

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION

STEPHEN CUMMINGS, individually,
Plaintiff,

vs.

DOLBY LABORATORIES, INC., a
California Corporation; LIGHTSTORM
ENTERTAINMENT, INC., a California
Corporation; SONY PICTURES
ENTERTAINMENT, INC., a California
Corporation; PARAMOUNT PICTURES
CORP., a California Corporation;
PARAMOUNT HOME
ENTERTAINMENT, INC., a California
Corporation; TWENTIETH CENTURY
FOX FILM CORP., a California
Corporation; JAMES CAMERON, an
individual; and Does 1-50,

Defendants.

Case No. 2:20-cv-04443-ODW-PVC

~~PROPOSED~~ JUDGMENT

Judge: Hon. Otis D. Wright, II

United States District Court
Central District of California

STEPHEN CUMMINGS,

Plaintiff,

v.

DOLBY LABORATORIES, INC., et al.,

Defendants.

Case No. 2:20-cv-04443-ODW (PVCx)

**ORDER GRANTING
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND COSTS
[71]**

I. INTRODUCTION

Pro se Plaintiff Stephen Cummings initiated this copyright action based on his fanciful claim that Defendants¹ adapted the 1997 motion picture *Titanic* from his life story. (~~See~~ Notice of Removal, Ex. A (“Complaint” or “Compl.”), ECF No. 1-1.) The Court granted Defendants’ motion to dismiss and invited a motion for attorneys’ fees and costs. (Order Granting Mots. to Dismiss 8–9, ECF No. 69.) Defendants now request \$20,534.65 in attorneys’ fees and costs. (Mot. for Att’ys’ Fees (“Mot.”), ECF No. 71.) For the reasons discussed below, the Court **GRANTS** Defendants’ Motion.²

¹ Defendants are James Cameron; Lightstorm Entertainment, Inc.; Paramount Pictures Corp.; Paramount Home Entertainment, Inc.; and Twentieth Century Fox Film Corp.

² Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

all be met.” *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 558 (9th Cir. 1996). Once the court determines a party is a “prevailing party” under § 505, it must consider whether the requested fees and costs are reasonable. 17 U.S.C. § 505; *see Accredability, LLC v. Accreditssoft*, No. CV 18-5969-DMG (FFMx), 2019 WL 4137409, at *4 (C.D. Cal. May 10, 2019).

IV. DISCUSSION

The Court previously determined that Defendants are the prevailing party and entitled to attorneys’ fees based on the frivolous nature of this case and to deter Cummings from filing further meritless lawsuits. (Order Granting Mots. to Dismiss 8–9.) Accordingly, the Court focuses its inquiry on whether Defendants’ request for \$20,534.65 (\$19,980 in attorneys’ fees and \$554.65 in costs) is reasonable.

A. Reasonable Attorneys’ Fees and Costs

To calculate the fee award, the Court determines “the number of hours reasonably expended on the litigation” and multiplies that number “by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Defendants seek attorneys’ fees based on the following rates and reported hours:

Attorney	Rate	Hours	Amount
Michael R. Kreiner	\$600	27.8	\$16,680
Mark D. Litvack	\$600	5.5	\$3,300
TOTAL		33.3	\$19,980

(*See* Declaration of Mark D. Litvack (“Litvack Decl.”), Ex. A, ECF No. 71-2.)

1. Reasonable Hourly Rate

Defendants request \$600 per hour for their attorneys Mark D. Litvack and Michael R. Kreiner. (Mot. 1–3.) They claim \$600 per hour is a reasonable blended rate that “reflects a discount of 49% on the standard rate of [Litvack], and 11.6% on the standard rate of [Kreiner].” (Mot. 2 (citing Litvack Decl. ¶ 6).)

1 the range of what other partners and associates that service corporate clients charge in
2 this district, *see Vasquez*, 2020 WL 6785650. Accordingly, the Court finds that
3 Defendants have carried their burden to demonstrate that their requested rates are
4 aligned with those prevailing in the community for civil litigators in Southern
5 California. For the foregoing reasons, the Court concludes that the blended rate of
6 \$600 per hour for Litvack and Kreiner is reasonable, and Defendants shall be entitled
7 to recover for their attorneys' time at that rate.

8 2. Reasonable Number of Hours Expended

9 Defendants seek to recover for the 33.3 hours their attorneys expended
10 litigating this matter (e.g., moving to dismiss this action on *res judicata* grounds and
11 moving for attorneys' fees). (Mot. 2.)

12 "The fee applicant bears the burden of documenting the appropriate hours
13 expended in the litigation and must submit evidence in support of those hours
14 worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). "By and large,
15 the court should defer to the winning lawyer's professional judgment as to how much
16 time he was required to spend on the case; after all, he won, and might not have, had
17 he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115
18 (9th Cir. 2008).

19 In support of the Motion, Defendants submit a table outlining the tasks and
20 hours their attorneys billed for work on this case. (Litvack Decl., Ex. A.) After
21 reviewing the evidence, the Court finds that Defendants have adequately supported
22 their requested hours. Kreiner, the associate on this matter, performed the majority of
23 the work and seeks fees for the 27.8 hours he expended on tasks that appear necessary
24 to quickly resolve this duplicative case. (*See id.*) Litvack, the supervising partner,
25 expended only 6.6 hours finalizing motions, discussing issues with clients, and
26 preparing for hearings. (*See id.*) Accordingly, the Court finds that Defendants'
27 attorneys may recover for the 33.3 hours they reasonably expended litigating this
28

1 **V. CONCLUSION**

2 For the reasons discussed above, the **GRANTS** Defendants' Motion (ECF
3 No. 71.) The Court awards Defendants attorneys' fees in the amount of \$19,980 and
4 litigation costs in the amount of \$400, for a total award of \$20,380.

