

1 LAW OFFICE OF JEFFREY S. YOUNG  
Jeffrey S. Young (172016)  
2 Jacob P. Ainciart (313588)  
1307 State Street, 1<sup>st</sup> Floor  
3 Santa Barbara, CA 93101  
jeff@jeffreyyounglaw.com  
4 Tel.: 805-884-0338

5 LAW OFFICES OF DARREN J. QUINN  
Darren J. Quinn (149679)  
6 12702 Via Cortina, Suite 105  
San Diego, CA 92014  
7 Tel.: 858-509-9401  
dq@dqlaw.com

8 *Additional Counsel Listed on Signature Block*  
9 *Attorneys for Plaintiff Greg Young Publishing, Inc.*  
10

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

14 GREG YOUNG PUBLISHING, )  
15 INC., a corporation, )

16 Plaintiff, )

17 v. )

18 ZAZZLE INC., a California )  
19 Corporation, and DOES 1-50, )

20 Defendants. )  
21

CASE NO.: 2:16-CV-04587 SVW (KSx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ATTORNEY FEES AND FULL COSTS**

Judge: Hon Stephen V. Wilson

Date: January 8, 2018

Time: 1:30 p.m.

Courtroom: 10A

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION ..... 2

3 II. THE COURT SHOULD AWARD PLAINTIFF REASONABLE

4 ATTORNEY FEES UNDER §505 ..... 3

5 A. The Non-Exclusive Factors Support An Award Of Attorney Fees To

6 Plaintiff. .... 4

7 1. Degree of Success Obtained ..... 4

8 2. Frivolousness. .... 5

9 3. Objective Reasonableness of Factual And Legal Arguments

10 ..... 5

11 4. Motivation ..... 5

12 5. Need For Compensation and Deterrence ..... 6

13 B. Plaintiff’s Fee Request Is Reasonable. .... 7

14 1. Reasonableness Of The Hourly Rates. .... 7

15 a. The Rates Sought Are Below The 2016-2017 Locality

16 Adjusted *Laffey* Matrix

17 ..... 9

18 b. Attorney Fee Expert Declaration Of Richard Pearl In A

19 2017 Central District Case Copyright and Trademark

20 Infringement Case

21 ..... 11

22 c. Other Recent Central District Court Opinions

23 ..... 13

24 d. Declarations Supporting The Reasonable Rates

25 ..... 15

26 e. The Hourly Rates In Plaintiff’s Counsel’s Fee

27 Agreements Are Not Determinative Of A “Reasonable Rate”

28 ..... 16

29 2. Reasonableness of Hours Spent ..... 17

30 a. Pre-July 25, 2017 Lodestar

31 ..... 18

32 b. Total Lodestar

33 ..... 18

34 3. Estimated Future Hours. .... 18

35 III. THE COURT SHOULD AWARD PLAINTIFF REASONABLE

1 ATTORNEY FEES UNDER §505 ..... 19  
2 A. Any Costs Disallowed On Bill of Costs ..... 20  
3 B. Deposition and Trial Travel..... 20  
4 C. Lodging And Parking for Trial ..... 20  
5 D. Lexis Legal Research Changes ..... 20  
6 IV. Prejudgment Interest on Judgment..... 21  
7 V. CONCLUSION ..... 21  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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26  
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1 Plaintiff, Greg Young Publishing, Inc. (“GYPI”), respectfully submits this  
2 memorandum in support of attorney fees and “full costs” under 17 U.S.C. §505.

3 **I. INTRODUCTION**

4 Plaintiff seeks an award of reasonable attorney fees and “full costs” under 17  
5 U.S.C. §505 (“§505”). The Supreme Court explained “copyright law ultimately  
6 serves the purpose of enriching the general public through access to creative works.”  
7 *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016) quoting *Fogerty*  
8 *v. Fantasy, Inc.*, 510 U. S. 517, 527 (1994). See also U. S. Const., Art. I, §8, cl. 8 (“To  
9 promote the Progress of Science and useful Arts”). “Accordingly, fee awards under  
10 §505 should encourage the types of lawsuits that promote those purposes.”  
11 *Kirtsaeng.*, 136 S. Ct. at 1986.

12 Plaintiff obtained a jury verdict of \$351,100 based upon defendant’s  
13 infringement of thirty-five (35) different works. [Dkt. 123 (Judgment) and Dkt 159  
14 (Order re: non-willful)] Plaintiff also obtained a permanent injunction. [Dkt. 160]

15 As explained in §II.A, plaintiff is entitled to reasonable attorney fees under  
16 §505. An award of attorney fees is supported by the five non-exclusive factors of: (1)  
17 degree of success obtained; (2) frivolousness; (3) objective reasonableness of factual  
18 and legal arguments; (4) motivation; and (5) need for compensation and deterrence.

19 As discussed in §II.B, plaintiff’s fee request is reasonable. Plaintiff’s requested  
20 rates are very reasonable (and below market). See §II.B.1. Plaintiff’s hours are also  
21 reasonable and well supported. See §II.B.2. Plaintiff’s counsel have estimated hours  
22 for future tasks but will supplement to provide exact amounts prior to any opinion on  
23 this motion. See II.B.3.

24 As discussed in §III, plaintiff seeks “full costs” under §505. These are  
25 essentially non-taxable costs that are normally billed, such as travel and computerized  
26 legal research.

27 Finally, as discussed in §IV, plaintiff seeks an award of prejudgment interest  
28 pursuant to 28 U.S.C. §1961.

1 **II. THE COURT SHOULD AWARD PLAINTIFF REASONABLE**  
2 **ATTORNEY FEES UNDER §505**

3 The Copyright Act provides, in part: “the court may also award a reasonable  
4 attorney’s fee to the prevailing party as part of the costs.” 17 U.S.C. §505. Our  
5 Supreme Court established several principles and criteria to guide the award of  
6 attorney fees under §505.

7 “The statutory language, . . . ‘clearly connotes discretion,’ and eschews any  
8 ‘precise rule or formula’ for awarding fees.” *Kirstaeng*, 136 S. Ct. at 1985 *quoting*  
9 *Fogerty*, 510 U. S. at 534..

