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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCANNED

Case No. CV 03-02873 MMM (VBKx)

Date July 19, 2006

Title Stewart v. Wachowski, et al.

Present: The Honorable MARGARET M. MORROW

ANEL HUERTA

N/A

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings:

Order Awarding Defendants Attorneys' Fees

I. INTRODUCTION

Plaintiff Sophia Stewart filed this action on April 24, 2003, alleging that defendants Twentieth Century Fox Film Corporation, James Cameron and Gale Anne Hurd (collectively, the "Terminator Defendants") had willfully infringed her copyrighted literary works by making and distributing The Terminator ("Terminator 1"), Terminator 2: Judgment Day ("Terminator 2") and Terminator 3: Rise of the Machines ("Terminator 3"). Stewart also alleged that defendants Warner Bros. Entertainment, Inc., Andy Wachowski, Larry Wachowski, Joel Silver, and Thea Bloom (collectively, the "Matrix Defendants") had willfully infringed her copyrighted literary works by making and distributing The Matrix ("Matrix 1"), The Matrix Reloaded ("Matrix 2"), and The Matrix Revolutions ("Matrix 3"). Stewart asserted claims for copyright infringement, declaratory relief, and violation of the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961 et seq.

On June 15, 2005, the court granted, *inter alia*, defendants' motions for summary judgment and their motion to dismiss Stewart's RICO claims and entered judgment in defendants' favor. On June 28, 2005, defendants filed a motion for attorneys' fees and costs pursuant to 17 U.S.C. § 505. In an order issued March 29, 2006, the court found that defendants were entitled to fees, but that they had failed to meet their burden of showing that the amount of fees sought was reasonable. Noting that the Ninth Circuit had held that "[t]otal denial of fees because of poor documentation is 'a stringent sanction, to be reserved for only the most severe of situations, and appropriately invoked

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only in very limited circumstances” (*Southerland v. International Longshoremen’s and Warehousemen’s Union, Local 8*, 845 F.2d 796 (9th Cir. 1988) (quoting *Jordan v. United States Department of Justice*, 691 F.2d 514, 518 (D.C. Cir. 1982)), the court directed defendants to file a supplemental pleading allocating their attorneys’ time between Stewart’s copyright and RICO claims, and offering evidence regarding the reasonableness of the attorneys’ rates. The court also directed defendants to allocate the costs they had incurred between the RICO and copyright infringement claims. On April 14, 2006, defendants filed the supplemental submissions requested by the court.

## II. DISCUSSION

### A. Amount Of Attorneys’ Fees

#### 1. Legal Standard For Determining The Amount Of An Attorneys’ Fees Award

Once a party has established that it is entitled to an attorneys’ fees award, “[i]t remains for the district court to determine what fee is ‘reasonable.’” *Hensley*, 416 U.S. at 433 (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)). “The most useful strategic point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Id.* This is known as the lodestar figure, and presumptively provides an accurate measure of reasonable attorneys’ fees. See *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994); *Clark v. City of Los Angeles*, 803 F.2d 987, 990 (9th Cir. 1986). A court may increase or decrease the lodestar amount in rare or exceptional cases. See *Blum v. Stenson*, 465 U.S. 886, 989-901 (1984); *Harris*, 24 F.3d at 18; *Clark*, 803 F.2d at 990-91.

A court using the lodestar approach in determining fees does not look directly to the multi-factor test developed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), and *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975).<sup>2</sup> Rather, as a first step, it determines the lodestar amount, which subsumes consideration of *Kerr/Johnson* factors such as novelty and complexity of the issues, the specific skill and experience of counsel, the quality of

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<sup>1</sup>The court’s order permitted Stewart to file a supplemental response, but she failed to do so.

<sup>2</sup>Under the *Johnson/Kerr* test, the factors to consider in determining the amount of attorneys’ fees awarded include: “(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.” *Kerr, supra*, 526 F.2d at 70; see also *Johnson, supra*, 488 F.2d at 717-19.

representation and the results obtained. See *Blum*, 465 U.S. at 989-900; *Clark*, 803 F.2d at 990-91 and n. 3; *Cunningham v. County of Los Angeles*, 879 F.2d 481, 484 (9th Cir. 1988).

## 2. Reasonableness Of Counsels' Hourly Rate

In determining the reasonableness of an attorney's rate, the court must review the "prevailing market rates in the relevant community." *Blum*, 465 U.S. at 895 & n. 11. The proper rate to utilize in computing fees is that which a lawyer of comparable skill, experience and reputation would command in the relevant community. *Id.* at 895 n. 11. "The burden is on the fee applicant to produce satisfactory evidence - in addition to the attorney's own affidavits - that the requested rates are in line with those prevailing in the community." *Id.*; *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) ("the choice of a relevant community and the prevailing rate in that community are crucial to establishing the amount of attorney's fees granted").

