

1 Crafty to amend its First Amended Complaint while the case was stayed. (ECF No.
2 215 at 9.)

3 On July 31, 2018, after being informed of the completion of arbitration, the
4 Court lifted the stay in this matter. (ECF No. 218.) The Court set a deadline for
5 Plaintiffs to file a petition to confirm the arbitration award. Plaintiffs filed a Petition
6 to Confirm Arbitration Award, (“Pl. Petition,” ECF No. 219.) In response,
7 Defendant Fuqing filed a Motion to Stay Execution of Arbitration. (“Def. Mot.,” ECF
8 No. 222.)² Plaintiffs filed a reply in support of their Petition, (“Reply,” ECF No.
9 226.)

10 **II. ANALYSIS**

11 Plaintiffs provide that the parties have engaged in a full arbitration and the
12 arbitrator awarded \$550,000 to Plaintiffs. (See ECF No. 217-1 (“Arbitration
13 Award”).³ Plaintiffs request the Court confirm the arbitration award and also award
14 Plaintiffs arbitration costs. (Petition 3 n.3, 5.) In response, Defendant Fuqing moves
15 to stay execution of the arbitration award pending resolution of Plaintiffs’ claims
16 against the remaining Defendants or, in the alternative, leave to amend its
17 counterclaim. (Def. Mot. 4.)

18 **A. Requirements for Confirmation of the Award**

19 Plaintiffs request the Court confirm the arbitration award. “[I]f the parties in
20 their agreement have agreed that a judgment of the court shall be entered upon the
21

22 (collectively, “Michaels”) with leave to amend (ECF No. 214) and dismissing without prejudice
23 the claims against Defendants Tony Zhu, Michelle Faherty d/b/a MRF Associates, Inc., A.C. Moore
24 Arts & Crafts, Inc., and Sbar’s, Inc. for lack of personal jurisdiction (ECF No. 85, 88, 103, 104,
25 213). The Court also dismissed Defendants 99 Cents Only and Dollar Tree (ECF Nos. 91, 149).

26 Plaintiffs have filed a motion for reconsideration regarding the Court’s dismissal of their
27 copyright infringement claim against Defendants Michaels and Hobby Lobby. (ECF No. 220.)
28 The Court will address the motion in a separate order.

² Defendant also filed a separate opposition to Plaintiffs’ Petition. (ECF No. 221.) Because the
opposition is identical to the Motion to Stay, the Court will refer only to the Motion to Stay.

³ The Court takes judicial notice of and considers this award. Judicial notice may be taken of orders
and decisions taken by other courts and administrative agencies. *Papai v. Harbor Tug & Barge
Co.*, 67 F.3d 203, 207 (9th Cir. 1995) (overruled on other grounds).

1 award made pursuant to the arbitration, and shall specify the court, then at any time
2 within one year after the award is made any party to the arbitration may apply to the
3 court so specified for an order confirming the award, and . . . the court must grant
4 such an order unless the award is vacated, modified, or corrected.” 9 U.S.C. § 9.
5 Here, the parties’ arbitration agreement provides that any court of competent
6 jurisdiction may enter judgment. (ECF No. 84-12 art. 14.) This language confirms
7 to this Court that the parties contemplated judicial enforcement. *Qorvis Commc’ns,*
8 *LLC v. Wilson*, 549 F.3d 303, 308 (4th Cir. 2008) (“[C]ourts must undertake
9 enforcement of arbitration awards ‘so long as the parties *contemplated* judicial
10 enforcement.’”) (quoting *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587
11 n.6 (2008)). Although the parties’ agreement does not specify a particular court in
12 which a judgment on the award may be entered, Plaintiffs have properly sought a
13 judgment in this Court because the award was made in San Diego, California. *See* 9
14 U.S.C. § 9. Plaintiffs’ Petition is also timely filed within the one-year requirement
15 under Section 9 because Plaintiffs filed the Petition a few months after the award was
16 issued. Therefore, the requirements are met.

17 **B. Proprietary of Confirming the Award**

18 Once a court is satisfied that the petition to confirm an arbitration award is
19 timely and properly supported, the court’s ultimate review of the petition is “both
20 limited and highly deferential.” *Coutee v. Barington Capital Grp., L.P.*, 336 F.3d
21 1128, 1132 (9th Cir. 2003) (citing *Sheet Metal Workers’ Int’l Ass’n v. Madison*
22 *Indus., Inc.*, 84 F.3d 1186, 1190 (9th Cir. 1996)). Confirmation of an arbitration
23 award typically “is a summary proceeding that merely makes what is already a final
24 arbitration award a judgment of the court.” *Romero v. Citibank USA, Nat’l Ass’n*,
25 551 F. Supp. 2d 1010, 1014 (E.D. Cal. 2008) (quoting *Florasynt, Inc. v. Pickholz*,
26 750 F.2d 171, 175–76 (2d Cir. 1984)). This limited and summary review aims to
27 honor the parties’ contractual choices and further the FAA’s “national policy
28 favoring arbitration and plac[ing] arbitration agreements on equal footing with all

1 other contracts.” *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443
2 (2006); *see also Thompson v. Tega-Rand Int’l*, 740 F.2d 762, 763 (9th Cir. 1984)
3 (“Where the parties have agreed to arbitration, the court will not review the merits of
4 the dispute.”).

