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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CEN COM, INC., a Washington Corporation
doing business as American Digital
Monitoring,

Plaintiff,

v.

NUMEREX CORP., a Pennsylvania
Corporation; NextAlarm, LLC, a Georgia
Limited Liability Company; and DOES 1 –
10,

Defendants.

Case No. C17-0560 RSM

ORDER GRANTING IN PART AND
DENYING IN PART SUPPLEMENTAL
MOTION FOR ATTORNEYS’ FEES

I. INTRODUCTION

This matter initially came before the Court on Defendants’ motion to compel Plaintiff to run certain electronic search terms and to compel certain third parties to respond to subpoenas *duces tecum*, which included a request for attorneys’ fees. Dkt. #41. On April 11, 2018, the Court granted Defendants’ motion, granted Defendants’ request for attorneys’ fees, and directed Defendants to file a supplemental motion, appending the evidence necessary to support their request. Dkt. #81 at 2-6. Defendants have since filed that supplemental motion. Dkt. #94. Plaintiff opposes the motion, arguing that Defendants have requested an unreasonable amount of hours, and objecting to the requested hourly rates. Dkt. #101. Defendants now ask the Court for a total award of \$8,787.50 in attorneys’ fees. For

ORDER - 1

1 the reasons discussed below, the Court GRANTS IN PART AND DENIES IN PART
2 Defendants' motion.

3 II. DISCUSSION

4 A. Legal Standard

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6 "When it sets a fee, the district court must first determine the presumptive lodestar
7 figure by multiplying the number of hours reasonably expended on the litigation by the
8 reasonable hourly rate." *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993).

9 The reasonable hourly rate is determined with reference to the prevailing rates charged by
10 attorneys of comparable skill and experience in the relevant community. *See Blum v. Stetson*,
11 465 U.S. 886, 895 (1984). In determining the reasonable number of hours expended on the
12 litigation, the Court may exclude any excessive, redundant, or otherwise unnecessary hours
13 billed. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). The Court may also adjust the
14 lodestar with reference to factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,
15 69-70 (9th Cir. 1975). The relevant Kerr factors are: (1) the time and labor required; (2) the
16 novelty and difficulty of the questions; and (3) the skill requisite to perform the legal services
17 properly. "The lodestar amount presumably reflects the novelty and complexity of the issues,
18 the special skill and experience of counsel, the quality of representation, and the results
19 obtained from the litigation." *Intel*, 6 F.3d at 622.

20 B. Reasonableness of Rates

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22 The Court first examines the hourly rate for time billed by their counsel requested by
23 Defendants. Defendants seek a billing rate of \$460 per hour (2017) and \$475 per hour (2018)
24 for the work performed by attorney Mathew Harrington, and \$275 per hour (2017) and \$310
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1 per hour (2018), both of whom work for the firm Stokes Lawrence, P.S. in Seattle, WA. Dkt.
2 #95 at ¶¶ 3-4. Although a paralegal also performed services on the matter, Defendants do
3 not seek to recover fees for her time. *Id.* at ¶ 2.

