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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DR. SEUSS ENTERPRISES, L.P., a  
California limited partnership  
  
Plaintiff,  
  
v.  
  
COMICMIX LLC, a Connecticut limited  
liability company; GLENN HAUMAN,  
an individual; DAVID JERROLD  
FRIEDMAN a/k/a DAVID GERROLD,  
and individual; and TY TEMPLETON,  
an individual,  
  
Defendants.

Case No.: 16-CV-2779 JLS (BGS)  
  
**ORDER (1) GRANTING JOINT  
MOTION FOR AN EXTENSION OF  
TIME *NUNC PRO TUNC* FOR  
DEFENDANTS TO FILE THEIR  
MOTION FOR ATTORNEYS’ FEES;  
(2) GRANTING PLAINTIFF’S *EX  
PARTE* APPLICATION FOR AN  
ORDER DENYING DEFENDANTS’  
MOTION FOR ATTORNEY’S FEES  
AND BILL OF COSTS WITHOUT  
PREJUDICE OR, IN THE  
ALTERNATIVE, STAYING  
PROCEEDINGS PENDING APPEAL;  
AND (3) DENYING WITHOUT  
PREJUDICE DEFENDANTS’  
MOTION FOR ATTORNEY’S FEES  
AND BILL OF COSTS**

(ECF Nos. 154, 155, 157, 158)

Presently before the Court are Plaintiff Dr. Seuss Enterprises, L.P.’s *Ex Parte* Application for an Order Denying Defendants’ Motion for Attorney’s Fees and Bill of Costs Without Prejudice or, in the Alternative, Staying Proceedings Pending Appeal (“*Ex Parte App.*,” ECF No. 157) and Plaintiff’s and Defendants ComicMix LLC, Glenn

1 Hauman, David Jerrold Friedman a/k/a David Gerrold, and Ty Templeton’s Joint Motion  
2 for an Extension of Time *Nunc pro Tunc* for Defendants to File Their Motion for Attorneys’  
3 Fees (“Joint Mot.,” ECF No. 158). Also before the Court are Defendants’ Opposition to  
4 (“*Ex Parte* Opp’n,” ECF No. 159) and Plaintiff’s Reply in Support of (“*Ex Parte* Reply,”  
5 ECF No. 160) the *Ex Parte* Application, as well as Defendants’ Bill of Costs (ECF No.  
6 154) and Motion for Attorney’s Fees (“Fee Mot.,” ECF No. 155).

### 7 **JOINT MOTION**

8 In the Joint Motion, the Parties indicate that they have stipulated to extend the  
9 deadline for Defendants to file their Fee Motion from April 9, 2019, to April 10, 2019, *see*  
10 Joint Mot. at 1–2, due to technical difficulties faced by Defendants’ counsel. *See* Decl. of  
11 Dan Booth in Support of Joint Mot., ECF No. 158-1, ¶¶ 7–8. Counsel for Plaintiff has  
12 stipulated to the timeliness of Defendants’ Fee Motion. *See id.* ¶ 9. Good cause appearing,  
13 the Court **GRANTS** the Joint Motion (ECF No. 158) and **EXTENDS NUNC PRO TUNC**  
14 the deadline for Defendants to file their Fee Motion to April 10, 2019.

### 15 **EX PARTE APPLICATION**

16 In its *Ex Parte* Application, Plaintiff requests that the Court deny without  
17 prejudice Defendants’ pending Fee Motion and Bill of Costs or, alternatively, stay these  
18 proceedings pending resolution of Plaintiff’s appeal. *See generally Ex Parte* App. Plaintiff  
19 contends that, “[u]nder the Federal Rules of Civil Procedure, a district court may deny  
20 without prejudice, or defer ruling on, a request for attorneys’ fees and costs until a pending  
21 appeal has been decided.” *Id.* at 1–2 (citing Comments to Fed. R. Civ. P. 54 (1993  
22 amendments); Fed. R. Civ. P. 58 advisory committee’s note to 1993 amendment). Plaintiff  
23 urges that “[c]ourts in the Ninth Circuit, including this District, routinely find it appropriate  
24 to deny without prejudice such motions in circumstances substantially identical to those  
25 present here,” *id.* at 2 (citing *FlowRider Surf, Ltd. v. Pac. Surf Designs, Inc.*, No. 3:15-cv-  
26 01879-BEN-BLM, 2018 WL 6830611, at \*3 (S.D. Cal. Dec. 21, 2018); *Pacing Techs.,*  
27 *LLC v. Garmin Int’l, Inc.*, No. 12-CV-1067-BEN JLB, 2014 WL 2872219, at \*2 (S.D. Cal.  
28 June 24, 2014); *Sovereign Gen. Ins. Servs., Inc. v. Scottsdale Ins. Co.*, No. 2:05-cv-00389-

