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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UM CORPORATION,

Plaintiff,

v.

TSUBURAYA PRODUCTIONS CO.,
LTD.,

Defendant.

Case No.: CV 15-03764-AB (AJWx)

**ORDER GRANTING IN PART
DEFENDANT TSUBURAYA
PRODUCTIONS CO., LTD.’S
MOTION FOR ATTORNEY’S FEES
AND FULL COSTS [321]**

Pending before the Court is Defendant Tsuburaya Productions Co., Ltd.’s (“TPC”) post-judgment motion for attorneys’ fees and full costs. (Dkt. No. 321.) Um Corporation (“UMC”) filed an opposition, (Dkt. No. 334), and TPC replied, (Dkt. No. 337). The Court heard oral argument on the Motion on July 20, 2018 and took the matter under submission. Having carefully reviewed the materials submitted by the parties and the arguments presented during oral argument, and for the reasons indicated below, the Court **GRANTS in part** TPC’s Motion.

I. BACKGROUND

The facts of this case are well known to the parties and are set forth in greater detail in the numerous orders of this Court. The following is a brief summary of the facts relevant to this inquiry. UMC filed its complaint on March 19, 2015, alleging

1 claims for copyright infringement, breach of contract, and declaratory relief. (Dkt.
2 No. 1.) After years of litigation, including significant motion practice, a jury trial was
3 held concerning the authenticity of the March 4, 1976 License Granting Agreement
4 (“1976 Agreement”). The sole question presented to the jury was whether the 1976
5 Agreement was an authentic contract signed by TPC’s former president, Noboru
6 Tsuburaya, on behalf of TPC. After deliberation, the jury returned a verdict in favor
7 of TPC, finding that the 1976 Agreement was *not* an authentic contract signed by
8 Noboru Tsuburaya. (See Dkt. No. 269.) The Court subsequently denied UMC’s post-
9 judgment motion for judgment as a matter of law or, in the alternative, new trial.
10 (Dkt. No. 305.) On April 19, 2018, the Court entered judgment in favor of TPC on
11 UMC’s first, second, third, and fourth claims for relief, and also against UMC and
12 counterdefendants TIGA Entertainment Company (“TIGA”), Golden Media Group
13 (“GMG”)¹, and Ultraman USA, Inc. (“Ultraman USA”) on TPC’s first and second
14 counterclaims. (Dkt. No. 312.) The judgment also awarded TPC “its costs incurred,
15 in an amount to be determined by the Court, to be paid by the UMC parties and
16 Ultraman USA, who are jointly and severally liable.” (*Id.* at 2.) The instant Motion
17 for Attorneys’ Fees and Full Costs followed thereafter.

18 II. LEGAL STANDARD

19 A. Attorneys’ Fees

20 In every case where a prevailing party seeks its attorneys’ fees from an
21 opponent, courts begin with “the general rule in this country that unless Congress [or a
22 state legislature] provides otherwise, parties are to bear their own attorney’s fees.”
23 *Fogerty v. Fantasy, Inc.* (“*Fogerty I*”), 510 U.S. 517, 533 (1994). Here, Defendants
24 rely on the Copyright Act in an effort to circumvent this general rule.

25 The Copyright Act provides that in a copyright action, “the court in its
26 discretion may allow the recovery of full costs by or against any party other than the
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28 ¹ The Court refers to UMC, TIGA, and GMG collectively as the “UMC parties.”

1 United States” including “a reasonable attorney’s fee to the prevailing party as part of
2 the costs.” 17 U.S.C. § 505. However, an award of attorneys’ fees under the
3 Copyright Act is a matter of discretion, not of right. *Fogerty I*, 510 U.S. at 533.
4 Under § 505, “[p]revailing plaintiffs and prevailing defendants are to be treated alike,
5 but attorney’s fees are to be awarded to prevailing parties only as a matter of the
6 court’s discretion.” *Id.* at 534. In determining whether, and how extensively, courts
7 should exercise that discretion, “[d]istrict courts should consider, among other things,
8 [1] the degree of success obtained; [2] frivolousness; [3] motivation; [4] objective
9 unreasonableness (both in the factual and legal arguments in the case); and [5] the
10 need in particular circumstances to advance considerations of compensation and
11 deterrence.” *Historical Research v. Carbal*, 80 F.3d 377, 378 n.1 (9th Cir. 1996).
12 However, each of those factors is merely a guidepost in the exercise of the court’s
13 “equitable discretion” and “courts are not limited to considering them.” *Fantasy, Inc.*
14 *v. Fogerty* (“*Fogerty II*”), 94 F.3d 553, 559 (9th Cir. 1996). Indeed, “[c]ourts have
15 awarded costs for copyright claims based on a single factor” *Robinson v. Lopez*,
16 No. CV 03–3732–LGB (PLAx), 2003 WL 23162906, at *2 (C.D. Cal. Nov. 24, 2003).

17 Even looking to those five articulated factors, however, it is important to
18 emphasize that a court’s discretion to award attorneys’ fees under the Copyright Act
19 “is not cabined by a requirement of culpability on the part of the losing party.”
20 *Fogerty II*, 94 F.3d at 555. “Within this framework courts are given wide latitude” to
21 award or deny attorneys’ fees under the Copyright Act, even when a party acted
22 reasonably or in good faith. *Entm’t Research Grp., Inc. v. Genesis Creative Grp.,*
23 *Inc.*, 122 F.3d 1211, 1229 (9th Cir. 1997); accord *Fogerty II*, 94 F.3d at 556
24 (awarding fees under the Copyright Act despite the fact that the “lawsuit was neither
25 frivolous nor prosecuted in bad faith”).

26 Ultimately, “[f]aithfulness to the purposes of the Copyright Act is . . . the
27 pivotal criterion” under § 505. *Fogerty II*, 94 F.3d at 558. “The primary objective of
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1 the Copyright Act is to encourage the production of original literary, artistic, and
2 musical expression for the good of the public.” *Fogerty I*, 510 U.S. at 524. Although
3 § 505 commonly accomplishes that purpose by incentivizing plaintiffs to bring suit to
4 protect their copyrights, “[t]he primary objective of copyright is not to reward the
5 labor of authors, but ‘[t]o promote the Progress of Science and useful Arts.’” *Feist*
6 *Pub’ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349–50 (1991). Indeed, § 505’s
7 provision for attorneys’ fees to prevailing defendants in addition to prevailing
8 plaintiffs recognizes “the important role played by copyright defendants” in advancing
9 the objectives of the Copyright Act. *Fogerty I*, 510 U.S. at 532 n.18, 527 (“[A]
10 successful defense of a copyright infringement action may further the policies of the
11 Copyright Act every bit as much as a successful prosecution of an infringement claim
12 by the holder of a copyright.”)

13 1. Calculating Attorneys’ Fees

14 Although the Ninth Circuit “has not mandated the lodestar method or
15 comparison to market rates in calculating attorneys’ fees under the Copyright Act”,
16 *Kourtis v. Cameron*, 358 Fed. App’x. 863, 868 (9th Cir. 2009) (citations omitted), the
17 Court begins from the premise that “[a]ttorney’s fees are based on the ‘lodestar’
18 calculation.” *Brighton Collectibles, Inc. v. RK Texas Leather Mfg.*, No. 10–CV–419–
19 GPC WVG, 2014 WL 5438532, at *3 (S.D. Cal. Oct. 24, 2014). “When it sets a fee,
20 the district court must first determine the presumptive lodestar figure by multiplying
21 the number of hours reasonably expended on the litigation by the reasonable hourly
22 rate.” *Intel Corp. v. Terabyte Int’l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). “This
23 calculation provides an objective basis on which to make an initial estimate of the
24 value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

25 “[T]o determine whether attorneys for the prevailing party could have
26 reasonably billed the hours they claim to their private clients, the district court should
27 begin with the billing records the prevailing party has submitted.” *Gonzalez v. City of*
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1 *Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). However, “a district court should
2 exclude from the lodestar amount hours that are not reasonably expended because they
3 are ‘excessive, redundant, or otherwise unnecessary.’” *Van Gerwen v. Guarantee*
4 *Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Normally, courts will conduct an
5 “hour-by-hour analysis of the fee request, and exclude those hours for which it would
6 be unreasonable to compensate the prevailing party.” *Gonzalez*, 729 F.3d at 1202.
7 However, “when faced with a massive fee application the district court has the
8 authority to make across-the-board percentage cuts either in the number of hours
9 claimed or in the final lodestar figure as a practical means of trimming the fat from a
10 fee application.” *Gates v. Deukmejian*, 987 F.2d 1392, 1399 (9th Cir. 1992) (internal
11 quotation marks omitted). A court that exercises its discretion to reduce the lodestar
12 amount by an across-the-board percentage reduction typically must explain its reasons
13 for doing so. *Gonzalez*, 729 F.3d at 1202. “Nevertheless, the district court can
14 impose a small reduction, no greater than 10 percent—a ‘haircut’—based on its
15 exercise of discretion and without a more specific explanation.” *Moreno v. City of*
16 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