4
5 “The party seeking fees bears the burden of documenting the hours expended in the
6 litigation and must submit evidence supporting . . . the rates claimed.” *Welch v. Metro. Life*
7 *Ins. Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007) (citing *Hensley*, 461 U.S. at 433). In the Ninth
8 Circuit, “the determination of a reasonable hourly rate ‘is not made by reference to the rates
9 actually charged the prevailing party.’” *Welch*, 480 F.3d at 946 (quoting *Mendenhall v. Nat’l*
10 *Transp. Safety Bd.*, 213 F.3d 464, 471 (9th Cir. 2000)). “Rather, billing rates should be
11 established by reference to the fees that private attorneys of an ability and reputation
12 comparable to that of prevailing counsel charge their paying clients for legal work of similar
13 complexity.” *Id.* (internal quotation omitted). “Affidavits of the plaintiffs’ attorney and other
14 attorneys regarding prevailing fees in the community, and rate determinations in other cases,
15 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the
16 prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403,
17 407 (9th Cir. 1990). “Generally, when determining a reasonable hourly rate, the relevant
18 community is the forum in which the district court sits.” *Camacho v. Bridgeport Fin., Inc.*,
19 *523 F.3d 973, 979* (9th Cir. 2008) (vacating award of attorneys’ fees in Fair Debt Collection
20 Practices Act case where district court failed to identify the relevant community or address
21 the prevailing market rate).
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24 In this case, Defendants have failed to present adequate evidence supporting the
25 reasonableness of the rates requested in this market. *See* Dkt. #95 at ¶ 3. Indeed, Defendants
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1 support their request with a single statement from attorney Harrington that he “believe[s]
2 []his rate and the rate of Mr. Zuniga to be commensurate with rates of professionals with
3 similar experience who represent clients in complex commercial lawsuits such as this one.
4 Dkt. #95 at ¶ 3. While defense counsel might “believe” that the hourly rate is reasonable,
5 Defendants provide no analysis of the rates charged for these types of cases in the Seattle
6 market. Given the Court’s familiarity with the market and the rates typically charged by
7 experienced attorneys in these types of cases, and a review by this Court of similar actions in
8 which attorney’s fees were awarded, the Court finds that the average rates awarded are
9 typically between \$350.00 and \$400.00 per hour. Accordingly, given the absence of proper
10 evidence from Defendants to comparable attorney rates in the Seattle market, the Court finds
11 that Defendants have failed to meet their burden to establish a reasonable hourly rate of more
12 than \$400.00 per hour for Mr. Harrington. Mr. Zuniga’s rates appear to be commensurate
13 for the market. The Court will therefore calculate the lodestar using the hourly rate of \$400
14 per hour for Mr. Harrington’s time, and the rates proposed for Mr. Zuniga’s time.

17 **C. Reasonableness of Hours**

18 The Court now turns to the reasonableness of the hours requested. “The party seeking
19 fees bears the burden of documenting the hours expended in the litigation and must submit
20 evidence supporting” the request. *Hensley*, 461 U.S. at 433. As noted above, the Court
21 excludes those hours that are not reasonably expended because they are “excessive,
22 redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434. Further, the Ninth Circuit
23 has held it is reasonable for a district court to conclude that the party seeking attorney’s fees
24 fails to carry its burden of documenting the hours expended when that party engages in “block
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1 billing” because block billing makes it more difficult to determine how much time was spent
2 on particular activities. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).
3 Likewise, intra-office conferences between experienced counsel, absent persuasive
4 justification by the moving party, may be excluded from an award as unnecessary and
5 duplicative. *See id.* at 949.
6

7 Defendants have presented a summary description of the time spent related to the
8 motion to compel. Dkt. #95 at ¶ 6. The Court notes that Defendants filed the initial motion
9 to compel on February 8, 2018. Dkt. #41. However, Defendants request hours expended on
10 litigation as far back as June 27, 2017. Dkt. #95 at ¶ 6. A review of that time reveals that
11 those hours were required for actions that are typical in litigation of a matter, and not solely
12 related to the motion to compel. *See id.* It is true that attorney conferences occurred prior to
13 the filing of the motion regarding the issues raised in the motion. *See id.* However, discovery
14 conferences are mandated by the Federal Rules of Civil Procedure and the Court’s Local
15 Rules as a matter of course. Accordingly, the Court will not compensate Defendants for the
16 time entries between 6/27/17 and 1/17/2018.
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18 The Court has reviewed Defendants’ attorneys’ summary of time for the remaining
19 hours requested. Dkt. #95 at ¶ 6. The Court will not award fees for the time Defendants’
20 counsel spent discussing the case between each other or with their own clients (as that type
21 of activity is analogous to an intra-office conference). Further, defense counsel has provided
22 the court with “block” time entries, which has left the Court unable to attribute specific time
23 spent on a particular activity on several dates. Dkt. #95 at ¶ 6; *Welch*, 480 F.3d at 948.
24 Accordingly, the Court will deduct from its award of attorney’s fees the following:
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1 record, the Court hereby finds and ORDERS that Defendants' motion (Dkt. #94) is
2 GRANTED IN PART AND DENIED IN PART. Defendants are awarded **attorneys' fees in**
3 **the amount of \$4,302.00.**

4 DATED this 4th day of May 2018.

6 

7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE