

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 18-1048-DOC (DFMx)

Date: February 10, 2020

Title: UNITED STUDIOS OF SELF DEFENSE, INC., v. KRISTOPHER RINEHART
ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kelly Davis
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

**PROCEEDINGS (IN CHAMBERS): ORDER GRANTING IN PART
MOTION FOR ATTORNEYS' FEES
[246]**

On December 4, 2019, this Court issued its findings of facts and conclusions of law (“Order”) holding that Plaintiff did not meet its burden on any claim, Defendants prevailed on certain counterclaims, and Defendants be awarded “all attorneys’ fees and costs . . . subject to a reasonable accounting given to the Court.” Dkt. 242 at 29. The Court awarded attorneys’ fees and costs under §1717 of the California Civil Code, and independent of its authority to award fees to Defendants as the prevailing party on the merits, found that Defendants should be awarded “all attorneys’ fees and costs . . . for the entirety of this action subject to a reasonable accounting given to the Court” as a sanction for Plaintiff and Charles Mattera’s bad faith conduct and fraud perpetuated on the Court. *Id.* at 28. This Court is within its discretion to sanction such conduct as an exercise of its inherent powers. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (recognizing the inherent power of courts to impose appropriate sanctions where conduct disrupts the judicial process).

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Defendants submitted their accounting and motion for attorneys' fees and costs on December 17, 2019 ("Motion") (Dkt. 246). Plaintiff opposed on December 30, 2019 (Dkt. 251). Defendants replied on January 6, 2020 (Dkt. 254).

I. Legal Standard

Civil Code §1717 provides in part: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." Further, "[w]here a cause of action based on the contract providing for attorneys' fees is joined with other causes of action beyond the contract, the prevailing party may recover fees under section 1717 only as they relate to the contract action." *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir. 1985). However, fees that are "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" are recoverable. *Id.* (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 158 (1979)).

The Court's inherent power to assess sanctions requires a showing that a party "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (recognizing inherent power of courts to impose appropriate sanctions where conduct disrupts judicial process). "Because of their very potency, inherent powers must be exercised with restraint and discretion." *Id.* at 44. "[I]f a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party." *Id.* at 46.

II. Discussion

a. Calculation and Reasonableness of Fees

In Reply, Defendants correct a clerical error in their submission of fees and request a total of \$3,233,923.72 in fees and costs. Reply at 2. This consists of total fees billed of \$1,229,952, total costs billed of \$51,255.29, total costs paid directly by Defendant himself of \$33,209.16, work in progress fees of \$25,326, work in progress costs of \$64.27, and an enhancement of 150% for unusual circumstances. *See Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691 (9th Cir. 1996) (awarding a 2.0 multiplier for unusual circumstances). The total before any enhancement is

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1,339,806.72 (\$1,255,278 in fees \$84,528.72 in costs).¹ Reply at 2–3. Plaintiff reviewed this accounting, the rates charged by Mr. DeCarlo, Mr. Bautista, and other partners and associates, and determined that it “will not quibble too much with the rates charged by the attorneys.” Opp’n at 6. Defendants charged \$595 per hour for DeCarlo and Bautista, \$400 per hour for other partners, \$350 per hour for associates and between \$135 and \$185 per hour for paralegals and law clerks. *Id.* Given that Plaintiff does not oppose these rates (nor does Plaintiff ask the Court to find the number of hours spent on this matter unreasonable), the rates and hours provided in Defendant’s accounting are accepted as reasonable for the lodestar calculation.

However, Plaintiff does object to certain categories of fees that it believes should be disregarded. Plaintiff argues that Defendant’s billing for an ongoing complaint regarding Plaintiff and the California Department of Business Oversight (“DBO”) is improper, given that these are fees associated with actions outside of this litigation. Opp’n at 6. This Court agrees, and reduces the fees outlined above by \$10,876. Plaintiff also objects to miscellaneous fees that do not appear to relate to the instant matter. Opp’n at 8–9. This Court agrees, and reduces the fees outlined above by \$2,618.

Next, Plaintiff argues that fees relating to its meritorious motion to dismiss and motion for summary judgement should not be awarded, as Defendant was not the prevailing party as to those claims dismissed before trial. This Court agrees that under §1717, those fees should not be awarded. Therefore, the fees outlined above are reduced by \$64,546. However, these fees are recoverable pursuant to this Court’s order awarding Defendants “all attorneys’ fees and costs . . . for the entirety of this action subject to a reasonable accounting given to the Court” as a sanction for misconduct. That independent award of fees and costs was not based on whether Defendants were the prevailing party, but instead was based on Plaintiff and Charles Mattera’s bad faith litigation tactics and fraud on this Court, which occurred throughout the entirety of the litigation.

Thus, the lodestar figure for this action is \$1,177,238 (\$1,255,278 - \$10,876 - \$2,618 - \$64,546) as it pertains to the award Defendants are entitled to as the prevailing party under §1717² and \$1,241,784 (\$1,255,278 - \$10,876 - \$2,618) as it pertains to the

¹ The Court will not include the \$4,480 Defendants estimate it will incur drafting their Reply and appearing at any hearing.

