UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

BROWNMARK FILMS, LLC,

Plaintiff,

v. Case No. 2:10-cv-01013-JPS

COMEDY PARTNERS, MTV NETWORKS, PARAMOUNT PICTURES CORPORATION, SOUTH PARK DIGITAL STUDIOS LLC, and VIACOM INTERNATIONAL INC.,

Defendants.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECOVER ATTORNEYS' FEES AND COSTS

Defendants Comedy Partners, MTV Networks, Paramount Home Entertainment Inc., South Park Digital Studios LLC, and Viacom International Inc. (collectively "the South Park Defendants") respectfully submit the following memorandum of law in support of their motion to recover $46,775.23 in attorneys' fees and costs that they have incurred in this action, plus the amount incurred in preparing this fee motion and reply.

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1. SUMMARY OF ARGUMENT

The Copyright Act authorizes this Court to award a "reasonable attorney's fee" to the "prevailing party" in "any civil action under this Title." 17 U.S.C. § 505. As the Court's July 6, 2011 order establishes, the South Park Defendants are the prevailing parties in this action. The Court determined that the *South Park* episode in question was an "obvious" parody, concluded that the South Park Defendants' use of Plaintiff's "What What (in the Butt)" music video was a fair use under Section 107, and dismissed Plaintiff's copyright-infringement claim with prejudice. *Brownmark Films LLC v. Comedy Partners*, 2011 U.S. Dist. LEXIS 72684 at *19, *23 (E.D. Wis. July 6, 2011). Thus, the Court has discretion to award the South Park Defendants their attorneys' fees and costs. 17 U.S.C. § 505.

In other fair-use cases involving obvious parodies, courts have not hesitated to grant attorneys' fees to the prevailing defendants. For example, in *Mattel v. Walking Mountain Prods.*, 2004 U.S. Dist. LEXIS 12469 at *4-*8, *11, Copy. L. Rptr. (CCH) ¶ 28,824 (C.D. Cal. June 24, 2004) (post-remand from Ninth Circuit), the district court awarded more than $1.6 million in attorneys' fees and $240,000 in costs to an artist who had been sued by Mattel for copyright infringement over his photographs of nude Barbie dolls juxtaposed with kitchen appliances. This Court should grant the South Park Defendants' much more modest request – for $46,775.23 – in full, plus the fees incurred to prepare this fee motion and supporting memorandum of law. *See* Exs. I, J.

Indeed, each of the relevant factors supports the issuance of a fee award. These factors include the South Park Defendants' complete success in the action, the objective unreasonableness of Plaintiff's claim, the frivolousness of the lawsuit, Plaintiff's questionable motivation, and the importance of deterring similarly baseless claims in the future that threaten

to chill parodic or other critical speech. *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994) ("*Fantasy I*"). Plaintiff had every opportunity to avoid liability for the South Park Defendants' fees. After Plaintiff first threatened to sue in 2008, the South Park Defendants sent a lengthy letter explaining their fair-use defense. Exs. A, B. After Plaintiff filed suit in 2010, the South Park Defendants' counsel again reminded Plaintiff that its claim was barred by Section 107. Wickers Decl. ¶ 5. Nonetheless, Plaintiff insisted on prosecuting this action, and now should be ordered to reimburse the South Park Defendants $46,775.23 for the attorneys' fees and costs that they incurred to defend themselves against Plaintiff's meritless claim, plus the fees incurred to prepare this fee motion and supporting memorandum of law.[1]

2. FACTUAL AND PROCEDURAL SUMMARY

In late September 2008, Plaintiff threatened a copyright-infringement lawsuit arising from *South Park*'s parody of the "What What (in the Butt)" ("WWITB") viral video. Ex. A. In response, the South Park Defendants sent a detailed, seven-page letter to Plaintiff's counsel on October 2, 2008, predicting that "a federal district court would dismiss [any] copyright-infringement claim" because *South Park*'s use was a fair use, "urg[ing Plaintiff] to reconsider its threatened lawsuit," and cautioning that such "a lawsuit would expose [Plaintiff] to liability for Comedy Central's attorneys' fees and costs." Ex. B. Plaintiff's then-counsel responded with a one-sentence email warning that "the next time we will talk will be in the Court for the Eastern District of Wisconsin." Ex. C.

