

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

---

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

---

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) ORDER RE COUNTER-CLAIMANTS' MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS (DKT. 479);

COUNTER-CLAIMANT MARVIN GAYE III'S MOTION FOR AWARD OF ATTORNEY'S FEES AND JOINDER IN MOTION (DKT. 502);

COUNTER-DEFENDANTS' OBJECTIONS TO APPLICATION TO THE CLERK TO TAX COSTS (DKT. 478, 521);

COUNTER-CLAIMANTS' MOTION TO STRIKE DECLARATION OF GERALD ESKELIN AND CONCURRENT APPLICATION TO FILE UNDER SEAL (DKT. 529)

**I. Introduction**

Pharrell Williams ("Williams"), Robin Thicke ("Thicke") and Clifford Harris, Jr. (collectively, "Thicke Parties") composed "Blurred Lines." Dkt. 1, ¶ 6. Frankie Christian Gaye, Nona Marvisa Gaye and Marvin Gaye III (collectively, "Gaye Parties") claim an ownership interest in two compositions by Marvin Gaye: "Got to Give It Up" and "After the Dance." Dkt. 12, ¶ 11; Dkt. 35, ¶ 11; Dkt. 36, ¶ 3. The Thicke Parties filed this action for declaratory relief, seeking a finding that "Blurred Lines" does not infringe the copyright in "Got to Give It Up." Dkt. 1. The Gaye Parties then filed various counterclaims, including one in which they claimed that "Blurred Lines" infringed the copyright held by the Gaye Parties for "Got to Give It Up," and that another song by Thicke, "Love After War," infringed the copyright for "After the Dance." Dkt. 14; Dkt. 36.

Following a jury trial on the counterclaims, on March 10, 2015, the jury returned a verdict in which it found that the Thicke Parties infringed the copyright for "Got to Give It Up," but that the infringement was not willful. The jury also determined that the Thicke Parties did not infringe the copyright for "After the Dance." Dkt. 320, 321. The jury also awarded the following to the Gaye Parties: \$4,000,000 in actual damages; \$1,610,455.31 in profits received by Williams and his company More Water from Nazareth Publishing,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

Inc.; and \$1,768,191.88 in profits received by Thicke. Dkt. 320 at 3. Through rulings on certain post-trial motions, the award of \$4,000,000 in actual damages was reduced to \$3,188,527.50, and the award of profits from Williams was reduced from \$1,610,455.31 to \$357,630.96. Dkt. 423 at 55. The request by the Gaye Parties for a running royalty in the amount of 50% of the songwriter and publishing revenue of “Blurred Lines” was also granted. *Id.* at 56.

On January 11, 2016, Frankie and Nona Gaye filed a Motion for Attorney’s Fees, in which Marvin Gaye III joined. Dkt. 479, 502. On January 12, 2016, Marvin Gaye III filed a separate Motion for Attorney’s Fees. Dkt. 502.<sup>1</sup> The Motions seek the following awards of attorney’s fees and costs:

**Table 1:**<sup>2</sup>

Law Firm	Requested Fees	Requested Costs	Total
King & Ballow	\$2,079,906.50	\$753,032.19	\$2,832,938.69
Levinsohn Associates, P.C.	\$405,949.37	\$12,516.05	\$418,465.42
Arnold & Porter	\$167,235.39	\$7,712.28	\$174,947.67
Wargo French	\$7,306.00	\$3,241.14	\$10,547.14
Gordon, Gordon & Schnapp	\$3,508.34	\$431.05	\$3,939.39
<b>Total:</b>	<b>\$2,663,905.60</b>	<b>\$776,932.71</b>	<b>\$3,440,838.31</b>

**Table 2:**

Law Firm	Requested Fees	Requested Costs	Total
Law Office of Paul N. Philips, APLC	\$95,355.00	n/a	<b>\$95,355.00</b>

The Thicke Parties opposed the Motions (Dkt. 511) and the Gaye Parties filed separate replies as to their respective Motions (Dkt. 525, 534). A hearing on the Motions was held on March 14, 2016 and the matters were taken under submission. Dkt. 550. For the reasons stated in this Order, the Motions are **DENIED**.

**II. Analysis**

**A. Legal Standard**

Section 505 of the Copyright Act provides that “[i]n any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.” 17 U.S.C. § 505. Under this statute, attorney’s

---

<sup>1</sup> In this Order, these two motions are referred to collectively as the “Motions.”

<sup>2</sup> Table 1 reflects the attorney’s fees requested by Frankie and Nona Gaye. Dkt. 504-1 at 18-19. Table 2 reflects the attorney’s fees requested by Marvin Gaye III. Dkt. 502-1 at 11.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

fees may be awarded to prevailing plaintiffs or defendants. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994) (“*Fogerty I*”). However, the award of attorney’s fees is discretionary:

Prevailing plaintiffs and prevailing defendants are to be treated alike, but attorney’s fees are to be awarded to prevailing parties only as a matter of the court’s discretion. There is no precise rule or formula for making these determinations, but instead equitable discretion should be exercised in light of the considerations we have identified.

*Id.* (internal quotation marks omitted).

There are several significant considerations that are to guide the exercise of discretion discussed in *Fogerty I*. They include: (i) “[t]he primary objective of the Copyright Act is to encourage the production of original literary, artistic, and musical expression for the good of the public,” (*id.* at 524); (ii) both defendants and plaintiffs may hold copyrights, and may “run the gamut from corporate behemoths to starving artists” (*id.* at 524-27); (iii) the need to encourage “defendants who seek to advance a variety of meritorious copyright defenses . . . to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement” (*id.* at 527); and (iv) “a successful defense of a copyright infringement action may further the policies of the Copyright Act every bit as much as a successful prosecution of an infringement claim by the holder of a copyright.” *Id.* The Ninth Circuit has explained that in applying these considerations, it is appropriate to consider the following factors: (i) the degree of success obtained by the moving party; (ii) the purposes of the Copyright Act; and (iii) whether an award of attorney’s fees would have a chilling effect that is too great or would impose an inequitable burden on an impecunious plaintiff, (collectively, the “*Fogerty Factors*”). *Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 766 (9th Cir. 2003).

*Fogerty I* also acknowledged that the following nonexclusive factors (the “*Lieb Factors*”)<sup>3</sup> may be relevant to a determination of a motion for an award of fees: (i) frivolousness; (ii) motivation; (iii) objective unreasonableness as to both the factual and in the legal elements of the case; and (iv) the need in particular circumstances to advance considerations of compensation and deterrence. *Fogerty I*, 510 U.S. at 534 n.19. The Court stated that these factors “may be used to guide courts’ discretion, so long as such factors are faithful to the purposes of the Copyright Act and are applied to prevailing plaintiffs and defendants in an evenhanded manner.” *Id.*

The Supreme Court’s emphasis on “evenhandedness” “means that courts should begin their consideration of attorney’s fees in a copyright action with an evenly balanced scale, without regard to whether the plaintiff or defendant prevails, and thereafter determine entitlement without weighting the scales in advance one way or the other.” *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 560 (9th Cir. 1996) (“*Fogerty II*”). “Within this framework, district courts are given wide latitude” to award or deny attorney’s fees under the Copyright Act, even when a party acted reasonably or in good faith. *Entm’t Research Grp.*,

---

<sup>3</sup> *Fogerty I* adopted these factors from *Lieb v. Topstone Industries, Inc.*, 788 F.2d 151, 156 (1986). 510 U.S. at 534 n.19.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

*Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1229 (9th Cir. 1997).<sup>4</sup>

**B. Whether to Award Attorney’s Fees and Costs**

1. Prevailing Party

The Gaye Parties assert, and the Thicke Parties do not dispute, that the Gaye Parties are “prevailing parties” who may be awarded attorney’s fees under § 505. Although the Gaye Parties were unsuccessful as to the claim arising from “After the Dance,” they were successful on their claim arising from “Got to Give It Up” and were awarded substantial damages. This is sufficient to establish that they are the “prevailing parties.” See, e.g., *Cadkin v. Loose*, 569 F.3d 1142, 1148-49 (9th Cir. 2009) (“[A] ‘prevailing party’ is one who has been awarded some relief by the court. The key inquiry is whether some court action has created a material alteration of the legal relationship of the parties.” (internal citation and quotation marks omitted)).

2. Fogerty Factors

a) Degree of Success Obtained

“This factor weighs more in favor of a party who prevailed on the merits, rather than on a technical defense.” *DuckHole Inc. v. NBCUniversal Media LLC*, 2013 WL 5797204, at \*2 (C.D. Cal. Oct. 25, 2013). The Gaye Parties assert that this factor weighs in their favor. Thus, they argue that the jury found that “Blurred Lines” infringed “Got to Give It Up,” and that this infringement was extensive, as established by the 50% publishing revenue of “Blurred Lines” awarded to the Gaye Parties, as well as the ongoing 50% royalty. Dkt. 504-1 at 12. The Thicke Parties respond narrowly. Thus, they concede that the Gaye Parties obtained a significant monetary judgment, but point out that it was in an amount that was substantially less than what they had sought. Dkt. 511 at 23.

Given the jury verdict in this action, this factor clearly weighs in favor of awarding attorney’s fees to the Gaye Parties. “However, this must be viewed together with the other *Fogerty* factors and does not alone call for an award under the Copyright Act.” *Design Data Corp. v. Unigate Enter., Inc.*, 2014 WL 5513541, at \*3 (N.D. Cal. Oct. 31, 2014) (citing *Halicki Films, LLC v. Sanderson Sales & Mktg.*, 547 F.3d 1213, 1230 (9th Cir. 2008); *Brod v. Gen. Pub. Grp., Inc.*, 32 F. App’x 231, 235-36 (9th Cir. 2002)).

---

<sup>4</sup> Although the cases that have discussed § 505 primarily use the terms “attorney’s fees” or “fees,” the discretionary standard established in *Fogerty I* also applies to an award of non-taxable costs. See, e.g., *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1120 (9th Cir. 2007) (“The district court reasonably found the evidence regarding Perfect 10’s motivation to be equivocal, and did not abuse its discretion in weighing the interests of compensation and deterrence and denying costs and attorney’s fees to defendants.”); *Identity Arts v. Best Buy Enter. Servs. Inc.*, 2008 WL 820674, at \*3-6 (N.D. Cal. March 26, 2008) (*Fogerty* analysis applied to award of both fees and costs); *Brayton Purcell LLP v. Recordon & Recordon*, 487 F. Supp. 2d 1124, 1132 (N.D. Cal. 2007) (court declined to award fees under § 505 pursuant to the *Fogerty* test, but found the prevailing party was entitled to costs “but only to the extent those costs are compensable under Rule 54(d) and Section 1920”). Accordingly, when this Order addresses an award of “fees,” it is also referring to an award of non-taxable costs.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

b) Purposes of the Copyright Act

“The most important factor in determining whether to award fees under the Copyright Act, is whether an award will further the purposes of the Act.” *Mattel, Inc v. MGA Entm't, Inc.*, 705 F.3d 1108, 1111 (9th Cir. 2013). In making this determination, “the question is whether a successful [*claim or*] defense of the action furthered the purposes of the Act, not whether a *fee award* would do so.” *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 816 (9th Cir. 2003) (emphasis in original). The Copyright Act’s “ultimate aim is . . . to stimulate artistic creativity for the general public good.” *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975). The “demarcation” of copyright law is an important part of this assessment:

Because copyright law ultimately serves the purpose of enriching the general public through access to creative works, it is peculiarly important that the law’s boundaries be demarcated as clearly as possible. Thus, a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious infringement claims.