17 As to the reasonableness of the rates charged, the “reasonable fees ‘are to be
18 calculated according to the prevailing market rates in the relevant community,
19 regardless of whether plaintiff is represented by private or nonprofit counsel.’” *Van*
20 *Skike v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir.
21 2009) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). “Generally, the relevant
22 community” for the purpose of determining the prevailing market rate “is the forum in
23 which the district court sits.” *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997).
24 “[T]he proper scope of comparison . . . extends to all attorneys in the relevant
25 community engaged in equally complex Federal litigation, no matter the subject
26 matter.” *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010)
27 (internal quotation marks omitted). That is, courts determine the reasonableness of a
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1 rate based upon “the rates prevailing in that district for similar services by lawyers of
2 reasonably comparable skill, experience and reputation,” irrespective of practice area.
3 *Id.* (quoting *Blum*, 465 U.S. at 895 n.11).

4 “Unless counsel is working outside his or her normal area of practice,” evidence
5 that a billing rate was the usual rate the attorney charges for his or her services is
6 evidence that the rate is comparable to the market rate. *Moore v. James H. Matthews*
7 *& Co.*, 682 F.2d 830, 840 (9th Cir. 1982). This is because “[b]illing rates usually
8 reflect, in at least a general way, counsel’s reputation and status (i.e., as partner,
9 associate, or law clerk).” *Id.*; accord *Kourtis*, 358 Fed. App’x. at 868 (“The district
10 court’s calculation of an attorney’s fee award . . . based on the actual rates charged by
11 [prevailing party’s] attorneys was reasonable under 17 U.S.C. § 505.”). However,
12 evidence of an attorney’s normal billing rate is not necessarily dispositive. “Attorney
13 affidavits regarding prevailing fees in the community and rate determinations in other
14 cases” may also provide “satisfactory evidence of the prevailing market rate.” *Lakim*
15 *Indus., Inc. v. Linzer Prods. Corp.*, No. 2:12–CV–04976 ODW, 2013 WL 1767799, at
16 *8 (C.D. Cal. Apr. 24, 2013); accord *United Steelworkers of Am. v. Phelps Dodge*
17 *Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (same).

18 Once calculated, “[t]he lodestar amount is presumptively the reasonable fee
19 amount” and may only be adjusted upward or downward by applying a multiplier in
20 “rare” or “exceptional” cases where “the lodestar amount is unreasonably low or
21 unreasonably high.” *Van Gerwen*, 214 F.3d at 1045. “[T]he fee applicant bears the
22 burden of establishing entitlement to an award and documenting the appropriate hours
23 expended and hourly rates.” *Hensley*, 461 U.S. at 437. However, a prevailing party
24 “is not required to record in great detail how each minute of his time was expended.”
25 *Id.* at 437 n.12. The prevailing party seeking attorneys’ fees need only “identify the
26 general subject matter of his time expenditures” to meet its burden of establishing its
27 fee request is reasonable. *Id.* This limited obligation reflects the broader policy that a
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1 “request for attorney’s fees should not result in a second major litigation.” *Id.* at 437.

2 **2. Non-taxable Costs**

3 The Copyright Act also affords courts discretion to award a prevailing party
4 “recovery of full costs.” 17 U.S.C. § 505. The statute’s use of the term “full costs”
5 means that “district courts may award otherwise non-taxable costs, including those
6 that lie outside the scope of [28 U.S.C.] § 1920, under § 505.” *Twentieth Century Fox*
7 *Film Corp. v. Entm’t Distrib.*, 429 F.3d 869, 885 (9th Cir. 2005). In addition to
8 regular taxable costs, allowable costs under § 505 include costs for service of process,
9 depositions expenses, copying, computer-assisted legal research, expert witness fees,
10 and travel costs. *See, e.g., Kourtis*, 358 Fed. App’x. at 868 (expert witness fees
11 allowable as non-taxable costs under § 505); *ExperExchange, Inc. v. Doculex, Inc.*,
12 No. C–08–03875 JCS, 2010 WL 1881484, at *12 (N.D. Cal. May 10, 2010) (expert
13 fees and travel costs allowable as costs under § 505); *Yue v. Storage Tech. Corp.*, No.
14 C07–05850 JW, 2008 WL 4185835, at *6 (N.D. Cal. Sept. 5, 2008) (allowing “legal
15 research and courier fees” as costs under § 505); *Atl. Recording Corp. v. Andersen*,
16 No. CV 05–933 AC, 2008 WL 2536834, at *19 (D. Or. June 24, 2008) (“In this
17 circuit, charges for computer-assisted legal research are recoverable as costs if they
18 are ordinarily billed to clients separately.”) (citation omitted). However, general costs
19 of doing business “that should be subsumed in a firm’s overhead,” such as staff
20 overtime, are generally disallowed under § 505. *See Berry v. Hawaiian Express Serv.,*
21 *Inc.*, No. 03–00385 SOM–LEK, 2006 WL 4102120, at *16 (D. Haw. Oct. 25, 2006).

22 **III. DISCUSSION**

23 TPC has provided the Court with invoices sent to TPC by Quinn Emanuel, a
24 declaration from TPC’s legal services manager who was involved in the billing
25 process, a declaration of counsel explaining the nature and extent of the fees
26 requested, as well as declaration from an outside attorney explaining the
27 reasonableness of the rates requested by counsel here. (*See* Dkt. Nos. 321, 322, 323,
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1 326.)

2 **A. Timeliness of TPC’s Motion**

3 UMC argues that the Court should dismiss TPC’s Motion as untimely. (Dkt.
4 No. 334 (“Opp’n”) at 6.) UMC contends that TPC had thirty days from April 18,
5 2018—the date the Court allegedly entered judgment against UMC—to file its
6 motion. Thus, according to UMC, the deadline to file a motion for attorneys’ fees and
7 costs was May 18, 2018. TPC filed its Motion on May 21, 2018. (*See* Dkt. No. 321.)
8 In response, TPC explains that the judgment, although signed on April 18, was not
9 actually *entered* onto the docket until April 19, 2018. (Dkt. No. 337 (“Reply”) at 2.)
10 Since thirty days from April 19 was May 19—a Saturday—TPC argues that its motion
11 was due the following Monday, May 21. (*Id.*)

12 Here, the Court’s Order regarding the briefing schedule specifically states that a
13 motion for attorneys’ fees and costs “shall be due thirty (30) days after the Court
14 *enters* judgment against UMC, GMG, and TIGA.” (Dkt. No. 309 at 1 (emphasis
15 added).) The language is clear—the date to be considered in calculating the due date
16 is the judgment’s *entry* date, not the date it was signed or filed. The judgment was
17 entered on April 19, and TPC’s motion was due thirty days thereafter. This fact is
18 reflected by the docket, which notes an entry date of April 19. Accordingly, the Court
19 finds that TPC’s Motion was timely filed on April 21, and refuses to deny the motion
20 on these grounds. *See* Fed. R. Civ. P. 6(a)(1)(C) (when computing time, “include the
21 last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the
22 period continues to run until the end of the next day that is not a Saturday, Sunday, or
23 legal holiday”).

24 **B. Limitations on TPC’s Ability to Collect Fees Under U.S.C.**
25 **§ 412**

26 “[T]he owner of copyright or of any exclusive right in the work may obtain
27 registration of the copyright claim by delivering to the Copyright Office” a copy of the
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1 work, an application for copyright registration, and the requisite fee. 17 U.S.C.
2 § 408(a). Although a copyright owner need not submit a registration in order to enjoy
3 the protections of the Copyright Act, registration expands the remedies available to
4 the owner in the event of infringement. While a copyright owner is always “entitled
5 to recover the actual damages suffered by him or her as a result of the infringement,
6 and any profits of the infringer that are attributable to the infringement” which are not
7 included in the damages calculation, *id.* § 504(b), “no award of statutory damages or
8 of attorney’s fees . . . shall be made for . . . (1) any infringement of copyright in an
9 unpublished work commenced before the effective date of its registration; or (2) any
10 infringement of copyright commenced after first publication of the work and before
11 the effective date of its registration, unless such registration is made within three
12 months after the first publication of the work,” *id.* § 412.