10 “[A] district court may not ‘award[ ] attorney’s fees as a matter of course’;  
11 rather, a court must make a more particularized, case-by-case assessment.” *Kirstaeng*,  
12 136 S. Ct. at 1985 *quoting Fogerty*, 510 U. S. 533.

13 “[A] court may not treat prevailing plaintiffs and prevailing defendants any  
14 differently; defendants should be ‘encouraged to litigate [meritorious copyright  
15 defenses] to the same extent that plaintiffs are encouraged to litigate meritorious  
16 claims of infringement.’” *Kirstaeng*, 136 S. Ct. at 1985 *quoting Fogerty*, 510 U. S.  
17 534.

18 The Supreme Court “noted with approval ‘several nonexclusive factors’ to  
19 inform a court’s fee-shifting decisions: ‘frivolousness, motivation, objective  
20 unreasonableness[,] and the need in particular circumstances to advance  
21 considerations of compensation and deterrence.’” *Kirstaeng*, 136 S. Ct. at 1985  
22 *quoting Fogerty*, 510 U. S. 534, n. 19.

23 “‘There is no precise rule or formula for making these determinations,’ but  
24 instead equitable discretion should be exercised ‘in light of the considerations we  
25 have identified.’” *Fogerty*, 510 U.S.534 *quoting Hensley v. Eckerhart*, 461 U.S. 424,  
26 436-437 (1983).

27 “Where a plaintiff has obtained excellent results, his attorney should recover  
28 a fully compensatory fee. Normally this will encompass all hours reasonably

1 expended on the litigation, and indeed in some cases of exceptional success an  
2 enhanced award may be justified.” *Hensley*, 461 U.S. 424, 435 (1983).

3 **A. The Non-Exclusive Factors Support An Award Of Attorney**  
4 **Fees To Plaintiff**

5 Following the Supreme Court, the Ninth Circuit has held: “In deciding  
6 whether to award fees under the Copyright Act, the district court should consider,  
7 among other things: the degree of success obtained on the claim; frivolousness;  
8 motivation; objective reasonableness of factual and legal arguments; and need for  
9 compensation and deterrence.” *VMG Salsoul, Ltd. Liab. Co. v. Ciccone*, 824 F.3d  
10 871, 887 (9th Cir. 2016) quoting *Maljack Prods., Inc. v. GoodTimes Home Video*  
11 *Corp.*, 81 F.3d 881, 889 (9th Cir. 1996).

12 These factors are “not exclusive and need not all be met.” *Fantasy, Inc. v.*  
13 *Fogerty*, 94 F.3d 553, 558 (9th Cir. 1996). See also *Althouse v. Warner Bros. Entm’t*,  
14 2014 U.S. Dist. LEXIS 194872, at \*4 (C.D. Cal. June 17, 2014) (“This list is not  
15 exhaustive, and not every factor must be met in order to grant an award of fees and  
16 costs.”) Although all factors need not be met, all factors support an award of attorney  
17 fees to plaintiff as discussed below.

18 **1. Degree of Success Obtained**

19 Plaintiff obtained near complete success on its claims for copyright  
20 infringement of thirty-five (35) registered copyrights for paintings by Kerne Erickson.

21 On Zazzle’s motion for summary judgment, the court denied summary  
22 judgment as to the Erickson works and ruled plaintiff “may elect to pursue statutory  
23 damages and attorney’s fees.” [Dkt 81 (SJ Order), at 10]<sup>1</sup>

24 On plaintiff’s motion for summary judgment on Zazzle’s affirmative defense  
25 under 17 U.S.C. 512(c), the court rules: “To the extent it manufactured and sold

26 \_\_\_\_\_  
27 <sup>1</sup> The court did grant partial summary judgment for Zazzle as to  
28 plaintiff’s claims based upon Westmoreland works. [Dkt 81 (SJ Order), at 10] No  
attorney fees are sought as to attorney time solely attributable to Westmoreland  
works. J. Young Decl., ¶20, Ainciart Decl., ¶16, Aquilino Decl., ¶23.

1 physical products bearing infringing images, Zazzle is not protected under 17 U.S.C.  
2 § 512(c).” [Dkt 81 (SJ Order), at 10]

3 At trial, plaintiff prevailed completely. The jury found infringement and  
4 awarded \$460,800 statutory damages on all thirty-five (35) copyrighted works  
5 submitted to the jury for determination. [Dkt. 129 (Verdict)]

6 After jury trial, plaintiff filed a motion for post-trial equitable relief, and the  
7 court granted a Permanent Injunction. [Dkt. 160 (Permanent Injunction)]

8 After jury trial, Zazzle successfully renewed its motion for judgment as to  
9 “willfulness” statutory damages as to five works. Although the court granted  
10 Zazzle’s motion, plaintiff still obtained the maximum non-willful statutory damages  
11 of \$30,000 for each of those five works. [Dkt 159 (Order), at 5] Thus, the jury’s  
12 award was reduced from \$460,800 to \$351,100.

13 Thus, the “degree of success” factor strongly supports an award of attorney fees  
14 to plaintiff.

## 15 **2. Frivolousness**

16 Because plaintiff prevailed completely at trial as to all 35 copyrighted works  
17 at issue, plaintiff’s copyright claim is not frivolous as a matter of law. *Unicolors,*  
18 *Inc. v. Kohl’s Dep’t Stores, Inc.*, 2017 U.S. Dist. LEXIS 112576, at \*8 (C.D. Cal. Jan.  
19 27, 2017) (“Plaintiff’s suit is obviously not frivolous since it prevails on the merits.”)