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6 **IT IS SO ORDERED.**

7
8 April 20, 2021

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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEPHEN CUMMINGS, INC.,

Plaintiff,

v.

DOLBY LABORATORIES, INC. ET AL,

Defendants.

Case No. 2:20-cv-04443-ODW-(PVCx)

JUDGMENT

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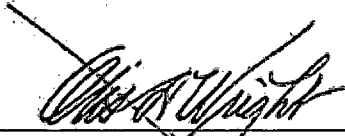
JUDGMENT

In light of the Court's Order **GRANTING** Defendants' Motions to Dismiss, it is **HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiff shall recover nothing from Defendants;
2. Plaintiff's Complaint is dismissed on the merits and with prejudice;
3. The Clerk of the Court shall close the case.

IT IS SO ORDERED.

September 16, 2020



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

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8 **United States District Court**
9 **Central District of California**
10

11 STEPHEN CUMMINGS,
12 Plaintiff,

13 v.

14 DOLBY LABORATORIES, INC., et al.,
15 Defendants.
16

Case No. 2:20-cv-04443-ODW(PVCx)

**ORDER GRANTING MOTIONS TO
DISMISS [20][29][37] AND
DENYING MOTIONS TO EXTEND
[55][57] AND GRANTING MOTION
FOR ATTORNEYS' FEES [16]**

17 **I. INTRODUCTION**

18 On May 15, 2020, Plaintiff Stephen Cummings filed the instant suit. On July
19 13, 2020, the Court held a telephonic hearing on several motions in this matter ("July
20 Hearing"). Cummings impermissibly called into the telephonic hearing on a cellular
21 telephone, which resulted in Cummings's garbled transmission. As the Court had
22 difficulty hearing Cummings despite specific instructions to appear telephonically
23 only on a landline and sufficient notice of the hearing, the Court considered the
24 parties' arguments presented in the written briefs. Fed. R. Civ. P. 78; L.R. 7-15.¹

25 For the reasons below, the Court **GRANTS** Defendants' Motions to Dismiss.
26 (Mot. to Dismiss by James Cameron, Lightstorm Entertainment, Inc., Paramount
27 Home Entertainment, Inc., Paramount Pictures Corp., Twentieth Century Fox Film

28 ¹ At the July Hearing, the Court also denied the Motion to deem Cummings a vexatious litigant.
(ECF No. 17.)

1 Corp., (collectively, “Cameron Group”) (“Cameron Group Mot.”), ECF No. 20; Mot.
 2 to Dismiss by Dolby Laboratories, Inc. (“Dolby”) (“Dolby Mot.”), ECF No. 29; Mot.
 3 to Dismiss by Sony Pictures Entertainment, Inc. (“Sony”) (“Sony Mot.”), ECF
 4 No. 37.) Consequently, the Court **DENIES** Cummings’s Motions for Extensions of
 5 Time to Serve various Defendants. (ECF Nos. 55, 57.) The Court also addresses the
 6 Cameron Group’s Motion for Attorneys’ Fees. (Mot. for Attys’ Fees, ECF No. 16.)

7 **II. FACTUAL BACKGROUND**

8 This lawsuit is Cummings’s third attempt to recover from Defendants
 9 Lightstorm Entertainment, Inc., Sony Pictures Entertainment, Inc., Paramount Pictures
 10 Corp., Paramount Home Entertainment, Inc., Twentieth Century Fox Film Corp., and
 11 James Cameron and first attempt against Dolby Laboratories, Inc. (collectively,
 12 “Defendants”) based on allegations that Defendants adapted the 1997 motion picture
 13 Titanic from Cummings’s life story. (See Notice of Removal Ex. A (“Compl.”), ECF
 14 No. 1-1.)

15 On May 19, 2017, Cummings first filed this lawsuit in the Middle District of
 16 Florida. See Compl.; *Cummings v. Cameron*, No. 6:17-cv-00908-CEM (M.D. Fla.
 17 May 19, 2017) (“*Cummings I*”). That case was dismissed because Cummings failed
 18 to comply with the local rules. *Cummings v. Cameron*, No. 6:17-cv-1897 ORL41
 19 (DCI), 2018 WL 5629931, at *2 n.2 (M.D. Fla. Oct. 31, 2018).

20 Plaintiff filed a second lawsuit at the same venue on November 2, 2017. See
 21 *Cummings v. Cameron*, No. 6:17-CV-1897 ORL41 (DCI) (M.D. Fla. Oct. 10, 2018)
 22 (“*Cummings II*”). The case was dismissed with prejudice. *Cummings II*, No. 6:17-cv-
 23 1897-Orl-41DCI, 2018 WL 5629931, at *2 (M.D. Fla. Oct. 31, 2018), *appeal*
 24 *dismissed*, No. 18-14836-D, 2019 WL 6249386 (11th Cir. June 25, 2019).

