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8
9 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

10 ELF-MAN, LLC,

11
12 Plaintiff,

13 vs.

14 RYAN LAMBERSON,

15 Defendant.

No. 2:13-CV-00395-TOR

SUPPLEMENTAL REPLY IN
SUPPORT OF DEFENDANT’S
MOTION FOR ATTORNEYS’ FEES

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I. INTRODUCTION

Ryan Lamberson submits this Reply Memorandum, supported by the Declaration of his counsel, J. Christopher Lynch and its exhibits.

Mr. Lamberson's fee request is proper. Each lawyer-day's time was contemporaneously logged. Monthly bills were sent to him for payment. Duplicative time was not billed nor requested. The timesheets and narrative clearly identify the tasks undertaken and their necessity. Lynch Dec. at ¶¶ 2-7.

Plaintiff does not explain how Mr. Lamberson could have prevailed with less lawyer-time. Other innocent Eastern District of Washington defendants remain ensnared. Elf-Man LLC dismissed Mr. Lamberson because his strategy was working – revealing plaintiff's handlers' persistent fraud on the United States District Courts. Equity supports full fees at a multiplier and immediate payment.

A. The Timesheets Are Accurate.

The timesheets are accurate. The time was logged daily and entered into Lee & Hayes' time and billing system. ECF No. 68, ¶ 25. Lynch Dec. at ¶¶ 2-3.

B. Bills Were Prepared And Sent for Payment.

The hours logged were the subject of monthly bills sent to Mr. Lamberson for payment. ECF No. 68, ¶ 25. Lynch Dec. at ¶¶ 2-7.

1 Note that plaintiff's fee requests in the main case, ECF No. 112-1, do not
2 include testimony that fees were billed or to whom – presumably because this would
3 have revealed the unidentified real party in interest.

4 **C. Block Billing Was Not Used.**

5 The timesheet descriptions were prepared to be as accurate and descriptive as
6 possible without revealing attorney-client privilege; the narrative is provided to
7 annotate the timesheets to allow understanding of the reasons for the tasks
8 undertaken. These are not “block billing” entries insufficient for a fee request. *See*
9 Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007) (citing definition of
10 block billing as “lumping together multiple tasks, making it impossible to evaluate
11 their reasonableness”); *see also* Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct.
12 1933, 1941 (1983) (finding fee application sufficient even though it merely provided
13 a summary of the time spent on a broad category of tasks).

14 Note that plaintiff's fee requests in the main case, ECF No. 112-1, use a similar
15 format with each day's hours and tasks presented as one entry.

16 **D. Good Faith Was Used To Prepare And Submit The Timesheets.**

17 Defense counsel have explained their respective roles, ECF Nos. 96, 97, and
18 68 at paragraphs 20-21. Logged time of paralegals and interns is not submitted. Over
19 \$25,000 of lawyer-time was written-down. Defense counsel worked at reduced rates.
20 ECF No. 76 at paragraph 11; ECF No. 92 at paragraph 58. The timesheets were

1 scrubbed, only presenting entries necessarily incurred. Lynch Dec. at ¶ 4. Plaintiff's
2 fourteen categories of objections are not well taken.

3 **1. The Counterclaims were well founded.**

4 Plaintiff's handlers have unlawfully demanded money from innocent people,
5 damaging Mr. Lamberson and the other victims. Mr. Lamberson was entitled to legal
6 relief, and the handlers' unlawful behavior is misuse of plaintiff's claimed copyright.
7 Plaintiff asserts it somehow has "immunity" to file baseless lawsuits, but it is now
8 entirely clear that the "sham litigation" exception applies to the claimed immunity.
9 Plaintiff is more interested in the *process* of the litigation than the *outcome*: plaintiff
10 needs the legal process to identify people to extort, but plaintiff will never use the
11 legal process to prove its claims because there is no admissible evidence proving
12 liability. Mr. Lamberson's counterclaims were well founded and would have been
13 pursued, had plaintiff not dismissed its own case before awaiting a ruling on the sham
14 litigation issues. Lynch Dec. at ¶ 8.

15 **2. The Sanctions Motions were well founded.**

16 Mr. Lamberson is entitled to fees for the denied Motions for Sanctions. The
17 prevailing party need not prevail on each matter within the case in order to be entitled
18 to full attorneys' fees. *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S. Ct. 1933, 1940,
19 76 L. Ed. 2d 40 (1983).

1 The sanctions motions were well founded: (i) plaintiff conducted no good faith
2 investigation of Mr. Lamberson before naming him; and (ii) plaintiff's handlers
3 multiplied the proceedings by being consistently (even predictably) evasive and
4 deceitful. The Court had discretion not to award sanctions, but this does not diminish
5 that plaintiff, its counsel, and its handlers engaged in sanctionable conduct. Lynch
6 Dec at ¶ 9.