1 MCE-DAD, 2008 WL 5381813, at \*1 (E.D. Cal. Dec. 23, 2008); *Flores v. Emerich & Fike*,  
2 No. 1:05-CV-0291 OWW DLB, 2007 WL 963282, at \*7 (E.D. Cal. Mar. 29, 2007); *Lasic*  
3 *v. Moreno*, No. 2:05-CV-0161-MCE-DAD, 2007 WL 4180655, at \*1 (E.D. Cal. Nov. 21,  
4 2007); *G.P.P., Inc. v. Guardian Prot. Prod., Inc.*, No. 1:15-CV-00321-SKO, 2018 WL  
5 932087, at \*3 (E.D. Cal. Feb. 16, 2018); *Dufour v. Allen*, Case No. 2:14-cv-5616 CAS  
6 (SSx), 2015 WL 12819170, at \*2 (C.D. Cal. Jan. 26, 2015)), where “the Ninth Circuit’s  
7 decision could have a direct impact on this Court’s determination as to whether an award  
8 of attorney’s fees and costs [to Defendants as the prevailing parties] is appropriate,” *id.* at  
9 3, especially as to whether Plaintiff’s decision to pursue the action against Defendants was  
10 reasonable or not. *See id.* at 3–4.

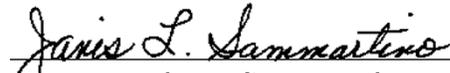
11 Defendants, on the other hand, argue that “[i]t will . . . conserve judicial resources  
12 to address the Fee Motion and Bill of Costs when the case has just ended and the issues  
13 raised are fresh in the Court’s mind.” *Ex Parte Opp’n* at 4. Relying on *Reinicke v. Creative*  
14 *Empire LLC*, No. 12-cv-01405-GPC, 2014 WL 5390176 (S.D. Cal. Oct. 22, 2014), and  
15 *Johnson v. Storix, Inc.*, 2017 WL 2779265, \*3 (S.D. Cal. June 27, 2017), among other  
16 cases, Defendants contend that, “[o]n that basis, courts in this Circuit routinely exercise  
17 their discretion to promptly determine the fees and costs due while appeal is pending, and  
18 decline similar requests to defer.” *Id.* at 5. Further, “[Plaintiff]’s argument, that the Ninth  
19 Circuit’s view of reasonableness of the merits appeal may affect this Court’s disposition  
20 on fees and costs, is basically unfounded,” *id.* at 8, and “[t]his Court need not await the  
21 Ninth Circuit’s opinion to assess whether [Plaintiff] reasonably spent two and a half years  
22 litigating allegations of market harm it could not support.” *Id.* at 9. Finally, Defendants  
23 contend that “[a] prompt decision would let the Ninth Circuit consolidate the pending  
24 appeal from the merits with any appeal from this Court’s decisions on fees and costs,”  
25 which “would serve the judicial interest in avoiding piecemeal appeals.” *Id.* at 10.

26 Upon full consideration of the Parties’ briefs and the law, the Court determines in  
27 its discretion that the Ninth Circuit’s decision could have an impact on this Court’s  
28 determination of whether attorneys’ fees and costs are merited under 17 U.S.C. § 505 and

1 15 U.S.C. § 1117(a). *See* Fed. R. Civ. P. 58 advisory committee’s note to 1993 amendment;  
2 *see also FlowRider Surf, Ltd.*, 2018 WL 6830611, at \*3; *Pacing Techs., LLC*, 2014 WL  
3 2872219, at \*2. The Court therefore **GRANTS** the *Ex Parte* Motion (ECF No. 157) and  
4 **DENIES WITHOUT PREJUDICE** Defendants’ Fee Motion (ECF No. 155) and Bill of  
5 Costs (ECF No. 154). The Court **GRANTS** Defendants leave to renew their Fee Motion  
6 and Bill of Costs within fourteen (14) days of the Ninth Circuit’s resolution of Plaintiff’s  
7 appeal.

8 **IT IS SO ORDERED.**

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10 Dated: April 30, 2019

  
11 Hon. Janis L. Sammartino  
12 United States District Judge  
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