25 In the instant matter, all Defendants move to dismiss this case on the basis of
 26 res judicata or collateral estoppel. (See Cameron Group Mot., Dolby Mot., Sony
 27 Mot.) Additionally, Dolby moves to dismiss for failure to state a claim. (See Dolby
 28

1 Mot.) Finally, the Court addresses the Cameron Group's Motion for Attorneys' Fees.
2 (See Mot. for Atty Fees.)

3 III. LEGAL STANDARD

4 A court may dismiss a complaint under Federal Rule of Civil Procedure
5 ("Rule") 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to
6 support an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901
7 F.2d 696, 699 (9th Cir. 1988). "To survive a motion to dismiss . . . under Rule
8 12(b)(6), a complaint generally must satisfy only the minimal notice pleading
9 requirements of Rule 8(a)(2)"—a short and plain statement of the claim. *Porter v.*
10 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003); *see also* Fed. R. Civ. P. 8(a)(2). The
11 "[f]actual allegations must be enough to raise a right to relief above the speculative
12 level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The "complaint must
13 contain sufficient factual matter, accepted as true, to state a claim to relief that is
14 plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation
15 marks omitted). "A pleading that offers 'labels and conclusions' or 'a formulaic
16 recitation of the elements of a cause of action will not do.'" *Id.* (citing *Twombly*, 550
17 U.S. at 555).

18 Whether a complaint satisfies the plausibility standard is a "context-specific
19 task that requires the reviewing court to draw on its judicial experience and common
20 sense." *Id.* at 679. A court is generally limited to the pleadings and must construe all
21 "factual allegations set forth in the complaint . . . as true and . . . in the light most
22 favorable" to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir.
23 2001). But a court need not blindly accept conclusory allegations, unwarranted
24 deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*,
25 266 F.3d 979, 988 (9th Cir. 2001).

26 Where a district court grants a motion to dismiss, it should generally provide
27 leave to amend unless it is clear the complaint could not be saved by any amendment.

1 See Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
2 1025, 1031 (9th Cir. 2008).

3 IV. DISCUSSION²

4 Defendants move to dismiss this case on the basis of res judicata or collateral
5 estoppel. (See Cameron Group Mot.; Dolby Mot.; Sony Mot.) Additionally, Dolby
6 moves to dismiss for failure to state a claim. (See Dolby Mot.) Finally, the Court
7 addresses the Cameron Group's Motion for Attorneys' Fees. (Mot. for Atty Fees.)

8 A. Failure to State a Claim

9 The Court addresses Dolby's motion first. Dolby correctly asserts that
10 Cummings only made two allegations against it in the entirety of his Complaint—first,
11 to assert that Cameron is the owner of Dolby, and second, to allege that all Defendants
12 including Dolby engaged in a conspiracy. (Compl. ¶¶ 8, 11.) “To establish a common
13 law claim for civil conspiracy, [plaintiff is] required to prove by clear, cogent, and
14 convincing evidence that (1) two or more people combined to accomplish an unlawful
15 purpose, or combined to accomplish a lawful purpose by unlawful means[] and (2)
16 the conspirators entered into an agreement to accomplish the conspiracy Mere
17 suspicion or commonality of interests is insufficient to prove a conspiracy.” *Conklin*

20 ² Cameron Group and Sony request for judicial notice of Cummings's prior lawsuits. (Reqs. for
21 Judicial Notice, ECF Nos. 21, 38.) Dolby requests judicial notice of corporate disclosure
22 documents. (Req. for Judicial Notice, ECF No. 30.) Finally, Cummings requests judicial notice of
23 various documents as well. (Pl.'s Req. Judicial Notice, ECF No. 27.) “A court may . . . consider
24 certain materials . . . [including] matters of judicial notice” when ruling on a Rule 12(b)(6) motion to
25 dismiss. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *see also* Fed. R. Evid. 201
26 (providing that judicial notice may be appropriate where facts are not subject to reasonable dispute).
27 The Court **GRANTS** requests by Cameron Group and Sony to judicially notice the order granting
28 the motion to dismiss in *Cummings II*, No. 6:17-cv-1897 (M.D. Fla.) The Court also **GRANTS** the
requests to consider the ownership of Dolby as such information is publicly available. *Oklahoma*
Firefighters Pension & Ret. Sys. v. IXIA, 50 F. Supp. 3d 1328, 1349 (C.D. Cal. 2014) (Morrow, J.)
 (“Courts can consider securities offerings and corporate disclosure documents that are publicly
available”) (citing *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th
Cir. 2008)). The Court **DENIES** all other requests as the Court does not consider those materials in
the disposition of the motions to dismiss.

1 v. *Univ. of Washington Med.*, No. C:18-0090-RSL, 2018 WL 5895352, at *4 (W.D.
2 Wash. Nov. 9, 2018), *aff'd*, 798 F. App'x 180 (9th Cir. 2020).

3 First, the Court “need not [] accept as true allegations that contradict matters
4 properly subject to judicial notice.” *Sprewell v. Golden State Warriors*, 266 F.3d 979,
5 988 (9th Cir.), opinion amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001).
6 The Court took judicial notice of the corporate disclosures demonstrating that
7 Cameron does not own Dolby and thus, the Court does not accept as true Cummings's
8 allegation that Cameron owns Dolby.

9 Without this assertion Cummings fails to connect Dolby to the conduct of the
10 remaining Defendants and thus, fails to sufficiently allege a claim for conspiracy.
11 Additionally, as discussed in detail below, Cummings's claims against the remaining
12 Defendants are barred by *res judicata*. Thus, the Court finds that no additional
13 allegations could cure Cummings's deficiency or properly raise a claim that Dolby
14 engaged in a conspiracy to use Cummings's likeness in the film *Titanic*. Accordingly,
15 the Court **DISMISSES without leave to amend** claims against Dolby.