7 **3. The timesheets are not duplicative.**

8 The timesheets were scrubbed to eliminate duplication. Many hours spent in
9 the defense and the investigation of plaintiff's handlers were not billed and are not
10 the subject of this fee request. Lynch Dec. at ¶¶ 2-7.

11 **4. The timesheets are not vague.**

12 As noted in point C above, the timesheets and narrative are not vague. The
13 nature of the tasks undertaken is clear. Lynch Dec. at ¶¶ 2-7.

14 **5. The "third-party" work was all directly relevant.**

15 Elf-Man LLC's cases are among hundreds of related cases brought in the name
16 of copyright holders, but orchestrated by foreigners unidentified to the Courts they
17 are abusing. These unidentified foreigners are the stated reason for Ms. VanderMay's
18 withdrawal – by definition, something unethical is underfoot. Mr. Lamberson had
19 more success than most BitTorrent defendants in discovering the elaborate nature of
20 the fraud perpetrated by these foreign handlers, and this drove his dismissal. It is no

1 surprise that plaintiff makes no mention of these unidentified foreigner handlers and
2 characterizes inquiries about them as irrelevant.

3 a. The BitTorrent nationwide scam.

4 Plaintiff and its handlers are responsible for a tidal wave of fraud on the federal
5 court system. This case has exposed some of it. Lynch Dec. at ¶¶ 10-16.

6 b. Working with Mr. Matesky was productive.

7 Mr. Lamberson's defense was aided by consultation with other counsel
8 representing innocent defendants sued by plaintiff. Lynch Dec. at ¶ 11.

9 c. Plaintiff's default judgments prove the scam.

10 Plaintiff continued to file fraudulent declarations in connection with its
11 Motions for Default Judgment. Lynch Dec. at ¶ 13.

12 d. Plaintiff's handlers are real parties in interest.

13 Plaintiff does not dispute that Mr. Lamberson's offers were not presented to
14 Elf-Man LLC. The handlers are in charge. Lynch Dec. at ¶ 14.

15 e. APMC and "Mr. Griffin" are not unrelated.

16 Plaintiff cavalierly claims APMC, Mr. Achache, "Mr. Griffin," and their crew
17 are unrelated to this matter, but this is not true. Lynch Dec. at ¶ 15.

18 f. The Vision Films investigation was proper.

19 Plaintiff claims subpoenas to Vision Films were not necessary, but they helped
20 confirm plaintiff's unlawful scam. Lynch Dec. at ¶ 16.

1 **6. Plaintiff failed to appear at its noted deposition.**

2 Plaintiff incorrectly claims that Mr. Lamberson stipulated to Elf-Man LLC's
3 unilateral cancellation of its own noted deposition. Plaintiff sought no Protective
4 Order. Lynch Dec. at ¶ 17.

5 **7. Plaintiff used an erroneous Certificate of Service.**

6 Plaintiff ignored discovery to it about APMC, and used a falsified Certificate
7 of Service to pretend it had timely answered. The untimely responses are a waiver of
8 objections. The time spent to investigate plaintiff's falsified Certificate of Service and
9 the consequences of it were proper. Indeed, Mr. Lamberson's Motion to Compel the
10 APMC discovery was the final procedural move that drew plaintiff's motion to
11 dismiss its own case. Lynch Dec. at ¶ 18.

12 **8. The Motion to Sever aided Mr. Lamberson's success.**

13 Part of plaintiff's handlers' scam is to join all defendants in each district in one
14 case, claiming each participated in concert with the others. Plaintiff thus avoided
15 \$11,200 of filing fees in the ED WA and \$60,000 in the WD WA. In fact, however,
16 the percentage chance that plaintiff's joinder allegations are true is zero. Lynch Dec.
17 at ¶ 19.

18 **9. Fees regarding the German witnesses are proper.**

19 Plaintiff's handlers violated Washington law by using private investigators not
20 licensed or bonded as Washington law requires. Plaintiff was deceitful about the

1 location of these investigators who are apparently in Germany (or the United
2 Kingdom or The Netherlands or maybe South Dakota or Sacramento). Telephonic
3 depositions of German nationals in a U.S. civil case are unlawful in Germany. So, of
4 course Mr. Lamberson researched how to lawfully depose these foreign “witnesses.”
5 Lynch Dec. at ¶ 20.

6 **10. Fees for these post-judgment pleadings are proper.**

7 As predicted, plaintiff objected to the fee request with the paradoxical argument
8 that Mr. Lamberson should somehow have been able more quickly to expose the fraud
9 that drove plaintiff and its handlers to dismiss their own case. Plaintiff’s token offer
10 that Mr. Lamberson is entitled to fewer than 20 hours is bad faith given plaintiff’s
11 litany of evasion and deceit. Justice has required Mr. Lamberson to fully brief the fee
12 request since plaintiff has declined to negotiate in good faith. Lynch Dec. at ¶ 21.