## 20 **3. Objective Reasonableness of Factual And Legal Arguments**

21 Similarly, because plaintiff prevailed completely at trial as to all 35  
22 copyrighted works at issue, the objective reasonableness of plaintiff’s factual and  
23 legal arguments is also established. [Dkt. 129 (Verdict)]

## 24 **4. Motivation**

25 Plaintiff’s motivation in bringing suit was to protect its copyrights, prevent  
26 Zazzle’s infringement, and prevent damage to plaintiff’s relationships with its  
27 licensors. G. Young Decl., ¶3. *See Unicolors, Inc. v. Kohl’s Dep’t Stores, Inc.*, 2017  
28

1 U.S. Dist. LEXIS 112576, at \*8-9 (C.D. Cal. Jan. 27, 2017) (“Plaintiff’s motivation  
2 in bringing the suit is its desire to protect its copyright — action consistent with a  
3 purpose of the Copyright Act.”); *Twentieth Century Fox Film Corp. v. Streeter*, 438  
4 F. Supp. 2d 1065, 1074-75 (D. Ariz. 2006) (“Film Corp.’s motivation is pursuing this  
5 litigation is to protect its copyrights which is one of the objectives of the Copyright  
6 Act.”).

7 Plaintiff’s motivation in bringing suit was also to support artists enriching the  
8 general public with new copyrighted works. G. Young Decl., ¶4. *See Kirtsaeng*, 136  
9 S. Ct. at 1986 (“copyright law ultimately serves the purpose of enriching the general  
10 public through access to creative works.”) (*quoting Fogerty*, 510 U. S. at 527).

11 Plaintiff’s motivation in bringing this lawsuit was also to deter Zazzle from  
12 infringing copyrights in the future. Plaintiff sent seven written infringement notices  
13 before filing this lawsuit. *See* Trial Exs. 142, 144, 146, 148, 149, 154 and 155. G.  
14 Young Decl., ¶5.

### 15 **5. Need For Compensation and Deterrence**

16 An award of attorney fees will further the dual goals of compensating plaintiff  
17 and deterring defendant’s conduct. *See Roach v. Tate Publ’g & Enters.*, 2017 U.S.  
18 Dist. LEXIS 182884, at \*20 (E.D. Cal. Nov. 2, 2017) (“fees would account for the  
19 dual goal of compensating Plaintiff and deterring Defendants’ conduct”); *Oracle*  
20 *United States, Inc. v. Rimini St.*, 209 F. Supp. 3d 1200, 1215 (D. Nev. 2016) (“court  
21 finds that an award of attorneys’ fees is appropriate to deter defendant Rimini from  
22 its pattern of infringing Oracle’s copyrights, which started when the business began  
23 and continued until the middle of this litigation.”); *Twentieth Century Fox Film Corp.*  
24 *v. Streeter*, 438 F. Supp. 2d 1065, 1075 (D. Ariz. 2006) (“An award of attorneys' fees  
25 would promote the protection of copyrights and further the goal of deterrence, by  
26 encouraging infringement actions for such violations.”).

27 “The holder of a copyright that has obviously been infringed has good reason  
28 to bring and maintain a suit even if the damages at stake are small.. .” *Kirtsaeng*, 136

1 S. Ct. at 1986. *See also Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1432 (9th Cir.  
2 1996) (“we are particularly concerned that the small award for damages in this case  
3 is insufficient to deter future copyright infringements such as the one at issue here”).  
4 In *Gonzales v. Transfer Techs., Inc.*, 301 F.3d 608, 610 (7th Cir. 2002), the Seventh  
5 Circuit explains that the smaller the damages, the stronger the case for attorney fees.

6 No one can prosecute a copyright suit for \$ 3,000. The effect of  
7 the district court’s decision if universalized would be to allow minor  
8 infringements, though willful, to be committed with impunity, to be in  
9 effect privileged, immune from legal address. ***The smaller the damages,  
provided there is a real, and especially a willful, infringement, the  
stronger the case for an award of attorneys’ fees.***

10 *Id.* (emphasis added).

11 Thus, the need for compensation and deterrence is particularly important here  
12 because plaintiff’s attorney fees required to litigate its copyright claims exceeded  
13 plaintiff’s recovery of damages or profits under 17 U.S.C. §504.

#### 14 **B. Plaintiff’s Fee Request Is Reasonable**

15 The Copyright Act provides for awarding “a reasonable attorney’s fee. . .” 17  
16 U.S.C. §505.

17 “The most useful starting point for determining the amount of a reasonable fee  
18 is the number of hours reasonably expended on the litigation multiplied by a  
19 reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933,  
20 1939 (1983). “[T]he fee applicant bears the burden of establishing entitlement to an  
21 award and documenting the appropriate hours expended and hourly rates.” *Id.* at 437.

#### 22 **1. Reasonableness Of The Hourly Rates**

23 “The reasonable rate should generally be guided by ‘the rate prevailing in the  
24 community for similar work performed by attorneys of comparable skill, experience,  
25 and reputation.’” *Hiken v. DOD*, 836 F.3d 1037, 1044 (9th Cir. 2016) *quoting*  
26 *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-1211 (9th Cir. 1986) (*citing*  
27 *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)).

28 “The lodestar should be computed using an hourly rate that reflects the

1 prevailing rate as of the date of the fee request. . . .” *Stetson v. Grissom*, 821 F.3d  
2 1157, 1166 (9th Cir. 2016).

3 “To determine a ‘reasonable hourly rate,’ the district court should consider:  
4 ‘experience, reputation, and ability of the attorney; the outcome of the results of the  
5 proceedings; the customary fees; and the novelty or the difficulty of the question  
6 presented.’” *Hiken*, 836 F.3d at 1044 *quoting Chalmers*, 796 F.2d at 1211(*citing*  
7 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).

8 “The burden is on the fee applicant to produce evidence ‘that the requested  
9 rates are in line with those prevailing in the community.’” *Hiken*, 836 F.3d at 1044  
10 *quoting Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (internal  
11 quotation marks omitted) (*quoting Blum*, 465 U.S. at 895 n.11).