16 B. Res Judicata

17 Next, the Court addresses the Cameron Group Motion and Sony Motion to
18 dismiss Cummings's complaint based on *res judicata*. (*See* Cameron Group Mot.;
19 Sony Mot.) *Res judicata* bars lawsuits based on “any claims that were raised or could
20 have been raised in a prior action.” *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th
21 Cir. 2002) (emphasis and internal quotation marks omitted). *Res judicata* applies to
22 bar a suit where there is “(1) an identity of claims; (2) a final judgment on the merits;
23 and (3) identity or privity between parties.” *Id.*

24 1. Identity of Claims

25 First, to establish identity of claims, the Court considers whether: (1) “the two
26 suits arise out of the same transactional nucleus of facts”; (2) “rights or interests
27 established in the prior judgment would be destroyed or impaired by prosecution of
28 the second action”; (3) “the two suits involve infringement of the same right”; and

(4) “substantially the same evidence is presented in the two actions.” *Mpoyo v. Litton Electro–Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). Here, Cummings files an action seeking declaratory relief and damages based on infringement of common law right of publicity and copyright. (See Compl.) First, the instant matter and *Cummings II* arise out of the same nucleus of facts: In *Cummings II*, he alleged Defendants used his “life story, studied him, and used his ‘image, . . . name[,] ideas, . . . art, . . . actions, . . . ‘music/ability vocally,’ . . . personality[,] . . . character, [and] . . . interactions with others’ to create *Titanic* and in connection with the sale of *Titanic* merchandise.” *Cummings II*, 2018 WL 5084748, at *1 (M.D. Fla. Aug. 28, 2018), *report and recommendation adopted in part, rejected in part*, 2018 WL 5629931 (M.D. Fla. Oct. 31, 2018). In the instant suit, Cummings alleges that Sony and the Cameron Group “have used Plaintiff’s name/image/likeness/words/photograph/ideas/life history and life story/other originating with ONLY the Plaintiff, to promote themselves, and/or the motion picture ‘Titanic’” (Compl. ¶ 13.) Thus, the first factor weighs in favor of establishing an identity of claims. Next, the second and third factors demonstrate an identity of claims because both the instant matter and *Cummings II* dealt with claims of rights to publicity and copyright infringement; reevaluating the claims dismissed in *Cummings II* would prejudice Defendants, forcing them to expend resources litigating previously resolved cases. *Compare Cummings II* 2018 WL 5084748, at *1 with Compl. ¶¶ 13–15. Finally, as the claims are identical, the evidence required to establish the claims would necessarily be identical. Considering the four factors, the Court finds that the identity of claims element has been met.

2. Final Judgment on the Merits

Second, the prior suits must have reached “a final judgment on the merits.” *Stewart*, 297 F.3d at 956. “[F]inal judgment on the merits is synonymous with dismissal with prejudice.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005) (alteration in original) (internal quotation marks omitted).

1 The prior lawsuit was dismissed with prejudice. *See Cummings II*, 2018 WL
2 5629931, at *2 (“The Amended Complaint (Doc. 44) is DISMISSED with
3 prejudice.”) Thus, this factor is also met.

4 3. *Identity or Privity Between Parties*

5 Third, the parties in the current action must be identical to or in privity with the
6 parties from the prior actions. *Stewart*, 297 F.3d at 956. In *Cummings II*, Cummings
7 filed suit against James Cameron, Lightstorm Entertainment, Inc., Sony Pictures
8 Entertainment Inc., Paramount Pictures Corp., Paramount Home Entertainment, Inc.
9 and Twentieth Century Fox Film Corporation, the identical parties raising this defense
10 in the instant matter. *Id.* Thus, there is no doubt that this requirement is satisfied.

11 4. *Cummings’s Opposition*

12 Cummings filed an untimely opposition to the three motions to dismiss, which
13 the Court nonetheless accepted. (Opp’n to Mots., ECF No. 60; Min. Order, ECF
14 No. 52.) However, Cummings simply reiterates the standard, “‘Res Judicata’ does
15 NOT APPLY unless the claims have been FULLY LITIGATED”, and adds
16 inflammatory remarks, “Your Honor,-do I have to put the defendants council [sic]
17 through Law School MYSELF?????.....ahem.....” (Opp’n to Mots. 3–4.)

18 Cummings’s statements are far from clear, yet the Court attempts to discern his
19 arguments. He seems to argue that the prior judgment was obtained by fraud;
20 however, the District Court in Florida adopted in part the Report and
21 Recommendation of the Magistrate Judge who found that Cummings had filed a
22 shotgun pleading. Opp’n to Mots. 5–6; *Cummings II*, 2018 WL 5084748, at *5,
23 *report and recommendation adopted in part, rejected in part*, 2018 WL 5629931. The
24 Court finds no evidence of fraud in the prior case and no specific allegations of fraud
25 are asserted. Next, Cummings argues that he included novel common law claims in
26 the instant suit precluding a finding of res judicata; however, each cause of action
27 asserted in the Complaint are premised on his allegations that the Defendants misused
28 his rights to create and profit from the film Titanic. (Opp’n to Mots. 7; *see* Compl.)

1 As all claims arise out of the same transactional nucleus of facts and satisfy the
 2 remaining factors of the identity of claims prong, the Court finds that any newly
 3 asserted claims are equally barred by res judicata. Thus, Cummings fails to
 4 meaningfully oppose the motions.