Defendants' supplemental submission provides evidence regarding the hourly rates charged by Bruce Isaacs and David Boren. Isaacs states that his normal billing rate in 2003 was \$335 per hour, while David Boren's was \$255 per hour.<sup>3</sup> In 2004, Isaacs' rate increased to \$380, while Boren's increased to \$280. Isaacs notes, however, that pursuant to the firm's fee arrangement with Warner Brothers, all work he did for the company in 2003 was billed at a discounted rate of \$265 per hour. This rate increased to \$335 per hour by May 2004.<sup>4</sup> Pursuant to the firm's fee arrangement with Fox, Isaacs' billing rate in 2003 was \$265 an hour; it increased to \$295 per hour for 2004. Boren's work for Fox was billed at a rate of \$235 per hour in 2003, and \$245 per hour thereafter.<sup>5</sup> As respects work done for James Cameron and Gail Anne Hurd, Isaacs' billing rate was \$335 per hour (the same as the Warner Bros. discounted rate), while Boren's rate was \$255 per hour.<sup>6</sup>

Defendants proffer evidence that these rates are comparable to prevailing market rates for intellectual property attorneys in Los Angeles.<sup>7</sup> Stewart has not challenged the adequacy of

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<sup>3</sup>Supplemental Declaration of Bruce Isaacs ("Isaacs Decl."), ¶ 2. Boren, who works under Isaacs, is a ninth-year associate.

<sup>4</sup>Isaacs Decl., ¶ 8.

<sup>5</sup>Isaacs Decl., ¶ 9; Defs.' Supp. Mem., Exh. E (Billing Statements).

<sup>6</sup>Isaacs Decl., ¶ 10.

<sup>7</sup>See, e.g., Defs.' Supp. Mem., Exh. A (Declaration of Charles Shepard), ¶¶ 4-5 (stating that as a partner practicing copyright law at Greenberg Glusker Fields Claman Machtinger & Kinsella LLP in Los Angeles, he billed \$485 per hour in 2005, and \$495 per hour in 2006. Shepard opines that a billing rate of \$335 for partners is well below prevailing market rates, while \$255 per hour for associates is normal and reasonable); Exh. C (*The National Law Journal*, "Firm-by-Firm Sampling of Billing Rates Nationwide"); Exh. D (The 2003 Survey of Law Firm Economics).

defendants' showing, and the court finds that the hourly rates charged by Isaacs and Boren are reasonable.

### 3. Reasonableness Of The Hours Charged

“[T]he fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of th[e] hours worked. The party opposing the fee application has the burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v. Rowland*, 39 F.3d 1439, 1449 (9th Cir. 1994) (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1993)). Even where no rebuttal is presented, however, the court has an independent obligation to review the fee request. *Gates*, 987 F.2d at 1401. Courts may reduce the number of hours compensated if the party seeking a fee award submits inadequate documentation. See *Cunningham*, 879 F.2d at 484 (citing *Hensley*, 461 U.S. at 433).

In its prior order regarding defendants' fee motion, the court found, and defendants conceded, that prevailing parties are not entitled to attorneys' fees under RICO. See *Chang v. Chen*, 95 F.3d 27, 28 (9th Cir. 1996) (“Prevailing Defendants cannot recover attorneys' fees pursuant to section 1964(c) of the RICO statute because they were prevailing defendants in this action. That provision only permits prevailing plaintiffs to recover fees. See 18 U.S.C. § 1964(c),” citing *Religious Technology Ctr. v. Wollersheim*, 796 F.2d 1076, 1082-83 (9th Cir. 1986) (discussing the limited remedies conferred on private plaintiffs)). Given this fact, the court could not award fees based on defendants' submission because it was unclear what number of hours had been devoted exclusively to defense of Stewart's RICO claims. Defendants' supplemental pleading attaches statements that detail the hours expended defending the copyright and RICO claims.

The billing statements reflect that Isaacs expended 348.6 hours defending Stewart's copyright infringement claim against the Warner Bros. defendants, 85.9 hours defending that claim against the Fox defendants, 41.2 hours defending the copyright claim against James Cameron, and 36.25 hours defending the claim against Gail Anne Hurd. Boren expended 372.6 hours defending Warner Bros. against allegations of copyright infringement, 134.1 hours defending the Fox defendants, 50.2 hours defending James Cameron, and 49.75 hours defending Gail Anne Hurd. Paralegals spent approximately .7 hours defending the copyright infringement claim against the Warner Bros. defendants, 1 hour defending the copyright claim against the Fox defendants, 1.75 hours defending plaintiff's allegation of copyright infringement against James Cameron, and .35 hours defending Gail Anne Hurd against those same allegations.<sup>8</sup> Consequently, defense counsel spent a total of 1133.7

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<sup>8</sup>Defs.' Supp. Mem., Exh. E (Billing Statements). The billing statements also reflect work done by an attorney named Robert Wyman. Because defendants offer no evidence regarding the reasonableness of Wyman's billing rate, the court declines to award fees for time expended by Wyman.

