seeks \$2,338.47 in costs, which consists of \$402.00
26 for the Court's filing fee, \$929.60 for service of process fees,
27 \$710.00 in investigative expenses, and \$296.87 in courier
28 charges. Exh. 1 to Mot. at 9; Exh. 2 to Mot.; Exh. 3 to Mot.

1 Filing and service of process fees are compensable, e.g.,
2 Velasquez, No. 1:20-CV-1736 JLT SAB, 2022 WL 348165 at *7, and
3 Plaintiff is entitled to recover those costs based on the record
4 and documents provided. See Dkt. No. 1 (filing fee); Exh. 3 to
5 Mot. (service of process fees). However, for the reasons stated
6 below, the Court declines to award Plaintiff investigative and
7 courier costs.

8 Purely investigative costs are generally not recoverable,
9 see Koppinger v. Cullen-Schiltz & Assocs., 513 F.2d 901 (8th
10 Cir. 1975), and many courts in this Circuit have refused to
11 award pre-litigation investigative costs under section
12 605(e)(3)(B)(iii). E.g., Velasquez, 2022 WL 348165 (E.D. Cal.
13 Feb. 4, 2022) (collecting cases); but see J & J Sports Prods.,
14 Inc. v. Pagliaro, No. 1:12-CV-1507-LJO-SAB, 2014 WL 7140605 at
15 *2 (granting investigative costs without expressly identifying
16 them in its order or discussing their propriety). Even if the
17 Court were to hold that purely investigative expenses are
18 compensable under section 605, the documentation provided here
19 is insufficient to support that the charge was reasonable. G &
20 G Closed Circuit Events, LLC v. Parker, 2021 WL 164998, at *9
21 (S.D. Cal. Jan. 19, 2021) (declining to "award investigator fees
22 when documented by an invoice containing nothing more than an
23 amount without even detailing the investigative services
24 provided or qualifications of the investigator."); G & G Closed
25 Cir. Events, LLC v. LA Placita RM Rest. Inc., No. 2:22-CV-01089-
26 DAD-DB, 2023 WL 8933585 (E.D. Cal. Dec. 26, 2023). Mr. Riley
27 opines that this cost was reasonable, Riley Declaration at ¶ 9,
28 but the only documentation Plaintiff submits is an invoice

1 generated not by the investigative company but by the Law
2 Offices of Thomas P. Riley. See Exh. 2 to Mot. at 12.
3 Critically, however, the qualifications of the investigator and
4 details of the investigation are omitted. See generally Mot.;
5 Riley Decl. ¶ 9. Based on this information, the Court cannot
6 conclude whether this cost is reasonable, even assuming
7 investigative costs are compensable. See J & J Sports Prods.,
8 Inc. v. Barajas, No. 115CV01354DADJTL, 2016 WL 2930549 at *5
9 (E.D. Cal. May 19, 2016).

10 The same is true for the courier charges Plaintiff seeks to
11 recover. The only documentation Plaintiff provides is an
12 itemization of courier expenses generated by the Law Offices of
13 Thomas P. Riley; Plaintiff does not include receipts for the
14 courier expenses incurred. See Exh. 1 to Mot. at 9. Therefore,
15 the Court finds Plaintiff has not provided sufficient
16 documentation to support an award of courier costs. E.g.,
17 Barajas, 2016 WL 2930549 at *3 (refusing to award courier
18 charges when no documentation was provided even though courier
19 fees are recoverable under § 605); G & G Closed Cir. Events, LLC
20 v. Aguilar, No. 18CV465 JM (BGS), 2018 WL 6445883 (S.D. Cal.
21 Dec. 10, 2018) (same).

22 In sum, Plaintiff is entitled to \$402.00 in filing fees and
23 \$929.60 in service of process fees for total sum of \$1,331.60 in
24 costs. All other requests for costs are denied.

25 II. ORDER

26 Accordingly, the Court ORDERS as follows:

27 The Court GRANTS IN PART and DENIES IN PART Plaintiff's
28 motion for attorneys' fees and costs under 47 U.S.C. section

1 605(e)(3)(B)(iii). Plaintiff is awarded \$7,293.75 in attorneys'
2 fees and \$1,331.60 in costs, for a total sum of \$8,625.35.

3 IT IS SO ORDERED.

4 Dated: March 26, 2024

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7 JOHN A. MENDEZ
8 SENIOR UNITED STATES DISTRICT JUDGE
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