More than two years later, Plaintiff filed its copyright-infringement lawsuit against the South Park Defendants. During a subsequent telephone conference, counsel for the South Park

[1] With their reply brief, the South Park Defendants will provide billing records evidencing the fees incurred in preparing the fee motion, supporting memorandum of law and declarations, and fee reply brief.

Defendants explained to Plaintiff's new counsel that *South Park*'s use of the WWITB video was a fair use, and that unless Plaintiff dismissed the lawsuit voluntarily, the South Park Defendants would move to dismiss and would seek to recover their attorneys' fees and costs. Wickers Decl. ¶ 5.

On January 24, 2011, Plaintiff filed an amended complaint, again alleging that the South Park Defendants' parody of WWITB infringed Plaintiff's copyright in the video. Amended Compl. (Docket No. 6) ¶¶ 14, 15. On February 22, 2010, the South Park Defendants filed their motion to dismiss under Rule 12(b)(6) and supporting memorandum of law, relying primarily on the fair-use defense. Docket No. 9. On March 15, Plaintiff filed its opposition, which did not substantively address fair use. Docket No. 16. On July 6, this Court issued its order dismissing the lawsuit with prejudice on fair-use grounds. Docket No. 23.

Heeding the Supreme Court's admonition that "[i]deally, of course, litigants will settle the amount of a fee," *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), the South Park Defendants offered to waive their right to seek attorneys' fees in exchange for Plaintiff's waiver of its right to appeal this Court's order granting the motion to dismiss, and thereby to put an end to this meritless litigation. Wickers Decl. ¶ 6 and Exs. D, F. Because of the relatively short deadline under Rule 54 to file a fee motion, the South Park Defendants asked Plaintiff's attorneys to respond to the offer at their earliest convenience. *Id.* Instead of responding, however, Plaintiff waited several days and filed a notice of appeal. Docket No. 26; Wickers Decl. ¶ 8. The South Park Defendants now move to recover their attorneys' fees and costs.

3. THE SOUTH PARK DEFENDANTS SHOULD BE AWARDED THEIR REASONABLE ATTORNEYS' FEES AND COSTS.

The Copyright Act grants district courts broad discretion to award attorneys' fees and costs to prevailing parties. Section 505 provides that:

> In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

17 U.S.C. § 505.

In light of the Court's order dismissing Plaintiff's lawsuit, there is no doubt that the South Park Defendants are the prevailing parties in this lawsuit. Docket No. 23. Under the circumstances, the South Park Defendants submit that the Court should award them their attorneys' fees and costs in full.

A. The Factors Identified By The Supreme Court And The Seventh Circuit Support An Award Of Fees And Costs To The South Park Defendants.

In *Fantasy I*, the Supreme Court announced a list of nonexclusive factors for district courts to consider in deciding whether to award attorneys' fees to prevailing parties in copyright-infringement cases. 510 U.S. at 534 n.19. These factors include the prevailing party's degree of success, the objective unreasonableness of the losing party's position (both factually and legally), the frivolousness of that party's arguments, the plaintiff's motivation in pursuing the lawsuit, and the need in particular circumstances to advance considerations of compensation and deterrence. *Id.* To simplify this "laundry list," the Seventh Circuit has made clear that the "two most important considerations ... are the strength of the prevailing party's case and the amount of damages or other relief the party obtained." *Tillman v. New Line Cinema Corp.*, 2008 U.S. Dist.

LEXIS 105200 at *10-*11, 89 U.S.P.Q. 2d (BNA) 1407 (N.D. Ill. December 31, 2008) (quoting *Assessment Technologies of WI, LLC v. Wire Data, Inc.*, 361 F.3d 434, 436 (7th Cir. 2004)).

