

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 9 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

TONY MARTINEZ,

Plaintiff - Appellant,

v.

COLUMBIA SPORTSWEAR USA  
CORP., DBA Columbia Sportswear  
Company 446; EDDIE BAUER, A  
DELAWARE LLC, DBA Eddie Bauer  
Outlet R-867; NEW BALANCE  
ATHLETIC SHOE, INC., DBA New  
Balance 0015,

Defendants - Appellees.

No. 12-16331

D.C. No. 2:10-cv-01333-GEB-  
KJN

Eastern District of California,  
Sacramento

ORDER

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Upon due consideration, appellees' motion for attorneys' fees and costs on appeal is granted. *McConnell v. Critchlow*, 661 F.2d 116, 118 (9th Cir. 1981); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007).

It was clear at the time that the district court entered final judgment that the claims had no basis in law or fact. *See Galen v. County of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007) ("A defendant can recover if the plaintiff violates this standard at any point during the litigation, not just at its inception."). The burden on this court was compounded by appellant filing, within days of oral argument,

both a motion to voluntarily dismiss the appeal and then a motion to withdraw the motion to dismiss.

Appellees' motion for attorneys' fees and costs on appeal is hereby **GRANTED**. Plaintiff and his attorneys, Lynn Hubbard III and Scottlyn Hubbard IV, shall be jointly and severally liable for attorneys' fees in the amount of \$24,960. *See First Investors Corp. v. American Capital Financial Services, Inc.*, 823 F.2d 307 (9th Cir. 1987) (imposing costs and attorneys' fees on plaintiff and his attorneys, jointly and severally); *see also Kalgaard v. C.I.R.*, 764 F.2d 1322, 1323 (9th Cir. 1985) (same).

*Martinez v. Columbia Sportswear USA Corp.*, No. 12-16331

Smith, N.R., Circuit Judge, dissenting:

I do not condone the Appellant's actions in this case. However, because I would not find that the appeal was "frivolous, unreasonable, or without foundation," *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1154 (9th Cir. 1997), I would deny the Appellees' motion for attorneys' fees and costs.

**Lee, Inah**

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

The following transaction was entered on 06/09/2014 at 11:26:39 AM PDT and filed on 06/09/2014

**Case Name:** Tony Martinez v. Columbia Sportswear USA Corp., et al

**Case Number:** [12-16331](#)

**Document(s):** [Document\(s\)](#)

**Docket Text:**

Filed order (BARRY G. SILVERMAN, CONSUELO M. CALLAHAN and N. RANDY SMITH) Upon due consideration, appellees' motion for attorneys' fees and costs on appeal is granted. *McConnell v. Critchlow*, 661 F.2d 116, 118 (9th Cir. 1981); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007). It was clear at the time that the district court entered final judgment that the claims had no basis in law or fact. See *Galen v. County of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007) ("A defendant can recover if the plaintiff violates this standard at any point during the litigation, not just at its inception."). The burden on this court was compounded by appellant filing, within days of oral argument, both a motion to voluntarily dismiss the appeal and then a motion to withdraw the motion to dismiss. Appellees' motion for attorneys' fees and costs on appeal is hereby GRANTED. Plaintiff and his attorneys, Lynn Hubbard III and Scottlyn Hubbard IV, shall be jointly and severally liable for attorneys' fees in the amount of \$24,960. See *First Investors Corp. v. American Capital Financial Services, Inc.*, 823 F.2d 307 (9th Cir. 1987) (imposing costs and attorneys' fees on plaintiff and his attorneys, jointly and severally); see also *Kalgaard v. C.I.R.*, 764 F.2d 1322, 1323 (9th Cir. 1985) (same). [9124478] (BJB)

**Notice will be electronically mailed to:**

Honorable Garland E. Burrell, Jr., Senior District Judge  
Mr. Scottlynn J. Hubbard, Attorney  
Jon D. Meer, Attorney

Mr. Patrick S. Thompson  
USDC, Sacramento  
Ms. Myra B. Villamor, Attorney

The following document(s) are associated with this transaction:

**Document Description:** Main Document

**Original Filename:** 12-16331order.pdf

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[STAMP acecfStamp\_ID=1106763461 [Date=06/09/2014] [FileNumber=9124478-0]

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**Document Description:** Additional Document

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