

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3	LIBERTY MEDIA HOLDINGS, LLC,)	Case No.: 2:12-cv-01057-GMN-RJJ
4)	
5	Plaintiff,)	ORDER
6	vs.)	
7	FF MAGNAT LIMITED, d/b/a Oron.com;)	
8	MAXIM BOCHENKO, a/k/a Roman Romanov;)	
9	and JOHN DOES 1-500,)	
10	Defendants.)	

11 Pending before the Court is the Emergency Renewed Motion for Attorneys’ Fees and
12 Costs (ECF No. 89) filed by Plaintiff Liberty Media Holdings, LLC (“Plaintiff” or “Liberty
13 Media” or “Liberty”). Defendant Oron.com (“Defendant” or “Oron”) filed a Response (ECF
14 No. 104) and Plaintiff filed a Reply (ECF No. 106).

15 **I. BACKGROUND**

16 This suit originated when Plaintiff filed a Complaint alleging copyright infringement on
17 June 20, 2012. (ECF No. 1.) By commencing the lawsuit, Plaintiff expected to “cease
18 Defendant’s infringement of its copyrighted audiovisual works, and to recoup the lost sales of its
19 content suffered through Oron’s piracy.” (ECF No. 89, 5:16-20.) First, Plaintiff sought and
20 obtained a Temporary Restraining Order (“TRO”) against Defendant that also ordered that
21 Defendant’s accounts be frozen. (ECF No. 11.) Additionally, Plaintiff filed a Motion for a
22 Preliminary Injunction. (ECF No. 4.) However, both parties later stipulated that the hearing on
23 the Motion for Preliminary Injunction should be delayed and the effect of the TRO should be
24 extended while the parties engaged in settlement discussions. (ECF No. 28.) In granting this
25 stipulation, the Court also set an extended briefing schedule for Plaintiff’s Motion for

1 Preliminary Injunction. (ECF No. 29.)

2 Ultimately, the parties appeared to reach an agreement on the terms of a settlement (see
3 ECF No. 33-1.) Notably, Defendant agreed that it would pay \$550,000 to the Plaintiff, that
4 Defendant would “take both strong and bold measures to keep Liberty Media content off of its
5 servers,” that it would “assist Liberty in identification and civil prosecution of any parties who
6 have been using Oron to distribute Liberty’s copyrighted material,” and that Plaintiff would
7 have “unfettered access to takedown/delete any of Liberty’s material that are being distributed
8 through Oron.com.” (ECF No. 33-1.) However, once Plaintiff began performing the agreement,
9 Defendant began disputing that these terms were actually agreed upon and had resulted in a
10 binding contract (ECF No. 44). While the parties were disputing the effect of the settlement
11 agreement, Plaintiff necessarily continued to prepare its brief in support of its motion for
12 preliminary injunction in accordance with the extended briefing schedule. (ECF No. 89.)

13 Subsequently, on August 7, 2012, the Court granted Plaintiff’s Motion to Enforce the
14 Settlement entered by the parties on July 5, 2012. (ECF No. 85.) In that Order, the Court
15 determined that the parties had mutually agreed to the terms once they resolved all disputes
16 surrounding the interpretation of those terms. (ECF No. 85.) Specifically, the Court stated that
17 “[t]here can be no dispute that there was a meeting of the minds” when “Plaintiff’s counsel
18 orally accepted Defendant’s interpretation” of the settlement terms. (ECF No. 85, 6.) The
19 Order further stated that “Defendant cannot plausibly claim that it no longer intended to be
20 bound by all the other terms of the Settlement Letter when it ‘got its way’” (Id. at 6:23-25.)

21 Thereafter, Plaintiff brought this motion seeking an award of attorneys’ fees pursuant to,
22 inter alia, § 505 of the Copyright Act. (ECF No. 85.) Since the instant case was filed on June
23 20, 2012, both parties have been very active in advancing the case. In fact, the docket contains
24 over 100 entries, including Plaintiff’s motion seeking a preliminary injunction (ECF No. 4),
25 multiple motions that Defendant filed seeking disbursement of its frozen funds (ECF Nos. 20,