12 “In general, ‘[a]ffidavits of the plaintiffs’ attorney and other attorneys  
13 regarding prevailing fees in the community, and rate determinations in other cases,  
14 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence  
15 of the prevailing market rate.’” *Hiken*, 836 F.3d at 1044 *quoting United Steelworkers*  
16 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

17 As discussed below, the reasonable hourly rates sought by plaintiff’s counsel  
18 appear to be **below** the prevailing market rate for other lawyers practicing in the  
19 Central District of California with similar experience and skill. The rates sought are  
20 approximately \$30/hour **below** the persuasive (but non-binding) 2016-2017 locality  
21 adjusted *Laffey* Matrix. The rates sought are also **materially below** the rates recently  
22 opined on by a prominent attorney fee expert in another case involving copyright and  
23 trademark infringement issues. The rates sought are also **below** the rates awarded by  
24 other Central District Court judges. Plaintiff’s attorneys’ declarations, as well as  
25 declarations of other attorneys who practice in the Central District, also support the  
26 following requested rates:

<i>Attorney/Paralegal</i>	<i>Education</i>	<i>Admitted</i>	<i>Years</i>	<i>Rate</i>
Darren Quinn	University of San Diego School of Law	1990	26	\$565
Jeffrey Young	Santa Barbara College of Law	1994	23	\$525
Jason Aquilino	George Washington University	2002	15	\$475
Jacob Ainciart	American University College of Law	2016	1	\$285
Patricia McWilliams	University of Missouri-Columbia, B.S. Ed., M. Ed., Ph.D (School Administration and Law) 1979	N/A	8+	\$150

**a. The Rates Sought Are Below The 2016-2017 Locality Adjusted *Laffey* Matrix**

“A widely recognized compilation of attorney and paralegal rate data is the so-called *Laffey* matrix, so named because of the case that generated the index.” *In re Chiron Corp. Sec. Litig.*, No. C-04-4293 VRW, 2007 U.S. Dist. LEXIS 91140, at \*18-19 (N.D. Cal. Nov. 30, 2007) citing *Laffey v Northwest Airlines, Inc*, 572 F Supp 354 (DDC 1983), *aff’d in part, rev’d in part on other grounds*, 241 U.S. App. D.C. 11, 746 F2d 4 (DC Cir 1984).

“The *Laffey* Matrix is a ‘widely recognized compilation of attorney and paralegal rate data’ that is used in the District of Columbia.” *Langer v. Dodaiton, Inc.*, 2015 U.S. Dist. LEXIS 64805, n. 53 (C.D. Cal. 2015) quoting *In re Chiron Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 91140 at \*18-19. “‘The *Laffey* [M]atrix is especially useful when the work to be evaluated consists of that by a mix of senior, junior and mid-level attorneys, as well as paralegals.’” *Id.* quoting *In re Chiron Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 91140 at \*19.

“‘The *Laffey* [M]atrix has been regularly prepared and updated by the Civil Division of the United States Attorney’s Office for the District of Columbia and used in fee shifting cases, among others.’” *Id.* quoting *In re Chiron Corp. Sec. Litig.*, 2007

1 U.S. Dist. LEXIS 91140 at \*19. The *Laffey* Matrix for 2017-2018 is available at  
 2 [http://www.usdoj.gov/usao/dc/Divisions/Civil\\_Division/Laffey\\_Matrix\\_4.html](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_4.html). See  
 3 *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269, at \*20 (N.D. Cal. Mar. 28,  
 4 2007) (quoting website link).

5 The *Laffey* Matrix can be adjusted to account for locality differences between  
 6 the District of Columbia and Los Angeles. “To calculate the adjusted rate, the court  
 7 has multiplied the original rate by the percentage increase, and added that amount to  
 8 the original rate. (Citations). . . (See Judicial Salary Plan Pay Rates,  
 9 <http://www.uscourts.gov/Careers/Compensation/JudiciarySalaryPlanPayRates.aspx>.)”  
 10 *Langer*, 2015 U.S. Dist. LEXIS 64805, at \*37 n.55. Adjusting for the Los Angeles  
 11 locality (29.65%) from the standard District of Columbia locality (27.10%) federal  
 12 judicial rates (and highlighting the relevant experience levels at issue on this motion),  
 13 the Los Angeles adjusted *Laffey* rates (29.65%/27.1%) are:

<i>Experience</i>	<i>Laffey (LA Adj.) 2017-2018</i>	<i>Laffey (LA Adj.) 2016-2017</i>	<i>Laffey (LA Adj.) 2015-2016</i>
31+ years (- 1986)	\$658.65	\$635.67	\$621.45
21-30 years ('87-'96)	\$615.98	\$594.09	\$579.87
16-20 years ('97-'01)	\$586.44	\$564.55	\$551.42
11-15 years('02-'06)	\$528.45	\$508.75	\$497.81
8-10 years ('07-'09)	\$448.58	\$432.17	\$422.32
6-7 years ('10-'11)	\$385.12	\$370.90	\$363.24
4-5 years ('12-'13)	\$378.56	\$363.24	\$355.58
2-3 years ('14-'15)	\$365.43	\$352.30	\$344.64
< 2 years ('16 - )	\$330.42	\$318.38	\$310.72
Paralegals & Law Clerks	\$179.43	\$171.77	\$168.49

25 Quinn Decl., ¶15 and Ex. C.

26 Thus, the rates plaintiff’s counsel seek are *below* the Los Angeles adjusted  
 27 *Laffey* Matrix rates.  
 28

<i>Attorney/ Paralegal</i>	<i>Admitted</i>	<i>Years</i>	<i>P Rate Sought</i>	<i>Laffey 2017- 2018</i>	<i>Laffey 2016- 2017</i>	<i>Laffey 2016- 2017</i>
Darren Quinn	1990	26	\$565	\$615.98	\$594.09	\$579.87
Jeff Young	1994	23	\$525	\$615.98	\$594.09	\$579.87
Jason Aquilino	2002	15	\$475	\$528.45	\$508.75	\$497.81
Jacob Ainciart	2016	1	\$285	\$330.42	\$318.38	\$310.72
Patricia McWilliams Ph.D	N/A		\$150	\$179.43	\$171.77	\$168.49

Quinn Decl., ¶16 and Ex. D.