The Seventh Circuit also has emphasized that where "the [plaintiff's] claim ... was frivolous and the prevailing party obtained no relief at all, ***the case for awarding [defendants] attorneys' fees is compelling***." *Assessment Technologies*, 361 F.3d at 437 (emphasis added). In fact, the Seventh Circuit has recognized that there is a "presumptive entitlement to an award of attorneys' fees" where the defendant, who receives no damages award, prevails. *Id.* This "presumption in favor of awarding fees is very strong. For without the prospect of such an award, the party might be forced into a nuisance settlement or deterred altogether from enforcing his rights." *Id.* (quoting *Diamond Star Building Corp. v. Freed*, 30 F.3d 503, 506 (4th Cir. 1994)). As the court noted in *Mattel*, fee recovery encourages parodists to engage in the "sort of social criticism and parodic speech protected by the First Amendment and promoted by the Copyright Act," and discourages copyright owners from misusing the Copyright Act to suppress such speech. 2004 U.S. Dist. LEXIS 12469 at *4-*5.

The factors outlined in *Fantasy I* and refined in *Assessment Technologies* point to one result in this case: the South Park Defendants should be awarded their attorneys' fees and costs.

1. The South Park Defendants Obtained Complete Relief In This Action.

The first factor, the amount of relief obtained, echoes the Supreme Court's earlier observation that "[t]he most critical factor [for a court evaluating a statutory fee request] is the degree of success obtained" by the moving party. *Hensley*, 461 U.S. at 433. In *Hensley*, the Supreme Court declared that where a party "has obtained excellent results, *his attorney should recover a fully compensatory fee*. Normally, this will encompass all hours reasonably expended

on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Hensley*, 461 U.S. at 435 (emphasis added).[2]

The rationale for awarding fees to a prevailing copyright defendant is simple: courts should discourage plaintiffs from using the cost of litigation to coerce settlements from defendants with solid factual and legal defenses. *Assessment Technologies*, 361 F.3d at 436-447. The Seventh Circuit has stated that "[t]here is no question that a dismissal with prejudice makes the defendant the prevailing party for purposes of an award of attorney's fees under § 505." *Mostly Memories, Inc. v. For Your Ease Only, Inc.*, 526 F.3d 1093, 1099 (7th Cir. 2008) (citing *Claiborne v. Wisdom*, 414 F.3d 715, 719 (7th Cir. 2005)).

Here, the South Park Defendants secured a complete victory when the Court granted their motion to dismiss Plaintiff's lawsuit with prejudice, making the South Park Defendants prevailing parties who are presumptively entitled to a fee award under Section 505. Because the South Park Defendants did not obtain any financial relief, their entitlement to recover fees is particularly "compelling." *Assessment Technologies*, 361 F.3d at 437.

2. The South Park Defendants' Fair-Use Argument Was Strong, And Plaintiff's Legal Position Was Objectively Unreasonable.

The second factor, the strength of the South Park Defendants' fair-use argument, also favors an award of fees and costs. In evaluating the strength of the fair-use defense and whether the plaintiff's lawsuit was objectively unreasonable, the Court again must consider the four statutory fair-use factors to determine whether the defense advanced "the purposes of the Copyright Act." *Mattel*, 2004 U.S. Dist. LEXIS 12469 at *3; 17 U.S.C. § 107. Courts regularly

[2] *Hensley,* which construed a prevailing-party fee-recovery statute materially identical to Section 505 of the Copyright Act, has been cited with approval in copyright cases. *See, e.g., Entertainment Research Group v. Genesis Creative Group*, 122 F.3d 1211, 1230-1232 (9th Cir. 1997); *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1027 (9th Cir. 1985).

have found that where the weight of the Section 107 factors obviously favors fair use, the defendants should be awarded their fees and costs.[3]

For the first fair-use factor, where the "parodic character of [the d]efendant[s]' work is reasonably perceived," the "purpose and character" of the use favors not only a fair-use finding, but also an award of attorneys' fees. *Mattel*, 2004 U.S. Dist. LEXIS 12469 at *4 (granting fee motion and commenting that "the parodic character of [the] [d]efendant's work was clear" because "[i]t is not difficult to see the commentary that [the defendant] intended or the harm that he perceived in Barbie's influence on gender roles and the position of women in society").