*Fogerty I*, 510 U.S. at 517-18.

The Gaye Parties contend that an award of attorney’s fees here will “help promote and incentivize the creation of original expression,” “will encourage others to protect their copyrights” and “will further the purpose of the [C]opyright [A]ct, which is, among other things, to demarcate the lines of copyright infringement.” Dkt. 504-1 at 11. However, each of these assertions is conclusory. There is little explanation as to how their success in this action furthered each of these purposes. The Thicke Parties argue that an award of attorney’s fees is not warranted under this factor because the Thicke Parties’ defenses contributed to the “demarcation” of the boundaries of copyright law just as much, if not more than, the Gaye Parties’ claims. Dkt. 511 at 24-25. This position has the same level of detail and force as the competing argument of the Gaye Parties.

This case required the resolution of many novel issues under copyright law; some were of first impression. During the summary judgment process, disputes arose as to the proper scope of the Gaye Parties’ copyright in “Got to Give It Up” under the operative 1909 Copyright Act. See Dkt. 139 at 7. The Thicke Parties asserted that the copyright held by the Gaye Parties protected only the composition contained in the sheet music that was deposited with the Copyright Office, and not the other features of the work such as the “groove” of the sound recording, sounds of instruments or other performance elements *Id.* at 7-8. The Gaye Parties argued that their rights extended to the compositions as presented in Marvin Gaye’s studio recordings of the songs, rather than what is reflected in the copyright deposits. *Id.*

The Summary Judgment Order included a detailed analysis of these issues, and concluded that the copyright in “Got to Give It Up” is not limited to the deposit sheets as a matter of law. However, it also concluded that the Gaye Parties had failed to present evidence to create a genuine issue as to whether the copyright encompassed other material. *Id.* at 8-12. Subsequently, the Thicke Parties filed a motion *in limine* to exclude evidence of the sound recording at the trial, on the grounds that it contains subject

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

matter that is not protected by the relevant copyright. Dkt. 165. The Order on this Motion *in Limine* included further analysis of the governing law for copyrights established under the 1909 Copyright Act. This included a consideration of the novel issue regarding the admissibility of sound recordings where a copyright is limited to deposit sheets. Dkt. 231.

Other novel issues were raised with respect to the appropriate jury instructions and verdict forms to be used for copyright claims based on musical compositions, as opposed to motion pictures or television. The Model Jury Instructions of the Ninth Circuit did not address these matters expressly. Nor was there substantial authority from other published decisions on several issues.

Because these and similar decisions in this matter addressed unique issues, the litigation could reasonably be seen as contributing to at least an informed discussion on the demarcation of copyright law. And, the defenses presented by the Thicke Parties were of equal significance with the claims asserted by the Gaye Parties in leading to this result. “Because reasonable, though losing, litigation positions define the precise boundaries of copyright law, parties who advance such positions should not be punished by the imposition of fees.” *Schiffer Publ'g, Ltd. v. Chronicle Books, LLC*, 2005 WL 1244923, at \*4 (E.D. Pa. May 24, 2005) (citing *Lotus Dev. Corp. v. Borland Int'l, Inc.*, 140 F.3d 70, 75 (1st Cir. 1998) (declining to award attorney’s fees where case presented novel or challenging issues because such litigation clarifies parameters of copyright law)).

Based on the foregoing, it is determined that the Gaye Parties have not shown that this factor weighs in favor of awarding attorney’s fees.

c) Chilling Effect of Attorney’s Fees

Courts must consider “whether the chilling effect of attorney’s fees may be too great or impose an inequitable burden on an impecunious [party].” *Ets–Hokin*, 323 F.3d at 766. Here, there is no assertion that the Thicke Parties are “impecunious” or might be unable to pay an award of attorney’s fees. However, granting the requested award of attorney’s fees of more than \$3.5 Million against parties whose defenses were objectively reasonable and potentially meritorious, could reasonably be seen as causing a chilling effect on those against whom future infringement actions are brought. Because *Fogerty I* made clear that “a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them,” 510 U.S. at 518, this factor is at best neutral.

3. Lieb Factors

a) Motivation

“[A] court’s discretion may be influenced by the plaintiff’s culpability in bringing or pursuing the action, but blameworthiness is not a prerequisite to awarding fees to a prevailing [party].” *Fantasy II*, 94 F.3d at 558. Where a case involves difficult questions of law, or “substantial questions of first impression,” it weighs against a finding that arguments were made in bad faith. *Lifshitz v. Walter Drake & Sons, Inc.*, 806 F.2d 1426, 1435 (9th Cir. 1986). “Courts generally hold that a finding of bad faith can be based on not only the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

actions that led to the lawsuit, but also the conduct of the litigation.” *Wild v. NBC Universal*, 2011 WL 12877031, at \*2 (C.D. Cal. July 18, 2011) (internal alterations and quotations marks omitted).

