

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	5:23-cv-01597-SVW-SHK	Date	September 20, 2024
Title	<i>The M.I.B. Group LLC v. Steven R. Aguilar et al.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz N/A

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: ORDER GRANTING PLAINTIFF’S MOTION FOR ATTORNEY FEES
[117]

I. Introduction

Before the Court is Plaintiff’s motion for attorney fees. ECF No. 117. For the foregoing reasons, the motion is GRANTED.

II. Factual and Procedural Background

The facts underlying the present case are outlined in the Court’s summary judgment order. ECF No. 114. Here, the Court will only provide a brief overview of the relevant procedural history.

Plaintiff The M.I.B. Group, LLC (“Plaintiff”) provides private security services. Defendant MIB-Shield LLC (“MIB Shield”) also provides private security services. MIB Shield is exclusively owned and

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operated by Steven R. Aguilar (“Aguilar,” and collectively with MIB Shield, “Defendants”).

The dispute between Plaintiff and Defendants concerned ownership of two trademarks: “MIB Security Group” and a MIB Group Logo in crosshairs. Plaintiff filed this trademark action against Defendants on August 9, 2023. ECF No. 1. Defendants responded with an answer and counterclaims. ECF Nos. 14, 15. The Court held a two-day jury trial on April 16-17, 2024, on the narrow question of whether Aguilar was working as an employee of Plaintiff when he registered the domain name “mibsecuritygroup.com.” ECF Nos. 78, 79. After the jury found for Plaintiff, ECF No. 84; the parties submitted cross-motions for summary judgment. ECF Nos. 91, 93.

The Court denied Defendants’ motion for summary judgment and granted Plaintiff’s motion for summary judgment in part. ECF No. 114. Specifically, the Court granted summary judgment on Plaintiff’s claims regarding federal trademark infringement and cybersquatting. *Id.* The Court then found that Defendants’ willful trademark infringement and cybersquatting entitled Plaintiff to reasonable attorney fees and ordered Plaintiff to submit billing records which can enable the Court to determine what constitutes a reasonable fee award. *Id.* In response, Plaintiff filed the current motion for Attorney fees on August 8, 2024. *Id.*

III. Legal Standard: Calculation of Attorney’s Fees

“Once a party establishes its entitlement to attorneys’ fees, it remains for the district court to determine what fee is reasonable.” *Animaccord Ltd. v. David Tran*, No. 23-00173 LEK-WRP, 2024 U.S. Dist. LEXIS 81957, 2024 WL 1976031, at *9 (D. Haw. Mar. 28, 2024) (internal quotations and alterations omitted) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). “District courts must calculate awards for attorneys’ fees using the ‘lodestar’ method.” *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001) (citations and quotations omitted). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Morales*, 96 F.3d at 363. The lodestar amount is “presumptively reasonable.” *Id.*

“[H]ours that are not ‘reasonably expended’ or which are ‘excessive, redundant, or otherwise unnecessary’ are not compensable. *Cano v. Kijakazi*, No. EDCV 21-1572 (JPR), 2023 U.S. Dist. LEXIS 225288, 2023 WL 8663771, at *3 (C.D. Cal. July 17, 2023) (quoting *Hensley*, 461 U.S. at 434). “The

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Court has wide discretion in determining the number of reasonable hours.” *Id.* (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1993) (as amended)). “Although the district court must give reasons for reducing fees . . . it can impose a reduction of up to 10 percent—a ‘haircut’—based ‘purely on the exercise of its discretion and without more specific explanation.’” *Id.* (citing *Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012)); *Neil v. Comm’r of Soc. Sec.*, 495 F. App’x 845, 846–47 (9th Cir. 2012)).

After making the initial lodestar calculation, the district court must assess whether it is necessary to adjust the award amount pursuant to the twelve factors outlined in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975). Those factors include the following: “(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.” *Id.* at 70 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The most important *Kerr* factor is “the degree of success obtained.” *Dannenberg v. Valadez*, 338 F.3d 1070, 1075 (9th Cir. 2003) (degree of success is “most critical factor” in determining reasonableness of award). District courts need not analyze every *Kerr* factor but must consider those most relevant to the case at hand. *Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 n.11 (9th Cir. 1987).