Thus, the *Laffey* Matrix rates (adjusted for Los Angeles) support that the rates sought by plaintiff’s counsel are reasonable.

**b. Attorney Fee Expert Declaration Of Richard Pearl In A 2017 Central District Case Copyright and Trademark Infringement Case**

On January 9, 2017, attorney fee expert Richard Pearl submitted a declaration regarding “non-contingent market rates charged by Los Angeles area attorneys of reasonably comparable experience, skill, and expertise for reasonably comparable services.” JN, ¶12. Mr. Pearl submitted his declaration in connection with a request for attorney fees in a copyright infringement and trademark infringement case. *Amusement Art, LLC v. Life Is Beautiful, LLC*, 2017 U.S. Dist. LEXIS 79135, at \*7 (C.D. Cal. May 23, 2017).

Judge Pregerson noted: “Mr. Pearl catalogued a number of recent fee award decisions in this district, as well as the prevailing market rates for comparable counsel detailed in various industry reports. (Id. ¶¶ 13-16.)” *Id.* at \*17. Mr. Pearl listed eleven (11) recent Los Angeles fee awards that overwhelmingly awarded Los Angeles rates higher than the Los Angeles *Laffey* Matrix (and thus higher than the rates sought by plaintiff’s counsel in this motion).

<i>Laffey Matrix</i>	<i>P Rate Sought</i>	<i>LA Laffey 2017-2018</i>	<i>Recent Cases (Pearl Decl., ¶13)</i>
21-30 years (1987-1996)	\$565 (Quinn-26 yrs) \$525 (Young -23 yrs)	\$615.98	\$680-\$775 [¶13(2)] \$890 [¶13(3)] \$825-930 [¶13(4)] \$700-775 [¶13(6)] \$700 [¶13(7)] \$750 [¶13(9)] \$660-\$725 [¶13(10)] \$625 [¶13(11)]
11-15 years (2002-2006)	\$475 (Aquilino-15yrs)	\$528.45	\$525-\$550 [¶13(2)] \$610-\$690 [¶13(4)] \$590 [¶13(5)] \$500 [¶13(8)] \$600 [¶13(9)] \$575 [¶13(10)]
< 2 years (2016 -)	\$285 (Ainciart - 1 yr)	\$330.42	\$360-\$450 [¶13(4)] \$330 [¶13(5)] \$375 [¶13(7)]
Paralegals & Law Clerks	\$150 (McWilliams 8+)	\$179.43	\$110-\$250 [¶13(2)] \$220-340 [¶13(3)] \$245-\$345 [¶13(4)] \$140-190 [¶13(5)] \$175-\$295 [¶13(6)] \$225 [¶13(7)] \$125 [¶13(10)] \$250 [¶13(11)]

Mr. Pearl also listed the “standard hourly non-contingent rates for comparable civil litigation stated in court filings, depositions, surveys, or other reliable sources by numerous California law firms or law firms with offices or practices in California. These sources include, among others, the 2016 rates included in the Valeo Attorney Hourly Rates and Fees Database.” Pearl Decl., ¶15. Mr. Pearl lists rates for 29 California law firms (with 26 firms having offices in the Los Angeles area).<sup>2</sup> Pearl Decl., ¶15. The hourly rates for these 26 firms are overwhelmingly higher than the Los Angeles *Laffey* Matrix (and thus higher than the rates sought by plaintiff’s counsel in this motion).

<sup>2</sup> Three firms listed by Mr. Pearl have offices in San Francisco, but not Los Angeles: (1) Hausfeld LLP; (2) Lief Cabraser Heimann & Bernstein, LLP; and (3) Ropes & Gray LLP. **Quinn Decl.** The rates of these firms are not listed on the “Other Firms” chart above.

<i>Laffey Matrix</i>	<i>P Rate Sought</i>	<i>LA Laffey 2017-2018</i>	<i>Other Firms (Pearl Decl., ¶15)</i>
21-30 years (1987-1996)	\$565 (Quinn-26 yrs) \$525 (Young -23 yrs)	\$615.98	\$750 (2013 Covington) \$800-955 (2016 Geffen) \$650-\$850 (2106 Greins) \$700 (2015 Hadsell) \$625 (2012 Hadsell) \$700-\$775 (2014 Kaye) \$890 (2012 (Kiesel) \$775 (2011 Kirkland) \$805 (2013 Reed)
11-15 years (2002-2006)	\$475 (Aquilino-15yrs)	\$528.45	\$655 (2010 Bingham) \$670 (2013 Covington) \$600 (2015 Hadsell) \$525 (2012 Hadsell) \$915 (2016 Milbank) \$625 (2011 Morrison) \$780-895(2016 O'Melveny) \$570 (2013 Reed)
< 2 years (2016 -)	\$285 (Ainciart - 1 yr)	\$330.42	\$400 (2010 Bingam) \$375 (2013 Covington) \$450 (2016 Jones Day) \$400 (2014 Jones Day) \$435 (2016 O'Melveny) \$440-445 (2016 Proskauer)
Paralegals & Law Clerks	\$150 (McWilliams 8+)	\$179.43	\$275-325 (2014 Cooley) \$260 (2013 Cooley) \$245 (2012 Cooley) \$110-355 (2013 Covington) \$345 (2013 Gibson) \$100 (2012 Greines) \$175-250 (2015 Hadsell) \$175-295 (2014 Kaye) \$120-280 (2010 Sidley)

Thus, the 2017 attorney fee expert declaration of Mr. Pearl supports that the rates sought by plaintiff's counsel are reasonable (especially since it shows the Los Angeles market rates are higher than the Los Angeles adjusted *Laffey Matrix*).

**c. Other Recent Central District Court Opinions**

Although the attorney fee expert declaration of Richard Pearl lists eleven (11) recent cases, plaintiff's counsel bring three other cases to the court's attention that are relevant to reasonable hourly rates in the Central District.