This Court likewise determined that the parodic nature of *South Park*'s use was readily apparent. As the Court stated:

> One only needs to take a ***fleeting glance*** at the South Park episode to gather the 'purpose and character' of the use of the WWITB video in the episode in question. The defendants used parts of the WWITB video to lampoon the recent craze in our society of watching video clips on the internet that are – to be kind – of rather low artistic sophistication and quality. The South Park episode 'transforms' the original piece by doing the seemingly impossible – making the WWITB video even more absurd by replacing the African American male singer with a naïve and innocent nine-year-old boy dressed in adorable outfits. The episode then showcases the inanity of the 'viral video' craze, by having the South Park fourth graders' version of the WWWITB video 'go viral,' seemingly the natural consequence of merely posting a video on the internet. More broadly, the South Park episode, with its use of the WWITB video, becomes a means to comment on the

[3] *See, e.g., Compaq Computer Corp. v. Ergonome*, 387 F.3d 403, 411-412 (5th Cir. 2004) (affirming award of $2.7 million in attorneys' fees based on fair-use defense in case arising from use of illustrations in instruction book on avoiding hand injuries); *Bond v. Blum*, 317 F.3d 385, 398 (4th Cir. 2003) (affirming award of attorneys' fees to defendant who prevailed on fair-use grounds, and stating that plaintiff and others like him "should be deterred from bringing meritless actions"); *Video-Cinema Films, Inc. v. Cable News Network, Inc.*, 2003 U.S. Dist. LEXIS 4887 at *12-*17, 66 U.S.P.Q.2d (BNA) 1473, 31 Media L. Rptr. 1634 (S.D.N.Y. March 31, 2003) (fees appropriate where fair-use factors plainly favored CNN and other networks that had used footage from *G.I. Joe* movie in reports on actor's death); *Religious Tech. Ctr. v. Lerma*, 908 F. Supp. 1362, 1367-1368 (E.D. Va. 1995) (awarding fees to *The Washington Post*, which had successfully defended copyright-infringement action brought by arm of Church of Scientology on fair-use grounds); *Tavory v. NTP, Inc.*, 297 Fed. App'x 986, 991 (Fed. Cir. 2008); *Hofheinz v. AMC Prods.*, 2003 U.S. Dist. LEXIS 16940 at *16-*21 (E.D.N.Y. Sept. 1, 2003).

> ultimate value of viral YouTube clips, as the main characters discover that while society is willing to watch absurd video clips on the internet, our society simultaneously assigns little monetary value to such works. ***The South Park 'take' on the WWITB video is truly transformative, in that it takes the original work and uses parts of the video to not only poke fun at the original, but also to comment on a bizarre social trend, solidifying the work as a classic parody.***

Brownmark, 2011 U.S. Dist. LEXIS 72684 at *23 (emphasis added). Thus, the first fair-use factor weighs heavily in favor of a fee award.

The third fair-use factor[4] also underscores the strength of the South Park Defendants' position. In *Video-Cinema Films*, one of the factors that favored an award of attorneys' fees was the plaintiff's unfounded claim that the defendants' use of clips from the film *G.I. Joe* in a television news report about the death of the film's lead actor took the "heart" of the film. 2003 U.S. Dist. LEXIS 4887 at *10 (S.D.N.Y. March 30, 2003). The court found that the plaintiff's position was "objectively unreasonable" because the amount taken was "reasonable in relation to the purpose of the copying." *Id. See also Mattel*, 2004 U.S. Dist. LEXIS 12469, at *5 (Mattel's claim that the defendant-artist took more than was necessary of the Barbie doll to comment on Barbie's perceived negative social influence was "completely without merit and would lead to absurd results," and favored a fee award to the defendant).

