

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BUCKHORN INC., <i>et al.</i> ,	:	Case No. 3:08-cv-459
	:	
Plaintiffs,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
ORBIS CORPORATION, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER GRANTING IN PART AND DENYING IN PART ORBIS’S MOTION FOR SUPPLEMENTAL ATTORNEYS’ FEES AND EXPENSES (Doc. 304)**

This civil action is before the Court on Defendant Orbis’s motion for attorneys’ fees and expenses (Doc. 304) and the parties’ responsive memoranda (Docs. 306, 308).

**I. BACKGROUND<sup>1</sup>**

On April 22, 2014, the Court awarded Orbis \$3,042,485.45 in attorneys’ fees, costs, and expenses. (Doc. 302). Now, Orbis moves for an award of supplemental attorneys’ fees and costs incurred from November 2013 through January 2014. Orbis seeks \$99,295.50 in attorneys’ fees and \$17.25 in copying costs incurred in litigating the initial award of attorneys’ fees and costs. Specifically, Orbis seeks a supplemental award for the following work:

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<sup>1</sup> Background facts are incorporated herein from Doc. 302.

<b>Project</b>	<b>Hours</b>	<b>Fees</b>
Preparing Motion for a Determination of Fee Award	99.2	\$50,098.50
Preparing Opposition to Buckhorn’s Motion to Dismiss	12.0	\$6,817.50
Preparing Reply to Plaintiffs’ Opposition to Motion for a Determination of Fee Award	78.3	\$42,379.50
<b>Total</b>	<b>190.5</b>	<b>\$99,295.50</b>

## II. STANDARD OF REVIEW

A court has the “discretion to deny attorneys’ fees” and “refuse to enforce a contractual attorney’s fee provision if an award of fees would be ‘inequitable and unreasonable.’” *Anderson v. Melwani*, 179 F.3d 763, 766 (9th Cir. 1999) (citing *DeBlasio Constr. Co. v. Mountain States Constr. Co.*, 588 F.2d 259, 263 (9th Cir. 1978) (the court did not err in denying fees where both parties were to blame for the dispute)).<sup>2</sup> A court “abuses its discretion if it awards contractually-authorized attorney’s fees under circumstances that make the award inequitable or unreasonable.” *Anderson*, 179 F.3d at 766.

The starting point for determining the amount of reasonable attorney’s fees is the “lodestar” amount. *Niswonger v. PNC Bank Corp. & Affiliates Long Term Disability Plan*, No. 3:10cv377, 2011 U.S. Dist. LEXIS 111648, at \*4 (S.D. Ohio Sept. 29, 2011) (citing *Inwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 551 (6th Cir. 2008)). The “lodestar” amount is calculated by multiplying the number of hours reasonably expended

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<sup>2</sup> Since the fee award is derived solely from a contract governed by California law, California law controls. (Doc. 286 at 20).

on the litigation by a reasonable hourly rate. (*Id.*) All that is necessary to prove the reasonableness of attorney fees is “evidence supporting the hours worked and rates claimed.” *Granada Inv., Inc. v. DWG Corp.*, 962 F.2d 1203 (6th Cir. 1992) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

### III. ANALYSIS

Orbis is entitled to recover reasonable attorney fees and other expenses incurred enforcing its rights under the Fee Provision of the Settlement License. *See, e.g., Central Soya Co., Inc. v. Geo. A. Hormel & Co.*, 723 F.2d 1573, 1578 (Fed. Cir. 1983) (“We interpret attorney fees to include those sums that the prevailing party incurs in the preparation for and performance of legal services related to the suit” and citing with approval a district court case holding that such fees “include lawyer’s fees for time spent on the issue of attorney fees.”).

#### A. Attorneys’ Hours<sup>3</sup>

Plaintiffs argue that Orbis’s motion mirrors its previously submitted motion for fees, which shows that much of the legal work necessary for the motion was already included in the invoices previously submitted to the Court, and for which the Court already issued an award. (*Compare* Docs. 261 and 286). Specifically, Orbis spent approximately 138 hours preparing its first motion for fees, and now seeks an award for another 99.2 hours for preparing a largely identical motion, plus 78.3 hours for its reply. (Docs. 303 and 286). Additionally, Plaintiffs argue that Orbis’s ten page reply brief was

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<sup>3</sup> This Court already established the reasonableness of Orbis’s attorneys’ rates. (Doc. 302 at 5).

largely repetition of the same arguments Orbis made on multiple occasions. Moreover, Orbis provides vague descriptions in its billing entries, such as “work on reply brief,” without any detailed information. (Doc. 303, Bono Decl., Ex. 1).

Plaintiffs also criticize Orbis’s memorandum *contra* to its motion to dismiss, which was five pages in length and involved a discussion of only one case. (Doc. 288). Accordingly, Buckhorn argues that an inequity will result if this Court awards the entirety of the supplemental attorney fees.

“[T]he determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court...The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.” *PLCM Group v. Drexler*, No. S080201, 2000 Cal. LEXIS 3716, at \*207 (Cal. May 8, 2000). “There is no precise rule or formula...The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.” *Hensley v. Eckerhart*, 461 U.S. 424, 436-7 (1983).

Plaintiffs argue that the loadstar amount should be reduced by one-third. Conversely, Orbis argues that the hours it incurred in preparing its motion for a determination of fees and costs is not “largely identical” to its earlier motion. Among other things, Orbis maintains that it had to consider and research many issues raised by Plaintiffs, including citations to forty cases and twenty footnotes, which was

accompanied by a seven-page, twenty-five paragraph declaration with twenty-two exhibits.

Upon careful review of Orbis's declaration and invoice in support of their motion, the Court finds that an inequity will result if this Court awarded the entirety of the supplemental attorney fees. Specifically, the Court finds that Orbis spent an inordinate amount of time briefing the motion for fees. Moreover, with entries such as "work on reply brief," the Court simply cannot find that 177.5 hours were required to brief the motion for fees. Accordingly, the Court adjusts the lodestar value of the fees pertaining to the motion for fees and therefore reduces the same by one-fourth (or 25%). ( $\$92,478 - \$23,119 = \$69,359$ ). The Court finds that the time spent opposing the motion to dismiss was reasonable.

#### **B. Costs**

This Court already determined that copying costs are reimbursable. (Doc. 302 at PageID 11609) (*citing Alvarado v. Nederend*, No. 1:08cv1900, 2011 U.S. Dist. LEXIS 52793, at \*27-28 (E.D. Cal. May 17, 2011)). Orbis seeks \$17.25 in copying costs reasonably and necessarily incurred in connection with preparing the hundreds of documents that Orbis submitted to document the reasonableness of fees and costs incurred in this matter. (Doc. 302 at PageID 11612). Buckhorn does not oppose this request.

#### IV. CONCLUSION

Accordingly, for these reasons, Orbis's motion for attorneys' fees and costs (Doc. 304) is **GRANTED IN PART** and **DENIED IN PART**. Specifically, Orbis is awarded \$76,176.50 in attorney's fees and \$17.25 in costs, for a total of \$76,193.75.

**IT IS SO ORDERED.**

Date: 7/11/14

*s/ Timothy S. Black*  
Timothy S. Black  
United States District Judge