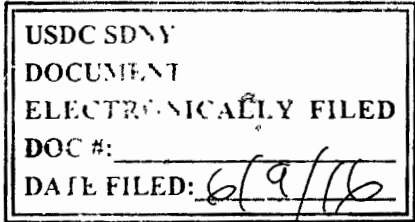


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
MAYIMBA MUSIC, INC.,  
Plaintiff,  
  
-against-  
  
SONY/ATV LATIN MUSIC PUBLISHING LLC  
and SONY/ATV DISCOS MUSIC PUBLISHING  
LLC,  
Defendants.  
----- X

**ORDER APPROVING**  
**APPLICATION FOR**  
**ATTORNEY'S FEES**  
12 Civ. 1094 (AKH)



ALVIN K. HELLERSTEIN, U.S.D.J.:

The Court issued an order partially granting the defendants' motion for sanctions on March 31, 2016, requesting that the defendants file a fee application. [Dkt. No. 256.] Defendants now request \$677,934.52 in attorney's fees, and \$64,946.83 in non-taxable costs.<sup>1</sup>

I find that the hourly rates of the Loeb attorneys involved in the matter, Barry Slotnick at \$741.80, Tal Dickstein at \$607.46, and Linna Chen at \$553.50, after discounts, are commensurate with the rates approved for similarly qualified attorneys in the jurisdiction. *See, e.g., Amaprop Ltd. v. Indiabulls Fin. Servs. Ltd.*, No. 10 CIV. 1853 PGG, 2011 WL 1002439, at \*5-6 (S.D.N.Y. Mar. 16, 2011), *aff'd*, 483 F. App'x 634 (2d Cir. 2012) (approving \$761 rate for senior partner). The hourly rates of the support staff who assisted with the matter, paralegals Antoinette Pepper at \$346.58 and Timothy Cummins at \$316.93, and litigation support manager Josh Gorruso at \$328.50 per hour, are higher than rates usually charged, *see, e.g., Lucky Brand Dungarees, Inc. v. Ally Apparel Resources LLC*, No. 05 Civ. 6757, 2009 WL 466136, at \*6

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<sup>1</sup> The defendants initially requested \$680,362.52 in attorney's fees and \$66,446.83 in non-taxable costs, but eliminated two erroneous entries from their revised application.

(S.D.N.Y. Feb. 25, 2009) (approving rates of \$205/hour to \$235/hour for paralegals), but not outside the realm of reasonable, *see Amaprop*, 2011 WL 1002439, at \*6 (“[Party] submitted fee schedules for bankruptcy cases indicating that paralegal rates as high as \$360 per hour have been approved.”). I conclude that, in light of the substantial experience of the support staff, that these rates were reasonable.

I also find that the amount of time, a total of 1,231.1 hours, including 245.3 hours spent preparing the motion for attorney’s fees and opposing plaintiff Mayimba’s Rule 60(b) motion was reasonable, in light of the complexity of the case and the voluminous record assembled over four years of litigation. “The hours analysis turns not on what appears necessary in hindsight, but on whether ‘at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures.’” *Amaprop*, 2011 WL 1002439, at \*7 (quoting *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir.1992)). The defendants’ billing entries detail the nature of the work performed by each attorney and paralegal, the hours expended, and the date. After a review of their entries, I find the time to be reasonable.

Having said all this, I have to keep in mind that a sanction in the form of fee shifting should not necessarily be limited to hours and rates that the prevailing party has agreed to pay. The sanctioned party did not agree to such a schedule, and may ill afford the expense, particularly after losing so completely on the merits. I have to recognize also that the Sony defendants won the case and removed the cloud on its ability to exploit a song with which a famous artist has been identified. Having this in mind, and exercising discretion, I fix the award of attorney’s fees at \$350,000, and the award of non-taxable costs at \$50,000, or a total of \$400,000.

In its opposition, plaintiff Mayimba attempts to raise new arguments related to the merits of its copyright claim. [Mayimba Br., Dkt. No. 265 at 8-12] These arguments were not timely brought and will not be considered now. The plaintiff also objects to the inclusion of witness airfare and lodging costs, as well as consulting services of Wilson Rood. But these expenditures are reasonable in light of the necessity of investigating and responding to the many factual representations advanced by plaintiff through the litigation. *See, e.g., Impulsive Music, Inc. v. Bryclear Enters.*, 483 F. Supp. 2d 188, 191 (D. Conn. 2007) (finding costs of an investigator allowable under 17 U.S.C. § 505).

The court also declines to enter the award jointly and severally as a sanction against Mayimba's new counsel, Balber Pickard, under 28 U.S.C. § 1927 and this court's inherent power. Balber Pickard's late arrival into the litigation makes it impossible for this court to conclude that it had the requisite bad faith to impose a sanction. *See Nemeroff v. Abelson*, 620 F.2d 339, 348 (2d Cir. 1980); *Baker v. Urban Outfitters, Inc.*, 431 F. Supp. 2d 351, 362 (S.D.N.Y. 2006), *aff'd*, 249 F. App'x 845 (2d Cir. 2007) ("An award made under § 1927 also must be supported by a finding of bad faith similar to that necessary to invoke the court's inherent power."). Though I found the Rule 60(b) motion to be objectively unreasonable, it was not so without merit as to alone establish counsel's bad faith.

For the reasons stated in this court's order of March 31, 2016, the court approves the defendants' application for attorney's fees and non-taxable costs in the amounts of \$350,000 and \$50,000 respectively. These amounts are awarded against plaintiff Mayimba and, in part, against prior counsel James Sheinbaum, and Mr. Sheinbaum's law firm throughout the case, Borstein & Sheinbaum. The plaintiff continued to pursue its claim even after terminating Mr. Sheinbaum's representation, engaging new counsel to press its claim through yet another stage of

litigation. Thus, \$200,000 is joint and several among all parties, and \$200,000 only against Mayimba.

SO ORDERED.

Dated: New York, New York  
June 9, 2016

A handwritten signature in black ink, appearing to read "Alvin K. Hellerstein", written in a cursive style.

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ALVIN K. HELLERSTEIN  
United States District Judge