

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 10-00300-DOC (MLGx)	Date	September 26, 2012
Title	ETAGZ, INC. v. QUICKSILVER, INC.		

Present: The Honorable	Marc L. Goldman, Magistrate Judge		
	Terri Steele		n/a
	Deputy Clerk		Court Reporter / Recorder
	Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
	None		None

Proceedings: In Chambers: Order Awarding Attorney Fees

On September 11, 2012, pursuant to F.R.Civ.P. 37(b)(2), the Court ordered that Plaintiff Etagz pay the reasonable costs and attorney fees incurred by Defendant in bringing a motion for contempt and sanctions. The latter motion arose from Plaintiff's failure to comply with this Court's Order of June 5, 2012, granting in part Defendant's motion to compel production of documents.

On September 17, 2012, Defendant filed a statement of costs and attorney fees. In that statement, Defendant asserts that it is entitled to \$15,510.00 in attorney fees arising from 18.5 hours of time expended by Attorney Mark A. Finkelstein, 1 hour expended by Attorney Jesse D. Muholland, and .5 hours expended by Paralegal Risa A. Robataille, on the motion for sanctions. Finkelstein claims an hourly billing rate of \$775.00, Knoepp claims an hourly rate of \$675.00, and Robitaille claims an hourly rate of \$275.00. Plaintiff has filed an opposition alleging that the time claimed to have been expended and the hourly rates are unreasonable.

This court has the discretion to determine the reasonableness of the number of hours claimed by a prevailing party in determining an award of fees as well as the hourly rate requested. *Costa v. Commissioner of Social Sec. Admin.*, ---F.3d ---, 2012 WL 3631255 at *2 (9th Cir. Aug. 24, 2012); *Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1010 (9th Cir. 2004) (citing *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001)); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 453 (9th Cir. 2010) (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992)). In determining an appropriate award of fees, the court's obligation is to provide a reasonable explanation of how it arrived at the amount of compensable hours. *Sorenson*, 239 F.3d at 1145; *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1992). As noted in *Hensley*, the court should exclude hours that were not reasonably expended. *Id.* at 434. In making that determination, the court must consider, among other factors, the complexity of the case or the novelty of the issues, the skill required to perform the service adequately, the customary time expended in similar cases, as well as the attorney's expertise and experience. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 & n.7 (9th Cir. 2011) (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975)); *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998).

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Having reviewed the submissions relating to the request for fees as well as the underlying pleadings, the Court finds that the amount of time counsel for Defendant expended on the motion to compel, a total of 20 hours, to be reasonable. The motion was well prepared and well documented. While it did not involve complex or novel legal issues, nor did it require inordinate skill and extraordinary expertise and experience to prepare, the Court simply cannot substitute its judgment as to whether the hours expended on the comprehensive presentation could have been reduced in some meaningful way. *See e.g., Costa*, at *4.

However, the rate of \$775.00 per hour for the work performed by Mr. Finkelstein and \$675.00 per hour by Mr. Mulholland is excessive and unreasonable. This Court is not aware of any case before it where an attorney has sought that high an hourly rate for an ordinary discovery dispute. Based upon the evidence presented by the Defendant, including the Economic Survey performed by the American Intellectual Property Law Association, a more appropriate rate for Finkelstein’s work in this case is \$475.00 per hour, and for Mulholland’s work \$325.00 per hour, which appear to be the median rates for partners and associates in the Los Angeles area performing intellectual property litigation.

Accordingly, it is ordered that Plaintiff pay Defendant its reasonable attorney fees in the amount of \$9,250.00. Payment shall be made on or before October 5, 2012. Failure to comply with this order will result in additional sanctions which may include terminating sanctions.

Initials of Clerk _____ : _____
ts _____