1 24, 90), Defendant’s Motion to Dismiss (ECF No. 21), and Plaintiff’s motion requesting
2 enforcement of the settlement agreement (ECF No. 33). To pursue this case, Plaintiff enlisted
3 Randazza Legal Group and incurred charges ranging from \$400-\$500 per hour for partners,
4 \$350 per hour for of counsel, \$325 per hour for associate attorneys, and \$125 per hour for law
5 clerks. (ECF No. 89.) The resolution of this case required 325.90 labor hours from Randazza
6 Legal Group, resulting in Plaintiff incurring \$134,910.00 in attorney fees and \$64,911.50 in
7 costs. (ECF No. 89.) Thus, Plaintiff filed this Motion requesting that this Court order Defendant
8 to pay Plaintiff \$199,821.50. (Id.) On August 26, 2012, Plaintiff supplemented its original
9 request for seeking attorneys’ fees incurred in attempting to satisfy the judgment against
10 Defendant. (See ECF No. 101.) According to the supplement, Plaintiff’s counsel spent an
11 additional 40 hours of labor to obtain satisfaction of that judgment and respond to Defendant’s
12 Motion for Disbursement of Fees, resulting in an additional \$15,142.50 in attorneys’ fees. (Id.)
13 Thus, the Plaintiff is requesting \$150,052.50 in attorneys’ fees and \$64,911.50 in costs, totaling
14 \$214,964.00. (See ECF No. 89, 101.)

15 In accordance with Local Rules of Practice, United States District Court, District of
16 Nevada, LCR 54-16, Plaintiff included a reasonable itemization and description of the work
17 performed. For the reasons stated below, the Court finds that an award of **\$131,797.50** in
18 attorneys’ fees is appropriate.

19 **II. DISCUSSION**

20 **A. Costs**

21 Pursuant to Federal Rule of Civil Procedure 54(d)(1), “costs—other than attorney’s fees
22 should be allowed to the prevailing party.” However, Local Rules of Practice, United States
23 District Court, District of Nevada, LCR 54-1, requires that a party claiming such costs “shall
24 serve and file a bill of costs and disbursements on the form provided by the Clerk no later than
25 fourteen (14) days after the date of entry of the judgment or decree.” LCR 54-1(a). Local Rule

1 54-1(b) further requires that “[e]very bill of costs and disbursements shall be verified and
2 distinctly set forth each item so that its nature can be readily understood. . . . An itemization and,
3 where available, documentation of requested costs in all categories must be attached to the bill
4 of costs.” LCR 54-1(b).

5 Although Plaintiff provided an itemization of the work performed by its attorneys,
6 Plaintiff failed to file the required Bill of Costs form (AO 133) and failed to file the required
7 itemization of the costs. (See ECF No. 89-4.) Therefore, to the extent that Plaintiff seeks an
8 award for the costs incurred, other than attorneys’ fees, Plaintiff’s motion is denied.

9 **B. Attorneys’ Fees**

10 Section 505 of the Copyright Act grants district courts discretion to award “a reasonable
11 attorney’s fee to the prevailing party as part of the costs.” 17 U.S.C. § 505. In determining
12 whether an award of attorneys’ fees is appropriate under § 505, a district court engages in a two-
13 part inquiry. First, a court determines whether the party requesting the attorneys’ fees is actually
14 a “prevailing party.” 17 U.S.C. § 505. Second, a district court exercises its “equitable
15 discretion” in determining whether an award of attorneys’ fees would “further[] the underlying
16 purposes of the Copyright Act” *Entm’t Research Grp., Inc. v. Genesis Creative Grp., Inc.*,
17 122 F.3d 1211, 1229-1230 (9th Cir. 1997) (citation and internal quotation marks omitted). Once
18 a district court determines that an award of attorneys’ fees is appropriate, then the court
19 calculates the amount of that award. *Cadkin v. Loose*, 569 F.3d 1142, 1147 (9th Cir. 2009).

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21 **C. Liberty Media is a “prevailing party” because the Order Granting Liberty
22 Media’s Motion to Enforce Settlement materially altered the legal relationship
between the parties.**

23 In *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and*
24 *Human Resources*, the Supreme Court determined that, in the context of the Fair Housing
25 Amendment Act, “prevailing party” is defined as a party who has been awarded some relief by

1 the court. 532 U.S. 598, 603 (2001). Subsequently, in *Cadkin v. Loose*, the Ninth Circuit
2 applied this definition of “prevailing party” to the use of that term in the Copyright Act. 569
3 F.3d 1142, 1148 (9th Cir. 2009). Therefore, the touchstone of this inquiry is “whether some
4 court action has created a ‘material alteration of the legal relationship of the parties.’” *Cadkin*,
5 569 F.3d at 1148 (quoting *Buckhannon*, 532 U.S. at 604). In fact, the Supreme Court has
6 explicitly explained when this alteration of legal relationship can occur: “[n]o material alteration
7 of the legal relationship between the parties occurs until the plaintiff becomes entitled to enforce
8 a judgment, consent decree, or settlement against the defendant.” *Farrar v. Hobby*, 506 U.S.
9 103, 113 (1992) (emphasis added); see also *Cadkin*, 569 F.3d at 1145 (noting that “dismissal
10 without prejudice does not alter the legal relationship of parties for the purposes of entitlement
11 to attorneys’ fees . . .”).