13 UMC argues that TPC is barred from recovering attorneys’ fees “incurred in
14 connection with its Counterclaims” because TPC did not register its copyrights until
15 long after the alleged infringement occurred. (Opp’n at 8–9.) According to UMC, the
16 three copyrighted works at issue in TPC’s first counterclaim were published in Japan
17 between 1966 and 1968, but were not registered with the United States Copyright
18 Office until 2015. (*Id.* at 9.) GMG apparently distributed the works in the United
19 States in 2012, years before the registration took place. Therefore, UMC argues that
20 because the works were not registered before or within three months of the alleged
21 infringement, § 412 would prevent an award of attorneys’ fees stemming from the
22 alleged infringement of these works by the UMC parties.

23 In its Reply, TPC notes that its infringement counterclaim was not the only
24 claim remaining after the Court granted summary judgment; TPC’s second
25 counterclaim for declaratory relief was still at issue, and TPC also continued to defend
26 against UMC’s declaratory relief claim through trial. (Dkt. No. 337 (“Reply”) at 4.)
27 As such, TPC contends that “Section 412 of the Copyright Act, on which UMC relies
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1 to argue that TPC is ineligible to recover fees incurred in connection with its
2 counterclaim for copyright infringement, in no way limits TPC’s eligibility to recover
3 fees in connection with defeating *UMC’s claim* for declaratory relief.” (*Id.* at 4.)
4 However, this argument goes to whether TPC can recover fees related to the
5 declaratory judgment claims under the Copyright Act, and not as to whether TPC can
6 seek fees in connection to work it did on its counterclaim for Copyright infringement.²
7 The statute clearly states that a party cannot recover fees in connection with “any
8 infringement of copyright in an unpublished work commenced before the effective
9 date of its registration.” 17 U.S.C. § 412. Therefore, the Court finds that TPC may
10 not recover fees for work performed solely in connection with its Copyright
11 counterclaim.

12 This being said, it does not appear that TPC spent much time on tasks
13 exclusively related to its copyright infringement counterclaim. That claim necessarily
14 rose or fell in connection with the declaratory judgment claims, which had to be
15 decided first. Indeed, the parties agreed that the only question presented to the jury
16 would be as to the validity claim, with the copyright issue to be resolved thereafter
17 depending on the result. (*See* Dkt. Nos. 269, 270, 299 at 104–107.) However, the
18 Court was able to identify work relating to GMG and/or TIGA from TPC’s billing
19 records. Out of the some 7110.3 hours billed, GMG and/or TIGA are mentioned in
20 connection with only 255.2 hours. Even still, the billing descriptions reveal that not
21 all of those 255.2 hours were spent on work relating to GMG or TIGA or on the
22 infringement counterclaim specifically; many entries include multiple tasks that were
23 performed during the noted time period. The Court was also able to identify
24 approximately 28.3 hours of work that based on the descriptions provided appears to
25 have been spent on the infringement counterclaim; however most of these hours also
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27 ² The issue of whether the declaratory judgment claims are related to UMC’s
28 Copyright infringement claim is addressed in further detail below. *See* Section III.e.1.

1 include time spent on other issues as well.

2 Thus, 283.5 would likely be a generous approximation of the time TPC's
3 attorneys spent exclusively on TPC's infringement counterclaim, as that figure also
4 includes time spent on other work for which TPC presumably could recover fees. But,
5 because it cannot be entirely sure if other time was spent on the infringement
6 counterclaim, the Court finds that a reduction of 283.5 hours would appropriately
7 account for any unrecoverable fees under § 412. Of these 283.5 hours, Ryan
8 Goldstein billed 48.1 at \$748 per hour and 1.6 at \$764 per hour; Daniel Posner billed
9 94.5 (plus 20.2) of these hours at \$672 per hour; Zachary Schenkkan billed 37 hours at
10 \$428 per hour and another 63.6 at \$456 per hour; Ryan Keech billed 4.6 hours at \$528
11 per hour; Andrew March billed 3.6 hours at \$584 per hour and 8.1 hours at \$640 per
12 hour; and finally, Wuh Kim, a litigation support staff member, billed 2.2 hours at
13 \$200 per hour.³ This results in a total of \$168,832.40. Accordingly, any fee award
14 granted will be reduced by \$168,832.40 to account for time spent on TPC's
15 infringement counterclaim, as prohibited by § 412.

16 C. The Purposes of the Copyright Act

17 Before considering the factors outlined in *Fogerty I*, the Court considers the
18 "pivotal" criterion of whether the purposes of the Copyright Act would be furthered
19 by a fee award. *See Fogerty II*, 94 F.3d at 558; *Mattel, Inc. v. MGA Entm't*, 705 F.3d
20 1108, 1111 (9th Cir. 2013) ("The most important factor in determining whether to
21 award fees under the Copyright Act, is whether an award will further the purposes of
22 the Act."). The Act's "ultimate aim is . . . to stimulate artistic creativity for the
23 general public good." *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156
24 (1975). That aim is furthered when defendants "advance a variety of meritorious
25 copyright defenses." *Fogerty I*, 510 U.S. at 527.

26 _____
27 ³ These rates reflect the 20% reduction TPC received on each attorneys' rate. The
28 attached excel spreadsheet further details which entries the Court used in these
calculations.

1 TPC argues that by prevailing in this lawsuit, it has “secured the unquestionable
2 right to distribute in the U.S. the *original* Ultraman works that TPC created . . . as
3 well as *new and derivative* Ultraman works that TPC has created since, and that it
4 intends to create in the future.” (Mot. at 13.) According to TPC, this ensures the
5 public’s access to existing Ultraman works and supports TPC’s desire to create new
6 works. On the other hand, UMC argues that a fee award is unnecessary to promote
7 the purposes of the Copyright Act because TPC could have still distributed and
8 created new Ultraman works in Japan even if the 1976 Agreement had been upheld.
9 Thus, UMC argues that the outcome of this case would actually have “little effect on
10 TPC’s incentive to create new works.” (Opp’n at 10.) UMC also states that as to the
11 original works, the public still had access to them outside of Japan through a licensee.

12 UMC’s arguments are unpersuasive. Under the terms of the 1976 Agreement,
13 TPC could only distribute its original Ultraman works in Japan. Moreover, under the
14 expansive interpretation of the 1976 Agreement argued by UMC, TPC’s ability to
15 distribute new or derivative works would also have been limited. The general public
16 outside of Japan would have been deprived of any new or derivative Ultraman works
17 created by TPC, which runs contrary to the purpose of “enriching the general public
18 through access to creative works.” *Fogerty I*, 510 U.S. at 527. It is certainly possible
19 that the opportunity to distribute original as well as new works worldwide would
20 motivate TPC to create such works, given the benefits that broader audiences could
21 elicit. Accordingly, the Court finds that an award of fees here would further the
22 purposes of the Copyright Act.

23 **D. Application of the *Fogerty* Factors**

24 As noted above, in exercising their discretion to grant or deny a fee request
25 under § 505, courts may consider the following factors: (1) the degree of success
26 obtained, (2) frivolousness, (3) motivation, (4) objective unreasonableness, and (5) the
27 need to advance considerations of compensation and deterrence. *Fogerty I*, 510 U.S.
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1 at 534 n.19. The Court addresses each factor individually.

2 **1. TPC’s Degree of Success**

3 The first factor considers the degree of success the movant obtained in the case.
4 Here, it is undisputed that TPC is the prevailing party. TPC successfully defended
5 against UMC’s copyright claim on summary judgment and prevailed at trial on the
6 issue of the 1976 Agreement’s validity. Following trial, the Court entered judgment
7 in TPC’s favor on UMC’s remaining claims and on TPC’s counterclaims. (Dkt. No.
8 312.) *See* C.D. Cal. R. 54-1 (explaining that the prevailing party “shall be the party in
9 whose favor judgment is rendered”). Accordingly, given that TPC obtained complete
10 success in this matter, this factor weighs in favor of granting TPC’s Motion.

11 TPC claims that this sort of “complete victory on the merits” is alone sufficient
12 to support and award of attorneys’ fees. (Mot. at 14 (citing *Perfect 10, Inc. v.*
13 *Giganews*, No. CV 11–07098–AB (SHx), 2015 WL 1746484, at * 7 (C.D. Cal. Mar.
14 24, 2015)).) UMC does not dispute that TPC obtained success on the merits, but
15 states that victory on the merits *alone* is insufficient to support an award of fees, and
16 that the remaining factors must be considered. (Opp’n at 11.)