5 As all three factors of res judicata are satisfied, the Court finds that all claims in
 6 this matter are barred. Accordingly, the Court **GRANTS** motions to dismiss by
 7 Cameron Group and Sony. The Court **DIMISSES WITH PREJUDICE** all claims in
 8 the Complaint against Cameron Group and Sony. Consequently, the Court **DENIES**
 9 Cummings's motions for an extension of time to serve various Defendants.

10 **C. Attorneys' Fees**

11 Finally, the Court addresses the Cameron Group's Motion for Attorneys' Fees.
 12 "[T]he court may also award a reasonable attorney's fee to the prevailing party as part
 13 of the costs." 17 U.S.C. § 505. The Supreme Court has suggested several factors the
 14 Court can consider in its discretion: "frivolousness, motivation, objective
 15 unreasonableness (both in the factual and in the legal components of the case) and the
 16 need in particular circumstances to advance considerations of compensation and
 17 deterrence." *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 535 (1994). The Supreme Court
 18 recently clarified the purpose of the fee award: "When a litigant—whether plaintiff or
 19 defendant—is clearly correct, the likelihood that he will recover fees from the
 20 opposing (i.e., unreasonable) party gives him an incentive to litigate the case all the
 21 way to the end." *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016).

22 As the prevailing parties, Cameron Group are eligible for an award of their
 23 attorneys' fees. Here, the Court finds that Cummings's allegations are wildly
 24 factually unreasonable as he doesn't claim to have been on the Titanic but asserts that
 25 his experience on yachts and his several love interests inspired the plot and the
 26 character Rose. (Compl. ¶¶ 16, 17.) Furthermore, his claims are plainly barred by res
 27 judicata and therefore, legally unreasonable. Although his motivation appears to be
 28 sincere as he genuinely believes the film was based on his life, Cummings filed a

1 patently frivolous case. The Court finds that the factors weigh in favor of awarding
2 attorneys' fees. *Glacier Films (USA), Inc. v. Turchin*, 896 F.3d 1033, 1043 (9th Cir.
3 2018) (finding the District Court abused its discretion in failing to consider the
4 unreasonableness of plaintiff's claim).

5 As this is his third case premised on identical facts and circumstances, the Court
6 finds that an award of attorney's fees is justified to compensate the Defendants and
7 should deter Cummings. Accordingly, the Court **GRANTS** the Motion for Attorneys'
8 Fees.

9 **V. CONCLUSION**

10 For the reasons discussed above, the Court **GRANTS** Dolby's Motion to
11 Dismiss **WITHOUT LEAVE TO AMEND** and Cameron Group and Sony Motions
12 to Dismiss **WITH PREJUDICE**. (ECF Nos. 20, 29, 37.) The Court **DENIES** as
13 **moot** Motions to Extend. (ECF Nos. 55, 57.) The Court **GRANTS** the Cameron
14 Group Motion for Attorneys' Fees and invites the parties to file its Motion for
15 Attorneys' Fees no later than October 14, 2020. The Court will enter Judgment.

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17 **IT IS SO ORDERED**

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19 September 14, 2020

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LIGHTSTORM ENTERTAINMENT,
INC. ET AL.,

Plaintiffs,

v.

STEPHEN CUMMINGS,

Defendant.

Case No. 2:20-CV-8044-ODW (PVCx)

JUDGMENT

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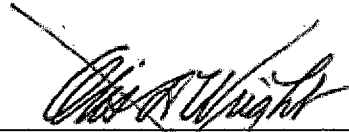
JUDGMENT

In light of the Court's Order **GRANTING** Plaintiffs' Motion for Summary Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. The July 3 UCC-1 and July 29 UCC-1 are declared false, fraudulent, invalid, null, void, and of no legal effect;
2. Cummings shall withdraw the July 3 UCC-1 and July 29 UCC-1 along with all accompanying affidavits and exhibits; and
3. Cummings is permanently enjoined from filing or recording any document of any description, including UCC-1s, which purport to create a debt, lien, or record of any kind against the person or property of the Studios, without the prior order of the Court.

IT IS SO ORDERED.

April 27, 2021



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

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United States District Court
Central District of California

LIGHTSTORM ENTERTAINMENT,
INC. ET AL.,

Plaintiffs,

v.

STEPHEN CUMMINGS,

Defendant.

Case No. 2:20-cv-08044-ODW (PVCx)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT [20], AND DENYING
PLAINTIFFS' MOTION TO
DECLARE STEPHEN CUMMINGS
A VEXATIOUS LITIGANT [34]**

I. INTRODUCTION AND BACKGROUND

On September 14, 2020, this Court dismissed a copyright action brought by Stephen Cummings against Lightstorm Entertainment, Inc., Paramount Pictures Corporation, Paramount Home Entertainment Inc., Twentieth Century Fox Film Corporation, James Cameron, and Dolby Laboratories (collectively, the "Studios"), in which Cummings sought \$400 million from the Studios because they allegedly based the film *Titanic* on his life story. *See* Order Granting Studios' Mots. to Dismiss, *Stephen Cummings v. Dolby Labs., Inc. et al.*, No. 20-04443 (C.D. Cal. May 15, 2020) ("*Cummings I*"). Relevantly, in *Cummings I*, the Court granted the Studios' motion to dismiss based on res judicata and denied their motion to declare Cummings a vexatious litigant. *See id.*

1 The Studios filed the present action because in July 2020, Cummings filed two
 2 false documents with the California Secretary of State purporting to establish a
 3 security interest in the Studios' assets based on a \$400 million debt they "owe"
 4 Cummings. (Compl., ECF No. 1; Joinder ECF No. 69.) With this case, the Studios
 5 seek: (1) a declaration that the documents Cummings filed are false and void; (2) an
 6 order instructing Cummings to withdraw the false documents; (3) an order instructing
 7 the Secretary of State to remove and expunge the false documents from official
 8 records; and (4) a permanent injunction enjoining Cummings from filing any
 9 document purporting to create an encumbrance or lien against the Studios without
 10 prior order of the Court. (*See* Mot. Summ. J. ("MSJ") 9, ECF No. 20.)

