

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Action Case No.: 1:13-cv-00360-RJJ
v.)	HON. ROBERT J. JONKER
)	MAG. JUDGE: RAY KENT
JESSE RALEIGH,)	
)	
Defendant.)	
_____)	

**DEFENDANT'S POST-JUDGMENT MOTION
FOR COSTS AND ATTORNEYS' FEES**

*** * * ORAL ARGUMENT REQUESTED * * ***

NOW COMES Defendant Jesse Raleigh, pursuant to Fed. R. Civ. P. 54(d)(2), and asks this Court to award costs and Attorneys' fees as authorized by 17 U.S.C. § 505, as the prevailing party in a civil action brought under the Copyright Act. To wit:

1. This action was commenced on April 1, 2013 by Plaintiff Malibu Media, LLC, a producer of pornographic movies and a prolific for-profit copyright litigator, against Defendant, Jesse Raleigh. After more than three years of litigation, the case was dismissed on May 24, 2016 (Doc. 157), and the Judgment of dismissal was entered that same day (Doc 158).

2. Pursuant to the reasoning of the United States Supreme Court in its recent decision in *CRST, Inc. v. EEOC*, ___U.S.___, Docket No. 14-1375 (May 19, 2016), and for other reasons set forth with more specificity in the accompanying Brief in Support, Defendant is clearly the "prevailing party" and should, particularly under the circumstances of this case, be awarded the full measure of costs and fees under 17 U.S.C. § 505.

3. Fed. R. Civ. P. 54(d)(2)(B)(iii) requires that a motion such as this "state the amount sought or provide a fair estimate of it." In this case, Defendant seeks a total of \$158,685.00, which is comprised of \$450.00 in costs (associated with case evaluation) and \$158,235.00 in attorneys' fees. This reasonable estimation of attorneys' fees is based on an hourly rate of \$350.00, payable for the (at least) 209 hours expended by Attorney Derek Wilczynski, and for the (at least) 243.1 hours expended by Attorney Lincoln G. Herweyer.

4. Fed. R. Civ P. 54(d)(2)(C) permits this Court to decide issues of liability for fees before receiving submissions on the value of services. The same sub-rule makes it mandatory that, as applied to this case, Plaintiff Malibu Media be given an opportunity for adversary submissions. Consequently, although documentation of the hours submitted by Attorney Herweyer accompanies this motion,¹ for reasons of efficiency, Defendant asks that this Court first determine whether Defendant is entitled to (i.e., Plaintiff is liable for) attorneys' fees and costs under 17 U.S.C. § 505, and then receive submissions on the value of the services (with the scope of such submissions largely determined by whether and to what extent Plaintiff contests the value of the services rendered).

5. The ability of Defendant's counsel to seek the concurrence of Malibu Media in the relief requested in this Motion has been effectively thwarted by the circumstances giving rise to the May 24, 2016 dismissal and Judgment. That is, Plaintiff's former counsel were all permitted to withdraw from this case, and no attorney

¹ Although Attorney Wilczynski's office has been able to compile his time records for the three years that this case has been ongoing, the press of other business has prevented Mr. Wilczynski from (as of yet) scrutinizing such records for accuracy and to redact from them any attorney-client privileged information or other matter that should be redacted before filing.

has come forward to make an appearance on Malibu Media's behalf. A corporation cannot conduct civil litigation in propria persona. See *Rowland v. Calif. Men's Colony*, 506 U.S. 194, 201-02, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993). Therefore, Defendant has been unable to even seek, let alone obtain, the concurrence of Plaintiff. This Motion and Brief, together with all supporting exhibits, are, however, being sent by first class mail to Plaintiff at the address for Malibu Media listed in Paragraph 7 of the April 1, 2013 Complaint (Doc. 1, Page ID 2), being 409 W. Olympic Blvd., Suite 501, Los Angeles, California, 90015. Defendant believes that this comports with Fed. R. Civ. P 5(a)(2) ("no service is required on a party who is in default for failing to appear") and Rule 5(b)(2)(C) (service is made on a party who has appeared by "mailing it to the person's last known address"). See Brief for Certificate of Service.

WHEREFORE, Defendant Respectfully requests that this Court, after giving Plaintiff an opportunity to contest it, determine that Defendant is entitled to an award of costs and attorneys' fees under the Copyright Act of up to \$158,685.00 and, thereafter, receive submissions on any issues relating to the value of the services rendered, and thereafter, enter an appropriate award of costs and fees to Defendant.

Respectfully submitted,

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