Lastly, district courts have discretion over awards of fees associated with the preparation of fee applications (called “fees on fees”). *Treasure Island, LLC v. Affiliated FM Ins. Co.*, No. 2:20-cv-00965-JCM-EJY, 2024 U.S. Dist. LEXIS 15110, 2024 WL 324782, at *4 (D. Nev. Jan. 26, 2024) (citing *Schneider v. Cnty. of San Diego*, 32 Fed.Appx. 877, 880 (9th Cir. 2002)).

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IV. Discussion

A. Plaintiff's counsel's requested fees are the product of a reasonable number of hours and a reasonable billing rate.

The central question to Plaintiff's motion is whether their request for attorney fees is reasonable. Here, this case involved a relatively complex trademark issue involving facts that spanned decades and involved nearly two million dollars in damages. Throughout the litigation, Plaintiff's counsel: completed pre-litigation investigations, filed the complaint, opposed Defendants' motion to stay the case, filed 12(b)(6) motions to dismiss Defendant's counterclaims and third-party complaint, prepared and served discovery, took multiple depositions, prepared for trial, conducted a two-day trial, attended numerous hearings with the court, drafted a motion for summary judgment and an opposition to Defendants' motion for summary judgment, and finally filed the attorney fees motion at issue now.

In total, Plaintiff requests \$218,439.25 in fees for this work. This sum represents 530 hours of work between two attorneys: Brian P. Kinder and Orlando J. Castano. Kinder billed 462 hours and Castano billed 68 hours. Given the magnitude of work this case required, highlighted by a two-day trial and cross-motions for summary judgment, the court finds the number of hours Plaintiff's counsel worked exceedingly reasonable. Moreover, both attorneys attach detailed billing statements to their motion for attorney fees. Analysis of these statements further bolsters the Court's conclusion that the number of hours billed by Plaintiff's counsel was reasonable.

The Court finds Plaintiff counsel's billing rate to be reasonable as well. Kinder billed at \$395/hour, while Castano billed at \$375/hour. These are both below market billing rates. According to Wolters Kluwer Real Rate Report for 2023, the median rate for a Los Angeles based litigation partner with 21+ of experience is \$802/hour. Not only are Plaintiff's counsel's rates far below market, but Plaintiff's counsel wrote off ~\$30,000 in fees, further highlighting the reasonableness of their billing.

B. Defendants' arguments for reducing Plaintiff's fees are unpersuasive.

Defendants make three arguments for why the Court should reduce Plaintiff's fees. None are persuasive.

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First, Defendants argue that the Court should not permit Plaintiff to recover fees for work performed prior to August 8, 2023, which is the date Plaintiff filed the initial complaint. Plaintiff's billing statements, however, reveal that the pre-complaint work in question was related to pre-suit investigation efforts, settlement negotiations, cease and desist letters, and the preparing and filing of the complaint. This is "[p]re-complaint work" that "is considered part of the process of litigation and can be included in [an] award for fees." *Pure Wafer, Inc. v. City of Prescott*, No. 13-cv-08236-PCT, 2014 U.S. Dist. LEXIS 103228, at *26 (D. Ariz. July 29, 2014) (awarding attorney fees for pre-litigation work). The Court will therefore award Plaintiff fees for work conducted prior to the filing of the complaint.

Second, Defendants contend that Plaintiff should reduce Castano's fees from September 2023 to July 2024 by 75% because Castano's time was duplicative of Kinder's time. But Defendants fail to identify a single billing entry where Castano's work was duplicative of Kinder's work. Nor will the Court assume that any of the work in this case was duplicative. If anything, the scope of this case would demand more than two lawyers' worth of work, not fewer. Moreover, Plaintiff has already written off \$30,000 in fees, meaning that if there was any duplication (which the Court doubts), it was almost certainly already written off the bill. The Court therefore declines to reduce Castano's fees.

Third, Defendants claim that Plaintiff's fees should be reduced because of unreasonable delays and confusion before and after trial that Defendants claim was caused by Plaintiff. But even a cursory analysis of the docket reveals that it is Defendants, not Plaintiff, who caused the confusion. At the time of the pre-trial conference, Defendants had failed to submit a single pre-trial document. Nor did Defendants respond to Plaintiff's request that Defendants participate in drafting a proposed pre-trial conference order. The Court will not hold Plaintiff accountable for confusion and delay that was caused by Defendants.

V. Conclusion

The Court GRANTS IN FULL Plaintiff's motion for attorney fees and awards Plaintiff \$218,439.25 in fees.

IT IS SO ORDERED.

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