17 In *Perfect 10, Inc. v. Giganews*, the Court found that the “degree of success”
18 factor weighed heavily in favor of an award. There, not only had the defendants won
19 “unqualified victories” on each of the plaintiff’s three theories of copyright
20 infringement, but the “successful defense of the action helped ‘demarcate’ the
21 ‘boundaries of copyright law.’” 2015 WL 1746484, at * 7. The Court also noted that
22 the plaintiffs’ claims would have “posed a serious threat to the public’s access to free
23 and competitive expression” and the defendants’ successful defense of the claims
24 furthered the purposes of the Copyright Act. *Id.* The Court concluded that, given the
25 extent to which this factor weighed in the defendants’ favor, it alone could support an
26 award of attorneys’ fees. *Id.* (citing *Robinson v. Lopez*, No. CV 03–3732 LGB
27 (PLAx), 2003 WL 23162906, at *2 (C.D. Cal. Nov. 24, 2003) (“Courts have awarded
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1 costs for copyright claims based on a single factor, such as objective
2 unreasonableness.” (citations omitted))).

3 In *Perfect 10, Inc.*, the Court’s analysis of this factor highlighted not only the
4 degree of success obtained, but also whether the purposes of the Copyright Act were
5 furthered. The Court did not include a separate analysis of this important
6 consideration. See *Perfect 10, Inc.*, 2015 WL 1746484, at *7 (citing *Los Angeles*
7 *News Serv. v. Reuters Television Int’l, Ltd.*, 149 F.3d 987, 997 (“[F]ees are warranted
8 inasmuch as it served the purposes of the Copyright Act for [defendant] to establish its
9 right to extraterritorial damages and to defend its favorable ruling below on fair
10 use.”)). As noted above, whether an award will further the purposes of the Copyright
11 Act is the most important consideration in determining whether to award fees under
12 the Act. See *Mattel, Inc.*, 705 F.3d at 1111. Therefore, the most logical reading of the
13 Court’s analysis is that it considered both factors under one heading, and was not
14 relying solely on the degree of success obtained in making its conclusion. In *Perfect*
15 *10, Inc.*, the two factors converged because the complete defense of the plaintiffs’
16 claims resulted in broader public access to artistic works, one of the main purposes of
17 the Act. Therefore, that order appears to be in line with other cases that have held that
18 where there is clear furtherance of the Copyright Act’s purposes, success on the merits
19 in addition thereto may support an award of fees. See *Fogerty II*, 94 F.3d at 556.
20 Accordingly, the Court declines to read its prior order as standing for the position that
21 degree of success obtained *alone* can support an award of fees.

22 Regardless, because TPC obtained complete success on the merits, this factor
23 weighs in favor of granting TPC’s Motion.

24 **2. UMC’s Claims Were Not Entirely Frivolous**

25 “A claim is not frivolous” under the Copyright Act “merely because it is
26 unsuccessful.” *Bisson–Dath v. Sony Computer Entm’t Am. Inc.*, No. CV–08–1235
27 SC, 2012 WL 3025402, at *2 (N.D. Cal. July 24, 2012). Rather, a frivolous claim
28

1 under the Copyright Act is one that, in either the factual or legal, is “clearly baseless,”
2 involving “fantastic or delusional scenarios.” *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*,
3 No. C 04–00371 JW, 2005 WL 2007932, at *4 (N.D. Cal. Aug. 12, 2005) (quoting
4 *Neitzke v. Williams*, 490 U.S. 324, 325–28 (1989)). Put another way, “[a] case is
5 deemed frivolous only when the “result is obvious or the arguments are wholly
6 without merit.” *Glass v. Sue*, No. CV 09–8570–RGK SHX, 2011 WL 561028, at *3
7 (C.D. Cal. Feb. 8, 2011) (citing *Karam v. City of Burbank*, 352 F.3d 1188, 1195 (9th
8 Cir. 2003)).

9 TPC argues that UMC’s claims were “wholly meritless” because UMC
10 allegedly “never had any evidence” for their position that (1) UMC owned any rights
11 in new and derivative Ultraman works, and (2) TPC infringed UMC’s alleged right to
12 distribute original Ultraman works outside Japan. (Mot. at 17.) As to the first point,
13 TPC contends that every court to interpret the 1976 Agreement agreed that no such
14 rights were transferred, and it was unreasonable for UMC to assert such a position
15 here. Second, TPC argues that it never distributed any original works in the United
16 States during the relevant period, and UMC’s alleged reliance on a YouTube
17 notification that TPC had posted such works was unreasonable. TPC states that UMC
18 could have easily confirmed at the time that the video was posted for viewers *in Japan*
19 and did not infringe any of UMC’s alleged rights. (Mot. at 15.)

20 UMC argues that its claims were not frivolous because the express language of
21 the 1976 Agreement purportedly supported their position. (Opp’n at 15.) UMC also
22 notes that because other courts found the 1976 Agreement was an authentic contract, it
23 was reasonable to believe a jury in this case would find it authentic as well.

24 The Court is unpersuaded that UMC’s claims were frivolous in the sense that
25 they were not “wholly baseless” or fantastical. As UMC points out, the issue of the
26 preclusive effect of the foreign judgments was unclear, and some of those courts did
27 find the agreement authentic. Further, there was a question as whether the Court
28

1 would give preclusive effect to the Japanese court’s *interpretation* of the 1976
2 Agreement only, or whether it would also accept that court’s finding that the
3 agreement was authentic. However, as to UMC’s argument regarding the scope of the
4 agreement, the foreign courts were consistent in their interpretations, finding that the
5 1976 Agreement did *not* transfer rights in new or derivative works. Further, the plain
6 language of the 1976 Agreement does not support UMC’s position; nowhere does it
7 say or imply that Sompote would have the right to make new or derivative works
8 based on the original works listed. Although UMC’s argument as to the scope of the
9 agreement was weak, this does not necessarily mean it was completely frivolous.
10 There was a possibility that this Court would not give preclusive effect to the Japanese
11 court’s interpretation and interpret the agreement differently. But, given the language
12 of the agreement itself, a different interpretation was extremely unlikely. For these
13 reasons, and given the lack of evidence UMC presented in support of its interpretation
14 of the 1976 Agreement, the Court finds that this factor weighs slightly in favor of
15 granting TPC’s motion.

16 **3. UMC’s Motivation in Bringing Suit Was Not**
17 **Improper**

18 This factor considers whether the party was motivated by an interest in
19 protecting its copyrights or “stimulat[ing] artistic creativity for the general public
20 good.” *Fogerty I*, 510 U.S. at 527. TPC argues that UMC brought this suit in a
21 “opportunistic attempt to obtain a more favorable litigation outcome in a foreign court
22 where it would not be saddled by Mr. Sompote’s participation.” (Mot. at 18.) TPC
23 claims that UMC had no reason to fear infringement of its alleged copyrights because
24 TPC had done nothing to impinge on any of those rights. TPC also argues that UMC
25 acted in bad faith by not attempting to obtain evidence from Mr. Sompote, “while at
26 the same time doing whatever it could to exploit Mr. Sompote’s absence from the
27 case.” (Mot. at 18.)
28

1 UMC states that it filed this lawsuit because it believed TPC infringed and also
2 disputed its rights in the relevant Ultraman works. According to UMC, TPC sent a
3 letter to UMC's licensee stating that UMC had *no* rights in the relevant works and that
4 TPC was considering filing suit against UMC in the United States. (Opp'n at 18.)
5 This letter allegedly motivated UMC to bring the instant suit in an effort to protect the
6 rights it believed the 1976 Agreement granted.

7 Again, the Court is not convinced that UMC had an improper motivation in
8 bringing this suit. Based on the prior lawsuits, UMC could have held a good-faith
9 belief that the 1976 Agreement transferred at least some rights in the relevant works.
10 Further, based on the letter and possibly the YouTube notification, UMC could have
11 believed the suit was necessary to defend its claimed rights. Accordingly, the Court
12 finds that this factor does not weigh in favor of a fee award.

