

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 WEDI CORP.,

7 Plaintiff,

8 v.

9 BRIAN WRIGHT; HYDRO-BLOK
10 USA LLC; and HYDROBLOK
11 INTERNATIONAL LTD.,

12 Defendants.

C15-671 TSZ

ORDER

13 SOUND PRODUCT SALES L.L.C.,

14 Counterclaimant,

15 v.

16 WEDI CORP.,

17 Counter-Defendant.

18 This matter comes before the Court on a motion for voluntary dismissal pursuant
19 to Federal Rule of Civil Procedure 41(a)(2), docket no. 360, brought by plaintiff wedi
20 Corp. (“wedi”). Having reviewed all papers filed in support of, and in opposition to, the
21 motion, and being well acquainted with the record in this matter, the Court enters the
22 following Order.

23 **Discussion**

wedi asserted a variety of claims against Brian Wright, Sound Product Sales
L.L.C. (“Sound Product”), Hydro-Blok USA LLC (“Hydro-Blok”), and Hydroblok

1 International Ltd. (“H-International”). Some of these claims were resolved in arbitration.
2 See Award (docket no. 101-3); Order (docket no. 128); Partial Judgment (docket
3 no. 129). Other claims, including wedi’s false advertising claims under the Lanham Act
4 and Washington’s Consumer Protection Act (“CPA”), as well as wedi’s abuse-of-process
5 claims, were dismissed by the Court during motion practice. See Orders (docket nos. 152
6 & 260). The remaining claims were dismissed with prejudice and without costs as a
7 result of the parties’ settlement. See Order (docket no. 295). Under the terms of the
8 parties’ settlement, wedi retained the right to appeal the Court’s rulings concerning its
9 Lanham Act and CPA claims. See id. at 2 n.1. Thus, with regard to the Lanham Act and
10 CPA claims, as well as the abuse-of-process claims, which had been addressed in the
11 same order, the Court entered a partial judgment against wedi, docket no. 296, and
12 awarded costs in the amount of \$2,538.46 to Mr. Wright, Sound Product, Hydro-Blok,
13 and H-International, see Minute Order Revising Taxation of Costs (docket no. 328).

14 The United States Court of Appeals for the Ninth Circuit affirmed all but one of
15 the Court’s summary judgment rulings. See Memo. (docket no. 335). The Ninth Circuit,
16 however, held that a material question of fact existed as to wedi’s claim of false
17 advertising premised on the statement that the products at issue are “ICC-ES¹ Tested and
18 Certified.” See id. at 2, 4-5. Because the partial judgment was reversed in part, the
19 award of costs was vacated. Id. at 5 n.4. On remand, wedi unsuccessfully sought to
20 amend its operative pleading, engage in further discovery, and reopen dispositive motion
21

22 ¹ ICC-ES is an acronym for International Code Council - Evaluation Service.
23

1 practice. See Minute Order at 1 n.1 (docket no. 340); Minute Order at ¶ 1 (docket
2 no. 345); Minute Order at ¶ 2 (docket no. 358). A few weeks before the trial date, wedi
3 filed the pending Rule 41(a)(2) motion, seeking voluntary dismissal of its Lanham Act
4 and CPA claims with prejudice and without attorney fees or costs, except for
5 reinstatement of the costs previously awarded. In response, Mr. Wright, Sound Product,
6 Hydro-Blok, and H-International contend that they should be given an opportunity to
7 seek attorney fees and costs. The Court disagrees as to attorney fees, but agrees as to
8 costs.

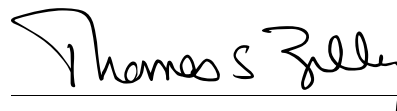
9 The Court has already ruled that attorney fees are not available under the CPA to
10 prevailing defendants. See Minute Order at ¶ 1(a) (docket no. 300). The Court has also
11 concluded that this case is not “exceptional” within the meaning of the Lanham Act, 15
12 U.S.C. § 1117(a), for purposes of awarding attorney fees. See Minute Order at ¶ 1
13 (docket no. 327). Neither of these decisions were challenged on appeal, and they are now
14 law of the case. wedi having prevailed in small part before the Ninth Circuit, the Court
15 rejects any notion that wedi’s conduct in seeking review transformed this case into an
16 “exceptional” one. And, while wedi was perhaps slow to understand that its remaining
17 claims were weak and that it was unlikely to realize a net gain over the expenses of trial,
18 the Court does not find wedi’s post-remand behavior to be exceptionally unreasonable or
19 outside the norm of similar litigation. Thus, Mr. Wright, Sound Product, Hydro-Blok,
20 and H-International will not be heard to assert any entitlement to attorney fees.

21 As prevailing parties, however, Mr. Wright, Sound Product, Hydro-Blok, and
22 H-International may tax costs on appeal and remand in the manner set forth in Local
23

1 Civil Rule 54(d). wedi's motion for voluntary dismissal, docket no. 360, is therefore
2 GRANTED in part and DENIED in part. wedi's remaining claims are DISMISSED with
3 prejudice and without attorney fees. The costs previously awarded against wedi are
4 hereby REINSTATED and they shall bear interest at the rate set forth in 28 U.S.C.
5 § 1961 from the date of the original partial judgment, December 6, 2019, until paid in
6 full. See Friend v. Kolodziejczak, 72 F.3d 1386, 1391-92 (9th Cir. 1995) (observing that
7 post-judgment interest applies to awards of costs and runs from the date that entitlement
8 was secured, rather than from the date that the exact quantity was set). The Clerk is
9 DIRECTED to enter judgment consistent with this Order, the Order entered June 18,
10 2019, docket no. 260, and the Minute Orders entered July 10, 2019, docket no. 263, and
11 September 19, 2019, docket no. 266. The Clerk is further DIRECTED to send a copy of
12 this Order and the Judgment to all counsel of record and to CLOSE this case.

13 IT IS SO ORDERED.

14 Dated this 23rd day of September, 2021.

15
16 

17 Thomas S. Zilly
18 United States District Judge
19
20
21
22
23