The Gaye Parties assert that the Thicke Parties brought their declaratory relief claims in bad faith. Thus, the Gaye Parties charge that the Thicke Parties were motivated by the expectation that the declaratory relief claims “would be too expensive for the Gaye Parties to defend, and that they would be bullied into going away.” Dkt. 504-1 at 16. The Gaye Parties argue that there was no other reason for the Thicke Parties to have brought an action because they could have instead conducted informal negotiations with the Gaye Parties. Alternatively, they claim that the Thicke Parties could have waited to see if the Gaye Parties would commence litigation, and then respond if they did so. But, instead the Thicke Parties brought their preemptive, declaratory relief action. *Id.* The Gaye Parties add that the Thicke Parties requested attorney’s fees in their complaint for declaratory relief, and in discussions with counsel for the Gaye Parties, threatened to seek an award of attorney’s fees, “hop[ing] that the prospect of facing a fee award would be too much for the Gaye Family to endure.” *Id.*

The Thicke Parties dispute these assertions as to their supposed bad faith. Dkt. 511 at 20. They respond that they attempted to resolve this dispute without litigation, but were unsuccessful. Specifically, they state that the Gaye Parties first asserted their claims as to copyright infringement, and demanded that the Thicke Parties convey 100% of the copyright for “Blurred Lines” to the Gaye Parties. *Id.*; Paterno Decl., Dkt. 517, ¶ 7. The Thicke Parties also state that they made a six-figure settlement offer to the Gaye Parties, which was rejected. Paterno Decl., Dkt. 517, ¶¶ 9, 10.

The Gaye Parties dispute these facts. Dkt. 525 at 4. They contend that they never made a demand that the Thicke Parties convey to them 100% of the copyright for “Blurred Lines,” and that there was no six-figure settlement offer from the Thicke Parties. *Id.*; Levinsohn Supp. Decl., Dkt. 525-1, ¶¶ 2-13. In support of these positions, the Gaye Parties present copies of several notes and emails exchanged by counsel, including Mark Levinsohn (“Levinsohn”) who then represented the Gaye Parties, prior to the commencement of this action. *Id.* Dkt. 525-2, Exs. A-I. The Gaye Parties argue that these exhibits show that no demand for 100% of the copyright was ever asserted, and that the Thicke Parties never engaged in any meaningful settlement efforts.

The Gaye Parties have not presented any admissible evidence to support their assertion that the Thicke Parties “threatened” to pursue attorney’s fees in this action in order to force the Gaye Parties to withdraw their claims.<sup>5</sup> Moreover, the Gaye Parties have not presented any admissible evidence to support their assertion that the Gaye Parties were financially “outgunned” by the Thicke Parties, or that a potential loss in this action and subsequent award of attorney’s fees to the Thicke Parties would have caused financial ruin for the Gaye Parties. The Gaye Parties had ample opportunity to submit financial records or other admissible sources of proof on this claim but did not do so. Nor did they address whether the attention that this litigation brought to the portfolio of works of Marvin Gaye led to an increase in royalties.

---

<sup>5</sup> The Gaye Parties only evidence in support of this argument is the Declaration of J. Gaye, in which she describes a conversation with counsel for the Gaye Parties on these issues. Dkt. 488. However, this conversation is inadmissible hearsay under Fed. R. Evid. 802. (See the accompanying order on the Thicke Parties’ evidentiary objections.)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

What this leaves is a factual dispute as to motivation based largely on the competing declarations of counsel. Although the emails and notes presented with the Levinsohn declaration do not reflect either a demand by the Gaye Parties for conveyance of 100% of the copyright for “Blurred Lines” or a six-figure settlement offer from the Thicke Parties, there is no showing that this collection of documents is a complete record of all that were exchanged prior to the commencement of the litigation. The Thicke Parties also offer little or no evidence to support their version of the facts. Moreover, “the amount of time and effort [the parties] devoted to this suit weighs against a finding of bad faith,” as it is unlikely that either side would have spent the vast time and resources required here “if they believed their claims lacked merit.” *Bisson-Dath v. Sony Computer Entm’t Am. Inc.*, 2012 WL 3025402, at \*2 (N.D. Cal. July 24, 2012).

For all of these reasons, this factor is at best neutral as to whether fees should be awarded.

b) Frivolousness and Factual and Legal Unreasonableness

Although separate factors, these issues may be considered together because both require an assessment whether the positions taken by the parties lacked legal and factual bases. *Wild*, 2011 WL 12877031, at \*2. “[T]he mere fact that [a party] lost cannot establish [its] objective unreasonability.” *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1181 (9th Cir. 2013). However, where a party “should have known from the outset that its chances of success in th[e] case were slim to none,” its decision to litigate is considered unreasonable. *SOFA Entm’t, Inc. v. Dodger Prods., Inc.*, 709 F.3d 1273, 1280 (9th Cir. 2013). “[A] frivolous claim under the Copyright Act is one that, in either the factual or legal assertions, is clearly baseless, involving fantastic or delusional scenarios. Put another way, a case is deemed frivolous only when the result is obvious or the arguments are wholly without merit.” *Perfect 10, Inc. v. Giganeews, Inc.*, 2015 WL 1746484, at \*8 (C.D. Cal. Mar. 24, 2015) (internal citations, alteration and quotation marks omitted).

The Gaye Parties argue that the conduct of the Thicke Parties during the litigation was objectively unreasonable. In support of this position they point out that Williams and Thicke made inconsistent statements as to whether “Got to Give It Up” inspired them in connection with the creation of “Blurred Lines.” Certain statements made in deposition and trial testimony differed materially from those made to the press prior to the litigation.<sup>6</sup> Dkt. 504-1 at 13-15. The Gaye Parties also contend that Thicke made statements in his response to Interrogatory No. 16 that were contradicted by his deposition and trial testimony.<sup>7</sup> *Id.* at 14.

The Gaye Parties rely on decisions in which fees were awarded based on what they deem to have been similar conduct. *IO Group, Inc. v. Jordan*, 2010 WL 2231793, at \*2 (N.D. Cal. June 1, 2010) and *Warren*

---

<sup>6</sup> The Gaye Parties reference out-of-court statements by Thicke saying that he instructed Williams to create a song like “Got to Give It Up,” and out-of-court statements by Williams that he tried to use the feeling of “Got to Give It Up” to create “Blurred Lines” and that he pictured himself as Marvin Gaye while creating “Blurred Lines.” Dkt. 540-1 at 13.