1 On May 23, 2017 in *Amusement Art, LLC*, Judge Pregerson (relying, in part,  
2 on the Pearl Decl.) ruled in a copyright infringement and trademark infringement  
3 action that attorney “hourly billing rates **between \$450 and \$865**” and “paralegals  
4 and support staff charging hourly rates **between \$215 and \$380**” were adequately  
5 substantiated by the Pearl Decl. as “in line with the prevailing rates.” 2017 U.S. Dist.  
6 LEXIS 79135 \*17. Judge Pregerson also ruled that “both the attorney rates and the  
7 paralegal rates are in line with hourly rates approved in recent comparable intellectual  
8 property cases in this district. *See, e.g., Perfect 10*, 2015 U.S. Dist. LEXIS 53681,  
9 2015 WL 1746484, at \*29, Appendix A (approving hourly rates for **partners**  
10 **between \$705 and \$930**, hourly rates for **associates between \$360 and \$690**, and  
11 hourly rates for **paralegal and support staff between \$245 and \$345**)” *Id.*  
12 (emphasis added).

13 On August 16, 2016, Judge King, in a copyright declaratory relief action  
14 regarding the song “Happy Birthday To You,” ruled the following rates reasonable:  
15 (1) \$820/hour (1985 - 31 years); (2) \$770/hour (1986 - 30 years); (3) \$640/hour (1997  
16 - 19 years); (4) 420/hour (2008 - 8 years); and (5) \$395/hour (2010 (6 years).  
17 *Morning v. Warner/Chappell Music, Inc.*, 2016 U.S. Dist. LEXIS 191665 \*19 (C.D.  
18 Cal. Aug. 16, 2016). Although plaintiff’s moving papers “did not submit evidence  
19 showing that their hourly rates are reasonable for the Los Angeles area,” Judge King  
20 noted that plaintiff’s reply paper cited Central District opinions “that compare  
21 favorably with the billing rates here. (Citations omitted).” *Id.* at \*19-20 (collecting  
22 cases).

23 On March 9, 2016, this court in a copyright infringement action regarding the  
24 television show *New Girl* approved the following “discounted” rates: (1)  
25 \$701.25/hour (1983 - 33 years); (2) \$552.50/hour (2000 - 16 years); (3) \$446.25/hour  
26 (2009 - 7 years); (4) \$488.75 (2008 - 8 years); and (5) \$165.75 for paralegals. *Counts*  
27 *v. Meriwether*, 2016 U.S. Dist. LEXIS 40651 (C.D. Cal. Mar. 9, 2016) \*8-11. This  
28 court ruled that the “hourly rates charged by the Fox Defendants’ counsel were

1 reasonable and consistent with the prevailing rates in the Central District for counsel  
2 of similar skill and experience.” *Id.* at \*11. “ Finally, consistent with the Court’s own  
3 knowledge and experience, \$165.75/hour is a reasonable billing rate for paralegals  
4 in Los Angeles.” *Id.* at \*12. This court relied upon a 2014 billing summary compiled  
5 by the National Law Journal and a 2015 American Intellectual Property Law  
6 Association’s 2015 Report of the Economic Survey showing that the requested  
7 “discounted” rates were commensurate with the rates of other attorneys in Los  
8 Angeles. *Id.* \*11. Because of the passage of time, plaintiff’s more recent evidence  
9 of hourly rates set forth above is more relevant.

10 **d. Declarations Supporting The Reasonable Rates**

11 The declaration of attorney Gregory Garrison supports the rates requested by  
12 plaintiff’s counsel. Mr. Garrison has been practicing law for over 24 years and has  
13 personal knowledge of the skill and experience of attorney Quinn (26 years) and the  
14 \$700/hour rate Mr. Garrison was recently awarded in the Central District of  
15 California. Mr. Garrison has personal knowledge that the current market rates in the  
16 Central District of California tend to be higher than the Los Angeles adjusted *Laffey*  
17 Matrix rate. Garrison Decl., ¶¶4-9. Mr. Garrison believes that a rate of \$565/hour for  
18 attorney Quinn is below market rates. Garrison Decl., ¶9.

19 The declaration of attorney Kirk Hulett supports the rates requested by  
20 plaintiff’s counsel. Mr. Hulett has been practicing law for about 34 years and has  
21 personal knowledge of the skill and experience of attorney Quinn (26 years). Mr.  
22 Hulett bills at \$675/hour and also believes that current market rates in the Central  
23 District tend to be higher than the Los Angeles adjusted *Laffey* Matrix rate. Hulett  
24 Decl., ¶¶4-7. Mr. Hulett believes that a rate of \$565/hour for attorney Quinn is  
25 comparable to or less than market rate. Hulett Decl., ¶8.

1 e. **The Hourly Rates In Plaintiff’s Counsel’s Fee**  
2 **Agreements Are Not Determinative Of A**  
3 **“Reasonable Rate”**

4 “Though the fee actually charged to the client may be an important factor,  
5 ‘whether or not [the client] agreed to pay a fee and in what amount is not decisive.  
6 \* \* \* *The criterion for the court is not what the parties agreed but what is*  
7 *reasonable.’” Sealy, Inc. v. Easy Living, Inc., 743 F.2d 1378, 1385 (9th Cir. 1984)*  
8 *quoting Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 718 (5th Cir.*  
9 *1974) (emphasis added).*

10 It is reversible error to reduce a requested hourly rate on the ground that an  
11 attorney has never collected a requested rate from a paying client. *Welch v. Metro.*  
12 *Life Ins. Co., 480 F.3d 942, 946 (9th Cir. 2007)*

13 First, the district court erred in reducing Welch’s requested rate because  
14 Kantor & Kantor does not collect \$375 and \$400 from its paying clients.  
15 *We have repeatedly held that the determination of a reasonable hourly*  
16 *rate “is not made by reference to the rates actually charged the*  
17 *prevailing party.” See, e.g., Mendenhall v. Nat’l Transp. Safety Bd., 213*  
18 *F.3d 464, 471 (9th Cir. 2000) (quoting Chalmers, 796 F.2d at 1210).*  
19 Rather, billing rates “should be established by reference to the fees that  
20 private attorneys of an ability and reputation comparable to that of  
21 prevailing counsel charge their paying clients for legal work of similar  
22 complexity.” *Davis, 976 F.2d at 1545; see also Carson v. Billings Police*  
23 *Dep’t, 470 F.3d 889, 892 (9th Cir. 2006) (holding that the prevailing*  
24 *market rate -- not the individual contract between the applicant attorney*  
25 *and the client -- “provides the standard for lodestar calculations”).*