In its July 6 order, this Court found that the South Park Defendants' use of the WWITB video was "relatively insubstantial" – a "*cartoon* of a nine year old boy repeating just enough lines [of] WWITB to conjure up the original work." *Brownmark*, 2011 U.S. Dist. LEXIS 72684

[4] In *Mattel*, the court followed the authority noting that the second fair-use factor, the nature of the use (whether it was creative or factual), is not important in a parody case. 2004 U.S. Dist. LEXIS 12469 at *5. Just as the "[p]laintiff [in *Mattel*] would have been objectively unreasonable to rely upon" the second factor in bringing a copyright-infringement lawsuit that did not satisfy any of the other factors, here it would be objectively unreasonable for Brownmark to rely upon the second factor in bringing this lawsuit against the South Park Defendants, as this Court has recognized. *See Brownmark*, 2011 U.S. Dist. LEXIS 72684, at *25 ("the 'nature' of the copyrighted work factor is not particularly helpful to the court" because "parodies almost invariably copy publicly known, expressive works").

at *25 (emphasis in original). As in *Video-Cinema* and *Mattel*, this finding confirms that Plaintiff's lawsuit was objectively unreasonable and favors an award of attorneys' fees.

The fourth fair-use factor also unquestionably supports a fee award. As this Court recognized, "there is little risk the derivative work in question [the *South Park* episode] would somehow usurp the market demand for the original: the *South Park* episode lampoons viral video crazes, while the WWITB video is the epitome of a clip that fuels such crazes." *Brownmark*, 2011 U.S. Dist. LEXIS 72684 at *26 (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 592 (1994) ("there is no protectable market for criticism")). *See also Mattel*, 2004 U.S. Dist. LEXIS 12469 at *6 (same).[5] Plaintiff's position is especially unreasonable given that the WWITB video has been viewed more than 37 million times on the Internet, including millions of times after the South Park episode ran. *See* South Park Defendants' Memo. of Law in Support of Motion to Dismiss (Docket No. 9) at 1.

Because the fair-use factors overwhelmingly support the Court's finding that the South Park episode was a protected parody, the South Park Defendants have established the strength of their defense and the objective unreasonableness of Plaintiff's legal position, both of which support an award of attorneys' fees.

3. Plaintiff's Lawsuit Is Frivolous And Its Motivation Is Questionable.

The other *Fantasy I* factors also favor a fee award. In *Mattel*, the court held that a copyright-infringement claim is frivolous if it is not "in an unsettled area of the law" and it "had little likelihood of success." 2004 U.S. Dist. LEXIS 12649 at *6-*7. Here, the protections for

[5] As the court recognized in *Video-Cinema Films*, a copyright plaintiff cannot claim that the defendant's use of the work deprived the plaintiff of a market to license its clips to others for fair uses such as news reporting (or, in this case, parodies), because such a rule "would eviscerate the affirmative defense of fair use since every copyright infringer seeking the protection of the fair use doctrine could have potentially sought a license from the owner of the infringed work." 2003 U.S. Dist. LEXIS 4887 at *12 (internal citations omitted).

parody are well-established, as demonstrated by the cases relied on by the South Park Defendants in the motion to dismiss. *See* cases discussed in South Park Defendants' Memo. of Law in Support of Motion to Dismiss (Docket No. 9) at 10-21. That is why this Court noted that there was a "***rather obvious resolution***" of the South Park Defendants' fair-use defense. *Brownmark*, 2011 U.S. Dist. LEXIS 72684 at *19 (emphasis added).

Plaintiff's motivation for this lawsuit is similarly questionable. In *Video-Cinema Films*, the court suggested that the "[p]laintiff's conduct was nothing more than an obvious effort to use the Copyright Act to secure payment from [the d]efendants for their fair use of the film footage." 2003 U.S. Dist. LEXIS 4887 at *15. The same could be said of Plaintiff's lawsuit against the South Park Defendants, which Plaintiff pursued more than two years after being put on notice of the South Park Defendants' strong fair-use defense. Ex. B. In fact, this Court pointed out that despite "opportunities to resolve rather glaring problems with the substance of the underlying dispute, the plaintiff has looked elsewhere and instead filed briefs that ***wholly ignored the central issue of this litigation, fair use. Such behavior is indicative of the efficacy of this litigation, which rightfully ends now.***" *Brownmark*, 2011 U.S. Dist. LEXIS 72684 at *27 (emphasis added).