12 In this case, Liberty Media is a prevailing party because the Order Granting Liberty
13 Media’s Motion to Enforce Settlement materially altered the legal relationship between the
14 parties. (ECF No. 85.) This Court previously determined that the parties formed an enforceable
15 contract on July 5, 2012, when Plaintiff’s counsel orally accepted Defendant’s interpretation of
16 the proposed settlement terms. (*Id.* at 6.) Thus, at this time, Plaintiff was entitled to enforce that
17 settlement. Moreover, in the Order Granting Liberty Media’s Motion to Enforce Settlement, the
18 Court entered judgment against the Defendant in favor of the Plaintiff in the amount of
19 \$550,000.00 and the Court dismissed the case with prejudice. (ECF No. 85, 7:20-8:7.) Thus,
20 these actions resulted in the “material alteration of the legal relationship of the parties” that is

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1 required to recover attorneys' fees under § 505 in the Ninth Circuit.¹ Buckhannon, 532 U.S. at
2 604.

3 **D. Granting Liberty Media's Motion for Attorneys' Fees furthers the underlying**
4 **purposes of the Copyright Act.**

5 Before awarding attorneys' fees under § 505 of the Copyright Act, district courts first
6 determine whether such an award would "further[] the underlying purposes of the Copyright Act
7" Entm't Research Grp., 122 F.3d at 1229-1230. When engaging in this analysis, a district
8 court considers a number of factors, including "(1) the degree of success obtained;
9 (2) frivolousness; (3) motivation; (4) the objective unreasonableness of the losing party's factual
10 and legal arguments; and (5) the need, in particular circumstances, to advance considerations of
11 compensation and deterrence." Love v. Associated Newspapers, Ltd., 611 F.3d 601, 614 (9th
12 Cir. 2010) (citing Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 n.19 (1994) (noting that the use
13 of "nonexclusive factors . . . may be used to guide courts' discretion, so long as such factors are
14 faithful to the purposes of the Copyright Act . . .")).

15 In this case, the Court finds three of these factors especially persuasive in determining
16 that an award of attorneys' fees for Plaintiff is appropriate: (i) the objective unreasonableness of
17 the Defendant's factual and legal arguments; (ii) the degree of success obtained; and (iii) the
18 need to advance considerations of compensation and deterrence. First, in its Order Granting
19 Plaintiff's Motion to Enforce the Settlement Agreement, the court stated that "[t]here can be no
20 dispute that there was a meeting of the minds" when "Plaintiff's counsel orally accepted
21 Defendant's interpretation" of the settlement terms. (ECF No. 85, 6.) The order further stated
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23 ¹ Defendant argues that an award of attorneys' fees under § 505 is appropriate only when a party "secure[s] a judgment on the
24 merits or [is] a party to a settlement agreement that is expressly enforced by the court through a consent decree." (ECF No.
25 104) (citing NXIVM Corp. v. Ross Institute, No. 1:03-cv-00976-GLS-DRH, 2005 WL 1843275, at *2 (N.D.N.Y. Aug. 2,
2005). To support this proposition, Defendant relies solely on an unreported case from the Northern District of New York.
The Court does not find Defendant's argument persuasive. Instead, this Court relies on controlling authority within the Ninth
Circuit. See Cadkin, 569 F.3d at 1148. Given that the Ninth Circuit has already provided a definition of "prevailing party"
under § 505, Defendant's discussion of consent decrees is wholly irrelevant.

1 that “Defendant cannot plausibly claim that it no longer intended to be bound by all the other
2 terms of the Settlement Letter when it ‘got its way’” (Id. at 6:23-25.) Therefore,
3 Defendant’s arguments in challenging the enforcement of the settlement agreement were
4 objectively unreasonable.

5 Second, the Plaintiff negotiated a considerably successful settlement which required
6 Defendant to both make a monetary payment to Plaintiff, as well as “take both strong and bold
7 measures to keep Liberty Media content off of its servers,” and “assist Liberty in identification
8 and civil prosecution of any parties who have been using Oron to distribute Liberty’s
9 copyrighted material” (ECF No. 33-1, 2.) Plaintiff also received “unfettered access to
10 takedown / delete any of Liberty’s material that are being distributed through Oron.com”
11 (Id.) Given the monetary payment, the measures that Defendant agreed to undertake to protect
12 Plaintiff’s intellectual property, and the cessation of future litigation between these parties,
13 Plaintiff obtained marked success through the settlement agreement and the Order enforcing that
14 agreement.

