

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 J & J SPORTS PRODUCTIONS, INC.,
12 Plaintiff,
13 v.
14 GORDON R. BRUMMELL, et al.,
15 Defendants.

Case No.: 15cv2601-MMA (MDD)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
UNOPPOSED MOTION FOR
ATTORNEY'S FEES AND COSTS**

[Doc. No. 12]

16
17
18
19 On May 2, 2016, the Court entered default judgment in favor of Plaintiff J&J
20 Sports Productions, Inc. and against Defendants Gordon R. Brummell, individually and
21 doing business as MJ's Bar & Grill, and Brummell and Associates, LLC. *See* Doc. No.
22 11. Plaintiff now moves for an award of attorney's fees and costs. *See* Doc. No. 12. The
23 motion is unopposed. For the reasons set forth below, the Court **GRANTS IN PART**
24 and **DENIES IN PART** Plaintiff's motion.

25 **DISCUSSION**

26 On November 19, 2015, Plaintiff filed suit against Defendants for alleged violation
27 of the Federal Communications Act, 47 U.S.C. § 605 *et seq.*, which prohibits commercial
28 establishments from intercepting and broadcasting satellite cable programming, and

1 violation of the Cable & Television Consumer Protection and Competition Act of 1992,
2 47 U.S.C. § 553, which prohibits the unauthorized reception or interception of
3 communications offered over a cable system. This action is one of many similar actions
4 filed by Plaintiff in this and other courts, against defendant sports bars, stores, and other
5 establishments who allegedly broadcasted pay-per-view sporting events illegally. On
6 May 2, 2016, the Court entered default judgment against Defendants. *See* Doc. No. 11.
7 The Court awarded Plaintiff \$3000 in damages, comprised of Plaintiff’s actual damages
8 in the amount of \$2,000.00, the licensing fee Defendants should have paid for the
9 Program, plus \$1,000.00 in statutory damages under 47 U.S.C. § 605. *Id.*

10 Reasonable attorney’s fees and costs are recoverable by the prevailing party
11 pursuant to 47 U.S.C. § 605(e)(3)(B)(iii). Plaintiff requests attorney’s fees in the amount
12 of \$2,195.00 and costs in the amount of \$1,050.00. However, Plaintiff does not provide
13 sufficient support for his attorney’s fees request, and he seeks reimbursement of pre-
14 filing investigative expenses totaling \$650.00, which other courts have declined to award.
15 *See, e.g., J & J Sports Prods., Inc. v. Diaz*, No. 12-CV-1106, 2014 U.S. Dist. LEXIS
16 55858 (S.D. Cal. Apr. 18, 2014) (citing *J & J Sports Prods., Inc. v. Ortiz*, No. 12-CV-
17 05766, 2014 U.S. Dist. LEXIS 39485 (N.D. Cal. Mar. 24, 2014)).

18 To determine reasonable attorney’s fees, this Court must use the lodestar method.
19 *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1152 n.4 (9th Cir. 2001) (internal
20 citations omitted). “The ‘lodestar’ is calculated by multiplying the number of hours the
21 prevailing party reasonably expended on the litigation by a reasonable hourly rate.”
22 *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). First, Plaintiff does not
23 support his request for attorney’s fees with contemporaneous billing records. *J & J*
24 *Sports Prods., Inc. v. Napuri*, No. C 10-04171, 2013 U.S. Dist. LEXIS 116238, 2013 WL
25 4428573, at *2 (N.D. Cal. Aug. 15, 2013) (“Absent the submission of detailed
26 contemporaneous time records justifying the hours claimed to have been expended on
27 this case, the Court gives little weight to the figures provided by Plaintiff.”). Second,
28 Plaintiff does not demonstrate that the hourly rates requested are reasonable vis-à-vis the

1 rates charged in “the forum in which the district court sits.” *Gonzalez v. City of*
2 *Maywood*, 729 F.3d 1196, 1205–06 (9th Cir. 2013). Plaintiff provides only the
3 unsupported declaration of counsel and the Laffey Matrix, which provides prevailing
4 market rates in the District of Columbia. *See* Riley Decl. ¶ 5, Ex. 2. “[T]he fee applicant
5 bears the burden of establishing entitlement to an award and documenting the appropriate
6 hours expended and hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).
7 Plaintiff has not met this burden and is therefore not entitled to an award of attorney’s
8 fees.

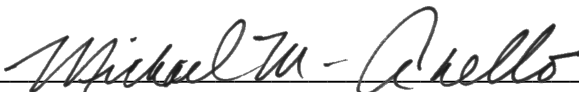
9 With respect to costs, Plaintiff requests a total award of \$1,050.00, consisting of
10 \$650 in pre-filing investigative fees and the \$400 filing fee required to institute this
11 action. Plaintiff provides no authority for the recovery of its investigative fees, and
12 courts have refused to award pre-filing investigation fees to the prevailing party. *See*
13 *Diaz*, 2014 U.S. Dist. LEXIS 55858, at *9-10 (citing *Ortiz*, 20141 U.S. Dist. LEXIS
14 39485; *Napuri*, 2013 U.S. Dist. LEXIS 116238; *Joe Hand Promotions Inc. v. Piacente*,
15 No. C-10-3429, 2011 U.S. Dist. LEXIS 60676 (N.D. Cal. Apr. 11, 2011); *J & J Sports*
16 *Prods., Inc. v. Schrader Rest. Corp.*, 485 F. Supp. 2d 422, 424 (S.D.N.Y. 2007)).
17 Accordingly, the Court will award Plaintiff costs in the amount of \$400 for
18 reimbursement of the filing fee.

19 **CONCLUSION**

20 Based on the foregoing, the Court **GRANTS IN PART** and **DENIES IN PART**
21 Plaintiff’s motion. The Court awards Plaintiff \$400 in costs.

22 **IT IS SO ORDERED.**

23 DATE: June 29, 2016

24 
25 HON. MICHAEL M. ANELLO
26 United States District Judge
27
28