4. A Fee Award Would Deter Others From Pursuing Meritless, But Costly, Copyright-Infringement Lawsuits Against Parodists.

As the Supreme Court has made clear, "it is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible. To that end, defendants who seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement." *Fantasy I*, 510 U.S at 527. That policy applies with particular force to defendant-parodists who incur

attorneys' fees and costs to vindicate fair-use rights. *See Mattel*, 2004 U.S. Dist. LEXIS 12469 at *4-*5.

Plaintiff's lawsuit contravened the intent of the Copyright Act by seeking to suppress social criticism and parodic speech that was entitled to full protection under the First Amendment and Section 107. "[T]his is just the sort of situation in which the Court should award attorneys' fees to deter this type of litigation." *Mattel*, 2004 U.S. Dist. LEXIS 12469 at *7.

B. The South Park Defendants' Fees Are Reasonable.

Through the end of June 2011, the South Park Defendants incurred $46,775.23 in attorneys' fees and costs to defeat Plaintiff's lawsuit: $36,919.06 by Davis Wright Tremaine and $9,856.17 by Godfrey & Kahn. Exs. I, J. This amount includes the costs of responding to Plaintiff's initial cease-and-desist letter in late 2008 and defending against this lawsuit. The South Park Defendants will supplement this amount with the fees and costs incurred in preparing this fee motion and reply when they file their reply brief. *See, e.g., Eirhart v. Libbey-Owens Ford*, 996 F.2d 846, 851 (7th Cir. 1993) (compensable fees include fees incurred for fee motion and fee reply). The South Park Defendants respectfully request that the Court award these fees and costs in full.

The usual starting point for determining the amount of a reasonable fee award is the "lodestar" – "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433; *Robinson v. City of Harvey*, 489 F.3d 864, 871 (7th Cir. 2007). "When ... the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee" to which counsel is entitled. *Blum v. Stenson*, 465 U.S. 886, 897 (1984).

Exhibits I and J detail the time spent by the South Park Defendants' counsel in this case. These exhibits consist of Davis Wright Tremaine's and Godfrey & Kahn's billing statements, which identify each task for which the South Park Defendants seek reimbursement, the attorney or paralegal who performed the task and his or her billing rate, and the amount of time expended on each task. These billing statements either have been paid by MTV Networks or represent outstanding obligations of MTV Networks. Wickers Decl. ¶ 11.

1. The Rates Charged Are Reasonable For Attorneys of Mr. Wickers', Mr. Glasser's, Mr. Peterson's, and Ms. Gregor's Experience And Qualifications.

Reasonable hourly rates are calculated according to the prevailing market rates in the relevant community. *See Blum*, 465 U.S. at 895; *Gautreau v. Chicago Housing Authority*, 491 F.3d 649, 659 (7th Cir. 2007). On remand from the Seventh Circuit, the court in *Mostly Memories, Inc. v. For Your Ease Only, Inc.*, 594 F. Supp. 2d 931, 933-934 (N.D. Ill. 2009), found that the rates charged for partners from an out-of-state law firm that represented the prevailing defendants in that copyright-infringement action – $500 per hour in 2005 and $525 in 2006 – were reasonable. *See also id.* (granting the prevailing defendants' $592,729 in fees and $66,340 in costs). Likewise, in *Love v. Mail on Sunday*, 2007 U.S. Dist. LEXIS 97061 at *25 (C.D. Cal. Sept. 7, 2007), the district court awarded attorneys' fees to the prevailing defendants in a copyright lawsuit based on hourly billing rates of between $305 and $690, depending on the individual attorney's years of experience. The court found that "[t]hese rates are consistent with the rates typically charged by other highly-regarded southern California law firms for similar work by attorneys of comparable experience." *Id.*

In 2010 and 2011, Mr. Wickers, who was admitted to practice in 1993, and Mr. Glasser, who was admitted to practice in 2007, billed the South Park Defendants at significantly

discounted hourly rates of $416.50 and $225.25, respectively. Wickers Decl. ¶ 11 and Ex. I. Mr. Peterson and Ms. Gregor billed the South Park Defendants at discounted hourly rates of $382.50 and $293.25, respectively. Peterson Decl. ¶ 3 and Ex. J.