13 **4. UMC's Litigation Position Was Not Objectively**
14 **Unreasonable**

15 Courts assess the objective reasonableness of a copyright litigant's claims "both
16 in the factual and in the legal components of the case" *Fogerty I*, 510 U.S. at 534
17 n.19 (internal quotes omitted). However, courts have not articulated precisely how
18 this factor differs from the question of whether a claim was "frivolous." *See, e.g.,*
19 *Perfect 10, Inc. v. CCBill LLC* ("CCBill"), 488 F.3d 1102, 1120 (9th Cir. 2007)
20 (discussing issues of objective unreasonableness and frivolity without differentiating
21 between the two). As with frivolity, "the mere fact that [a party] lost cannot establish
22 his objective unreasonability." *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1181 (9th
23 Cir. 2013). Still, the standard for objective unreasonableness is somewhat lower than
24 that for complete frivolity. While frivolity requires evidence that a party's claims
25 were "clearly baseless" involving "fantastic or delusional scenarios", *Perfect 10, Inc.*
26 *v. Visa Int'l Serv. Ass'n*, No. C 04-00371 JW, 2005 WL 2007932, at *4 (N.D. Cal.
27 Aug. 12, 2005), a claim is objectively unreasonable where the party advancing it
28

1 “should have known from the outset that its chances of success in this case were slim
2 to none.” *SOFA Entm’t, Inc. v. Dodger Prods., Inc.*, 709 F.3d 1273, 1280 (9th Cir.
3 2013).

4 In addition to the arguments outlined in the frivolity analysis above, TPC
5 contends that it was unreasonable for UMC to ask this Court to interpret the 1976
6 Agreement—a Japanese contract—in a way that was contrary to the Japanese court’s
7 interpretation of the same, and that UMC allegedly “did not even believe to be
8 correct.” (Mot. at 14.) TPC states that Perasit Saengduenchai admitted that he did not
9 believe the 1976 Agreement gave UMC rights in new or derivative works, which is
10 contrary to the litigation position UMC advanced for years in this case.

11 Again, UMC states that it reasonably believed this Court would not give
12 preclusive effect to the Japanese court’s ruling regarding the scope of the rights
13 allegedly transferred in the 1976 Agreement. (Opp’n at 12.) UMC also attempts to
14 explain Mr. Perasit’s testimony by stating that he believed he had to conform his
15 testimony to the Court’s summary judgment ruling, which held that the 1976
16 Agreement did not transfer any rights in new or derivative works. (*Id.* at 12–13.)
17 Lastly, UMC reiterates that it was reasonable for it to believe TPC had distributed
18 original Ultraman works in the United States based on the YouTube notification,
19 which allegedly would not have occurred unless “TPC claimed rights in that footage
20 in the same territory where [UMC’s licensee] Veranda claimed rights.” (*Id.* at 13.)

21 Although the standard for objective unreasonableness is lower, the Court does
22 not find that all of UMC’s litigation positions were objectively unreasonable. As
23 explained above, UMC’s position with respect to the scope of the agreement generally
24 lacked persuasive support and was unsupported by the prior court’s judgments.
25 However, it was arguably reasonable for UMC to believe the 1976 Agreement would
26 be found authentic in this Court based on some of the foreign court’s prior rulings.
27 Accordingly, the Court finds that this favor weighs in favor of granting TPC’s Motion.
28

1 **5. Considerations of Compensation and Deterrence**

2 The last *Fogerty* factor recognizes that “[d]eterring non-meritorious lawsuits
3 against defendants seen as having ‘deep pockets’ and compensating parties that must
4 defend themselves against meritless claims are both laudible [sic] ends.” *Scott v.*
5 *Meyer*, No. CV 09–6076 ODW(RZX), 2010 WL 2569286, at *3 (C.D. Cal. June 21,
6 2010). These parties have a long history of litigation and have sued one another
7 numerous times in various countries; in this sense, it seems both parties could benefit
8 from some deterrence. Multiple courts have heard these arguments and ruled on them,
9 yet the parties have continued to pursue further litigation. Each party bearing their
10 own attorneys’ fees could potentially deter both sides from pursuing non-meritorious
11 challenges of or infringing the other’s rights again in the future. Accordingly, the
12 Court does not find the need for compensation and deterrence compelling in this case.

13 Overall, an award of fees in this case is supported by the *Fogerty* factors. Thus,
14 the Court considers whether the costs and fees requested are reasonable.

15 **E. The Lodestar Calculation**

16 To determine the appropriate lodestar amount, the Court must consider the
17 reasonableness of both the rates TPC’s attorneys charged and the amount of time they
18 spent working at those rates. *Intel Corp.*, 6 F.3d at 622.

19 **1. Whether the Declaratory Judgment Claims Were “Related”**
20 **to the Copyright Infringement Claim**

21 A party entitled to attorney’s fees on a copyright claim can recover only those
22 fees incurred in defending against that claim or any “related claims.” *See Entm’t*
23 *Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1230 (9th Cir.
24 1997); *Hensley v. Eckerhart*, 461 U.S. 424, 434–35 (1983). Accordingly, the “first
25 step in the calculation of a reasonable attorney’s fee in the present case [is] to decide if
26 the copyright and non-copyright claims are related.” *See Trad. Cat Assoc., Inc. v.*
27 *Gilbreath*, 340 F.3d 829, 833 (9th Cir. 2003). Claims are related where they involve
28

1 “a common core of operative facts or [are] based on related legal theories.” *Hensley*,
2 461 U.S. at 435. “Thus, the focus is on whether the [] claims arose out of the same
3 ‘course of conduct.’” *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 903
4 (9th Cir. 1995). If the copyright and non-copyright claims are not related, the
5 defendants can only recover fees attributable to the copyright claims.

6 Other courts have acknowledged the issues that arise as to fee awards in cases
7 where both Copyright and non-copyright claims are asserted. In *InvesSys, Inc. v.*
8 *McGraw–Hill Cos.*, the First Circuit explained that because § 505 was drafted with
9 claims under the Copyright Act in mind, Congress did not “expressly address the
10 problem of a case with a mix of claims.” 369 F.3d 16, 19 (1st Cir. 2004). The First
11 Circuit continued, however, to state that “here a federal copyright claim was asserted
12 in the complaint, so this is literally a ‘civil action under this title [The Copyright Act],’
13 17 U.S.C. § 505.” *Id.* The same is true here. More importantly for present purposes,
14 the First Circuit went on to explain that, given the uncertainty of § 505’s scope, “the
15 case law has used common sense to carry out Congress’ underlying intent to provide
16 for attorney’s fees in copyright enforcement *or like matters* but not for other civil
17 claims that do not involve copyright.” *Id.* (citing *Entm’t Research Grp., Inc.*, 122
18 F.3d at 1230–31) (emphasis added). Here, there is no question that both UMC’s and
19 TPC’s claims seeking a declaration of copyright ownership, even though not invoking
20 the Copyright Act itself, are “like matters” for which § 505 fees are available. *See*
21 *Twentieth Century Fox Film Corp. v. Entm’t Distrib.*, 429 F.3d 869, 884 (9th Cir.
22 2005) (holding that the defendant’s counterclaims were sufficiently related to the
23 plaintiff’s copyright claims where the counterclaims “were predicated on its assertion
24 that [the plaintiff] did not own the copyright” to the work at issue).

25 In short, UMC’s argument, “which attempts to create an unbridgeable moat
26 around [its] copyright claim,” is a “cramped” reading of § 505. *Zamoyski v. Fifty-Six*
27 *Hope Road Music, Ltd.*, 767 F. Supp. 2d. 218, 222 (D. Mass. 2011) (citing *Entm’t*
28

1 *Research Grp., Inc.*, 122 F.3d at 20). *See also Rose v. Bourne, Inc.*, 176 F. Supp. 605,
2 607 (D.N.Y. 1959) (awarding fees in defendant’s counterclaim for declaration of
3 ownership, the copyright infringement claim having been dismissed prior to trial);
4 *R.C. Entm’t, Inc. v. Rodriguez & RCR Music Publ’g, Inc.*, No. 98 Civ. 8585(BSJ),
5 1999 WL 777903, at *3 (S.D.N.Y. Sept. 24, 1999) (awarding fees in suit for
6 declaration of ownership when no infringement claims were asserted).

7 Even though the issues that were litigated after the Court’s September 2017
8 Order related primarily to the parties’ declaratory judgment claims, copyright
9 considerations still permeated the case. The question of who owned the Ultraman
10 rights at issue was common to the copyright and declaratory judgment claims; the fact
11 that the contract issue was tried to the jury does not change the fact that the copyright
12 claims had shaped the case to that point. Therefore, the work performed in connection
13 with the declaratory judgment claims was sufficiently related to the copyright claim to
14 be covered by the fee provision in § 505, and the Court finds any further
15 apportionment unnecessary.