15 Third, the need to advance considerations of compensation and deterrence favors an
16 award of attorneys’ fees in this case for Plaintiff. Not only does an award of attorneys’ fees
17 deter any copyright infringement, it also deters the needless extension of litigation regarding
18 claims of copyright infringement, thus making it more financially feasible for copyright holders
19 to protect their intellectual property.

20 **E. The amount of Attorneys’ Fees requested by Liberty Media is reasonable.**

21 Calculation of reasonable attorneys’ fees requires a two-step inquiry. First, the court
22 computes the “lodestar” figure, which requires the court to multiply the reasonable hourly rate
23 by the number of hours reasonably expended on the litigation. *Fischer v. SJB-P.D., Inc.*, 214
24 F.3d 1115, 1119 (9th Cir. 2000). Next, the court considers the factors articulated by the Ninth
25 Circuit in *Kerr v. Screen Extras Guild, Inc.* and decides whether to increase or reduce the

1 lodestar amount. 526 F.2d 67, 70 (9th Cir. 1975); see Fischer, 214 F.3d at 1119. Specifically,
2 the court considers (1) the time and labor required, (2) the novelty and the difficulty of the
3 questions involved, (3) the skill required to perform the legal service properly, (4) the preclusion
4 of other employment by the attorney due to the acceptance of the case, (5) the customary fee,
5 (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or
6 circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation,
7 and ability of the attorney, (10) the “undesirability” of the case, (11) the nature and length of the
8 professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.
9 These factors are consistent with the Local Rules of Practice, United States District Court,
10 District of Nevada, LCR 54-16, which governs motions for attorneys’ fees. See LR 54–16(b)(3).

11 With respect to the first step, the hourly rates that Plaintiff’s attorneys charged are
12 reasonable rates in the Las Vegas legal market. Plaintiff enlisted Randazza Legal Group and
13 incurred charges ranging from \$400-\$500 per hour for partners, \$350 per hour for of counsel,
14 \$325 per hour for associate attorneys, and \$125 per hour for law clerks. (ECF No. 89, 8:2-5.)
15 Plaintiff’s attorneys claim that working on Plaintiff’s case “consumed 325.90 hours preparing,
16 filing, and responding to the many motions in this case.” (ECF No. 89, 7:23-25.) After a review
17 of the itemized bill, the Court denies those fees that are traditionally secretarial-type services,
18 such as docketing. The Court also denies those fees that are duplicative due to Plaintiff’s
19 attorneys’ consulting together. Rather, the Court allows only the fee for the one attorney in the
20 consultation with the highest hourly rate. Additionally, the Court denies those fees that Plaintiff
21 incurred as a result of litigation activities in Hong Kong. Thus, the court will exclude the costs
22 incurred in these activities and awards a total fee award of **\$131.797.50**.

23 Second, the Court sees no reason to increase or reduce the lodestar amount based on the
24 Kerr factors. This motion was filed in accordance with LRC 54-16 by including the “[a]
25 reasonable itemization and description of the work performed” and “[a] brief summary” of the

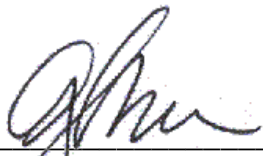
1 relevant factors. Notably, this case has been active for slightly longer than two months and the
2 number of filings in the docket already exceeds 100. In fact, the docket includes Plaintiff's
3 motion seeking a preliminary injunction (ECF No. 4), multiple motions that Defendant filed
4 seeking disbursement of its frozen funds (ECF Nos. 20, 24, 90), Defendant's Motion to Dismiss
5 (ECF No. 21), and Plaintiff's Motion Requesting Enforcement of the Settlement Agreement
6 (ECF No. 33). Plaintiff asserts that its attorneys' "ability to take on other representations and
7 serve other clients was significantly, and necessarily, impaired" during this time. (ECF No. 89,
8 7:22-23.) Given the volume of filings in this case and Plaintiff's itemized list of attorneys' fees
9 totaling over 320 labor hours, the Court agrees that by representing Plaintiff, its attorneys were
10 precluded from other employment. In addition to the reasons stated in Section II.D. above, the
11 Court finds that the volume of labor intensive filings further supports the conclusion that the
12 amount of attorneys' fees need not be reduced based on the Kerr factors.

13 **III. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff's Emergency Renewed Motion for Attorneys'
15 Fees (ECF No. 89) is **GRANTED**. Plaintiff is awarded attorneys' fees in the amount of
16 **\$131,797.50**.

17 **IT IS FURTHER ORDERED** that, due to Plaintiff's failure to file the required Bill of
18 Costs form (AO 133) and the required itemization of costs, Plaintiff's Motion for Costs is
19 **DENIED**. (See ECF No. 89-4.)

20 **DATED** this 4th day of September, 2012.

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25 Gloria M. Navarro
United States District Judge