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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SAVAGE,
Plaintiff,
v.

No. C 07-06076 SI

**ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEYS' FEES AND
COSTS**

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, INC., *et al.*,
Defendants.

On August 29, 2008, defendants filed a motion for an award of attorney's fees and costs under the Copyright Act. [Docket No. 47] The motion is scheduled for hearing on November 14, 2008. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing.

Plaintiff Michael Savage brought suit in this court on December 3, 2007 for copyright infringement and civil RICO (Racketeer Influenced and Corrupt Organizations) claims against defendants. At the same time as they filed an answer to the complaint, defendants moved for judgment on the pleadings. By order dated July 25, 2008, this Court granted defendants' motion for judgment on the pleadings as to both causes of action. The copyright claim was dismissed with prejudice, while the RICO claim was dismissed with leave to amend. Plaintiff failed to amend his complaint, and judgment was entered on August 15, 2008.

This Court has discretion under the Copyright Act to allow recovery of costs and attorneys' fees by or against any party. *See* 17 U.S.C. § 505. "In applying this provision, district courts are charged with two tasks: First, deciding whether an award of attorneys' fees is appropriate, and second, calculating the amount of fees to be awarded." *Traditional Cat Ass'n v. Gilbreath*, 340 F.3d 829, 832-

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1 33 (9th Cir. 2003). In *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1992), the Supreme Court considered
2 the factors which govern the court's discretion in performing the first task, deciding whether to award
3 fees, with respect to prevailing defendants. The Court held:

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

8 *Fogerty*, 510 U.S. at 534 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436-437 (1983)).

9 On remand in *Fogerty*, the Ninth Circuit provided the following analysis of the Supreme Court's
10 standards:

11 Considerations discussed by the Court include the Copyright Act's primary objective, "to
12 encourage the production of original literary, artistic, and musical expression for the
13 good of the public," *id.* at 524, 114 S.Ct. at 1028; the fact that defendants as well as
14 plaintiffs may hold copyrights, *id.* at 525-527, 114 S.Ct. at 1029, and "run the gamut
15 from corporate behemoths to starving artists," *id.* at 524, 114 S.Ct. at 1028 (internal
16 quotations and citation omitted); the need to encourage "defendants who seek to advance
17 a variety of meritorious copyright defenses ... to litigate them to the same extent that
18 plaintiffs are encouraged to litigate meritorious claims of infringement," *id.* at 527, 114
19 S.Ct. at 1030; and the fact that "a successful defense of a copyright infringement action
20 may further the policies of the Copyright Act every bit as much as a successful
21 prosecution of an infringement claim by the holder of a copyright," *id.*

22 *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 557-558. In capsule, "Faithfulness to the purposes of the
23 Copyright Act is . . . the pivotal criterion." *Id.*, at 558.

24 Here, the purposes of the Copyright Act were affected only marginally. Plaintiff's Copyright
25 Act claim was never strong and was litigated anemically. Plaintiff saved his heavy artillery for his
26 RICO claim, which he ultimately abandoned despite having been given leave to amend. The action was
27 terminated promptly after resolution of defendants' first motion. While the Court agreed with
28 defendants' fair use argument, there were features of the decision which required analysis.

Having considered the standards set out by the case law, and considering the "pivotal" criterion
of the purposes of the Copyright Act, this Court finds in its discretion that attorneys' fees are not
warranted in this case. Accordingly, the Court hereby DENIES defendants' motion.

IT IS SO ORDERED.

Dated: November 12, 2008



SUSAN ILLSTON
United States District Judge