<sup>7</sup> In response to Interrogatory No. 16 Thicke answered: “Robin Thicke told Pharrell Williams that Thicke would love to create a song that evoked the musical era of ‘Got to Give It Up.’” Dkt. 196-13 at 67.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

*Publishing Co. v. Spurlock*, 2010 WL 760311, at \*8 (E.D. Pa. Mar. 3, 2010). Neither case is directly on point. *IO Group* assessed a motion for attorney’s fees after the entry of default judgment against a defendant who appeared temporarily in the action, but then failed to respond to subsequent deadlines. *IO Grp.*, 2010 WL 2231793, at \*1. The court found that the defendant had made objectively unreasonable factual claims in his responsive pleading because he made contradictory statements within the same document as to the ultimate issue presented, *i.e.*, whether the defendant reproduced, distributed and publicly displayed certain copyrighted works on his website. *Id.* at \*2-3. Similarly, the portion of the *Warren* decision cited by the Gaye Parties found objective unreasonableness where the plaintiff made false or misleading statements to the court regarding his impending deafness, in order to obtain expedited proceedings, and where the plaintiff made false statements as to his efforts to produce a certain book, which required the defendant to defend against “disingenuous” claims. 2010 WL 760311, at \*7-8.

Neither case addresses the relevance of statements made outside of, and prior to, the litigation. It is not uncommon for those promoting a new song or creative work within the entertainment industry to seek to attract attention that will be conveyed to potential consumers. This may result in increased sales of the work, and greater attention to the artist. Such statements are not ones made under oath. Consequently, it is not unreasonable for the same person to make different statements should he or she be placed under oath in subsequent litigation of the same or related issues. Although the pre-litigation statements that are inconsistent with ones made under oath may go to the credibility of the witness, this does not make this pattern of conduct objectively unreasonable.

The Gaye Parties also argue that Thicke made inconsistent statements during the course of this litigation, citing Interrogatory No. 16. The Thicke Parties respond that Thicke amended his response to Interrogatory No. 16, so that it conformed to his deposition and later trial testimony. Dkt. 511 at 19; Miller Decl., Dkt. 520-12, Ex. L at 4. Although this approach may not be seen as conduct undertaken in utmost good faith, it does not rise to the level of “objective unreasonableness.” It was not a false statement to the Court, nor one made during pretrial proceedings that was inconsistent with the obligations imposed by Fed. R. Civ. P. 11. Nor does whether Thicke told Williams that he would like to create a song that evoked the musical era of “Got to Give It Up” necessarily concern the ultimate legal question submitted to the jury -- whether there was a substantial similarity between two musical works. Therefore, Thicke’s conflicting statements do not tend to show that the claimed belief of the Thicke Parties that “Blurred Lines” did not infringe the copyright of “Got to Give It Up” was objectively unreasonable. *Cf. Seltzer*, 725 F.3d at 1181 (“Seltzer’s statement at his deposition—which the district court viewed as a ‘concession’—only expressed his opinion and could not concede the transformative nature of Green Day’s work.”); *Cariou v. Prince*, 714 F.3d 694, 707 (2d Cir. 2013) (“What is critical is how the work in question appears to the reasonable observer, not simply what an artist might say about a particular piece or body of work . . . . Rather than confining our inquiry to [the artist’s] explanations of his artworks, we instead examine how the artworks may ‘reasonably be perceived’ in order to assess their transformative nature.”).

The Thicke Parties also argue that their defense was objectively reasonable because they prevailed on several important issues, which were discussed above. See § II.B.2.b, *supra*. They also point out that they consulted with two musicologists before bringing the action and that each opined that there was no

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

substantial similarity between “Blurred Lines” and “Got to Give It Up.” Dkt. 511 at 18. As Peter Paterno, counsel for the Thicke Parties, has declared:

I promptly investigated the merits of the claim, including that I sought the opinions of two prominent musicologists, Sandy Wilbur and Tony Ricigliano, as to whether the songs were substantially similar. Ms. Wilbur and Mr. Ricigliano each conducted separate, independent analyses of the songs, and each musicologist independently advised me that the two songs were not substantially similar, and that there was no musicological evidence to support an infringement claim. Their opinions comported with my own opinion that the two songs were not the same.

Paterno Decl., Dkt. 517, ¶ 6. This statement is supported by a declaration submitted by Ricigliano. Dkt. 519.

Considered as a whole, the foregoing matters demonstrate that the Gaye Parties have not shown that the conduct of the Thicke Parties in this litigation was objectively unreasonable. Instead, it shows that the parties took reasonable, competing positions that were litigated in a spirited manner. Although some of the statements by the Thicke Parties both before and during the litigation were inconsistent, the Thicke Parties have shown that their overall defense against the claims of infringement was reasonable and non-frivolous. And, it is not at all uncommon for a party to make inconsistent statements during the course of litigation. That is what leads to cross-examination to impeach such a witness.

Finally, given the expert opinions that were provided to the Thicke Parties prior to the commencement of their declaratory relief action and their success on certain legal and factual issues, there is insufficient evidence to show that the Thicke Parties “should have known from the outset” that their chances of success “were slim to none.” *SOFA*, 709 F.3d at 1280; *see also Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996) (district court properly exercised discretion in finding copyright claims non-frivolous where the claims had, among other things, “a factual basis supported by expert testimony”). Ultimately, “[t]his was a close and difficult case” and neither party acted in an unreasonable manner in presenting their competing factual and legal arguments. *Seltzer*, 725 F.3d at 1181.