These rates are fully justified by the attorneys' qualifications, and are consistent with rates charged by attorneys with similar qualifications at other firms. *See* Wickers Decl. ¶ 10. Mr. Wickers has been a partner in Davis Wright Tremaine's Los Angeles office since 2000, specializes in representing television networks and other media companies in copyright, trademark, and First Amendment matters, and has been recognized as a leading litigator in these fields. *Id.* and Ex. H. Mr. Glasser is a 2007 graduate of the University of California, Berkeley School of Law, who has specialized in intellectual-property and First Amendment litigation throughout his nearly four-year tenure at Davis Wright Tremaine. *Id.* and Ex. G. Mr. Peterson has practiced intellectual-property law in Wisconsin since 1998, and has taught as an adjunct faculty member at the University of Wisconsin Law School. Peterson Decl. ¶ 2. Ms. Gregor, who was admitted to the bar in 2005, also has significant experience in copyright litigation. *Id.*

2. The Number of Hours Worked Was Reasonable.

The South Park Defendants' primary law firm staffed this matter efficiently, with one partner and one associate.[6] Together, Mr. Wickers and Mr. Glasser have billed a total of 118.8 hours on this matter – 39 hours by Mr. Wickers and 79.8 hours by Mr. Glasser. Wickers Decl. ¶ 11 and Ex. I. These hours were reasonably necessary to analyze Plaintiff's allegations, to draft the South Park Defendants' motion to dismiss and reply, to prepare this fee motion, and to handle the day-to-day management of the case. *Id.* In addition, attorneys from Godfrey & Kahn

[6] The Davis Wright Tremaine associate who worked with Mr. Wickers in responding to Plaintiff's 2008 cease-and-desist letter, Robyn Aronson, was hired away in 2010 by MTV Networks/Comedy Central. Wickers Decl. ¶ 10. Thus, Mr. Glasser was tapped to work on the case with Mr. Wickers when the lawsuit was filed in late 2010.

billed 19.3 hours to the matter, lending their experience and expertise litigating in this Court and in the Seventh Circuit. Peterson Decl. ¶¶ 2-3 and Ex. J.

The total legal fees incurred by the South Park Defendants to date are $46,775.23, including fees incurred in responding to the 2008 cease-and-desist letter. Wickers Decl. ¶ 12 and Exs. I-J. That amount is easily within the range of – and in many cases significantly less than – the fee awards to prevailing defendants in other copyright actions in this Circuit and elsewhere. *See, e.g., Mostly Memories*, 594 F. Supp. 2d at 933-934 (granting the prevailing defendants' $592,729 in fees and $66,340 in costs). *See also Gilbert v. New Line Productions*, Case No. 2:09-cv-02231-HGK-RZ (C.D. Cal. Dec. 6, 2010) (awarding prevailing defendants over $800,000 in attorneys' fees in copyright action); *Milton Greene Archives v. BPI Communications*, Case No. SA CV 04-635 (C.D. Cal. March 9, 2006) (awarding prevailing defendants over $765,000 in attorneys' fees in copyright action); *Mattel*, 2004 U.S. Dist. LEXIS 12469 at *11 (awarding prevailing defendants $1.6 million in fees and $240,000 in costs in copyright action).

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4. CONCLUSION

Plaintiff never should have filed this lawsuit, and had multiple opportunities to avoid liability for the South Park Defendants' fees. But Plaintiff insisted on pursuing this lawsuit and putting the South Park Defendants to the burden and expense of vindicating their fair-use rights. Under these circumstances, the Court should grant this motion and award the South Park Defendants $46,775.23, plus any fees associated with their fee motion and fee reply brief.

DATED: July 20, 2011

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By:/s/ Alonzo Wickers IV
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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2011, I caused the foregoing document to be electronically filed with the Clerk of the Court using the ECF system which will make this document available to all counsel of record for viewing and downloading from the ECF system.

Dated: July 20, 2011.

/s/ Alonzo Wickers IV
Alonzo Wickers IV