26 *See also Stirling v. Genpact Servs., LLC, 2012 U.S. Dist. LEXIS 196197, at \*5-6*  
27 *(C.D. Cal. May 2, 2012) (the district court found an attorney’s hourly fee of*  
28 *\$290/hour reasonable and found a \$50/hour rate charged by that attorney in another*  
*case not dispositive).*

29 In the instant case, the hourly rates in plaintiff’s counsel fee agreements with  
30 plaintiff are lower than prevailing market rates for attorneys in the Central District  
31 with comparable experience. The fee agreement for attorney Darren Quinn provides  
32 an hourly rate of \$495/hour. Quinn Decl., ¶14. The 2014 fee agreement covering  
33 attorney Jeff Young and Jacob Ainciart sets forth an hourly rate of \$475/hour for  
34 attorney Young and \$275/hour for “Associates” which would include attorney

1 Ainciart. Young Decl., ¶17. The 2012 fee agreement for attorney Aquilino provided  
2 for a \$325/hour pre-litigation rate and a “in the case of litigation, the prevailing rate  
3 for the applicable jurisdiction.” Aquilino Decl., ¶18.

4 The Supreme Court instructed that an attorney who defers payment or who takes  
5 a case on contingency “will require paying more than their customary hourly rates.  
6 Most attorneys paid an hourly rate expect to be paid promptly and without regard to  
7 success or failure.” *Hensley*, 461 U.S. 424, 448-49. In the instant case, attorney  
8 Darren Quinn associated in as counsel for plaintiff in reliance of obtaining attorney  
9 fees under §505 either by settlement or by court award. Quinn Decl., ¶10. The  
10 Supreme Court instructed “no fee is reasonable unless it would be adequate to induce  
11 other attorneys to represent similarly situated clients seeking relief comparable to that  
12 obtained in the case at hand.” *Id.* As a result, the court may rule that attorney  
13 Quinn’s rate should be higher than the *Laffey* Matrix and Los Angeles market rates  
14 set forth above.

## 15 16 **2. Reasonableness of Hours Spent**

17 Plaintiff’s counsel have submitted detailed time records indicating the amount  
18 of time spent on each task, the attorney performing the task, and the hourly rate  
19 charged. Plaintiff’s counsel billed in tenths of an hour with the exception of attorney  
20 Young who billed in hundredth’s of an hour increments. The time was not “block  
21 billed” - that is, the time spent on each individual task was detailed. Quinn Decl, ¶11.  
22 J. Young Decl., ¶14, Ainciart Decl., ¶11, Aquilino Decl., ¶15.

23 Because Zazzle served a Rule 68 Offer on July 25, 2017 that was “inclusive of  
24 all attorney’s fees and costs incurred by Plaintiff in relation to its claims against  
25 Zazzle as of the date of this offer,” plaintiff’s counsel separates the hours billed.

**a. Pre-July 25, 2017 Lodestar**

<i>Attorney/Paralegal</i>	<i>Pre-7/25/17 Hours</i>	<i>Rate</i>	<i>Lodestar</i>
Jeff Young	261.42	\$525.00	\$137,245.50
Jacob Ainciart	252.8	\$285.00	\$72,048.00
Jason Aquilino	250.90	\$475.00	\$119,177.50
Darren Quinn	135.60	\$565.00	\$76,614.00
Patricia McWilliams	17.60	\$150.00	\$2,640.00
TOTAL	893.72		\$405,085.00

Quinn Decl., ¶12; Young Decl., ¶15; Ainciart Decl., ¶12; and Aquilino Decl., ¶16.

**b. Total Lodestar**

<i>Attorney/Paralegal</i>	<i>Total Hours</i>	<i>Rate</i>	<i>Lodestar</i>
Jeff Young	366.17	\$525.00	\$192,239.25
Jacob Ainciart	420.00	\$285.00	\$119,700.00
Jason Aquilino	333.80	\$475.00	\$158,555.00
Darren Quinn	434.60	\$565.00	\$245,339.00
Patricia McWilliams	61.30	\$150.00	\$9,195.00
TOTAL	1554.57		\$715,833.25

Quinn Decl., ¶13; Young Decl., ¶16; Ainciart Decl., ¶13 and Aquilino Decl., ¶17.

**3. Estimated Future Hours**

Plaintiff’s counsel estimates that they will expend additional time prior to the court’s decision on this motion. Accordingly, plaintiff’s counsel provides a “fair estimate” pursuant to Fed. R. Civ. Proc. 54(d)(2)(B) of the following reasonably anticipated activities:

<i>Activity</i>	<i>Young</i>	<i>Ainciart</i>	<i>Aquilino</i>	<i>Quinn</i>
Continue settlement discussions	6.0	3.0	1.0	6.0
Attorney fee discovery issues	1.0	.5	1.5	5.0
Review attorney fee opposition	.5	.5	.5	2.0

1	Prepare attorney fee reply	1.0	3.0	.5	10
2	Request injunction findings	1.0	1.0	0	5.0
3	Review opposition to findings	.5	.5	.5	2.0
4	Prepare findings reply	1.0	1.0	1.0	6.0
5	Review Zazzle motion to stay pending appeal papers	.5	.5	.5	1.0
6	Oppose Zazzle stay motion	1.0	3.0	1.0	15.0
7	Review Zazzle stay reply	.5	.5	.5	1.0
8	Prepare for hearings	2.0	0	0	4.0
9	Travel to and from hearing	4.0	0	0	5.0
10	Attend hearing	1.0	0	0	1.0

11 Plaintiff’s counsel reserve the right to supplement this fee request with exact  
 12 hours expended prior to the court’s decision on this motion.