11 Now pending before the Court are the Studios' (1) Motion for Summary
 12 Judgment, and (2) Motion to Declare Cummings a Vexatious Litigant. (*See* MSJ;
 13 Mot. Vexatious Litigant ("MVL"), ECF No. 34.) Cummings opposes both Motions
 14 but fails to offer any persuasive arguments. (*See* Opp'n MSJ, ECF No. 27; Opp'n
 15 MVL, ECF No. 39.)¹

16 II. SUMMARY JUDGMENT

17 First, the Court addresses the Studios' Motion for Summary Judgment.

18 A. Background

19 The Studios contend that Cummings filed two false UCC-1s² with the
 20 California Secretary of State in an effort to harass them and without any legal basis
 21 whatsoever. (MSJ 5.) The uncontroverted facts are summarized below.³

23 ¹ Having carefully considered the papers filed in connection with the Motions, the Court deemed the
 24 matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

25 ² Specifically, Cummings filed two UCC-1 financing statements. A UCC-1 financing statement
 26 perfects a security interest in a debtor's personal property. *See* Cal. Com. Code § 9508. UCC-1s are
 27 typically filed with the Secretary of State in the state where the debtor resides to perfect the
 28 creditor's security interest in the debtor's property. Cal. Com. Code § 9501(a)(2). The filing of a
 UCC-1 creates a lien against the debtor's personal property and establishes priority in the event of
 the debtor's default or bankruptcy. Cal. Com. Code §§ 9308, 9322. For a UCC-1 to be properly
 filed: (1) a debt must be owed to the filer, and (2) the debtor must authorize the filing of the UCC-1.
 Cal. Com. Code § 9509(a).

1 Notwithstanding multiple rulings by the Middle District of Florida and this
 2 Court dismissing Cummings's claims that the 1997 motion picture *Titanic* was based
 3 on his life story, Cummings filed two false Uniform Commercial Code Financing
 4 Statements ("UCC-1s") with the California Secretary of State that assert an interest in
 5 the personal property of the Studios. (*See* Compl.; SUF 14, 22.) Specifically,
 6 Cummings asserts an interest exists based on an imaginary \$400 million debt he
 7 claims the Studios owe him for their film *Titanic*. (SUF 18, 27.)

8 "[The Studios] have never given Cummings any security interests in their
 9 assets, or otherwise entered into any security agreements with Cummings." (SUF 13.)
 10 Nevertheless, on July 3, 2020, Cummings filed a UCC-1, File Number 20-
 11 7802652698 ("July 3 UCC-1"), with the California Secretary of State identifying the
 12 Studios as "Debtor." (SUF 14.) The Studios did not authorize Cummings to file the
 13 July 3 UCC-1. (SUF 15.) The UCC-1 places a lien on collateral described as: "All
 14 assets[,] inventory, proceeds of sold inventory, accounts receivables, fixtures, case,
 15 equipment, bank account balances and real property," and "[a]ll property subject to
 16 enforcement of a judgment against the judgment debtors to which a judgment lien on
 17 personal property may attach." (SUF 16.)

18 Cummings attached an "'Affidavit' and 'Statement of Truth'" to the
 19 July 3 UCC-1, where he states that the Studios owe him \$400 million and "a
 20 1% continuing royalty to be paid to [Cummings and his] heirs in perpetuity, annually,
 21 from the proceeds of the continuing sales of the film." (SUF 27.) When Cummings
 22 filed the July 3 UCC-1, he knew that the Studios did not authorize its filing, and he
 23
 24

25 ³ As an initial matter, Cummings failed to file a statement of genuine disputes of material facts as
 26 required under Local Rule 56-2. As a result, the Court is entitled to deem all of the Studios'
 27 undisputed facts uncontroverted if they are supported by admissible evidence. *See Werner v. Evolve*
 28 *Media, LLC*, No. 2:18-CV-7188-VAP-(SKx), 2020 WL 3213808, at *1 (C.D. Cal. Apr. 28, 2020).
 The Studios filed a Statement of Uncontroverted Facts and supports their facts with admissible
 evidence. (*See* Studios' SUF, ECF No. 20-2.) Therefore, the Court takes the Studios' facts as true.

1 knew that his claims to the Studios' property identified as "collateral" had been
2 dismissed with prejudice by the Middle District of Florida. (SUF 21.)

3 On July 29, 2020, Cummings filed a second false UCC-1, which identifies the
4 Studios as "Debtor," File Number U200009479336 ("July 29 UCC-1") (the
5 July 3 UCC-1 and the July 29 UCC-1 are referred to collectively as the
6 "False UCC-1s"). (SUF 22.) The Studios did not authorize Cummings to file the
7 July 29 UCC-1. (SUF 23.) The July 29 UCC-1 is nearly identical to the
8 July 3 UCC-1 and is based on the same purported collateral. (SUF 25.) Cummings
9 filed the July 29 UCC-1 with the California Secretary of State without the Studios'
10 authorization, and he knew at the time that he filed the July 29 UCC-1 that he had no
11 valid claims against the Studios. (SUF 30.)