For the foregoing reasons, this factor does not support an award of attorney’s fees.

c) Compensation and Deterrence

In light of many of the considerations discussed above, these factors do not support an award of attorney’s fees. With respect to the issue of compensation, the Gaye Parties have been adequately compensated for the “Got to Give It Up” infringement both by the substantial damages awarded by the jury, and the ongoing 50% royalty of the “Blurred Lines” profits. These substantial monetary awards will also serve to specifically deter the Thicke Parties, and generally deter others in the industry from future infringement. *See, e.g., Brayton Purcell LLP v. Recordon & Recordon*, 487 F. Supp. 2d 1124, 1130 (N.D. Cal. 2007) (“Brayton Purcell has already been well compensated through the arbitration award. It has received substantial statutory damages, even in the absence of proof of any actual damages.”); *Columbia*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

*Pictures v. Tucker*, 1997 WL 779093, at \*14-15 (N.D. Ill. Dec. 11, 1997) (attorney’s fees were not necessary to compensate plaintiffs and defendant was sufficiently deterred because plaintiffs had been awarded \$115,000 in statutory damages for 115 infringements).

Furthermore, the Gaye Parties have not shown that the Thicke Parties engaged in any bad faith conduct that warrants the imposition of attorney’s fees as a deterrent. Thus, the Thicke Parties did not pursue a frivolous, unreasonable position, and they are not serial litigants seeking an unwarranted payday. *Scott v. Meyer*, 2010 WL 2569286, at \*3 (C.D. Cal. June 21, 2010) (“Deterring non-meritorious lawsuits against defendants seen as having ‘deep pockets’ and compensating parties that must defend themselves against meritless claims are both laud[a]ble ends.”). Finally, the Gaye Parties’ assertion that compensation in the form of a fee award is required because the Gaye Parties have less financial means than the Thicke Parties has not been supported by any admissible evidence.

For these reasons, the Gaye Parties have not shown that this factor supports an award of attorney’s fees.

\* \* \*

In light of the foregoing analysis with respect to the *Fogerty* and *Lieb* Factors, the Gaye Parties have not shown that an award of attorney’s fees is warranted. Beyond the success on the merits, little else supports their position. This case presented novel issues. How they would be determined was not, even with hindsight, something that was clear. In light of this record, the observations in the controlling cases are, of course, instructive:

While it is true that *one* of the goals of the Copyright Act is to discourage infringement, it is by no means the *only* goal of that Act. . . .

[T]he policies served by the Copyright Act are more complex, more measured, than simply maximizing the number of meritorious suits for copyright infringement.

*Fogerty I*, 510 U.S. at 526 (emphasis in original).

The primary objective of copyright is not to reward the labor of authors, but “[t]o promote the Progress of Science and useful Arts.” To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work.

*Id.* at 527 (quoting *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349–50 (1991)) (alteration in original).

The Motions are **DENIED**.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

**C. Taxable Costs**

The Judgment entered in this action states that “[t]he Gaye Parties are awarded their costs incurred and unique as to the First Claim for Relief, in an amount to be determined by the Court, to be paid by Counter-Defendants, who are jointly and severally liable.” Dkt. 450 at 3. The Thicke Parties argue that the Gaye Parties’ Application to Tax Costs (“Cost Application”) (Dkt. 478) includes costs associated with the second claim for relief related to “Love After War”/“After the Dance,” on which the Gaye Parties were not the prevailing party. Dkt. 521. For this reason, the Thicke Parties challenge those costs.

In the Cost Application, the Gaye Parties explain the methodology they used to apportion costs between the two claims: “All lines from the deposition transcripts that included language regarding either song[] were discounted from the cost of each transcript. This was accomplished by (1) adding up the total number of lines in the transcript; (2) subtracting all lines that discussed and/or included language regarding ‘After the Dance[]’ and ‘Love After War’; and (3) discounting each transcript by the percentage devoted to ‘After the Dance’ and ‘Love After War.’” Dkt 478 at 16 n.1. These statements and the corresponding calculations are supported by the declaration of Sherie A. Johnson (“Johnson”). It states the process by which the costs were apportioned: “I [ ] read[] through 27 deposition transcripts and highlight[ed] lines of each deposition transcript that referenced ‘Love After War’ and ‘After the Dance.’ I included in my highlighting any discussions following up to or after references in the deposition transcript to ‘Love After War’ and ‘After the Dance.’” Johnson Reply Decl., Dkt. 525-4, ¶ 4. Johnson concluded that the “After the Dance” claim was referenced in only 2.422% of all depositions. Johnson Decl., Dkt. 486, ¶ 4.

The Thicke Parties argue that these calculations do not accurately apportion costs between the claims. Thus, they contend that the Gaye Parties “improperly assume that unless, and only to the extent, there is an express and direct reference to [‘Love After War’ or ‘After the Dance’], the[] transcripts relate only to [‘Blurred Lines’].” Dkt. 521 at 4 (emphasis omitted). The Thicke Parties point out that the Gaye Parties did not include in their calculations “testimony about background, expert methodology, and other general issues” that are applicable to both claims for relief. *Id.* at 5. The Thicke Parties also argue that the Gaye Parties count irrelevant pages -- such as captions and indices -- which increase the total lines and decrease the “percentage” allocated to the “Love After War” claim. *Id.*

An alternative method of apportioning the costs between the two claims is provided by the Thicke Parties in the Declaration of Karen L. Sloane (“Sloane”). Dkt. 518. It states that she made a qualitative review of all written discovery material served or responded to by the Gaye Parties. Based on that review, she apportioned time as follows: (i) Requests for Production of Documents were 51.1% related to “Blurred Lines,” 32.7% related to “Love After War,” and 15.7% related to general matters; (ii) Interrogatories were 58.6% related to “Blurred Lines,” 29.9% related to “Love After War,” and 11.6% non-specific; and (iii) Requests for Admissions were 50% related to “Blurred Lines” and 50% related to “Love After War.” *Id.* ¶ 7. Thus, the Thicke Parties argue that costs attributable to both claims should be reduced by 50%. Dkt. 521 at 2. The Gaye Parties did not file a substantive reply to these arguments.