16 **2. Whether Fees Can Be Awarded Against TIGA and GMG**

17 UMC also argues that, as to GMG and TIGA, TPC’s Motion must be denied in
18 full because they were *only* involved as parties to TPC’s counterclaims. However, as
19 explained in detail above, TPC’s counterclaim for declaratory relief is related to
20 UMC’s original claims for copyright infringement and declaratory relief. As such,
21 TPC may recover fees in connection with the work it performed on the related claims,
22 which involved TIGA and GMG. Because the entire action can be classified as
23 arising “under” the Copyright Act, and because TIGA and GMG were parties to
24 TPC’s related declaratory relief counterclaim, a portion of the fee award may be
25 apportioned to them. Further, the Court’s judgment, which is based on the unopposed
26 request for judgment, states that the *UMC parties* will be responsible for costs
27 awarded by the Court. (*See* Dkt. No. 312.) However, although they were named as
28

1 counterdefendants, TIGA and GMG played an extremely limited role in this litigation.
2 As noted above, only approximately 4% of the total work billed by TPC’s counsel
3 related to TIGA and/or GMG. Even still, much of this work was performed in
4 connection with TPC’s infringement counterclaim, for which TPC cannot recover
5 fees.

6
7 In light of their minor role, TIGA and GMG should only be responsible for a
8 similarly small percentage of a cost award. *See Corder v. Gates*, 947 F.2d 374, 381–
9 83 (9th Cir. 1991) (considering how courts should apportion fee awards among
10 defendants and finding that the focus should be on “the *time* expended by the plaintiff
11 in pursuing each defendant”); *Woods v. Graphic Commc’ns, Inc.*, 925 F.2d 1195,
12 1206 (9th Cir. 1991) (holding that district court did not abuse its discretion in allotting
13 a portion of “Phase I” fees to the union since a portion of Woods’s efforts had been
14 directed at the union during Phase I); *Sable Commc’ns of Cal. v. Pac. Tele. & Tele.*
15 *Co.*, 890 F.2d 184, 194 (9th Cir. 1989) (“If, as appears likely, the conduct of Pacific
16 Bell was the focus of the litigation and required a larger portion of the time of
17 plaintiff’s counsel, it is appropriate to allocate the burden of the fee award
18 accordingly.”). Considering the amount of time spent on work related to these parties,
19 and that much of it related to the infringement counterclaim, the Court finds it fair and
20 appropriate to hold TIGA and GMG responsible for 1% of the cost award.

21
22
23 **3. The Rates Requested are Consistent with Prevailing Market**
24 **Rates**

25 An attorney’s rate is “reasonable” for the purpose of a fee award if it comports
26 with “prevailing market rates in the relevant community, regardless of whether
27 plaintiff is represented by private or nonprofit counsel.” *Van Skike*, F.3d at 1046. To
28 determine whether a rate falls within the scope of “prevailing market rates,” courts

1 consider rates charged by other “attorneys in the relevant community engaged in
2 equally complex Federal litigation, no matter the subject matter” “for similar services
3 by lawyers of reasonably comparable skill, experience and reputation.” *Prison Legal*
4 *News*, 608 F.3d at 455 (internal quotes omitted).

5 TPC requests reimbursement for attorney, paralegal, and support staff time
6 from its legal team at Quinn Emanuel. TPC’s lead trial counsel, John Quinn, is the
7 founding partner of Quinn Emanuel with over forty years of experience. (Dkt. No.
8 322, Declaration of Daniel C. Posner in Support of TPC’s Motion (“Posner Decl.”)
9 ¶ 34(a).) Mr. Quinn billed his time in this case at the hourly rate of \$960, which Mr.
10 Posner states is well below Mr. Quinn’s regular hourly rate. TPC requests
11 compensation for 128.2 hours of Mr. Quinn’s time spent on this matter, which
12 accounts for only a portion of the time Mr. Quinn actually devoted to the case. Ryan
13 Goldstein, a senior partner on TPC’s legal team who was the main point of contact
14 between TPC and the firm, billed between \$748–\$804 per hour, which is also
15 purportedly well below his regular hourly rate. (Posner Decl. ¶ 34(b).) Mr. Goldstein
16 has approximately twenty years of experience and has been a partner since 2006. He
17 is also head of the firm’s Tokyo office. TPC seeks reimbursement for 1497.6 hours of
18 Mr. Goldstein’s time. Daniel C. Posner was the attorney primarily responsible for
19 overseeing the daily litigation activity in this case. Mr. Posner has been a partner at
20 Quinn Emanuel since 2013, and billed his time at an hourly rate between \$672–\$780
21 in this case. TPC seeks to recover for approximately 2111.7 hours of Mr. Posner’s
22 time spent on this matter.

23 Zachary Schenkkan was the lead associate on the case. Mr. Schenkkan
24 “oversaw all aspects of discovery, including the complicated foreign-language
25 document review; took multiple fact and expert depositions; actively participated in
26 all significant legal research and briefing tasks; oversaw many aspects of trial
27 preparation; and played an active role in evidentiary and legal issues at trial, and also
28

1 cross-examined an expert witness.” (Posner Decl. ¶ 34(d).) Mr. Schenkkan billed his
2 time at an hourly rate of \$292–\$580 in this case. TPC seeks compensation for 1473.1
3 hours of Mr. Schenkkan’s time spent on this matter.

4 Other partners and senior counsel who assisted on the case billed between
5 \$788–\$960 per hour. (Posner Decl. ¶ 35(a)–(c).) TPC seeks to recover for 33.5 hours
6 of time spent by these attorneys. Additional associate time was billed at rates between
7 \$488–\$660 per hour, (Posner Decl. ¶ 35(d)), and other attorney time at rates between
8 \$160–\$296 per hour, (*id.* ¶ 36). TPC seeks compensation for 1579.8 hours of time
9 spent by these other attorneys. Finally, paralegal time was billed at \$240–\$244 per
10 hour, and TPC seeks compensation for 484 hours of paralegal time spent on this case.
11 (Posner Decl. ¶ 39.) Additionally, Quinn Emanuel’s litigation support staff charged
12 between \$140–\$292 per hour for their services. (Posner Decl. ¶ 40.) TPC seeks to
13 recover for 73.69 hours of their time spent on this matter. Lastly, TPC seeks to
14 recover for 54.5 hours of time spent by Quinn Emanuel’s “trial graphics specialist”
15 Dave Scholz. (Posner Decl. ¶ 41.) Mr. Scholz’s hourly rate is \$250.

16 **4. Attorney Rates**

17 UMC argues that TPC’s attorneys charged unreasonably high rates for its
18 partners and associates. (Opp’n at 21.) UMC states that TPC failed to include
19 evidence of what other comparable attorneys in this district charge and notes the lower
20 rates charged by its counsel. Specifically, UMC notes that Quinn Emanuel “billed a
21 third-year associate at an hourly rate that was \$40 higher than the hourly rate of a
22 senior counsel with 30 years’ experience.” (Opp’n at 23.)

23 In support of its attorneys’ rates, TPC submits the declaration of André Jardini.
24 (Dkt. No. 326, Declaration of André Jardini in Support of TPC’s Motion (“Jardini
25 Decl.”).) Mr. Jardini is an attorney at the firm Knapp, Peterson & Clarke with over
26 forty years of litigation experience. (Jardini Decl. ¶¶ 1, 2.) He has participated in
27 auditing legal billing since 1985, and has “personally audited the billing of a large
28

1 proportion of the major law firms in California.” (*Id.* ¶ 9.) Mr. Jardini has performed
2 more than 1,500 such audits. (*Id.*) Mr. Jardini also started his own company related
3 to auditing legal billing, and has reviewed billing in a wide variety of matters,
4 including intellectual property cases. He has testified as an expert witness on the issue
5 of reasonableness of legal fees in over 275 cases, both on behalf of the proponent of
6 the fees and the opponent. (*Id.* ¶¶ 11–14.) After reviewing file materials, invoices,
7 and motions prepared by Quinn Emanuel in this case, Mr. Jardini concluded that the
8 discounted fees Quinn Emanuel charged TPC were reasonable. (*Id.* ¶¶ 35, 39.)

9 First, although the rates charged by opposing counsel may sometimes be
10 “useful”, “the district court has the discretion not to rely on them.” *Gonzalez*, 729
11 F.3d at 1202. Although Quinn Emanuel’s rates were higher than those charged by
12 UMC’s counsel, the differences are not so dramatic as to fall outside the normal range
13 of rates charged. Further, the Court is not convinced that the chart provided in UMC’s
14 Opposition represents an accurate comparison. UMC does not note the experience of
15 any of its attorneys except to note their year of law school graduation. Graduation
16 year alone is not necessarily indicative of experience level or expertise. Accordingly,
17 the Court finds the evidence of opposing counsel’s rates to be of limited use in
18 determining the reasonableness of the requested rates.