13 **III. THE COURT SHOULD AWARD PLAINTIFF REASONABLE ATTORNEY FEES UNDER §505**

14 “The Copyright Act also affords courts discretion to award a prevailing party  
 15 ‘recovery of full costs.’ 17 U.S.C. §505.” *Perfect 10, Inc. v. Giganews, Inc.*, 2015  
 16 U.S. Dist. LEXIS 54063, at \*16 (C.D. Cal. Mar. 24, 201).

17 “In addition to regular taxable costs, allowable costs under section 505 include  
 18 costs for service of process, depositions expenses, copying, computer assisted legal  
 19 research, expert witness fees, and travel costs.” *Id.*

20 Plaintiff’s non-taxable costs are itemized in the expenses total as follows:

<i>Expense Paid By</i>	<i>Support</i>	<i>Amount</i>
21 Jeffrey Young	J. Young Decl., Ex. B	\$271.38
22 Jason Aquilino	Aquilino Decl., Ex. B	\$613.66
23 Darren Quinn	Quinn Decl., Ex. B	\$4,551.48
24 Gregory Young	G. Young Decl., Ex. A	\$969.61
25 Gregory Young	G. Young Decl. Ex. B	\$2,580.72
26 TOTAL		\$8,986.85

1           **A. Any Costs Disallowed On Bill of Costs**

2           Concurrently with the filing of this motion, plaintiff is also filing a Bill of  
3 Costs for costs recoverable under 28. U.S.C. §1920.

4           To the extent that any costs on the Bill of Costs are not allowed by the court,  
5 then plaintiff seeks to recover such non-taxable costs under §505. “The statute's use  
6 of the term ‘full costs’ means that ‘district courts may award otherwise non-taxable  
7 costs, including those that lie outside the scope of [28 U.S.C.] § 1920, under § 505.’”)  
8 *Perfect 10, Inc.*, 2015 U.S. Dist. LEXIS 54063, at \*16 ( *quoting Twentieth Century*  
9 *Fox Film Corp. v. Entertainment Distributing*, 429 F.3d 869, 885 (9th Cir. 2005).

10           **B. Deposition and Trial Travel**

11           Plaintiff’s travel costs, including airfare to San Francisco to take depositions  
12 of Zazzle employees, travel to court for hearings and trial, are recoverable under  
13 §505. *See, e.g. ExperExchange, Inc. v. DocuLex, Inc.*, 2010 U.S. Dist. LEXIS 54530,  
14 at \*35 (N.D. Cal. May 10, 2010) (“amounts charged for travel expenses already  
15 incurred are reasonable”).

16           **C. Lodging And Parking for Trial**

17           Plaintiff paid \$2,580 for hotel lodging during the trial at the rate of \$175/night  
18 (\$215.06 after taxes/fees) for each room. The trial's first witness (Kerne Erickson)  
19 stayed one night. Greg Young and attorney Young shared a room. Plaintiff’s  
20 attorneys Quinn, Ainciart and Aquilino each had their own room. The lodging was  
21 the closest plaintiff could find to court that offered the benefit of free meeting space  
22 to prepare for trial and free use of a printer. Plaintiff also paid \$28.60 for parking. G.  
23 Young, ¶10.

24           **D. Lexis Legal Research Changes**

25           Attorney Quinn incurred computer assisted research. Quinn Decl., Ex. B.

26           “Computer assisted research fees are expenses that are normally incurred in the  
27 course of litigation and routinely billed to fee-paying clients. Thus, they are  
28 recoverable as ‘full costs’ under § 505. This Court finds that counsel’s billing

1 statements submitted with the Guidance Motion adequately document the online  
2 research fees incurred by counsel.” *Berry v. Hawaiian Express Serv.*, No. 03-00385  
3 SOM-LEK, 2006 U.S. Dist. LEXIS 78281, at \*48 (D. Haw. Oct. 25, 2006); *Perfect*  
4 *10, Inc.*, 2015 U.S. Dist. LEXIS 54063, at \*89 (“\$68,634 in Westlaw legal research  
5 charges” allowed under §505 because “prevailing practice in the district is to  
6 separately bill for such expenses.”).

7 **IV. Prejudgment Interest on Judgment**

8 Prejudgment interest is allowed on plaintiff’s award. *Polar Bear Prods. v. Timex*  
9 *Corp.*, 384 F.3d 700, 718 (9th Cir. 2004) (“Because prejudgment interest may be  
10 necessary at times to effectuate the legislative purpose of making copyright holders  
11 whole and removing incentives for copyright infringement, we hold that the district  
12 court erred in concluding that prejudgment interest is unavailable under the Copyright  
13 Act of 1976. . .”)

14 “Interest shall be allowed on any money judgment in a civil case recovered in  
15 a district court.” 28 U.S.C. § 1961(a) “Such interest shall be calculated from the  
16 date of the entry of the judgment, at a rate equal to the weekly average 1-year constant  
17 maturity Treasury yield, as published by the Board of Governors of the Federal  
18 Reserve System, for the calendar week preceding[.] the date of the judgment.” *Id.*

19 The judgment was entered August 10, 2017. [Dkt 123 (Judgment)] Plaintiff is  
20 entitled to 1.23% interest on \$351,100 which amounts to \$11.83/day (\$351,100 X  
21 1.23%/365).

22 **V. CONCLUSION**

23 For the foregoing reasons, plaintiff requests that the court award plaintiff  
24 reasonable attorney fees and “full costs” pursuant to §505.

25 Dated: November 13, 2017

Respectfully Submitted,

26 LAW OFFICES OF JEFFREY YOUNG  
27 JEFFREY S. YOUNG  
28 JACOB P. AINCIART

AQUILINO LAW

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JASON A. AQUILINO

LAW OFFICES OF DARREN J. QUINN  
DARREN J. QUINN

By: s/s Darren J. Quinn  
Darren J. Quinn

12702 Via Cortina, Suite 105  
Del Mar, CA 92014

*Attorneys for Plaintiff Greg Young  
Publishing, Inc.*