The parties generally agree that the Judgment provides that the Gaye Parties are only entitled to costs

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

associated with, and necessary for, the pursuit of the claim based on “Blurred Lines.” The Gaye Parties’ methodology for apportionment of costs is a mechanical and unpersuasive method for making the necessary apportionment. Counting lines with express references to “After the Dance” and “Love After War,” is itself suspect. That a question posed at a deposition, or an answer to a question posed at a deposition, may have been lengthy, is not a reliable means of allocating costs. Similar issues are presented by merely counting lines that include objections made at depositions. Nor does this mechanical method allow a reasonable measurement of discovery or other proceedings that applied to general matters in the action, with relevance to both causes of action. For example, the Cost Application states that of the 1810 lines of testimony in the deposition transcript of Bruce Scavuzzo (“Scavuzzo”), only 42 referred to “Love After War” or “After the Dance.” Dkt. 478 at 18. From this the Gaye Parties conclude that only 2.32% of the deposition relates to that claim. Therefore, they request costs in an amount that assumes 97.68% of the deposition concerned “Blurred Lines.” But, this ignores the testimony as to matters such as the education, professional background, and current job title and related duties of the witness. See Dkt. 163-2 at 10-12, 16-19. All are matters that have equal application to both claims.

The less mechanical approach used by the Thicke Parties -- identifying what percentage of material relates exclusively to each of the two claims and what percentage relates to both -- is a more persuasive one. However, the Thicke Parties have not shown that a 50-50 allocation is appropriate. Thus, the only calculations provided by the Thicke Parties, which are discussed above, show that the “Blurred Lines” claim was related to more than 50% of the litigation material. For example, the Thicke Parties state that of the Requests for Production of Documents, 51.1% related to “Blurred Lines,” 32.7% related to “Love After War” and 15.7% were non-specific. This means that, of the 83.8% of the material that was claim-specific, 61% related to “Blurred Lines” ( $51.1/83.8 \times 100$ ) and 39% related to “Love After War” ( $32.7/83.8 \times 100$ ). Similarly, the Thicke Parties calculated that 58.6% of the Interrogatories were related to “Blurred Lines,” 29.9% related to “Love After War,” and 11.6% were non-specific. These figures mean that the claim-specific material is apportioned 66.21% to “Blurred Lines” ( $58.6/88.5 \times 100$ ) and 33.79% to “Love After War” ( $29.9/88.5 \times 100$ ).

Upon review of the material submitted by the parties, and their respective arguments, it is determined that an appropriate apportionment for costs related to both claims is 65% for “Blurred Lines” and 35% for “Love After War.” It is also consistent with the Court’s experience and observation as to the allocation between the works in the many pre-trial matters that were addressed. Based on that starting figure, the specific objections of the Thicke Parties to the Cost Application are addressed:

(1) Costs for service of process on Geffen Records d/b/a Interscope Records are not recoverable, because it was sued as a Counterclaim-Defendant only on the “Love After War” claim. Dkt. 478 at 4 (item 1).

(2) 65% of the costs for service of process on UMG Recordings, Inc., Universal Music Distribution and Star Trak Entertainment, Inc. are recoverable because each entity was sued as a Counterclaim-Defendant on both claims. *Id.* (items 3-5).

(3) 65% of the costs for service of subpoenas on Career Artist Management, ASCAP,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

SoundExchange, Roberts & Halfitz, The Harry Fox Agency and Robinson & Company are recoverable because each entity was served as part of identifying royalty information relevant to both claims. *Id.* (items 8-13).

(4) 65% of the costs incurred for the witness fees of the expert witnesses engaged by the Thicke Parties, *i.e.*, Sandra Wilbur and Bruce Kolbrenner, are recoverable because each witness offered opinions regarding both claims. *Id.* at 2.

(5) 65% of the costs incurred for the deposition transcripts of Sandy Wilbur, Harry Weigner, Anthony Masciarotte, Robin Thicke, Jason Gallien, Nicole Bilzerian, Neil Jacobson, Douglas Bania, Bruce Kolbrenner, Donald Zakarin/Bruce Scavuzzo/Dag Sandsmark, Nona Gaye, Janis Gaye, Nancie Stern, Ron Aston, Ingrid Monson, Judith Finell and Gary Cohen are recoverable because each of these witnesses testified about both claims. *Id.* at 16-17 (items 1-3, 5-11, 14-16, 19, 21-23).

Based on the foregoing, the total cost award must be recalculated in conformance with this Order. Because all data necessary to do so has not been provided the Gaye Parties shall file an amended request on or before April 21, 2016, with figures that are consistent with the terms of this Order. On or before April 26, 2016, the Thicke Parties shall file any objections or a statement of non-opposition to the form of the recalculation of the costs. Upon receiving these filings, the matter will be taken under submission.

**D. Motion to Strike Declaration of Gerald Eskelin and Application to File Under Seal**

The declaration of Gerald Eskelin (Dkt. 512) was filed by the Thicke Parties in support of their opposition to the requests for the award of attorney's fees. Eskelin is a musicologist. His declaration presents certain opinions about "Blurred Lines" and "Got to Give it Up." The Thicke Parties presented the declaration to support the reasonableness of the positions that they took during the course of the litigation. The Gaye Parties filed a motion to strike the Eskelin Declaration ("Motion to Strike"), as well as an application to file all related material under seal ("Application"). Dkt. 529.