hours defending Stewart's copyright infringement claim.<sup>9</sup>

Defendants assert that these charges were reasonably incurred given the nature of the litigation, as well as the complexity of the legal and factual issues posed.<sup>10</sup> The court has reviewed the descriptions of the work performed. Based on this independent review, the court finds that the bills do not reflect duplicate fees charged to the parties represented – i.e., to Warner Bros., Fox, Cameron, and Hurd. Rather, the court finds that the majority of the hours expended by defendants' counsel were reasonable, with the following exceptions:

The hours billed for preparation of motions to dismiss Stewart's state law claims and for summary judgment on those claim are not compensable under the Copyright Act. The bills reflect that an associate billing at \$255 per hour expended 2.3 hours on a motion to dismiss Stewart's state unfair competition claim against the Warner Bros. defendants.<sup>11</sup> The court therefore reduces the lodestar calculation by \$586.50.

Additionally, the court notes that Isaacs spent approximately 15 hours, at a rate of \$335 per hour, on Warner Bros.' behalf, and .4 hours, at a rate of \$295 per hour, on Fox's behalf, responding to press inquiries from CBS News, BET, the WB network, The Los Angeles Times, VIBE Magazine, Black Enterprise Magazine, NPR, and other media outlets.<sup>12</sup> Charging Stewart for time spent communicating with the press is unreasonable. Therefore, the court reduces the lodestar calculation by \$5,143.

The court also finds that, because defendants' initial motion for attorneys' fees was inadequate, Stewart should not be required to pay all of the fees generated by that effort. As a result, the court

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<sup>9</sup>By contrast, counsel and their paralegals billed a total of 164.75 hours for work related exclusively to the RICO claims. These fees were incurred primarily in connection with two motions to dismiss the RICO claims. Much of the remaining work done on the case was common to both the copyright infringement and RICO claims because the RICO claims were premised, in part, on allegations of criminal copyright infringement. "Attorney's fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are proper and one in which they are not allowed." *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir. 1985); see also *Zuniga v. United Can Co.*, 812 F.2d 443, 453 (9th Cir. 1987) (same). For these reasons, the court finds defendants' allocation reasonable.

<sup>10</sup>Isaacs Decl., ¶ 4 (indicating that the time billed to defendants was "reasonable and necessary given the scope and complexity of the legal and factual issues in dispute (six different movies at issue), the amount in dispute (a sizable amount given potential disgorgement of profits issues) and the difficulties, complexities and significance of the litigation").

<sup>11</sup>Defs.' Supp. Mem., Exh. E (Billing Statements).

<sup>12</sup>Defs.' Supp. Mem., Exh. E (Billing Statements).

reduces the number of hours expended by half, and will award fees only for 37.73 hours of time expended preparing the attorneys' fees motion, i.e., half of 16.6 hours at \$335 per hour and 28.5 hours at \$255 per hour for Warner Brothers; 5.35 hours at \$295 per hour and 11.8 hours at \$245 per hour for Fox; 1.5 hours at \$335 per hour and 5.2 hours at \$255 per hour for James Cameron; and 1.5 hours at \$335 per hour and 5.2 hours at \$255 per hour for Gail Anne Hurd).

In toto, therefore, the court finds that the time reasonably expended defending Stewart's copyright claims is 1078.27 hours.

#### 4. The Final Lodestar Figure

Multiplying the hourly rates of defendants' attorneys and paralegals by the number of hours they reasonably spent representing each of the defendants, the court calculates a lodestar figure of \$305,235.62 (\$199,583.75 for the Warner Bros. defendants; \$55,795.37 for the Fox defendants; \$25,898.75 for James Cameron; and \$23,957.75 for Gail Anne Hurd).<sup>13</sup>

#### B. Reimbursable Costs

In their motion, defendants also sought reimbursement of the litigation costs they incurred defending this action. See *Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996) (holding, in connection with an attorneys' fees award under § 505, that costs for long distance telephone, facsimile transmission, messenger services and express mail "were reasonable out-of-pocket expenses of the kind normally charged to clients by attorneys, and thus [that they] should have been included as part of the reasonable attorneys' fees awarded"); see also *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (holding in a case where fees were sought under 42 U.S.C. § 1988, that "[o]ut-of-pocket litigation expenses are reimbursable as part of the attorneys' fee, distinct from the costs already awarded to plaintiffs under 28 U.S.C. § 1920"). Specifically, defendants sought reimbursement for deposition transcripts and reporter's fees, as well as disbursements for printing in the amount of \$695.00. Because the clerk of court has already awarded these costs to defendants,<sup>14</sup> no further order is necessary.

### III. CONCLUSION

For the foregoing reasons, the court awards defendants \$305,235.62 in attorneys' fees.

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<sup>13</sup>The evidence indicate that the paralegals' time was billed at \$120 per hour (Defs.' Supp. Mem., Exh. E), a rate the court finds reasonable.

<sup>14</sup>See Defs.' Supp. Mem., Exh. F (Bill of Costs submitted to and approved by the clerk of the United States District Court for the Central District of California).