13 **11. Fees incurred after May 2014 are proper.**

14 Plaintiff includes an exchange between counsel in May 2014 where plaintiff
15 offered to allow Mr. Lamberson a no-money judgment and injunction against himself,
16 which, of course, was rejected. Mr. Lamberson was under no obligation to accept this
17 “settlement,” especially where it was clear that he would not accept any resolution
18 that did not compensate him for his attorneys’ fees. Plaintiff had an opportunity for a
19 no-money resolution during the FRCP 11 “safe harbor” period that closed on October
20 31, 2013. Lynch Dec. at ¶ 5.

1 **12. Fees incurred after June 2014 are proper.**

2 Plaintiff's Motion to Dismiss its own case made no provision for compensating
3 Mr. Lamberson, so Mr. Lamberson asked that the dismissal be conditioned upon such
4 payment. Since the law allowed plaintiff to withdraw its motion to dismiss if it found
5 any conditions unacceptable, Mr. Lamberson properly continued briefing of the
6 pending matters. Mr. Lamberson also continued investigation into the lies and fraud
7 plaintiff and its handlers perpetrated on United States District Courts – these lies and
8 fraud are directly relevant to the propriety of a fee award and multiplier as Mr.
9 Lamberson requests. Lynch Dec. at ¶ 22.

10 **13. Mr. Lamberson's Motion to Compel the APMC Discovery
11 precedes Plaintiff's motion to Dismiss.**

12 Plaintiff again makes the incorrect assertion that its motion to dismiss its own
13 case was prior to Mr. Lamberson's Motion to Compel the APMC discovery. The ECF
14 numbers show that it was not. Lynch Dec. at ¶ 23.

15 **14. Mr. Lamberson's Motion to Strike was well founded.**

16 Mr. Lamberson moved to strike plaintiff's late response to the Motion to
17 Compel the APMC discovery. As noted in point 7 above, plaintiff lied about the
18 timeliness of its objections to the discovery. If plaintiff's late-filed response had
19 honestly admitted that the Certificate of Service was erroneous, then Mr. Lamberson
20 would not have moved to strike the pleadings. Instead, the late-filed response claimed

1 the deceitful Certificate of Service was proper, so Mr. Lamberson moved to strike the
2 pleadings for being as late as well as wrong. Lynch Dec. at ¶ 24.

3 **E. The Requested Rates Are Reasonable.**

4 The requested rates are reasonable and significantly under the AIPLA statistics
5 for the experience-level of the three defense counsel. ECF No. 68 at ¶¶ 17-18 and
6 Exhibit 4. The rates are reasonable under the circumstances of the case; for example,
7 requested rates are lower than those requested by plaintiff's counsel in the main case,
8 ECF No. 112-1. Intellectual property skill was necessary to the defense and hastened
9 resolution of the case. Lynch Dec. at ¶ 25.

10 **F. A Lodestar And Immediate Payment Or Bond Are Proper.**

11 Plaintiff presents no argument against imposition of a requirement of
12 immediate payment of the award under *Pythagoris v. Stegall*, 2009 WL 3245000 (CD
13 CA 2009) Case No. 8:08-cv-0087 at ECF 386. Likewise, plaintiff presents no
14 argument against imposition of a plaintiff's bond to facilitate immediate payment of
15 defense attorneys' fees under RCW 4.84.210 and *White Coral v. Geysler Giant*, 145
16 Wn. App. 862, 867-869 (2008). Unless immediate payment is ordered, it is virtually
17 certain that plaintiff and its handlers will evade payment of the judgment and be
18 deceitful in its collection, just as they have been evasive and deceitful in litigation of
19 the substantive matter. Lynch Dec. at ¶¶ 26-27.

1 An award of immediate payment is also warranted where Elf-Man LLC
2 continues to pursue claims and default judgments against ED WA citizens. Plaintiff
3 should not be allowed to pursue its claims and judgments while not paying a judgment
4 against it, especially under the circumstances where the real party in interest is the
5 unknown guild of foreign handlers.

6 An award of immediate payment may spare Elf-Man LLC from bankruptcy
7 imposed by collection of the judgment, but proximately caused by plaintiff's
8 unknown handlers. No rational party would pursue this case after rejecting the
9 opportunity to examine innocent Mr. Lamberson and his computer – the only
10 explanation is that plaintiff's handlers have played Elf-Man LLC as a puppet loading
11 the burden of fees on its back with no intention of paying them.

12 **G. All requested costs have been documented.**

13 Plaintiff argues that the cost documentation is insufficient, but the costs have
14 already been documented. ECF No. 95, paragraph 71, Exhibit E.

15 **II. CONCLUSION**

16 An award of immediate payment of two times all requested fees is proper and
17 respectfully requested.

1 DATED this 12th day of December, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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