19 Second, the declaration provided by Mr. Jardini provides some support for
20 TPC’s request. Although Mr. Jardini does conclude that the rates billed by the
21 attorneys at Quinn Emanuel were within the prevailing rates in the community, *see*
22 *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991) (submission of declarations
23 stating that rate was the prevailing market rate in the relevant community was
24 sufficient to establish appropriate rate for lodestar purposes), his main focus seems to
25 be on whether the total fees billed were reasonable. (*See* Jardini Decl. ¶¶ 87–90.)
26 However, he does base his opinion on his experience conducting similar litigation and
27 his audits of attorneys’ fees in comparable litigation, which in a way supports the idea
28

1 that the rates were akin to the prevailing rates in the community. (*Id.* ¶ 87.)

2 Therefore, the Court does consider Mr. Jardini’s declaration as providing significant
3 support for TPC’s request.

4 Because the evidence provided offers limited insight on the prevailing market
5 rates in this district, the Court looks to other evidence as well. Though not
6 dispositive, the rates counsel actually charged TPC is at least one factor the Court may
7 consider in determining whether the rates sought are reasonable. *Moore*, 682 F.2d at
8 840; *accord Maldonado v. Lehman*, 811 F.2d 1341, 1342 (9th Cir. 1987) (“evidence
9 of counsel’s customary hourly rate may be considered by the District Court” as one
10 factor in determining the reasonable market rate). At minimum the rate an attorney
11 actually charges its client is a “good starting to point” because “the actual rate that
12 [the attorney] can command in the market is itself highly relevant proof of the
13 prevailing community rate.” *Elser v. I.A.M. Nat. Pension Fund*, 579 F. Supp. 1375,
14 1379 (C.D. Cal. 1984) (internal quotes omitted). Here, Quinn Emanuel charged TPC
15 at the rates requested, which were allegedly 20% lower than what Quinn Emanuel
16 would typically charge. (Posner Decl. ¶ 26.) Based on its experience with similar
17 firms and similarly experienced attorneys in this district, the Court is persuaded that
18 the rates charged were similar to if not lower than what could be commanded in the
19 market. Quinn Emanuel is a preeminent law firm with extensive experience in
20 intellectual property litigation. The fees charged here appear to be reasonable given
21 the complexity and scope of the case, which required the work of numerous qualified
22 lawyers for many years. Further, the value of TPC’s choice to retain a preeminent law
23 firm showed in both the quality of defense counsel’s lawyering and the significant
24 results they obtained for TPC.

25 The attorney rates outlined above are also consistent with rates allowed in other
26 intellectual property cases in this district of a similar scale. *See Perfect 10, Inc.*, 2015
27 WL 1746484, at *19 (approving rates between \$350 and \$930 for attorney time in
28

1 complicated copyright matter); *Masimo Corp. v. Tyco Health Care Group, L.P.*, No.
2 CV 0204770–MRP (AJWx), 2007 WL 5279897 (C.D. Cal. Nov. 5, 2007) (finding
3 attorney rates ranging from \$390 per hour to \$1,002.96 per hour were reasonable for
4 the Los Angeles area over ten years ago); *Love v. Mail on Sunday*, No. CV05-7798
5 ABC(PJWX), 2007 WL 2709975, at *8 (finding junior associate rates of \$305 per
6 hour to partner rates of \$690 per hour reasonable and “consistent with the rates
7 typically charged by other highly-regarded southern California law firms for similar
8 work by attorneys of comparable experience”). Accordingly, based on the evidence
9 provided and additional research, the Court concludes that the rates charged were
10 within the prevailing market rates in this district.

11 **5. Hours Billed**

12 In support of their Motion, TPC submits roughly 260 pages of counsel’s billing
13 records, and requests the Court count 7110.3⁴ hours in billed time. (Posner Decl.
14 ¶¶ 25, 63; Ex. B.) With the exception of the hours billed for certain tasks outlined by
15 Mr. Jardini, the Court finds TPC’s billed hours to be largely reasonable. (See Jardini
16 Decl. ¶¶ 59–65.) Further, UMC does not argue that the hours billed were
17 unreasonable or excessive.⁵ Indeed, this case was hotly litigated for over three years:
18

19 ⁴ It is unclear whether this number reflects the deductions in time proposed by Mr.
20 Jardini. In his declaration, Mr. Posner states that Quinn Emanuel “has billed TPC
21 \$4,280,351.20 for attorney’s fees during the course of the case, covering 7110.3
22 [hours] of billable time.” (Posner Decl. ¶ 25.) However, in conclusion, Mr. Posner
23 states that TPC seeks “including all discounts and reductions” a total of \$4,107,59.62.
24 (Posner Decl. ¶ 42.) This second figure comports with Mr. Jardini’s proposed
25 amount, which includes his deductions. (See Jardini Decl. ¶ 65.) Mr. Jardini does not
26 provide a total or adjusted hours calculation.

27 ⁵ UMC does repeat its argument that the Court should not grant TPC fees in relation
28 to work performed after summary judgment was granted. This argument was rejected
above. UMC also argues that a 10% reduction from the claimed fees is appropriate to
account for “inefficiencies in work performed by its primary counsel.” (Opp’n at 24.)
However, UMC provides no explanation as to what these so-called inefficiencies were
or why 10% is an appropriate discount. The Court will not reduce TPC’s hours based
on this argument.

1 the parties engaged in extensive motion practice and ultimately a jury trial was held.
2 The attorneys in this case also dealt with the complexity of foreign judgments and
3 many foreign language documents and witnesses, which undoubtedly required more
4 time and effort to evaluate.

5 However, Mr. Jardini noted several hours of billed time that should be deducted
6 from the total sought. First, because TPC is not seeking to recover costs incurred in
7 connection with its counterclaims against Mr. Sompote or Ultraman USA, or its
8 efforts to obtain Mr. Sompote's default, 127.5 hours billed in connection with these
9 efforts should be deducted. (Jardini Decl. ¶ 61.) Second, Mr. Jardini found 83.75
10 hours of billing entries related to overhead costs, which are not properly billed as legal
11 fees. (*Id.* ¶ 62.) Third, Mr. Jardini identified 13.3 hours of work related to Ultraman
12 litigation in China that should not have been billed in this case. (*Id.* ¶ 63.) Lastly,
13 based on Quinn Emanuel's representation that it would not bill for certain attorney
14 work, Mr. Jardini recommended another \$64,688.40 reduction. (*Id.* ¶ 64.) All in all,
15 Mr. Jardini recommended a \$173,291.98 deduction from the \$4,280,351.20 total
16 billed to TPC. Subtracting this number leaves a total of \$4,107,059.62, the amount
17 ultimately requested by TPC in its Motion. (*Id.* ¶ 65.)

18 In light of the foregoing analysis, the Court calculates TPC's lodestar at
19 \$4,107,059.62. This figure includes the deductions outlined above. Because neither
20 party urges the court to impose an upward or downward multiplier under *Kerr v.*
21 *Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), the Court's analysis of a
22 reasonable attorneys fee ends with the presumptively reasonable lodestar amount. *See*
23 *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006).

24 **F. TPC's Non-Taxable Costs Request Is Reasonable**

25 As the prevailing party in this action, TPC is also entitled to its "full costs"
26 under 17 U.S.C. § 505. Although TPC separately applied to the Clerk for its
27 traditional taxable costs under 28 U.S.C. § 1920, (Dkt. No. 320), it applies to this
28

1 Court for an award of \$567,118.13 in non-taxable costs under the Copyright Act.
2 (Mot. at 24–25; Posner Decl. ¶¶ 43–61.) TPC provides a detailed description of the
3 costs for which it seeks reimbursement, (Posner Decl. ¶¶ 43–61), and an itemized list
4 of the same, (*id.* ¶ 44). Mr. Posner also declares the costs were “reasonably and
5 necessarily incurred in the course of providing legal services to TPC in this case.”
6 (Posner Decl. ¶ 44.) The declaration of Mr. Akira Mori also provides further detail as
7 to certain costs, including witness fees and travel expenses. (Dkt. No. 323,
8 Declaration of Akira Mori in Support of TPC’s Motion (“Mori Decl.”) ¶¶ 18, 19, 20.)

9 In opposition to this request, UMC argues only that TPC has not provided
10 sufficient evidence as to whether the costs requested are related to TPC’s
11 counterclaims. (Opp’n at 24–25.) Again, UMC argues that TPC cannot recover costs
12 incurred solely in connection with its counterclaims under § 505. UMC also contends
13 that TPC failed to provide “back-up” for any of the amounts it seeks in costs, “making
14 it impossible for UMC and the Court to evaluate the reasonableness of many of the
15 claimed expenses and justifying a deep discount in the claimed costs.” (Opp’n at 25.)