5 Here, Fuqing does not make any challenges to the arbitration award and does
6 not request the Court alter the award in any way. Its request to stay execution of the
7 award is based on the arbitrator’s award regarding the ownership of one of Plaintiffs’
8 entities, CLLC. Before arbitration, Fuqing owned a 33% interest in Plaintiff CLLC.
9 The arbitrator determined that Fuqing lost 20% of its ownership interest by failing to
10 make a payment of \$100,000 under the parties’ Contribution Agreement.
11 (Arbitration Award 5.) As of now, Fuqing retains a 26.4% interest in CLLC. (*Id.*)
12 CINC has transferred to CLLC all of its assets and liabilities. (*Id.* (citing the parties’
13 Contribution Agreement).) For this reason, Fuqing argues “a portion of any recovery
14 by Plaintiffs from the remaining Defendants in this case belongs to CLLC” and
15 therefore some of the proceeds will need to be distributed to Fuqing. (Def. Mot. 7.)
16 Fuqing therefore requests the Court stay execution of the arbitration award so that
17 Fuqing may “offset any recovery due to it” at the time of distribution of the future
18 proceeds. (*Id.* at 8.)

19 The Court disagrees with Fuqing. It is not necessary to stay execution of the
20 current arbitration award so that any future awards can be appropriately pro-rated.
21 The Court trusts the parties can properly allocate any future funds when and if the
22 time comes. Fuqing predicts Plaintiffs will prevent it from obtaining its lawful share
23 of any damages in this case. This speculation is insufficient for the Court to stay the
24 lawful share of funds to which Plaintiffs are entitled per the arbitration award.
25 Accordingly, the Court **DENIES** Fuqing’s Motion to Stay. (ECF No. 222.) In the
26 alternative, Fuqing “requests leave to amend its counterclaim to seek judicial
27 dissolution of CLLC pursuant to Cal. Corp. Code § 17707.03.” (*Id.* at 10.) But,
28 Fuqing specifies this request is only “[i]f the parties are unable to come to a

1 resolution” in distributing the amount Fuqing owes under the arbitration award and
2 any recovered damages in this case. (*Id.*) Fuqing provides no support for its request
3 to amend its counterclaim, and the request appears to be speculative, only needed
4 “if” the parties cannot resolve any distribution issues. The Court therefore **DENIES**
5 this request without prejudice.

6 In sum, given there is no cognizable challenge to the award, the Court
7 **CONFIRMS** the arbitration award. The Court now turns to Plaintiffs’ request for
8 costs.

9 **C. Plaintiffs’ Request for Costs**

10 Plaintiffs request the Court award them \$44,457.10 in arbitration costs. (Pl.
11 Petition 5.) In a footnote describing the requested costs, Plaintiffs confusingly
12 request three awards: (1) the arbitration costs, (2) “Crafty’s fees and costs for this
13 petition and all further proceedings required to secure a judgment against Fuqing”;
14 and (3) “Crafty’s fees and costs incurred in further post-judgment proceedings
15 against Fuqing, including for interest (as awarded), contempt, perjury, and sanctions
16 for failure to comply with the final judgment.” (*Id.* at 3 n.3.) The first request is
17 specified to be for \$44,457.10. The second two requests are unclear and without
18 support; the Court declines to analyze these vague requests here.

19 In the arbitration award, the arbitrator analyzed remedies such as costs and
20 attorneys fees, noting the parties’ arbitration agreement provides “[t]he costs of
21 arbitration, including administrative fees, fees for a record and transcript, and the
22 arbitrator’s fees, as well as reasonable attorney’s fees will be awarded to the party
23 determined by the arbitrator to be the prevailing party.” (Arbitration Award 15; *see*
24 ECF No. 84-12.) The arbitrator analyzed the Copyright Act which provides, “the
25 court in its discretion may allow the recovery of full costs by or against any party.”
26 (Arbitration Award 15 (quoting 17 U.S.C. § 505).) The arbitrator then cited the
27 holding of *Parfums Givenchy v. CC Beauty Sales*, 832 F. Supp.1378, 1393 (C.D. Cal.
28 1993) which stated a copyright holder is barred from recovery statutory damages or


1 attorney's fees "if two conditions are met: (1) the copyright was registered more than
2 three months after the work was first published, and (2) the infringing activity
3 commenced after the date of first publication and before the effective date of
4 registration of the work." (*Id.*) The arbitrator concluded he "does not recall any
5 evidence that the infringed products were timely registered so as to enable an award
6 of attorney's fees and costs under this statute." (*Id.*) The arbitrator noted each party
7 had requested attorney's fees and Plaintiffs also had requested reimbursement for
8 costs. The arbitrator awarded Plaintiffs attorneys' fees in the amount of \$100,000,
9 finding Plaintiffs to be "the overall prevailing party." (Arbitration Award 17.)
10 Without more explanation, the arbitrator did not award any costs. As noted above,
11 this Court's review of an arbitration award is "both limited and highly deferential."
12 *Coutee*, 336 F.3d at 1132. Plaintiffs do not specifically request the Court alter the
13 arbitration award in awarding costs, but in essence they are asking the Court to do
14 just that. As part of its limited review and confirmation, the Court is not persuaded
15 that sufficient evidence has been presented to warrant overturning the arbitrator's
16 refusal to award costs. The Court **DENIES** Plaintiffs' request for arbitration costs.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Court **CONFIRMS** the arbitration award but
19 **DENIES** Plaintiffs' request for costs, (ECF No. 219). The Court **DENIES**
20 Defendant Fuqing's Motion to Stay Execution of the Arbitration Award, (ECF No.
21 222).

22 **IT IS SO ORDERED.**

23
24 **DATED: September 13, 2018**


Hon. Cynthia Bashant
United States District Judge