12 **B. Legal Standard**

13 A court "shall grant summary judgment if the movant shows that there is no
14 genuine dispute as to any material fact and the movant is entitled to judgment as a
15 matter of law." Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable
16 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*,
17 550 U.S. 372, 378 (2007). A disputed fact is "material" where the resolution of that
18 fact might affect the outcome of the suit under the governing law, and the dispute is
19 "genuine" where "the evidence is such that a reasonable jury could return a verdict for
20 the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968).
21 Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues
22 of fact and defeat summary judgment. *Thornhill's Publ'g Co. v. GTE Corp.*, 594 F.2d
23 730, 738 (9th Cir. 1979). Moreover, though the Court may not weigh conflicting
24 evidence or make credibility determinations, there must be more than a mere scintilla
25 of contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*,
26 198 F.3d 1130, 1134 (9th Cir. 2000).

27 Once the moving party satisfies its burden, the nonmoving party cannot simply
28 rest on the pleadings or argue that any disagreement or "metaphysical doubt" about a

1 material issue of fact precludes summary judgment. *See Celotex*, 477 U.S. at 322–23;
 2 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986);
 3 *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466,
 4 1468 (9th Cir. 1987). Nor will uncorroborated allegations and “self-serving
 5 testimony” create a genuine issue of material fact. *Villiarimo v. Aloha Island Air, Inc.*,
 6 281 F.3d 1054, 1061 (9th Cir. 2002). Summary judgment will thus be granted against
 7 a party who fails to demonstrate facts sufficient to establish an element essential to his
 8 case when that party will ultimately bear the burden of proof at trial. *See Celotex*,
 9 477 U.S. at 322.

10 **C. Discussion**

11 The Studios’ position in this case is that Cummings was not authorized to file
 12 the False UCC-1s. (MSJ 8.) Cummings puts forth no substantive argument in
 13 opposition. (*See Cummings’s Opp’n MSJ*, ECF No.27 (stating only that
 14 “[Cummings] hereby rise[s] in opposition to [the Studios’] Motion.”).)

15 The California Commercial Code (“Commercial Code”) provides that a person
 16 may file a UCC-1 only if the debtor authorizes the filing by: (1) authenticating a
 17 security agreement; (2) becoming bound as debtor by a security agreement; or
 18 (3) acquiring collateral in which a security interest is attached. Cal. Com. Code
 19 §§ 9509, 9315(a)(2). Where a purported creditor “is not proceeding in accordance
 20 with [Division 9 of the Commercial Code], a court may order or restrain collection,
 21 enforcement, or disposition of collateral on appropriate terms and conditions.” Cal.
 22 Com. Code § 9625(a).

23 A party improperly named as a debtor in a UCC-1 is entitled to injunctive relief
 24 pursuant to the Commercial Code. Cal. Com. Code § 9625(a); *see also United States*
 25 *v. Biggs*, No. CIV S-04-1263 FCD GGH PS, 2007 WL 3313022, at *11 (E.D. Cal.
 26 Nov. 6, 2007), *report and recommendation adopted*, No. CIV S-04-1263 FCD GGH
 27 PS, 2008 WL 4104296 (E.D. Cal. Sept. 3, 2008). Moreover, 28 U.S.C. § 2201(a)
 28 permits declaratory relief to clarify and settle parties’ legal interests in property. *See*,

1 *e.g., CitiMortgage, Inc. v. Wright*, No. CV 16-2920 DSF (FFMx), 2018 WL 6016949,
 2 at *5 (C.D. Cal. Apr. 6, 2018) (“The two principal criteria supporting entry of
 3 declaratory judgment [under 28 U.S.C. § 2201(a)] occur when: (1) the judgment will
 4 serve a useful purpose in clarifying and settling the legal relations in issue, and (2) the
 5 judgment will terminate and afford relief from the uncertainty, insecurity, and
 6 controversy giving rise to the proceeding.”).

7 The undisputed facts demonstrate that Cummings filed the False UCC-1s with
 8 the California Secretary of State with knowledge that the Studios did not authorize the
 9 filing. (SUF 14–15, 22–23.) Moreover, Cummings’s act of filing the False UCC-1s
 10 was in clear violation of Commercial Code sections 9509(a) and 9315(a)(2), which
 11 together state that a party can only file a UCC-1 only if the debtor authorizes the
 12 filing. Accordingly, the Studios are entitled to summary judgment as a matter of law,
 13 and injunctive and declaratory relief pursuant to Commercial Code section 9625(a)
 14 and 28 U.S.C. § 2201(a). Therefore, the Court **GRANTS** the Studios’ Motion for
 15 Summary Judgment.