16 Despite its protest, UMC offers no evidence or argument to suggest that the
17 scope of the costs is unreasonable in the context of this litigation. Instead, UMC
18 suggests that TPC should have provided back-up or a more detailed explanation of
19 how each of the costs were necessary and reasonable. However, the costs requested
20 were explained in detail by Mr. Posner and Mr. Mori, and further information is not
21 required to determine the reasonableness of request. Based on the evidence submitted,
22 the costs set forth in Mr. Posner’s declaration appear to have been reasonably
23 necessary in the course of the litigation, and the Court awards TPC \$567,118.13 in
24 non-taxable costs under § 505.

25 IV. CONCLUSION

26 For the foregoing reasons, the Court **GRANTS in part** TPC’s Motion. The
27 Court awards TPC attorneys’ fees of **\$3,938,227.22** and full non-taxable costs of
28

1 **\$567,118.13.** In total, GMG and TIGA are only responsible for **\$45,053.45**, 1% of the
2 total award.

3
4 **IT IS SO ORDERED.**

5 Dated: August 01, 2018

A handwritten signature in black ink, appearing to read "André Birotte Jr.", with a long horizontal flourish extending to the right.

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8 HONORABLE ANDRÉ BIROTTE JR.
9 UNITED STATES DISTRICT COURT JUDGE
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Date	Attorney	Timesheet references	Hours Billed	Hourly Rate
8/9/2015	Dan Posner	infringement counterlcaim	1.40	840
10/15/2015	Ryan Goldstein	gmg	1.1	935
10/19/2015	Zachary Schenkkan	GMG	0.3	535
10/20/2015	Zachary Schenkkan	gmg	0.3	535
11/4/2015	Dan Posner	GMG	0.80	840
11/10/2015	Ryan Goldstein	gmg	1.30	935
11/18/2015	Ryan Goldstein	gmg	2.30	935
11/9/2015	Ryan Keech	gmg	1.1	660
11/20/2015	Ryan Goldstein	gmg	2.20	935
11/24/2015	Dan Posner	infringement counterlcaim	1.50	840
12/14/2015	Ryan Keech	TIGA	2.10	660
12/15/2016	Ryan Keech	TIGA	1.40	660
12/21/2015	Dan Posner	gmg	1.50	840
1/3/2016	Dan Posner	gmg	1.80	840
1/28/2016	Dan Posner	TIGA	3.30	840
1/29/2016	Dan Posner	TIGA	2.50	840
2/8/2016	Dan Posner	infringement counterlcaim	0.9	840
2/22/2016	Dan Posner	TIGA	1.80	840
2/22/2016	Zachary Schenkkan	TIGA	2.70	535
2/23/2016	Dan Posner	TIGA	1.90	840
2/24/2016	Dan Posner	TIGA	2.80	840
3/10/2016	Ryan Goldstein	TIGA	0.80	935
3/22/2016	Zachary Schenkkan	GMG	2.4	535
3/23/2016	Zachary Schenkkan	GMG	0.3	535
3/28/2016	Dan Posner	TIGA	0.90	840
3/29/2016	Dan Posner	TIGA, gmg	2.20	840
3/30/2016	Dan Posner	TIGA	1.70	840
4/6/2016	Zachary Schenkkan	gmg	1.40	535
4/7/2016	Zachary Schenkkan	gmg	1.60	535
4/11/2016	Zachary Schenkkan	gmg	2.90	535
4/14/2016	Zachary Schenkkan	gmg	1.00	535
4/15/2016	Zachary Schenkkan	gmg	2.40	535
4/19/2016	Zachary Schenkkan	gmg	2.10	535
4/20/2016	Zachary Schenkkan	gmg	4.70	535
5/9/2016	Zachary Schenkkan	gmg	1.20	535
5/12/2016	Ryan Goldstein	TIGA	1.40	935
5/13/2016	Zachary Schenkkan	gmg	1.80	535
5/15/2016	Dan Posner	gmg	0.80	840
5/17/2016	Zachary Schenkkan	gmg, tiga	2.60	535
5/19/2016	Zachary Schenkkan	gmg, tiga	2.30	535
5/20/2016	Zachary Schenkkan	gmg, tiga	0.90	535
5/22/2016	Dan Posner	GMG	0.60	840
6/1/2016	Zachary Schenkkan	GMG	1.70	535
6/2/2016	Zachary Schenkkan	GMG	1.90	535
6/3/2016	Ryan Goldstein	GMG	2.00	935
6/6/2016	Zachary Schenkkan	GMG	0.2	535

6/8/2016	Wuh Kim	GMG	1.40	250
6/9/2016	Wuh Kim	GMG	0.80	250
6/29/2016	Ryan Goldstein	GMG	3.60	935
6/30/2016	Ryan Goldstein	GMG	2.40	935
7/5/2016	Zachary Schenkkan	GMG	0.70	535
8/19/2016	Dan Posner	infringement counterlcaim	0.8	840
9/15/2016	Dan Posner	infringement counterlcaim	0.5	840
9/16/2016	Dan Posner	TIGA	0.90	840
9/16/2016	Zachary Schenkkan	tiga	0.10	535
9/21/2016	Dan Posner	tiga	0.40	840
9/27/2016	Dan Posner	tiga	0.90	840
10/17/2016	Zachary Schenkkan	tiga	1.50	535
10/19/2016	Dan Posner	GMG	1.90	840
10/31/2016	Zachary Schenkkan	GMG	2.70	570
11/1/2016	Zachary Schenkkan	GMG	5.30	570
11/2/2016	Zachary Schenkkan	tiga	2.40	570
11/2/2016	Dan Posner	tiga	1.80	840
11/4/2016	Zachary Schenkkan	tiga	0.50	570
11/8/2016	Dan Posner	GMG	3.3	840
11/9/2016	Dan Posner	GMG	1.8	840
11/10/2016	Dan Posner	GMG	4.60	840
11/11/2016	Dan Posner	GMG	3.2	840
11/11/2016	Zachary Schenkkan	tiga	0.40	570
11/12/2016	Dan Posner	gmg	1.6	840
11/14/2016	Dan Posner	gmg	4.9	840
11/14/2016	Zachary Schenkkan	GMG	3.00	570
11/15/2016	Dan Posner	gmg	5.8	840
11/15/2016	Zachary Schenkkan	GMG	4.20	570
11/16/2016	Andrew March	tiga	3.60	730
11/16/2016	Ryan Goldstein	GMG	4.80	935
11/16/2016	Zachary Schenkkan	tiga	1.50	570
11/17/2016	Ryan Goldstein	GMG	5.90	935
11/18/2016	Ryan Goldstein	GMG	2.60	935
11/20/2016	Zachary Schenkkan	tiga	3.20	570
11/21/2016	Zachary Schenkkan	tiga	1.90	570
11/28/2016	Zachary Schenkkan	TIGA	3.10	570
11/29/2016	Zachary Schenkkan	TIGA	2.50	570
11/30/2016	Zachary Schenkkan	TIGA	2.20	570
12/12/2016	Zachary Schenkkan	TIGA	6.60	570
12/14/2016	Zachary Schenkkan	TIGA	8.10	570
12/15/2016	Zachary Schenkkan	TIGA	11.00	570
12/16/2016	Dan Posner	TIGA	7.50	840
12/16/2016	Ryan Goldstein	TIGA	2.2	935
12/17/2016	Dan Posner	TIGA	5.5	840
12/18/2016	Dan Posner	TIGA	2.3	840
12/19/2016	Ryan Goldstein	TIGA	4.2	935
12/19/2016	Dan Posner	TIGA	9.5	840

12/20/2016	Ryan Goldstein	tiga	5.8	935
12/20/2016	Dan Posner	tiga	9	840
12/21/2016	Ryan Goldstein	GMG	5.50	935
12/27/2016	Dan Posner	gmg	4.4	840
12/28/2016	Dan Posner	TIGA, gmg	2.6	840
1/13/2017	Ryan Goldstein	tiga	1.3	955
2/6/2017	Zachary Schenkkan	tiga	5	635
6/26/2017	Andrew March	infringement counterlcaim	8.1	800
7/31/2017	Dan Posner	infringement counterlcaim	0.9	840
8/2/2017	Dan Posner	infringement counterlcaim	1.3	840
8/7/2017	Ryan Goldstein	tiga	0.3	955
8/7/2017	Dan Posner	infringement counterlcaim	1.2	840
8/22/2017	Dan Posner	infringement counterlcaim	3.3	840
8/24/2017	Dan Posner	infringement counterlcaim	3.9	840
8/25/2017	Dan Posner	infringement counterlcaim	4.5	840
		TOTAL HOURS BILLED:	283.5	