The Gaye Parties object to the presentation of the Eskelin Declaration because they hired him as a consulting expert prior to the commencement of this litigation. They contend that it was improper for counsel for the Thicke Parties to have conferred with him because the opinions that he shared with them are privileged and confidential information pursuant to Fed. R. Civ. P. 26(b)(3)(A) and Fed. R. Civ. P. 26(b)(4)(D). Thus, they argue that the contacts with Eskelin by counsel for the Thicke Parties as well as the presentation of his declaration in connection with the present Motions, violated the applicable rules of professional responsibility.<sup>8</sup>

---

<sup>8</sup> In arguing that there has been improper conduct by counsel, the Gaye Parties have not cited any specific rule of professional responsibility. The Thicke Parties cite *Erickson v. Newmar Corp.*, 87 F.3d 298, 301-02 (9th Cir. 1996), which states that "[s]ince existing rules of civil procedure carefully provide for limited and controlled discovery of an opposing party's expert witnesses, all other forms of contact are impliedly prohibited." This language supports the view that an attorney may violate ethical requirements through contacts with an expert witness retained by opposing counsel in the course of litigation. Moreover, because the procedures for expert discovery are well established,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

As a remedy, the Gaye Parties request that the Eskelin Declaration be stricken from the record. The Gaye Parties also state that “further sanctions” should be considered, including striking the entire opposition of the Thicke Parties to the attorney’s fees Motions and disqualifying King Holmes, the firm that is counsel to the Thicke Parties, from further representation of them in this action. The Gaye Parties do not specifically request that such further sanctions be imposed. The Thicke Parties respond that no privileged or confidential information was disclosed by Eskelin, and that the Eskelin Declaration does not contain any confidential communications he may have had with counsel for the Gaye Parties. Dkt. 547.

Fed. R. Civ. P. 26(b)(4)(D) provides that “[o]rdinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial.” That the work of a consulting expert may be privileged was previously addressed in this action. Thus, this was the basis for an order that quashed discovery requests by the Thicke Parties as to the work of Lawrence Ferrara, another consultant retained by the Gayes. See *Williams v. Bridgeport Music, Inc.*, 300 F.R.D. 120 (S.D.N.Y. 2014).

The Thicke Parties argue that, although Fed. R. Civ. P. 26(b)(4)(D) limits formal discovery of consulting experts engaged by an adverse party, it does not prohibit all ex parte contacts with such persons. The Thicke Parties address the authority cited by the Gaye Parties, and argue that it addresses only ex parte contacts with an opposing expert prior to trial. Such a contact would violate the discovery procedures set forth in Fed. R. Civ. P. 26, and would thereby impose substantial prejudice to the party that had engaged the expert. The Thicke Parties argue that these principles do not apply here. They claim that, because the contact with the expert once retained by the Gaye Parties occurred after the trial had concluded, and was precipitated by his post-trial public disclosure of his opinions, there was no wrongdoing.

The Thicke Parties’ argument distinguishing contacts with an opposing expert that occur before and after a trial, is not persuasive. The Thicke Parties have cited no authority that supports this position. Thus, they have cited no case or treatise in which it is stated that privileged communications with an expert made prior to trial, lose that protection when the trial is complete. Therefore, because the Eskelin Declaration discusses his retention by the Gaye Parties as well as the opinions that he provided to them and their

---

inappropriate contact with an expert engaged by an adverse party may also be in violation of the rule “prohibiting conduct prejudicial to the administration of justice.” *Id.* at 302 (quoting 2 Geoffrey C. Hazard & W. William Hodes, *The Law of Lawyering* § 3.4:402 (2d ed. Supp. 1994)). *Erickson* also states that “two ethics opinions” have concluded that an attorney violates an ethical duty through ex parte contact with an expert engaged by an opposing party. The American Bar Association Formal Ethics Opinion 93-378 provides that, although the ABA Model Rules do not explicitly prohibit ex parte contacts with an expert engaged by an opposing party, an attorney who has such contacts may violate the duty to obey the obligations of the tribunal. ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 93-378 (1993); see Model Rules of Prof’l Conduct Rule 3.4(c) (1983); Nev. Sup. Ct. R. Prof’l Conduct 173(3) (1986). The opinion explained that Fed. R. Civ. P. 26(b)(4)(A) sets forth a procedure for conducting discovery as to the work and opinions of an expert engaged by an opposing party. Ex parte communications may sidestep the discovery rules and thereby violate the duty of an attorney to obey the rules of the tribunal in which a matter is litigated. ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 93-378 (1993).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-06004 JAK (AGRx)

Date April 12, 2016

Title Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.

---

counsel, it is appropriate to strike it from the record, and not use it as a basis for the decision on the current Motions for an award of fees and costs. The Gaye Parties have not made any showing of prejudice that would warrant any additional sanctions.

Furthermore, the Gaye Parties have not presented a persuasive reason why the Eskelin Declaration, Motion to Strike and related materials should be filed and maintained under seal. There is “a strong presumption in favor of access” by the public to court records. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Court records can only be sealed “given sufficiently compelling reasons for doing so.” *Id.* The Gaye Parties have not demonstrated that they will be prejudiced if these documents are publicly available. Their retention of Eskelin as a consulting expert was disclosed by the Gaye Parties. And, there is no compelling reason presented to seal the opinions he provided to the Gaye Parties when he was a pre-litigation consultant. These same views were published by Eskelin prior to the filing of his declaration in this action.

For these reasons, the Application is **DENIED** and the Motion to Strike and supporting documentation (Dkt. 529) and the opposition to the Motion to Strike and supporting documentation (Dkt. 547) shall be unsealed.

**III. Conclusion**

For the foregoing reasons, the Motions are **DENIED**. The Motion to Strike is **GRANTED** and the Application to File Under Seal is **DENIED**. The Application to Tax Costs is **DENIED** as to the amounts that exceed those approved in this Order.

**IT IS SO ORDERED.**

Initials of Preparer \_\_\_\_\_ : \_\_\_\_\_  
ak \_\_\_\_\_