² Plaintiff also appears to argue that under §1717 this Court should only consider fees regarding contracting parties and contract claims. However, fees that are “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” are recoverable. *See Diamond*, 753 F.2d at 1467. And it is well established that a non-party to a contract can collect fees under §1717 when the non-party is “sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney’s fees should he prevail in enforcing the contractual obligation against the defendant.” *Reynolds Metals*, 25 Cal. 3d at 128. Here, the

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award Defendants are entitled to as a sanction. Costs are an additional \$84,528.72 under both awards.

b. Lodestar Enhancement and Fees Under §1717

Defendants’ request for a multiplier is a more complicated issue. Defendants argue that, after the lodestar figure is determined, a lodestar enhancement is appropriate given the unique circumstances surrounding this litigation.³ Specifically, they argue that this case presented “extreme facts” and a “vigilance” on the part of Defendants and their counsel to pursue the truth despite Plaintiff and Charles Matter’s efforts to the contrary. Mot. at 7.

“In addition to billing judgment reductions, in rare cases, a district court may make upward or downward adjustments to the presumptively reasonable lodestar” *Gates v. Deukmejian*, 987 F.2d 1392, 1402 (9th Cir. 1992). Plaintiff asks the Court to apply a 1.5 multiplier. The Court may adjust the lodestar upward or downward based on factors including (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee award. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). A trial court is not required to include a fee enhancement but has discretion to do so in appropriate cases. *Id.* at 1138. Finally, “an enhancement for contingent risk or quality of representation may not properly be imposed merely for the purpose of punishing [the losing party.]” *Id.* at 1142.

Defendants argue this Court has the discretion to provide a lodestar enhancement for four reasons: (1) the unusual circumstances of this case; (2) the novelty and difficulty of the questions involved; (3) the skill of attorneys displayed presenting the issues; and (4) the contingent nature of the fee award. Mot. at 8–13. Plaintiff argues that this is not a contingency case, that Mr. DeCarlo and his firm’s skill representing the Defendants is already presumably included in the lodestar calculation, and that the unusual

non-contract claims at issue at trial “directly or indirectly involved the [interpretation] and enforcement of” the contracts at issue and thus an apportionment would be improper. See *Citrus El Dorado LLC, v. Stearns Bank.*, No. SACV091462DOCRNBX, 2016 WL 7626583, at *3 (C.D. Cal. Apr. 18, 2016). Further any non-parties to relevant contracts were sued on contracts as if they were parties to it, and therefore can properly recover fees. *Reynolds Metals*, 25 Cal. 3d at 128.

³ Such an enhancement would only be appropriate under §1717. This Court’s award of fees and costs as a sanction only serves to make Defendants whole for expenses caused by Plaintiff’s conduct and not as a further punishment. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991).

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circumstances of this case are not extreme enough to justify such a large enhancement. *See* Opp’n at 9–17.

The Court agrees with the Plaintiff that this is not a contingency fee case and finds that Defendants’ arguments to the contrary are misplaced. Further, though this Court has the authority to enhance a presumably reasonable lodestar calculation for certain factors not already accounted for in the lodestar, the facts of this case are not so extreme that the lodestar calculation described above fails to account for the work that the Defendants’ counsel put into this case. Though the Court notes that Defendants’ counsel represents that he underbilled his time, *see* Declaration of Daniel Decarlo (Dkt. 246-1) at ¶ 21, it would be improper for the Court to guess the amount of time actually spent and adjust the fee accordingly. Finally, this Court will not—and cannot—use §1717 as a means to punish Plaintiff or Mr. Mattera. While the Court has already made substantial findings regarding Mr. Mattera’s bad faith actions in this case, the fee awarded under §1717 must be confined to an award of “reasonable attorney’s fees.” Cal. Civ. Code § 1717(a). Such an award is accurately reflected in the lodestar calculation conducted above.

Therefore, the fees awarded to Defendants under §1717 is \$1,177,238 plus costs of \$84,528.72.

c. Fees Awarded as a Sanction

Unlike a fee awarded under §1717, this Court’s inherent power to award fees as a sanction for the conduct outlined in the Order is not limited to contract-related claims of which Defendants were the prevailing party. Instead, this Court has the authority to award fees for all expenses caused by the sanctionable conduct. Indeed, the Supreme Court has affirmed a district court’s authority to sanction a party for the entire amount of litigation costs and fees when sanctionable conduct occurred throughout the litigation. *See Chambers*, 501 U.S. at 40, 51. As outlined in the Order, the Court found that Mr. Mattera lied under oath, lied in deposition testimony, lied on the stand, suborned perjury, at minimum showed a reckless disregard for the truth when utilizing salacious allegations of statutory rape to coerce the Defendants to settle this case, and threatened Mr. Rinehart’s personal and professional reputation. *See, e.g.,* Order at ¶¶ 5–17. Throughout the litigation, Mr. Mattera attempted to essentially use this Court to pummel Mr. Rinehart and the other Defendants into submission. Thus, this Court is within its discretion to award the entirety of fees and costs to Defendants to make them whole for expenses caused by Mr. Mattera’s conduct. *See Chambers*, 501 U.S. at 46. Mr. Mattera was at one time a party to this litigation, and nevertheless is the party that committed the sanctionable conduct the Court has found occurred throughout the litigation, thus Plaintiff

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and Mr. Mattera are jointly and severally liable for \$1,241,784 in fees and \$84,528.72 in costs as a sanction for such conduct.

III. Disposition

Accordingly, the Court **HOLDS** Plaintiff liable to Defendants in the amount of \$1,177,238 plus costs of \$84,528.72 under §1717. Further, the Court **HOLDS** Plaintiff and Mr. Mattera jointly and severally liable to Defendants in the amount of \$1,241,784 in fees and \$84,528.72 in costs under its inherent authority to issue fees and costs as a sanction. The award is not cumulative, but instead offers two separate avenues for which Defendants may collect attorneys' fees and costs in this case. Defendants are free to pursue fees and costs under either theory.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11

Initials of Deputy Clerk: kd

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