16 **III. VEXATIOUS LITIGANT**

17 Next, the Court addresses the Studios’ Motion to Declare Cummings a
 18 Vexatious Litigant. (MVL.)

19 **A. Background**

20 Cummings has initiated three cases against the Studios regarding the same
 21 fantastical theory that the film *Titanic* was based on his life story.⁴ Thus, in
 22 *Cummings I*, the Studios moved to declare Cummings a vexatious litigant based on his

23
 24 ⁴ Cummings filed his first lawsuit against the Studios in the Middle District of Florida, asserting that
 25 the film *Titanic* is based on his life story. *See Cummings v. Cameron*, No. 6:17-cv-00908-CEM,
 26 2017 WL 7513075, at *1 (M.D. Fla. May 19, 2017) (“*Titanic I*”). That case was dismissed because
 27 Cummings failed to comply with the local rules. *Id.* On November 2, 2017, Cummings filed a
 28 second case against the Studios in the Middle District of Florida. *See Cummings v. Cameron*, No.
 6:17-CV-1897 ORL41 (DCI), 2018 WL 7350914, at *1 (M.D. Fla. Oct. 10, 2018) (“*Titanic II*”). The
 case was dismissed with prejudice. *See Cummings v. Cameron*, No. 17-cv-1897, 2018 WL 5629931,
 at *2 (M.D. Fla. Oct. 31, 2018), *appeal dismissed*, No. 18-14836-D, 2019 WL 6249386 (11th Cir.
 June 25, 2019); *see also Cummings I*.

1 frivolous and duplicative suits; however, the Court denied their motion as premature.
2 *See* Order Granting Mots. to Dismiss 1 n.1, *Cummings I*. Now, the Studios again
3 move to declare Cummings a vexatious litigant because they contend (1) his extra-
4 judicial actions (filing the False UCC-1s) have forced the Studios to take legal action;
5 and (2) Cummings told the studios in a meet and confer that he “is not going away
6 until [he] gets paid.” (MVL 5; Decl. of Michael R. Kreiner ¶ 3, ECF No. 34-1.) The
7 Court held a hearing on Plaintiffs’ vexatious litigant motion and invited supplemental
8 briefing on the applicability of Local Rule 83.8-4 and California Code of Civil
9 Procedure sections 391–391.8. (Am. Min. Order, ECF No. 42; Pls.’ Suppl. Br., ECF
10 No. 43; Mot. to Suppl. R., ECF No. 44.)

11 **B. Legal Standards**

12 “Federal courts can ‘regulate the activities of abusive litigants by imposing
13 carefully tailored restrictions under . . . appropriate circumstances.’” *Ringgold-*
14 *Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (quoting *De*
15 *Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)). Pursuant to the All Writs
16 Act, “enjoining litigants with abusive and lengthy [litigation] histories is one such . . .
17 restriction” that courts may impose. *Id.* However, “[r]estricting access to the courts
18 is . . . a serious matter . . . [as] the right of access to the courts is a fundamental right
19 protected by the Constitution.” *Id.* Accordingly, “[o]ut of regard for the
20 constitutional underpinnings of the right to court access, ‘pre-filing orders should
21 rarely be filed,’ and only if courts comply with certain procedural and substantive
22 requirements.” *Id.* at 1062 (quoting *De Long*, 912 F.2d at 1147).

23 Additionally, in this District, Local Rule 83-8.4 provides that “the Court may, at
24 its discretion, proceed by reference to the Vexatious Litigants statute of the State of
25 California.” (citing Cal. Code Civ. Proc. §§ 391–391.8). California’s vexatious
26 litigant statutes provide that a pro se party is a vexatious litigant if after a litigation has
27 been finally determined against the person they (1) repeatedly attempt to relitigate
28 (i) the validity of the holdings against him, (ii) the same claims and issues determined

1 in a previous action, or (2) “repeatedly file[] unmeritorious motions, pleadings, or
 2 other papers . . . or engage[] in other tactics that are frivolous or solely intended to
 3 cause unnecessary delay.” Cal. Code Civ. Proc. § 391.

4 **C. Discussion**

5 In this case, the Court finds that Cummings does not yet satisfy the
 6 requirements to be deemed a vexatious litigant. The vexatious litigant statutes are
 7 aimed to deter parties from filing frivolous actions. *See generally Ringgold-Lockhart*,
 8 761 F.3d at 1061; Cal. Code Civ. Proc. § 391. Importantly, and as mentioned above,
 9 Cummings did not initiate *this* action. Although the content of his filings in defense
 10 of this lawsuit appear far removed from reality, Cummings has a due process right to
 11 be heard on this matter. *See Ringgold-Lockhart*, 761 F.3d at 1065 (explaining that
 12 where a party is obligated or invited to file a response, it is inappropriate to make a
 13 vexatious litigant finding based on the frivolous arguments put forth in those filings).

14 The underlying bases for this action are the False UCC1s. Thus, the Court’s
 15 decision to enjoin Cummings from filing additional false liens or other documents that
 16 purport to establish an interest in the Studios’ property should be sufficient to address
 17 the harm at issue in this case. In light of the above, the Court does not find it
 18 appropriate to declare Cummings a vexatious litigant at this time. Accordingly, the
 19 Studios’ vexatious litigant motion is **DENIED**.

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court **DENIES** the Studios’ Motion to Declare
 22 Cummings a Vexatious Litigant. (ECF No. 34.) The Court **GRANTS** the Studios’
 23 Motion for Summary Judgment (ECF No. 20.) Accordingly, **IT IS ORDERED** that:

- 24 1. The July 3 UCC-1 and July 29 UCC-1 are declared false, fraudulent, invalid,
 25 null, void, and of no legal effect;
- 26 2. Cummings shall withdraw the July 3 UCC-1 and July 29 UCC-1 along with
 27 all accompanying affidavits and exhibits; and
- 28 3. Cummings is permanently enjoined from filing or recording any document

1 of any description, including UCC-1s, which purport to create a debt, lien, or
2 record of any kind against the person or property of the Studios, without the
3 prior order of the Court.

4 The Court shall issue judgment.

5
6 **IT IS SO ORDERED.**

7
8 April 27, 2021

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10 
11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
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**Additional material
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